ICTR-01-74-A
02-02-2009
C514/A-387(A)

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

UNITED NATIONS
NATIONS UNIES

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

ICTR Appeals Chamber
Date: 02 February 2009
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Registrar: **Mr. Adama Dieng**

Judgement of: **2 February 2009**

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FRANÇOIS KARERA

v.

THE PROSECUTOR

Case No. ICTR-01-74-A

JUDGEMENT

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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 Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an appeal by François Karera ("Appellant") against the Judgement rendered on 7 December 2007 in the case of *The Prosecutor v. François Karera* ("Trial Judgement") by Trial Chamber I of the Tribunal ("Trial Chamber").

I. INTRODUCTION

A. Background

2. The Appellant was born in 1938, in Huro sector, Musasa commune, Kigali prefecture.[1] For fifteen years he was the *bourgmestre* of Nyarugenge commune, in Kigali-Ville prefecture.[2] On 9 November 1990, the Appellant was appointed sub-prefect in Kigali prefecture and on or around 17 April 1994, he was appointed by the Interim Government as prefect of Kigali prefecture.[3]

3. The Appellant was tried on the basis of an amended indictment dated 19 December 2005 ("Amended Indictment"), which charged him with individual criminal responsibility under four counts: genocide (Count 1); complicity in genocide (Count 2); extermination as a crime against humanity (Count 3); and murder as a crime against humanity (Count 4). He was additionally charged with superior responsibility under Counts 1, 3 and 4. These counts related to attacks against and the murder of Tutsis in Nyamirambo sector (Nyarugenge commune, Kigali-Ville prefecture); in Kigali prefecture and at the Ntarama Church (Ntarama sector, Kakenze commune, Kigali prefecture).

4. The Trial Chamber found the Appellant guilty, under Article 6(1) of the Statute of the Tribunal ("Statute"), of genocide (Count 1)[4] and extermination and murder as crimes against humanity (Counts 3 and 4, respectively).[5] The Trial Chamber acquitted the Appellant of the alternative charge of complicity in genocide (Count 2) in light of his conviction for genocide.[6] While the Trial Chamber also found that the Appellant was responsible as a superior pursuant to

[1] Trial Judgement, para. 21. The Appeals Chamber notes that the Trial Chamber erred in designating the prefecture "Kigali-Rural" as in 1994 it was officially named Kigali prefecture. *See infra* paras. 55-58. *See also* Exhibit P14: *Loi 29/90 du 28 mai 1990, modifiant et complétant la loi du 15 avril 1963 sur l'organisation territoriale de la République (Journal Officiel, 1/08/1990).*
[2] Trial Judgement, para. 23.
[3] Trial Judgement, para. 24.
[4] Trial Judgement, paras. 540, 544, 548.
[5] Trial Judgement, paras. 557, 560, 561.

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Article 6(3) of the Statute, it did not enter a separate conviction on that basis but considered the Appellant's "superior position as an aggravating factor in sentencing".[7] It imposed a single sentence of imprisonment for the remainder of the Appellant's life.[8]

B. The Appeal

5. The Appellant presents twelve grounds of appeal challenging his convictions and his sentence. He requests the Appeals Chamber to overturn his convictions and to order his release.[9] In the alternative, he requests the Appeals Chamber to order a retrial or, as a further alternative, to quash his life sentence and substitute it with an appropriate sentence.[10] In his Appellant's Brief, the Appellant dropped his Ninth Ground of Appeal[11] and as a consequence, the Appeals Chamber will not address this ground of appeal.

6. The Appeals Chamber heard oral arguments regarding this appeal on 28 August 2008. Having considered the written and oral submissions of the parties, the Appeals Chamber hereby renders its Judgement.[12]

[6] Trial Judgement, para. 549.
[7] Trial Judgement, paras. 566, 577.
[8] Trial Judgement, para. 585.
[9] Notice of Appeal, p. 28; Appellant's Brief, p. 61.
[10] Notice of Appeal, p. 28; Appellant's Brief, p. 61.
[11] The Appellant acknowledges that "the [Trial] Chamber's erroneous finding of fact did not occasion a miscarriage of justice for the Appellant". Appellant's Brief, para. 310.
[12] The Appeals Chamber points out that some aspects of the Appellant's grounds of appeal are inextricably intertwined. Therefore, for ease of analysis, Ground of Appeal 1 and part of Ground of Appeal 2 will be addressed under Ground of Appeal 7.

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II. STANDARDS OF APPELLATE REVIEW

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

8. As regards errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[14]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal interpretation and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, applies the correct legal standard to the evidence contained in the trial record and determines whether it is itself convinced beyond reasonable doubt as to the factual finding challenged by the appellant before that finding may be confirmed on appeal.[15]

10. As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[16]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[17] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[18]

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[13] *See Muvunyi* Appeal Judgement, para. 8. *See also Martić* Appeal Judgement, para. 8.
[14] *See Muvunyi* Appeal Judgement, para. 9 citing *Ntakirutimana* Appeal Judgement, para. 11 (citations omitted).
[15] *See Martić* Appeal Judgement, para. 10.
[16] *Muvunyi* Appeal Judgement, para. 10 citing *Krstić* Appeal Judgement, para. 40 (citations omitted).
[17] *See Muvunyi* Appeal Judgement, para. 11. *See also Martić* Appeal Judgement, para. 14.
[18] *See Muvunyi* Appeal Judgement, para. 11. *See also Orić* Appeal Judgement, para. 13.

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12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[19] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies. Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[20]

[19] Practice Direction on Formal Requirements for Appeals from Judgement, para. 4(b). *See Muvunyi* Appeal Judgement, para. 12.
[20] *See Muvunyi* Appeal Judgement, para. 12. *See also Martić* Appeal Judgement, para. 14.

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III. ALLEGED GENERAL ERRORS IN THE ASSESSMENT OF THE EVIDENCE (GROUND OF APPEAL 2, IN PART)

13. In his Second Ground of Appeal,[21] the Appellant submits that in its assessment of the evidence, the Trial Chamber committed "numerous errors of law" that invalidate the Trial Judgement and made erroneous factual findings occasioning a miscarriage of justice.[22] Specifically, he contends that the Trial Chamber erred by applying incorrect standards of law in its assessment of his testimony and in considering conflicting, hearsay, circumstantial, and uncorroborated evidence.[23] He further alleges several errors related to the Trial Chamber's conduct of a site visit.[24]

14. The Appeals Chamber will address the Appellant's arguments in turn.[25]

A. Alleged General Errors in the Assessment of the Appellant's Testimony

15. The Appellant contends (i) that special rules should apply to the assessment of an accused's testimony and that the Trial Judgement did not provide a reasoned opinion in this respect; and (ii) that the Trial Chamber erred in law by failing to conclude that the portions of his testimony on which the Prosecution did not cross-examine him were established.

1. Rules Applicable to the Assessment of an Accused's Testimony and Provision of a Reasoned Opinion

16. Relying on Canadian case law, the Appellant first avers that "special rules for the assessment of evidence that flow from the presumption of innocence apply when an accused chooses to testify in his own trial".[26] In such a situation, Judges should first evaluate the accused's credibility, then state whether they believe him, and, if applicable, explain why they are satisfied beyond reasonable doubt of his guilt despite contradictory evidence.[27] In the Appellant's view, such

[21] Notice of Appeal, paras. 16-45; Appellant's Brief, paras. 6-46.
[22] Notice of Appeal, para. 17.
[23] The Appellant also gives notice that he intends to detail under each ground of appeal the factual and legal errors in the Trial Judgement (Appellant's Brief, para. 46). In the Appellant's Brief (paras. 7, 15, 30) and in the Brief in Reply (paras. 9, 11, 12, 14, 17, 87), the Appellant additionally alleges general errors in the assessment of his defence of alibi. The Appeals Chamber notes that in his Notice of Appeal, the Appellant does not allege such errors under the Second Ground of Appeal, but under the Eighth Ground of Appeal (Notice of Appeal, paras. 221-239). The Appeals Chamber will therefore consider all the Appellant's arguments related to the alibi below under Chapter IX.
[24] Appellant's Brief, paras. 41-46.
[25] The following two arguments will be addressed below in Chapter VIII: (i) The allegation that the Trial Chamber erred in law by failing to consider that its finding that the Appellant held pacification meetings was incompatible with the Prosecution's allegations relating to his participation in meetings encouraging crimes in Rushashi and those relating to murders or incitement to commit murder. Appellant's Brief, para. 27, referring to Trial Judgement, paras. 417, 316-456. Appellant's Brief, para. 29. *See also* Brief in Reply, paras. 77, 78; and (ii) the Appellant's contention that the Trial Chamber's reasons for rejecting his testimony, at paragraph 406 of the Trial Judgement, are inadequate and constitute an error of law. Appellant's Brief, para. 21.
[26] Appellant's Brief, para. 14; Notice of Appeal, para. 29.
[27] Notice of Appeal, para. 29; Appellant's Brief, paras. 14, 15, 18, 19; Brief in Reply, para. 84.

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a procedure prevents the Judges from unduly shifting the burden of proof to the accused and from erroneously examining whether the accused's testimony raises a reasonable doubt regarding the charges against him.[28] He emphasizes that such an approach is supported by the Appeals Chamber's holding in *Muhimana* to the effect that "[a]n accused does not need to prove at trial that a crime 'could not have occurred' or 'preclude the possibility that it could occur'".[29]

17. The Appellant next submits that in order for a convicted person to understand the reasons supporting his conviction, the Trial Judgement should set out clearly why the Trial Chamber accepted or rejected certain allegations and the accused's explanations about them.[30] He states that "the main criticism against the Trial Chamber is not only that it failed to provide adequate reasons for its findings, but also that it failed to explain why it did not believe Karera's evidence on practically all the facts alleged against him".[31] Relying again on Canadian case law, he contends that such a failure constitutes an error of law.[32]

18. The Prosecution responds that the Appellant's submissions are presented "in very general terms" and that they do not establish that the Trial Chamber disregarded its obligation to provide a reasoned opinion or committed an error capable of affecting the Trial Judgement.[33] It submits that a proper reading of the Trial Judgement shows that the Trial Chamber considered and evaluated the Appellant's testimony together with the evidence called by both the Prosecution and the Defence.[34] The Prosecution further contends that the Trial Chamber provided clear, reasoned findings of fact as to each element of each crime charged, as required by the Tribunal's jurisprudence.[35]

19. Regarding the Appellant's contention that special rules should apply when assessing an accused's testimony, the Appeals Chamber recalls that the Tribunal's Chambers are not bound by national rules of evidence or national case law.[36] While "[t]here is a fundamental difference between being an accused, who might testify as a witness if he so chooses, and a witness",[37] this does not imply that the rules applied to assess the testimony of an accused are different from those applied with respect to the testimony of an "ordinary witness". A trier of fact shall decide which witness's testimony to prefer, without necessarily articulating every step of its reasoning in reaching

[28] Appellant's Brief, paras. 16-18; Brief in Reply, paras. 86, 87.
[29] Appellant's Brief, para. 17, citing *Muhimana* Appeal Judgement, para. 18.
[30] Appellant's Brief, paras. 7, 8.
[31] Appellant's Brief, para. 22.
[32] Appellant's Brief, paras. 22-24; Notice of Appeal, para. 31.
[33] Respondent's Brief, para. 58.
[34] Respondent's Brief, paras. 60-62, 69.
[35] Respondent's Brief, para. 59.
[36] Rule 89(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.8, Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007, paras. 7, 11.

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this decision.[38] In so doing, as for any witness, a trier of fact is required to determine the overall credibility of an accused testifying at his own trial[39] and then assess the probative value of the accused's evidence in the context of the totality of the evidence.[40] There is no requirement in the Tribunal's jurisprudence that the accused's credibility be assessed first and in isolation from the rest of the evidence in the case.

20. Furthermore, it is settled jurisprudence that every accused has the right to a reasoned opinion under Article 22 of the Statute and Rule 88(C) of the Rules.[41] A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 24 of the Statute.[42] However, the reasoned opinion requirement relates to the Trial Judgement as a whole rather than to each submission made at trial.[43] Indeed,

> the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial. The Appeals Chamber recalls that it is in the discretion of the Trial Chamber as to which legal arguments to address. With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record. It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. There may be an indication of disregard when evidence which is clearly relevant to the findings is not addressed by the Trial Chamber's reasoning, but not every inconsistency which the Trial Chamber failed to discuss renders its opinion defective. [...] If the Trial Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[44]

Additionally, a Trial Chamber does not need to set out in detail why it accepted or rejected a particular testimony.[45] This is equally applicable to all evidence, including that tendered by the accused person.

21. A review of the Trial Judgement reveals that the Trial Chamber did consider the Appellant's testimony and made assessments of the probative value of that evidence.[46] It was not obliged to

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[37] *Galić* Appeal Judgement, para. 17; *Kvočka* Appeal Judgement, para. 125; *Prlić et al.* Decision of 5 September 2008, para. 11.
[38] *Kupreškić et al.* Appeal Judgement, para. 32.
[39] *Ntakirutimana* Appeal Judgement, para. 391, citing *Musema* Appeal Judgement, para. 50.
[40] *See Musema* Appeal Judgement, para. 50 (regarding the assessment of documentary evidence tendered by an accused in support of his alibi); *Muhimana* Appeal Judgement, para. 19.
[41] *Muvunyi* Appeal Judgement, para. 144, citing *Simba* Appeal Judgement, para. 152; *Kamuhanda* Appeal Judgement, para. 32; *Kajelijeli* Appeal Judgement, para. 59; *Semanza* Appeal Judgement, paras. 130, 149.
[42] *See, e.g., Limaj et al.* Appeal Judgement, para. 81.
[43] *Limaj et al.* Appeal Judgement, para. 81; *Kvočka et al.* Appeal Judgement, para. 23.
[44] *Kvočka et al.* Appeal Judgement, para. 23 (citations omitted); *Simba* Appeal Judgement, para. 152; *Ntagerura et al.* Appeal Judgement, para. 206; *Niyitegeka* Appeal Judgement, para. 124; *Kajelijeli* Appeal Judgement, para. 60; *Musema* Appeal Judgement, paras. 18-20; *Limaj et al.* Appeal Judgement, para. 81; *Naletilić and Martinović* Appeal Judgement, para. 603.
[45] *Muhimana* Appeal Judgement, para. 99; *Simba* Appeal Judgement, para. 152; *Musema* Appeal Judgement, paras. 18-20.
[46] *See, inter alia,* Trial Judgement, paras. 30, 34, 48, 49, 64, 65, 72, 73, 104, 133, 275-278, 309, 342-345, 373, 390-394, 402, 406, 415, 430, 448, 463-466, 479-481, 515, 516.

systematically justify why it rejected each part of that evidence. The Appellant's claim that the Trial Chamber erred by failing to explain why it did not believe him is therefore dismissed.

2. Alleged Error concerning Inferences that the Trial Chamber Should Have Drawn from the Prosecution's Absence of Cross-Examination of the Appellant

22. The Appellant submits that the Trial Chamber erred in law in failing to conclude that those portions of his testimony that the Prosecution did not cross-examine were established.[47] Referring to Rule 90(G)(ii) of the Rules, the *Rutaganda* Appeal Judgement,[48] and Canadian jurisprudence, he submits that the "failure to cross-examine a witness on an aspect of his testimony implies a tacit acceptance of the truth of the witness's evidence on the matter".[49] The Appellant also contends that the Trial Chamber's failure to provide a reasoned opinion on this question constitutes an error of law, since he cannot ascertain the Trial Chamber's reasons for disbelieving him.[50]

23. The Prosecution responds that it was open to the Trial Chamber not to draw a negative inference from the Prosecution's decision not to cross-examine the Appellant on certain details of his testimony where he repeated his denial of the allegations against him.[51] In this respect, the Prosecution recalls that the Trial Chamber already heard the parties' arguments on this issue and ruled that "the Prosecution is under no obligation to cross-examine the Accused on all aspects of its case".[52]

24. The Appeals Chamber finds that Rule 90(G)(ii) of the Rules does not support the Appellant's contention. The rule merely states that "[i]n the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness." The ICTY Appeals Chamber has previously stated, regarding the similarly worded Rule 90(H)(ii) of the ICTY Rules, that it:

> seeks to facilitate the fair and efficient presentation of evidence whilst affording the witness being cross-examined the possibility of explaining himself on those aspects of his testimony contradicted by the opposing party's evidence, so saving the witness from having to reappear needlessly in

[47] Notice of Appeal, para. 25. The authoritative French version of this paragraph reads: "*La Chambre de première instance a erré en droit en [ne] concluant pas que les portions du témoignage de l'appelant sur lesquelles il n'avait pas été contre-interrogé devraient être tenues pour avérées.*" The English translation inaccurately reads: "The Trial Chamber erred in law in finding that those portions of the Appellant's testimony on which he was not cross-examined were to be considered established", while it should read: "The Trial Chamber erred in law in **not** finding that those portions of the Appellant's testimony on which he was not cross-examined were to be considered established". Appellant's Brief, paras. 25, 26.
[48] *Rutaganda* Appeal Judgement, para. 310.
[49] Appellant's Brief, para. 26 (citation omitted); Notice of Appeal, para. 26.
[50] Appellant's Brief, para. 26.
[51] Respondent's Brief, para. 67.
[52] Respondent's Brief, para. 67, quoting Trial Judgement, para. 191, and fn. 250.

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order to do so and enabling the Trial Chamber to evaluate the credibility of his testimony more accurately owing to the explanation of the witness or his counsel.[53]

25. The central purpose of this rule is to "promote the fairness of the proceedings by enabling the witness [...] to appreciate the context of the cross-examining party's questions, and to comment on the contradictory version of the events in question".[54]

26. For the requirements of this rule to be fulfilled, there is no need for the cross-examining party to explain every detail of the contradictory evidence. Furthermore, the rule allows for some flexibility depending on the circumstances at trial.[55] This therefore implies that if it is obvious in the circumstances of the case that the version of the witness is being challenged, there is no need for the cross-examining party to waste time putting its case to the witness.[56]

27. The Appeals Chamber notes that the term "witness" under Rule 90 of the Rules does not always equate to an accused who chooses to testify. There is a fundamental difference between the accused, who might testify as a witness if he so chooses, and a witness. The Tribunal "does not reflexively apply rules governing any other witness to an accused who decides to testify in his own case".[57] When an accused testifies in his own defence, he is well aware of the context of the Prosecution's questions and of the Prosecution's case, insofar as he has received sufficient notice of the charges and the material facts supporting them.[58] Furthermore, the accused's version of the events is for the most part challenged by the Prosecution, while his testimony is aimed at responding to Prosecution's evidence and allegations. In these circumstances, it would serve no useful purpose to put the nature of the Prosecution's case to the accused in cross-examination. The Appeals Chamber therefore does not find that Rule 90(G)(ii) of the Rules was intended to apply to an accused testifying as a witness in his own case. The Appeals Chamber notes that, in any event,

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[53] *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-AR73.7, Decision on the Interlocutory Appeal against a Decision of the Trial Chamber, as of Right, 6 June 2002, p. 4.

[54] On this issue, the Appeals Chamber approves of the language used by the Trial Chamber in *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Order Setting Forth Guidelines for the Procedure Under Rule 90(H)(ii), 6 March 2007 ("*Popović* Order"), para. 1.

[55] On this issue, the Appeals Chamber approves of the language used by the Trial Chamber in *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Decision on "Motion to Declare Rule 90(H) (ii) Void to the Extent It Is in Violation of Article 21 of the Statute of the International Tribunal" by the Accused Radoslav Brđanin and on "Rule 90(H) (ii) Submissions" by the Accused Momir Talić, 22 March 2002 ("*Brđanin* Decision"), paras. 13, 14; *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on Partly Confidential Defence Motion Regarding the Consequences of a Party Failing to Put its Case to Witnesses Pursuant to Rule 90(H)(ii), 17 January 2006, pp. 1-2; *Popović* Order, para. 2.

[56] The Appeals Chamber notes that the case of *Browne v. Dunn* (on which the *Brđanin* Decision, confirmed by the Appeals Chamber, relies) states that the requirement to put the case to the witness does not apply when it is "otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling. Of course I do not deny for a moment that there are cases in which that notice has been so distinctly and unmistakably given, and the point upon which he is impeached, and is to be impeached, is so manifest, that it is not necessary to waste time in putting questions to him upon it". *Browne v. Dunn* (1893) 6 R. 67 (H.L.).

[57] *Prlić et al*, Decision of 5 September 2008, para. 11.

[58] The question of the lack of notice will be treated separately by the Appeals Chamber, see below Chapter VIII(D) and Chapter X.

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Rule 90(G)(ii) of the Rules is silent on any inferences that may be drawn by a Trial Chamber from a witness's testimony that is not subject to cross-examination.

28. The Appeals Chamber further notes that the relevant holding of the Appeals Chamber in *Rutaganda* reads:

> *La Chambre d'appel estime que, d'une manière générale, une partie qui ne contre-interroge pas un témoin sur une déclaration donnée admet tacitement la véracité de la déposition dudit témoin sur ce point. La Chambre de première instance n'aurait donc pas commis une erreur de droit en l'espèce, en induisant du fait que l'Appelant n'avait pas contre-interrogé le témoin Q sur la distribution d'armes, que celui-ci ne contestait pas la véracité de la déposition dudit témoin sur ce point. Ceci étant dit, il ne ressort pas clairement du Jugement que la Chambre de première instance est effectivement parvenue à une telle conclusion. Il semble plutôt qu'elle se soit limitée à noter que l'Appelant n'avait pas contre-interrogé le témoin Q sur la question visée, sans toutefois en tirer quelques conséquences que ce soit dans ses conclusions factuelles. De l'avis de la Chambre d'appel, cet argument est dépourvu de fondement.*[59]

29. The Appeals Chamber recalls that in *Kamuhanda*, the Appeals Chamber stated that this holding in *Rutaganda* "does not stand for the proposition that a trier of fact *must* infer that statements not challenged during cross-examination are true," and that it is within the discretion of a Trial Chamber to decline to make such an inference.[60] Thus, the Appeals Chamber emphasizes that a Trial Chamber has the discretion to infer (or not) as true statements unchallenged during cross-examination, and to take into account the absence of cross-examination of a particular witness when assessing his credibility.[61]

30. The Appeals Chamber notes that in this instance, the Appellant, who testified at the end of the case, had consistently denied the allegations against him throughout the proceedings and claimed that he did not know anything about the crimes alleged.[62] The Prosecution cross-examined the Appellant on a number of issues.[63] Under this sub-ground of appeal, the Appellant has failed to point to any finding allegedly affected by the lack of cross-examination by the Prosecution but

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[59] *Rutaganda* Appeal Judgement, para. 310 (footnote omitted). The Appeals Chamber notes that the English version does not accurately reflect the French authoritative version. The English version reads: "The Appeals Chamber considers that a party who fails to cross-examine a witness upon a particular statement tacitly accepts the truth of the witness's evidence on the matter. Therefore the Trial Chamber did not commit an error of law in the case at bar, in inferring that the Appellant's failure to cross-examine Witness Q on the weapons distribution meant that he did not challenge the truth of the witness's evidence on the matter. That being said, it is unclear from the Trial Judgement whether the Trial Chamber drew inferences from this failure. Rather, it appears that it only noted that the Appellant failed to cross-examine Witness Q regarding the specific statement, without making any inferences in its factual conclusions. It is the opinion of the Appeals Chamber that this argument is without foundation." In order to fully reflect the nuances introduced by the Appeals Chamber in its finding, the English translation of the first two sentences of this paragraph should read: "The Appeals Chamber considers that, **[in general]**, a party who fails to cross-examine a witness upon a particular statement tacitly accepts the truth of the witness's evidence on the matter. Therefore the Trial Chamber **[would have]** not commit**[ted]** an error of law in the case at bar, in inferring that the Appellant's failure to cross-examine Witness Q on the weapons distribution meant that he did not challenge the truth of the witness's evidence on the matter."

[60] *Kamuhanda* Appeal Judgement, para. 204.

[61] *Kajelijeli* Appeal Judgement, para. 26; *Nahimana et al.* Appeal Judgement, paras. 820, 824 and fn. 1893.

[62] T. 21 August 2006; T. 22 August 2006; T. 23 August 2006.

[63] T. 22 August 2006 pp. 31-61; T. 23 August 2006 pp. 1-44.

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merely makes a general reference to his oral arguments at trial.[64] In these circumstances, the Appellant has not demonstrated that the Trial Chamber committed an error of law in not considering as established those portions of his testimony on which the Prosecution did not cross-examine him.[65]

31. The Appeals Chamber further declines to consider the unsubstantiated assertion made by the Appellant with respect to the lack of a reasoned opinion on this point.

32. For the foregoing reasons, this sub-ground of appeal is dismissed.

B. Alleged Errors in the Assessment of Circumstantial Evidence

33. The Appellant submits that the Trial Chamber committed "many errors of law in its assessment of circumstantial evidence".[66] He argues that "[w]hen the [Prosecution] relies on circumstantial evidence to prove an allegation, the guilt of the accused must be the only possible inference to be drawn from that evidence."[67] He contends that the Trial Chamber "disregarded many cultural and social factors which could have shed a different light on the evidence, and based on which it could have made different findings."[68] He also contends that a "quick analysis of the evidence [...] in relation to all the Trial Chamber's findings shows that a reasonable trier of fact could never have drawn the factual conclusions that the Trial Chamber drew".[69]

34. It is well established that a conclusion of guilt can be inferred from circumstantial evidence only if it is the only reasonable conclusion available from the evidence.[70] Whether a Trial Chamber infers the existence of a particular fact upon which the guilt of the accused depends from direct or circumstantial evidence, it must reach such a conclusion beyond reasonable doubt. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the non-existence of that fact, the conclusion of guilt beyond reasonable doubt cannot be drawn.[71]

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[64] *See* Notice of Appeal, paras. 24-26; Appellant's Brief, paras. 25, 26.
[65] Any specific arguments raised by the Appellant in relation to this allegation will be dealt with below in the respective Chapters.
[66] Notice of Appeal, para. 33.
[67] Appellant's Brief, para. 32, referring to *Nahimana* Appeal Judgement, para. 524, *Ntagerura et al.* Appeal Judgement, paras. 306, 399, and *Mpambara* Trial Judgement, para. 163; Notice of Appeal, para. 34.
[68] Notice of Appeal, para. 35.
[69] Notice of Appeal, para. 36.
[70] *Ntagerura et al.* Appeal Judgement, para. 306. *See also Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, paras. 524, 906; *Čelebići* Appeal Judgement, para. 458; *Stakić* Appeal Judgement, para. 219; *Vasiljević* Appeal Judgement, para. 120; *Krstić* Appeal Judgement, para. 41; *Kvočka et al.* Appeal Judgement, para. 237.
[71] *Ntagerura et al.* Appeal Judgement, para. 306. *See also Čelebići* Appeal Judgement, para. 458; *Stakić* Appeal Judgement, para. 219.

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35. Under this sub-ground of appeal, however, the Appellant merely makes general allegations regarding the Trial Chamber's assessment of circumstantial evidence without substantiating them or providing any reference to the Trial Judgement. Therefore this sub-ground of appeal is dismissed.[72]

C. Alleged Errors in the Assessment of Hearsay Evidence

36. The Appellant submits that the Trial Chamber systematically erred in giving hearsay evidence weight or probative value contrary to the standard developed by the ICTY in the *Aleksovski* Decision, according to which "the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence".[73] He argues, in this respect, that the Trial Chamber erred in fact by giving weight to evidence that a reasonable trier of fact could simply not have considered,[74] and by disregarding "a good deal of evidence" favourable to him which it should have accepted.[75] He further argues that the Trial Chamber erred in law in failing to justify, in many instances, why it preferred hearsay evidence to the Appellant's uncontradicted testimony.[76]

37. The Prosecution disputes the Appellant's allegations that the Trial Chamber did not assess hearsay evidence properly, and notes that the Appellant did not point to any specific example or show how the Trial Chamber erred.[77] It contends that in such circumstances, it is sufficient to note that the Trial Chamber cautiously assessed hearsay evidence in accordance with the Tribunal's jurisprudence.[78]

38. The Appellant replies that with respect to the allegations concerning events in Nyamirambo, the Trial Chamber erred in preferring second or third-degree hearsay evidence to the Appellant's corroborated and un-contradicted testimony.[79] He also submits that neither the Trial Chamber nor the Prosecution provided justification for this preference.[80]

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[72] The Appeals Chamber will address separately the Appellant's arguments related to the assessment of circumstantial evidence that have been raised with greater specificity under other grounds. *See* below Chapter IV.
[73] Notice of Appeal, paras. 38-40; Appellant's Brief, paras. 33, 34, citing *Aleksovski* Decision, para. 15 (citation omitted); Brief in Reply, paras. 33, 34, also citing *Aleksovski* Decision, para. 15 (citation omitted).
[74] Notice of Appeal, para. 40.
[75] Notice of Appeal, para. 39; Appellant's Brief, paras. 33, 34.
[76] Appellant's Brief, para. 35.
[77] Respondent's Brief, para. 63.
[78] Respondent's Brief, para. 63.
[79] Brief in Reply, para. 33.
[80] Brief in Reply, paras. 33, 35.

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39. It is well established that, as a matter of law, it is permissible to base a conviction on hearsay evidence.[81] A Trial Chamber has the discretion to cautiously consider hearsay evidence[82] and has the discretion to rely on it.[83] While the weight and probative value to be afforded to that evidence will usually be less than that accorded to the evidence of a witness who has given it under oath and who has been cross-examined, it will depend upon "the infinitely variable circumstances which surround hearsay evidence".[84] Thus, the fact that the evidence regarding a specific event is hearsay evidence does not in itself suffice to render it not credible or unreliable.[85] The source of information,[86] the precise character of the information,[87] and the fact that other evidence corroborates the hearsay evidence[88] are relevant criteria in assessing the weight or probative value of hearsay evidence. In any event, it is for the appealing party to demonstrate that no reasonable trier of fact could have relied upon hearsay evidence in reaching a specific finding.[89]

40. The Appeals Chamber rejects the unsubstantiated and vague contentions made under this sub-ground of appeal that the Trial Chamber systematically erred in its assessment of hearsay evidence, that it failed to provide a reasoned opinion in relation to its assessment of hearsay evidence, and that it also failed to explain why it relied upon that evidence and disregarded evidence favourable to the Appellant.

41. Furthermore, the Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber erred in preferring hearsay testimony to the Appellant's uncontradicted testimony. Contrary to the Appellant's assertion,[90] his testimony denying his participation in all of the crimes was challenged by Prosecution evidence and was thus contradicted.[91] As noted above, the fact that the evidence regarding a specific event is hearsay evidence does not in itself suffice to render it not credible or unreliable.[92] Such an assessment will depend upon the particular circumstances of each case.

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[81] *Muvunyi* Appeal Judgement, para. 70; *Muhimana* Appeal Judgement, para. 49; *Gacumbitsi* Appeal Judgement, para. 115.
[82] *Rutaganda* Appeal Judgement, para. 34; *Ndindabahizi* Appeal Judgement, para. 115; *Akayesu* Appeal Judgement, paras. 288, 289, 292.
[83] *Nahimana et al.* Appeal Judgement, para. 831; *Akayesu* Appeal Judgement, para. 292; *Naletilić and Martinović* Appeal Judgement, para. 217.
[84] *Aleksovski* Decision, para. 15.
[85] *See, e.g., Nahimana et al.* Appeal Judgement, paras. 215, 473.
[86] *Nahimana et al.* Appeal Judgement, para. 831; *Ndindabahizi* Appeal Judgement, para. 115 (about "unverifiable hearsay" evidence); *Semanza* Appeal Judgement, para. 159; *Rutaganda* Appeal Judgement, paras. 154, 156, 159.
[87] *Ndindabahizi* Appeal Judgement, para. 115.
[88] *Nahimana et al.* Appeal Judgement, para. 473 (for an illustration of hearsay testimonies corroborating each other); *Gacumbitsi* Appeal Judgement, para. 115.
[89] *Nahimana et al.* Appeal Judgement, para. 509 (concerning second-degree hearsay evidence); *Semanza* Appeal Judgement, para. 159; *Naletilić and Martinović* Appeal Judgement, paras. 217, 218.
[90] Appellant's Brief, para. 35; Brief in Reply, paras. 33, 35.
[91] *See, e.g.,* Trial Judgement, paras. 110-122, 401-417, 431-438, 499-510.
[92] *See supra* para. 39.

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42. For the foregoing reasons, this sub-ground of appeal is dismissed.

D. Alleged Errors in the Assessment of Uncorroborated Evidence

43. The Appellant submits that the Trial Chamber erred in law by applying the Tribunal's jurisprudence on corroboration erratically and by failing to provide a reasoned opinion in relation to the corroboration of evidence.[93] He contends that "the allegations of many witnesses should have been discounted" on this ground.[94] The Appellant argues that the possibility of collusion between witnesses could constitute a situation where corroboration is required.[95] In this respect, he alleges that the Trial Chamber erred by not requiring corroboration of the allegations made by four Prosecution witnesses concerning the events in Ntarama despite its observation of the possibility of collusion among them.[96] He also submits that a lack of reasoned opinion in the Trial Judgement makes it impossible to know the basis to believe, or not, uncorroborated evidence, "the level of corroboration required [...] and what is considered as corroborating evidence."[97]

44. The Prosecution responds that the Trial Chamber consistently indicated where the evidence was corroborated, and where corroboration was required in relation to the Appellant's presence at the crime scene and his participation in the crimes alleged.[98]

45. The Appeals Chamber recalls that a Trial Chamber has the discretion to decide, in the circumstances of each case, whether corroboration of evidence is necessary[99] and to rely on uncorroborated, but otherwise credible, witness testimony.[100] Therefore, a Trial Chamber may, depending on its assessment, rely on a single witness's testimony for the proof of a material fact.[101] It may thus convict an accused on the basis of evidence from a single witness, although such evidence must be assessed with appropriate caution.[102] Any appeal based on the absence of

[93] Appellant's Brief, paras. 36, 39.
[94] Notice of Appeal, para. 42.
[95] Appellant's Brief, paras. 37, 38.
[96] Appellant's Brief, para. 40.
[97] Appellant's Brief, para. 39.
[98] Respondent's Brief, para. 65, referring to Trial Judgement, paras. 174, 215, 219, 366, 552-561. The Appeals Chamber observes that the reference to paragraphs 552-561 is obviously incorrect.
[99] *Muhimana* Appeal Judgement, para. 49; *Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92; *Rutaganda* Appeal Judgement, para. 29.
[100] *Muvunyi* Appeal Judgement, para. 128; *Muhimana* Appeal Judgement, paras. 101, 120, 159, 207; *Nahimana et al.* Appeal Judgement, paras. 547, 633, 810.
[101] *Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92; *Semanza* Appeal Judgement, para. 153. *See also Kordić and Čerkez* Appeal Judgement, para. 274, citing *Kupreškić et al.* Appeal Judgement, para. 33.
[102] *Kordić and Čerkez* Appeal Judgement, para. 274. In *Kordić and Čerkez*, the Appeals Chamber also held that "care must be taken to guard against the exercise of an underlying motive on the part of the witness." *Kordić and Čerkez* Appeal Judgement, para. 274. *See also Ntagerura et al.* Appeal Judgement, para. 203. In *Ntagerura et al.*, the Appeals Chamber confirmed that "considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to

corroboration must therefore necessarily be against the weight attached by the Trial Chamber to the evidence in question.[103]

46. The Appeals Chamber dismisses the assertions made by the Appellant under this sub-ground of appeal as general and unsubstantiated. The Appellant's submission relating to possible collusion between the four Prosecution witnesses testifying about the events in Ntarama[104] will be addressed below.[105]

47. For the foregoing reasons, this sub-ground of appeal is dismissed.

E. Alleged Errors relating to the Observations Made during the Site Visit

48. The Appellant submits that the Trial Chamber erred in law by failing to provide the factual findings arising from the site visit, thus denying him the opportunity to present a full defence, as well as the right to an intelligible judgement.[106] The Appellant further submits that the Trial Chamber erred in fact by making factual findings which are contrary to the observations it made during its site visit in Rwanda from 1 to 3 November 2006.[107] He argues that observations made during the site visit brought to light certain details about the Ntarama area that are not revealed in the Trial Judgement.[108] He argues that, absent a *procès-verbal*, pictures or admissions, it is now impossible to use the observations made during the site visit to challenge the credibility of unreliable witnesses and to demonstrate the Trial Chamber's errors in this respect.[109] He also contends that this prevents the Appeals Chamber from assessing the accuracy of the evidence collected during the site visit.[110]

49. The Prosecution responds that the Appellant makes only vague assertions, without establishing how the Trial Chamber erred by disregarding or omitting to consider any specific fact or observation, such as to make appellate intervention necessary.[111] It avers that the Appellant failed to show any error of law or fact in the Trial Chamber's assessment of witnesses' testimonies and the parties' submissions on the observations made during the site visit.[112] The Prosecution further

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carefully consider the totality of the circumstances in which it was tendered." *Ntagerura et al.* Appeal Judgement, para. 204 (citation omitted).

[103] *Kordić and Čerkez* Appeal Judgement, para. 274.

[104] Trial Judgement, paras. 250, 308, 313.

[105] *See infra* paras. 231-235.

[106] Appellant's Brief, para. 44.

[107] Notice of Appeal, paras. 43, 44.

[108] Appellant's Brief, para. 43. *See also* Appellant's Brief, para. 207; AT. 28 August 2008 p. 54.

[109] Appellant's Brief, para. 45; AT. 28 August 2008 pp. 12, 13. The Appellant submits that he was not obliged to request that minutes be taken during the site visit and that it was the obligation of the Trial Chamber to ensure that a report of the site visit be produced. AT. 28 August 2008 p. 13.

[110] Appellant's Brief, para. 42; AT. 28 August 2008 p. 55.

[111] Respondent's Brief, para. 73.

[112] Respondent's Brief, para. 76.

asserts that the Appellant does not establish that the failure to produce a separate report amounts to an error that could have any impact on the verdict.[113]

50. Turning to the Appellant's contention that the Trial Chamber erred in law by failing to keep records from the site visit, the Appeals Chamber first notes that at no time during the trial proceedings did the Appellant object to the absence of such materials.[114] Moreover, the Appeals Chamber notes that the Trial Chamber considered the parties' submissions on the observations made during the site visit in reaching its findings,[115] and explained how its observations affected the assessment of the evidence.[116] Therefore, the Appeals Chamber does not agree that, in relying on its observations, the Trial Chamber denied the Appellant the right to present a full defence and to be provided with a reasoned opinion. The Appeals Chamber emphasizes that detailed records of Trial Chamber's site visits should normally be kept. The purpose of a site visit is to assist a Trial Chamber in its determination of the issues and therefore it is incumbent upon the Trial Chamber to ensure that the parties are able to effectively review any findings made by the Trial Chamber in reliance on observations made during the site visit.[117] The Appeals Chamber however finds that in this case the Appellant has not demonstrated that he was prejudiced by his inability to challenge the Trial Chamber's observations and that the parties had the opportunity to make arguments based on their observations of the site visit in their closing arguments and closing briefs to which the Trial Chamber referred in its Judgement.[118]

F. Conclusion

51. Accordingly, the Second Ground of Appeal is dismissed in part. The remaining arguments presented in the Second Ground of Appeal will be considered below under Chapter VII.

[113] Respondent's Brief, para. 76; AT. 28 August 2008 pp. 41, 42.
[114] The Appeals Chamber observes that the Appellant consented without reservation to the site visit. *See The Prosecutor v. François Karera*, Case No. ICTR-2001-74-T, Defence Response to the Prosecutor's Motion for a View (Locus in Quo) (Rules 4, 54, and 89 of the Rules of Procedure and Evidence), 12 May 2006.
[115] Trial Judgement, paras. 133, 159 (and fn. 217), 160 (and fn. 218), 161, 305. *See also* Prosecution Closing Brief, paras. 20, 24, 389, 418, 452, and fn. 414; Defence Closing Brief, paras. 93, 111, 184, 235, fns 255-256, 451; T. 23 November 2006 pp. 7, 35, 38, 40, 41, 53.
[116] Trial Judgement, paras. 133, 159, 160, 161, 305.
[117] Such records may take different forms and it will depend on the circumstances of the specific case to determine which form will be most appropriate.
[118] *See* Trial Judgement, paras. 133, 159, 161.

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IV. ALLEGED ERRORS RELATING TO THE FINDING THAT THE APPELLANT ACTED AS PREFECT *DE FACTO* IN "KIGALI-RURAL" BEFORE 17 APRIL 1994 (GROUND OF APPEAL 3)

52. The Trial Chamber found that, before his formal appointment as prefect of Kigali prefecture on 17 April 1994, the Appellant exercised at least some of the authority which would normally have been exercised by the prefect.[119] It rejected the submission that he only exercised authority as sub-prefect responsible for economic and technical affairs.[120]

53. Under this ground of appeal, the Appellant submits that the Trial Chamber erred in finding: (i) that the prefecture where he exercised authority was named "Kigali-Rural"; (ii) that, under Rwandan law, the former prefect, Côme Bizimungu ("Bizimungu"), was empowered to appoint him prefect *ad interim*; and (iii) that he acted as prefect *de facto* of "Kigali-Rural" before his official appointment to this post on 17 April 1994.[121]

54. The Appeals Chamber will consider the Appellant's arguments in turn.

A. Alleged Error relating to the Official Designation of Kigali Prefecture in 1994

55. The Appellant submits that the Trial Chamber erred in designating "Kigali-Rural" the prefecture where he successively exercised functions as sub-prefect and prefect, while in 1994, its official name was Kigali prefecture.[122] He contends that this error shows the superficial nature of the Trial Chamber's assessment of the evidence.[123]

56. The Prosecution responds that this claim is groundless.[124]

57. The Appeals Chamber agrees with the Appellant that the Trial Chamber erred in designating the prefecture "Kigali Rural" as it was officially named Kigali prefecture in 1994.[125] However, the Appellant has not shown that this error adversely impacted the Trial Chamber's findings.

58. Accordingly, this sub-ground of appeal is dismissed.

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[119] Trial Judgement, paras. 77, 247.
[120] Trial Judgement, para. 120.
[121] Notice of Appeal, paras. 46-74; Appellant's Brief, paras. 47, 48, 51, referring to Exhibit D49, Rwandan Official Gazette, 15 October 1993.
[122] Notice of Appeal, paras. 48, 49; Appellant's Brief, para. 48.
[123] Notice of Appeal, paras. 50, 51.
[124] Respondent's Brief, para. 79.
[125] Exhibit P14.

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B. Alleged Error in Finding that Former Prefect Côme Bizimungu was Empowered to Appoint the Appellant Prefect *Ad Interim*

59. The Appellant submits that the Trial Chamber erred in finding that he exercised *de jure* powers of the prefect subsequent to his "appointment" to this position by the former prefect Bizimungu on 24 August 1993.[126] He claims that the Trial Chamber erred in finding that Article 12 of Legislative Decree No. 10/75 of 11 March 1975 ("Legislative Decree No. 10/75") allowed Prefect Bizimungu to appoint a successor. He contends that, pursuant to Legislative Decree No. 10/75, only the President of the Republic could appoint a prefect.[127] He argues that, in any event, since Bizimungu's position as prefect had been terminated on 4 August 1993, Bizimungu could not exercise any power after that date and consequently could not have appointed him prefect *ad interim*.[128]

60. The Prosecution responds that the Appellant exercised functions *de jure* as prefect *ad interim*.[129] It recalls the Trial Chamber's finding to the effect that, pursuant to Article 12 of Legislative Decree No. 10/75, Bizimungu was entitled to delegate some of his powers as prefect after his appointment to a new position.[130] It further points to Defence Witness MZR's testimony that a prefect was entitled to assign a sub-prefect for the coordination of the prefecture's activities.[131]

61. In a letter dated 24 August 1993, Bizimungu informed the Appellant that he was "hereby designated prefect *ad interim* of Kigali prefecture to continue to act as [he] did during [Bizimungu's] leave which expires today".[132] The Appellant does not challenge the existence or authenticity of this letter. Rather, he denies having accepted this appointment and claims that Bizimungu was not legally empowered to appoint him.[133] No evidence has been presented to show that the Appellant formally accepted the appointment.

62. The Trial Chamber rejected the Appellant's submissions and evidence that no one was appointed to replace Bizimungu before 17 April 1994 and that only the President had the power to designate a prefect *ad interim* or an acting prefect.[134] In so doing, it reasoned that "the Rwandan legislation did not prevent Bizimungu from delegating certain official powers to [the Appellant] in

[126] Appellant's Brief, paras. 49-52.
[127] Notice of Appeal, paras. 53-56; Appellant's Brief, paras. 49-51; AT. 28 August 2008 p. 5.
[128] Notice of Appeal, paras. 57, 58; Appellant's Brief, paras. 53, 62, 63; AT. 28 August 2008 p. 5.
[129] Respondent's Brief, para. 80.
[130] Respondent's Brief, para. 80.
[131] Respondent's Brief, para. 80.
[132] Exhibit P15, p. 10.
[133] Appellant's Brief, paras. 51, 63; AT. 28 August 2008 pp. 5-7.
[134] Trial Judgement, paras. 75, 76.

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August 1993" and that Articles 17 and 19 of Legislative Decree No. 10/75 did not reserve the competence to designate "a sub-prefect as an 'interim' or 'acting' prefect" exclusively to the President.[135] The Trial Chamber therefore implicitly found that Bizimungu was legally entitled to delegate his powers or to appoint a prefect *ad interim* even after the termination of his appointment as prefect on 4 August 1993.

63. The Appeals Chamber considers that nothing in Legislative Decree No. 10/75 suggests that Bizimungu was entitled to delegate prefectoral powers or to appoint a successor, even temporarily, after the termination of his appointment.[136] However, the Trial Chamber's interpretation of Legislative Decree No. 10/75 could not have adversely impacted its assessment of the Appellant's power, since it did not find that the Appellant, before his official appointment as prefect on 17 April 1994, exercised functions of a prefect *de jure*. Instead the Trial Chamber merely concluded that he "exercised at least some of the authority which would normally have fallen under the [prefect]", which is a finding of a *de facto* exercise of power.[137]

64. In light of the foregoing, this sub-ground of appeal is dismissed.

C. Alleged Errors in Finding that the Appellant Acted as *De Facto* Prefect before 17 April 1994

65. Under this sub-ground, the Appellant argues that in finding that he had acted as *de facto* prefect before 17 April 1994, the Trial Chamber erred: (i) in relying on letters signed by the Appellant "for the prefect"; (ii) in relying on circumstantial evidence; and (iii) in the assessment of the evidence and by failing to provide a reasoned opinion.[138] The Appellant also asserts that no evidence was adduced to prove that he had exercised powers of the prefect after 14 January 1994 and before his appointment as prefect on 17 April 1994.[139] The Appeals Chamber addresses these arguments in turn.

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[135] Trial Judgement, paras. 75, 76. The Trial Chamber's finding at paragraph 75 of the Trial Judgement refers to "August 1993". It is clear however that the question at stake was whether Bizimungu could delegate his powers or appoint the Appellant as prefect *ad interim* after 4 August 1993.

[136] Article 17 of Legislative Decree No. 10/75 suggests that no legal delegation of powers could occur unless the prefect was on duty and Legislative Decree No. 10/75 is silent as to the *interim* exercise of powers in case of vacancy of a prefectoral position. It states *inter alia* that "the sub-prefects are hierarchically subordinate to the prefect" and that a sub-prefect in charge of a sub-prefecture "represents the prefect in all its function" but "under the responsibility and authority of the prefect". (Exhibit P14, Exhibit D68). *See also* Exhibit D49, Rwandan Official Gazette, 15 October 1993; Trial Judgement, para. 75.

[137] Trial Judgement, para. 77.

[138] Notice of Appeal, paras. 59-70; Appellant's Brief, paras. 54-69.

[139] Appellant's Brief, paras. 58-61.

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1. Alleged Error relating to the Letters Signed by the Appellant "for the Prefect"

66. The Appellant submits that the Trial Chamber erred in relying on letters signed by the Appellant "for the prefect between late August 1993 and 14 January 1994" to find that he had exercised *de facto* powers of the prefect.[140] He argues that "these letters are only a minute portion of the official correspondence from Kigali prefecture" in that period and submits that other sub-prefects at the Kigali prefecture also signed correspondence or presided over meetings after the termination of Bizimungu's appointment on 4 August 1993.[141] He asserts that the letters of 22 September, 21 October, and 25 October 1993, which the Trial Chamber considered crucial as they related to security matters in the prefecture, do not support the Trial Chamber's factual conclusions that the Appellant exercised *de facto* powers of the prefect of Kigali prefecture. According to the Appellant, the letters of 22 September and 25 October 1993 are merely invitations to a meeting of the Security Council of the Kigali prefecture, while the security measures described in the letter of 21 October 1993 were taken for the end of the year and New Year festivities and did not continue until April 1994.[142] The Appellant also claims that the Trial Chamber erred in finding that these three letters "[coincided] with evidence relating to the killings which took place in Nyamirambo, Rushashi and Ntarama, in which [the Appellant] was allegedly involved".[143]

67. The Prosecution responds that it was reasonable for the Trial Chamber to conclude on the basis of all the evidence, and in particular, these three letters, that the Appellant had acted as prefect before his official appointment to that post.[144]

68. The Appeals Chamber finds that the Appellant's argument is insufficient to demonstrate that no reasonable trier of fact could have found, as the Trial Chamber did, on the basis of the letters of 22 September, 21 October, and 25 October 1993, that the Appellant had exercised, prior to April 1994, powers beyond the capacity of a sub-prefect for economic and technical affairs. Contrary to the Appellant's claim, it was open to the Trial Chamber to make this finding by reference to the evidence contained in the three letters. By signing "for the prefect" letters relating to matters falling

[140] Notice of Appeal, paras. 59, 70; AT. 28 August 2008 p. 9.
[141] Notice of Appeal, para. 60; Appellant's Brief, paras. 56-60, 64; AT. 28 August 2008 p. 8. The Appellant states that there were four sub-prefects of the prefecture responsible for a given department in the Kigali prefecture and the three sub-prefects of the prefecture, whose responsibilities covered a distinct territory of the prefecture. Notice of Appeal, para. 60; Appellant's Brief, para. 56.
[142] Appellant's Brief, para. 58; AT. 28 August 2008 p. 8.
[143] Appellant's Brief, paras. 59, 60.
[144] Respondent's Brief, para. 83.

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outside his normal duties as sub-prefect in charge of economic and technical affairs,[145] at a time when no prefect was on duty, the Appellant effectively exercised some of the powers of the prefect.

69. The possibility, suggested by the Appellant, that other sub-prefects may have also signed other letters "for the [prefect]" is merely speculative. In any case, the Trial Chamber took that possibility into account in concluding that "[e]ven assuming, as stated by [the Appellant] that other sub-prefects may have signed letters on behalf of the prefect, the correspondence shows that [the Appellant] exercised at least some of the authority which would normally have fallen under the [prefect]".[146]

2. Alleged Error in Relying on Circumstantial Evidence

70. The Appellant submits that the Trial Chamber erred in law by reaching its conclusion that he had acted *de facto* as prefect on the basis of circumstantial evidence, "whereas this evidence could also be interpreted otherwise"[147] and by failing to consider "uncontradicted [Defence] witnesses" explaining "in a coherent manner the situation that existed before the appointment of [the Appellant as prefect on 17 April 1994]".[148]

71. The Appeals Chamber does not agree. As recalled above, in finding that the Appellant had exercised "at least some of the authority" of a prefect, the Trial Chamber relied on letters he had signed in that capacity. These letters were direct rather than circumstantial evidence of his *de facto* authority as prefect prior to his formal appointment to that position.

3. Alleged Errors in Assessing the Evidence and in Failing to Provide a Reasoned Opinion

72. The Appellant claims that the Trial Chamber's finding that he exercised prefectoral powers was based on a "completely erroneous" assessment of the evidence and amounts to a miscarriage of justice.[149] He argues that the Trial Chamber failed to provide a reasoned opinion for rejecting the evidence of Defence witnesses who coherently explained the situation that existed before the Appellant's appointment as prefect and demonstrated that there was a reasonable possibility that the allegation that he had acted *de facto* as prefect prior to his appointment was false.[150] Further, the Appellant submits that the Trial Chamber failed to take into account that the Rwandan Patriotic Front (RPF) and the Rwandan Armed Forces (FAR) were fighting in certain areas of Kigali

[145] Exhibit P15, pp. 11-23. These three letters were filed only in Kinyarwanda. Upon request by the Appeals Chamber, the Registry has provided their translation into French and English.
[146] Trial Judgement, para. 77.
[147] Appellant's Brief, para. 68.
[148] Appellant's Brief, para. 69; AT. 28 August 2008 p. 9.
[149] Appellant's Brief, para. 66.
[150] Appellant's Brief, paras. 68, 69; AT. 28 August 2008 p. 9.

prefecture and that, on 17 April 1994, the date of his appointment as prefect, only three out of the sixteen communes of Kigali prefecture were under government control.[151]

73. The Prosecution responds that the Appellant's reiteration of Defence evidence falls short of demonstrating that the Trial Chamber erred in the assessment of the evidence.[152] It asserts that the Trial Chamber took into account the Appellant's testimony and that of Defence Witness MZR and validly rejected their assertion that no one had exercised the duties of the prefect of Kigali prefecture for about eight months, from August 1993 to 17 April 1994.[153] The Prosecution recalls that the Trial Chamber found credible the evidence of Witnesses BMJ and BMK to the effect that, at a meeting in Ntarama on 14 April 1994, the Appellant had presented himself as prefect.[154]

74. Contrary to the Appellant's assertion, the Trial Chamber took into account the evidence presented by the Defence, addressed its submissions, and provided a reasoned opinion.[155] The Trial Chamber was not compelled to accept the Appellant's general denial that he assumed a law-enforcement role over and above his responsibilities as sub-prefect, especially in view of the fact that he acknowledged that he had signed letters in the capacity of prefect relating to security matters.[156] The Trial Chamber noted and addressed the Appellant's assertion that other sub-prefects may have signed similar letters on behalf of the prefect.[157] With regard to Witness MZR, although he testified that between 4 August 1993 and 17 April 1994[158] there was no prefect or acting prefect in Kigali prefecture, and that he never witnessed the Appellant introducing himself in such a capacity during that period, he nonetheless conceded that during the absence of the prefect, a sub-prefect could have signed invitations to meetings and could have chaired a meeting.[159]

75. The Appeals Chamber finds that the Appellant has failed to explain how the assertion concerning fighting in certain areas of Kigali prefecture, as well as the assertion that on 17 April 1994, only three out of the sixteen communes of the Kigali prefecture were under government control contradicts the Trial Chamber's finding regarding his exercise of "some authority" of the prefect in Kigali prefecture prior to that date. Therefore, the Appellant has not demonstrated that no reasonable trier of fact could have concluded that he exercised some authority of a prefect prior to his appointment to that post on 17 April 1994.

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[151] Appellant's Brief, para. 60. The Appellant affirms that this fact – arising from his testimony – was not contested by the Prosecution and mentions the communes of Musasa, Rushashi, and Tare, all located in the Rushashi sub-prefecture.
[152] Respondent's Brief, para. 84.
[153] Respondent's Brief, para. 82.
[154] Respondent's Brief, para. 82.
[155] Trial Judgement, paras. 60-77.
[156] Trial Judgement, paras. 72, 73.
[157] Trial Judgement, paras. 72, 73, 77.
[158] T. 16 May 2006 p. 34. The witness mentioned 17 April 1993. However, it is obvious from the context that he meant 17 April 1994.
[159] T. 15 May 2006 p. 29; T. 16 May 2006 pp. 33, 34.

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76. Finally, the Appellant submits that the Trial Chamber erred in law by failing to apply the standard "beyond reasonable doubt" when assessing the evidence.[160] He argues that the Trial Chamber should have found that in view of Defence evidence, there was a reasonable possibility that the Prosecution's allegations were false.[161] The Appeals Chamber considers that this argument is not sufficiently substantiated to demonstrate any error on the part of the Trial Chamber.

4. Allegation that No Evidence was Adduced that the Appellant had Exercised Powers of the Prefect after 14 January 1994

77. The Appellant contends that no evidence was adduced that he had exercised powers of the prefect after 14 January 1994.[162]

78. This assertion falls short of demonstrating any error on the part of the Trial Chamber. The Trial Chamber did not find that the Appellant continuously exercised the authority of the prefect from August 1993 to April 1994, but rather made a finding that he had exercised some of the authority of a prefect.[163] Contrary to the Appellant's contention, the Trial Chamber accepted evidence that the Appellant acted on some occasions as prefect between 14 January and 17 April 1994. Specifically, based on the testimonies of Witnesses BMJ and BMK, the Trial Chamber found that the Appellant had called himself prefect before the latter date[164] and that, at a meeting at Ntarama sector office on 14 April 1994, he had promised Tutsi refugees that he would provide them with security, thus acting within the ambit of the prefect.[165]

79. In light of the foregoing, this sub-ground of appeal is dismissed.

D. Conclusion

80. For the foregoing reasons, the Appellant's Third Ground of Appeal is dismissed in its entirety.

[160] Appellant's Brief, para. 69.
[161] Appellant's Brief, para. 69.
[162] Notice of Appeal, paras. 61-65; Appellant's Brief, para. 58; AT. 28 August 2008 p. 9.
[163] Trial Judgement, para. 77.
[164] Trial Judgement, paras. 234, 238, 247.
[165] Trial Judgement, para. 254.

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V. ALLEGED ERRORS RELATING TO THE APPELLANT'S INVOLVEMENT IN THE MRND AND HIS AUTHORITY OVER THE *INTERAHAMWE* (GROUND OF APPEAL 4)

81. The Trial Chamber found that the Appellant exercised authority over the *Interahamwe* in 1994.[166] The Trial Chamber convicted the Appellant, pursuant to Article 6(1) of the Statute, for ordering, instigating, and aiding and abetting genocide, and murder and extermination as crimes against humanity, based in part on the involvement of the *Interahamwe* in the killings of Tutsis in Nyamirambo, Ntarama, and Rushashi.[167]

82. The Trial Chamber found that the Appellant's position as President of the MRND in Nyarugenge commune after April 1992 had not been established beyond reasonable doubt,[168] but that this in itself did not exclude the fact that he exercised authority over the *Interahamwe* in 1994.[169] The Trial Chamber based this finding on his previous presidency and continuing membership in the MRND, combined with his importance as the former *bourgmestre* of Nyarugenge commune and subsequent functions as sub-prefect and prefect of Kigali prefecture.[170] The Trial Chamber found that the evidence specific to this question, in particular the testimonies of Witnesses BMA and BLX, in conjunction with the evidence relating to the events in Nyamirambo, Ntarama, and Rushashi, was sufficient to find that the Appellant exercised authority over the *Interahamwe* in 1994.[171]

83. The Appellant submits that the Trial Chamber erred in its assessment of the evidence of Witnesses BMA and BLX relating to his alleged involvement in the MRND in Nyarugenge after 1992 and in concluding that he exercised authority over the *Interahamwe* in 1994.[172]

84. The Appellant contends that the Trial Chamber erred in law by accepting parts of Witness BLX's testimony despite certain factors that cast doubt on his evidence.[173] He recalls that the Trial Chamber itself decided to consider Witness BLX's evidence with caution because of the witness's involvement in proceedings before Rwandan courts.[174] Further, the Appellant contends that Witness

[166] Trial Judgement, para. 56. The Trial Chamber found that it had not been established that his authority over the *Interahamwe* in Nyamirambo, Rushashi or Ntarama extended beyond his personal influence. Trial Judgement, para. 567.
[167] Trial Judgement, paras. 535-548, 552-561.
[168] Trial Judgement, para. 55.
[169] Trial Judgement, para. 56.
[170] Trial Judgement, para. 56.
[171] Trial Judgement, para. 56.
[172] Notice of Appeal, paras. 75, 76; Appellant's Brief, paras. 70-82.
[173] Appellant's Brief, para. 77.
[174] Notice of Appeal, para. 76; Appellant's Brief, paras. 72, 74, referring to Trial Judgement, para. 52.

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BLX contradicted himself when he asserted before the Trial Chamber that the Appellant held the position of President of the MRND in April 1994, while he had testified in the *Karemera et al.* case that it was Hamadi Nshimiyimana who held this position at that time.[175] He claims that the Trial Chamber's conclusion that there was no contradiction in the witness's testimony on this point was "completely erroneous."[176] In his view, Witness BLX's testimony in the *Karemera et al.* case corroborated the Appellant's testimony that following his resignation, in April or May 1992, Hamadi Nshimiyimana replaced him as MRND President in Nyarugenge commune.[177]

85. The Prosecution responds that the Trial Chamber correctly found that the Appellant's authority over the *Interahamwe* in 1994 was based on his previous presidency and continuing membership in the MRND, his importance as a former *bourgmestre*, as well as his subsequent functions as sub-prefect and prefect.[178] It submits that this ground of appeal is unfounded and should be dismissed in its entirety.[179]

86. The Appeals Chamber finds no merit in the Appellant's submissions challenging the Trial Chamber's assessment of Witness BLX. The Trial Chamber addressed in detail the alleged discrepancy between Witness BLX's testimony in the present case and his previous testimony in the *Karemera et al.* case before the Tribunal.[180] It noted that during his testimony in the *Karemera et al.* case, the witness mentioned Hamadi Nshimiyimana twice, first stating that Hamadi Nshimiyimana held the position of Vice-President of the MRND in Nyarugenge and subsequently stating that he was President of the MRND in that commune in 1994.[181] The Trial Chamber found that there was "no clear discrepancy" between his testimonies in the two cases because the witness had stated in both cases that Hamadi Nshimiyimana held the position of Vice-President of the MRND in April 1994.[182] On appeal, the Appellant merely repeats the argument he raised at trial. The Appeals Chamber is not a second trier of fact, and a party cannot simply repeat arguments on appeal that did not succeed at trial in the hope that the Appeals Chamber will consider them afresh.[183] The Appellant does not demonstrate that the Trial Chamber's finding was erroneous. Accordingly, the Appellant's appeal on this point is dismissed.

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[175] Appellant's Brief, para. 75, referring to Trial Judgement, para. 54.
[176] Appellant's Brief, para. 75.
[177] Appellant's Brief, para. 76. *See also* Appellant's Brief, para. 71.
[178] Respondent's Brief, paras. 86-88.
[179] Respondent's Brief, para. 89.
[180] Trial Judgement, para. 54.
[181] Trial Judgement, para. 54, fn. 81 referring to *Karemera et al.*, T. 10 March 2006 p. 18. The Trial Chamber observed that Hamadi Nshimiyimana's position was not at issue in that case.
[182] Trial Judgement, para. 54.
[183] *Semanza* Appeal Judgement, para. 9.

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87. The Appellant also challenges the testimony of Witness BMA, asserting that the witness "lied outright" and that the Trial Chamber erred by failing to reject his testimony in its entirety.[184] The Appellant notes the following discrepancies: while Witness BMA told the Rwandan authorities that he had not seen the Appellant during the war, he testified before the Trial Chamber that he had seen the Appellant after 6 April 1994 on at least three occasions in the office of the Kigali prefecture.[185] During cross-examination, the witness claimed that he might have been talking about "a different Karera", while he had stated at the beginning of his testimony that he only knew one person bearing this name.[186] Furthermore, in his testimony before the Trial Chamber, the witness testified to the Appellant's position within the MRND and his resulting authority over the *Interahamwe*, whereas in pre-trial statements to the Tribunal's investigators, the witness had never implicated the Appellant as a high-ranking member of the MRND.[187]

88. The Appeals Chamber finds no merit in the Appellant's submissions challenging the Trial Chamber's assessment of Witness BMA. The Appellant solely contests that part of the witness's testimony which the Trial Chamber found inconsistent and which it therefore rejected.[188] The Appeals Chamber recalls that a Trial Chamber may accept some parts of a witness's testimony while rejecting others.[189] In the instant case, the Trial Chamber found credible and relied on the witness's testimony concerning the Appellant's support to the *Interahamwe* in 1991 and 1992.[190] The Appellant has not demonstrated an error on the part of the Trial Chamber in this regard. Accordingly, the Appellant's argument on this point is dismissed.

89. Finally, the Appellant submits that the Trial Chamber's holding that it had not been established beyond reasonable doubt that he continued to be President of the MRND in Nyarugenge after April 1992 meant that Witnesses BMA and BLX who had testified to this effect[191] had lied.[192] The Appellant thus concludes that the Trial Chamber erred in law by accepting, without explanation, other parts of the witnesses' testimonies to find that the Appellant supported the *Interahamwe* in 1991 and 1992 and exercised authority over them in 1994.[193]

90. The Appeals Chamber rejects the Appellant's contention on this point. As noted above, a Trial Chamber may accept some parts of a witness's testimony while rejecting others. The Appeals

[184] Appellant's Brief, para. 79, referring to Trial Judgement, para. 53.
[185] Appellant's Brief, para. 80, referring to Exhibit D7A, p. 29, and D7B, p. 20; T. 19 January 2006 pp. 28-30.
[186] Appellant's Brief, para. 81, referring to T. 19 January 2006 pp. 41-46.
[187] Appellant's Brief, para. 81, referring to Exhibit D10A.
[188] Trial Judgement, para. 53.
[189] *See Seromba* Appeal Judgement, para. 110, citing *Simba* Appeal Judgement, para. 212; *Kamuhanda* Appeal Judgement, para. 248, citing *Kupreškić et al.* Appeal Judgement, para. 333.
[190] Trial Judgement, para. 56.
[191] Trial Judgement, paras. 38, 42.
[192] Appellant's Brief, para. 82.
[193] Appellant's Brief, para. 82.

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Chamber further recalls that a Trial Chamber has the obligation to provide a reasoned opinion, but is not required to articulate every step of its reasoning in detail.[194] In the present case, the Trial Chamber explicitly stated that it found the witnesses' testimonies concerning the Appellant's support to the *Interahamwe* in 1991 and 1992 credible.[195] The Appellant has not demonstrated an error in this finding. The Appellant's argument that the witnesses lied is speculative and does not require further consideration.

91. The Appeals Chamber observes that, in any event, the Trial Chamber made no finding on the Appellant's authority based on the evidence of Witnesses BMA and BLX alone. The Trial Chamber's reliance on Witnesses BMA and BLX is limited to a general illustration of the Appellant's authority over the *Interahamwe* without any link to particular events. The Trial Chamber merely noted that the evidence of Witnesses BMA and BLX regarding the Appellant's support to the *Interahamwe* in 1991 and 1992 was credible and supported the fact that the Appellant exercised authority over the *Interahamwe*.[196] In addition, it held that the evidence adduced in relation to the specific events in Nyamirambo, Ntarama, and Rushashi also showed that the Appellant exercised authority over the *Interahamwe*.[197]

92. For the foregoing reasons, the Appeals Chamber rejects the Appellant's submissions that the Trial Chamber erred in the assessment of the evidence of Witnesses BMA and BLX relating to his involvement in the MRND in Nyarugenge after 1992 and in finding that he exercised authority over the *Interahamwe* in 1994. Accordingly, this ground of appeal is dismissed.

[194] *See Simba* Appeal Judgement, para. 152.
[195] Trial Judgement, para. 56.
[196] Trial Judgement, para. 56.
[197] Trial Judgement, para. 56, referring to Trial Judgement, Sections II.4-6.

VI. ALLEGED ERRORS RELATING TO THE FINDING THAT THE APPELLANT WAS INVOLVED IN A CAMPAIGN TO KILL TUTSIS IN NYAMIRAMBO SECTOR, NYARUGENGE COMMUNE (GROUND OF APPEAL 5)

93. The Trial Chamber found that in April 1994 three policemen, Kalimba, Habimana, and Kabarate, who "were stationed in [the Appellant's] house in Nyamirambo [...] committed crimes together with the *Interahamwe* operating in that area".[198] Specifically, the Trial Chamber found that:

> - Between 8 and 10 April [1994], the *Interahamwe* followed after Kabahaye, a Tutsi, and killed him in Butamwa, not far away from Nyamirambo. They then reported to the policemen that he had been killed [...];
>
> - Between 8 and 10 April 1994, policeman Kalimba forced a man to kill Murekezi, a Tutsi, at the roadblock near Karera's house [...];
>
> - On 10 April 1994, Ndingutse, a Tutsi, was arrested and killed by the policemen and *Interahamwe* not far away from Karera's house [...];
>
> - On 24 April 1994, Palatin Nyagatare, a Tutsi, was killed at a roadblock about three plots from his house by policeman Kalimba [...].[199]

94. The Trial Chamber further found that the perpetrators were aware that the victims were Tutsis and that they killed them pursuant to the Appellant's order to kill Tutsis.[200] Based on these findings, the Trial Chamber convicted the Appellant, pursuant to Article 6(1) of the Statute, for ordering genocide and extermination and murder as crimes against humanity.[201]

95. The Appellant submits that the Trial Chamber erred in its factual findings in relation to his involvement in a campaign to kill Tutsis in Nyamirambo sector, Nyarugenge commune.[202] He argues that the Trial Chamber erred in finding that: (i) he exercised authority over the three policemen involved in the killings; (ii) he ordered, by telephone, the killing of Kabuguza's family members between 7 and 10 April 1994; (iii) he gave orders to kill Tutsis and to demolish their houses in Nyamirambo between 7 and 15 April 1994; (iv) he gave orders to spare certain Tutsis and their houses between 7 and 15 April 1994; (v) a man called Kahabaye was killed in April 1994 as a consequence of the orders given by him; (vi) he ordered policeman Kalimba to kill a Tutsi called

[198] Trial Judgement, para. 535.
[199] Trial Judgement, para. 535.
[200] Trial Judgement, para. 536.
[201] Trial Judgement, paras. 540, 557, 560, 561.
[202] Notice of Appeal, paras. 77-140; Appellant's Brief, paras. 83-184; AT. 28 August 2008 pp. 24, 25.

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Murekezi between 8 and 10 April 1994; (vii) he was involved in the killing of Jean Bosco Ndingutse on 10 April 1994; and (viii) a man called Palatin Nyagatare was killed following his orders to kill Tutsis at Nyamirambo.[203] The Appeals Chamber will consider these arguments in turn.

A. Alleged Errors relating to the Appellant's Authority over Commune Policemen

96. The Trial Chamber found that the Appellant had authority over the three policemen who guarded his house in Nyamirambo and manned a roadblock near his house.[204] The Trial Chamber further found that the three policemen committed crimes in the area of Nyamirambo.[205]

97. In this section, the Appeals Chamber considers the following allegations of errors related to the finding that the Appellant had authority over the policemen: (i) alleged failure to provide a reasoned opinion; (ii) alleged error in assessing Prosecution evidence; and (iii) alleged failure to give proper weight to Defence evidence.

1. Alleged Error in Failing to Provide a Reasoned Opinion

98. The Appellant submits that the Trial Chamber erred in law in failing to identify the evidence showing the Appellant's alleged *de jure* or *de facto* authority over the communal policemen Kalimba, Habimana, and Kabarate allegedly posted at his house in Nyamirambo and in omitting to explain how he could have exercised any authority over policemen who were outside the administrative territory in which he worked.[206]

99. The Prosecution primarily responds that the Trial Chamber duly considered the evidence of several witnesses to establish that the three policemen took orders from the Appellant and committed criminal acts.[207]

100. A review of the Trial Judgement reveals that, contrary to the Appellant's contention, the Trial Chamber provided a reasoned opinion for the impugned findings and identified the underlying evidence.[208] The Trial Chamber relied on the evidence of Witnesses BMF, BMH, BLX, BMU, BMA, BMG, and BME to find that the policemen Kalimba, Habimana, and Kabarate were "communal policemen" under the Appellant's authority, rather than under the authority of the prefect of Kigali-Ville prefecture.[209] The Trial Chamber's conclusion that the Appellant exercised authority over these policemen is not based on the premise that he had *de jure* authority over them,

[203] Appellant's Brief, paras. 183, 184.
[204] Trial Judgement, paras. 122, 537.
[205] Trial Judgement, paras. 168, 192, 196, 203, 535.
[206] Notice of Appeal, paras. 82-84; AT. 28 August 2008 p. 14.
[207] Respondent's Brief, paras. 91-96, sp. para. 95.
[208] Trial Judgement, paras. 110-122.

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even though the Trial Chamber recalled that in a state of emergency a prefect can requisition communal police.[210] Instead, the Trial Chamber's conclusion is supported by the evidence of several Prosecution witnesses who testified that the policemen were guarding the Appellant's house and manning a roadblock in front of it, that these policemen claimed to be the Appellant's subordinates, that the Appellant ordered them to kill Tutsis and destroy their houses, and that people said that they obeyed the Appellant's orders.[211]

101. This argument is therefore dismissed.

2. Alleged Error in Relying on Prosecution Evidence

102. The Appellant submits that the Trial Chamber erred in finding that throughout the month of April 1994 he exercised authority over certain commune policemen since the evidence does not permit this inference.[212] He contends that this error of fact occasioned a miscarriage of justice.[213]

103. The Appellant asserts that since there was no legal basis for the allegation that he had authority over the policemen, the Prosecution had to support its allegation by providing evidence that he continuously and effectively exercised *de facto* authority over the policemen during April 1994.[214] He submits that this allegation was "bizarre" considering the Trial Chamber's findings that the Appellant left Kigali on 7 April 1994 and remained in Ruhengeri between 7 and 19 April 1994.[215]

104. The Appellant argues that the Trial Chamber failed to take into account existing "compelling reasons for discounting" the evidence provided by Prosecution witnesses[216] and ignored evidence contradicting the Prosecution allegation or "render[ing] it less plausible".[217] More specifically, he asserts that the Trial Chamber erred in relying on the testimony of Prosecution Witnesses BMU, BLX, BMA, BMG, BMF, BMH, and BME.[218]

105. The Appeals Chamber will consider the Appellant's arguments in turn.

[209] Trial Judgement, para. 122.
[210] Trial Judgement, paras. 120-122.
[211] Trial Judgement, paras. 112-118, 121, 122.
[212] Appellant's Brief, para. 89.
[213] Appellant's Brief, para. 89, referring to Trial Judgement, para. 537.
[214] Appellant's Brief, para. 87. The Appellant recalls that Nyamirambo was located in Kigali-Ville prefecture, and not in Kigali prefecture, of which he was a sub-prefect.
[215] Appellant's Brief, para. 88, referring to Trial Judgement, paras. 478, 500.
[216] Notice of Appeal, paras. 85, 86.
[217] Appellant's Brief, para. 90.
[218] Appellant's Brief, paras. 91-113.

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(a) Witness BMU

106. Witness BMU, an official from Nyamirambo, testified that around 10 April 1994, three commune policemen, Safari, Kalimba, and Thomas, manned a roadblock in front of the Appellant's house and were engaged in killings.[219] According to the witness, on 10 April 1994, the policemen told him that they reported to the Appellant and not to Tharcisse Renzaho, the prefect of Kigali-Ville prefecture.[220]

107. The Appellant asserts that Witness BMU lied and made contradictory statements. He argues that Witness BMU's testimony established too tenuous a link between the Appellant and the policemen manning a roadblock in front of his house to support the finding made by the Trial Chamber.[221]

108. The Prosecution responds that the Appellant simply reiterates his submissions at trial on the credibility of Prosecution witnesses, including Witness BMU, while failing to show that the Trial Chamber acted unreasonably in relying on this evidence.[222]

109. In assessing Witness BMU's evidence, the Trial Chamber observed that, as an official in Nyarugenge in 1994 and someone who knew the Appellant personally, the witness was in a good position to observe the events.[223] However, the Trial Chamber decided to consider his evidence with caution, since it found that the witness "may have been influenced by a wish to positively affect the criminal proceedings against [him] in Rwanda."[224]

110. The Trial Chamber then observed that Witness BMU's prior statements of 1998 and 2002 ("1998 Statement" and "2002 Statement", respectively) do not mention policemen at a roadblock in front of the Appellant's house and that "[h]e explained that he was not asked about them and added that in his 1998 statement he only described what people told him, and not what he saw."[225] While the Trial Chamber considered that this was "not quite consistent with his testimony that he had heard from a subordinate about the policemen's position at the roadblock," it nevertheless found that this inconsistency did not affect the witness's credibility.[226] The Trial Chamber accepted Witness BMU's explanations for the discrepancies between his testimony and prior statements regarding the number of roadblocks in Nyamirambo and his knowledge of the roadblocks when he

[219] The Trial Chamber "consider[ed] it likely that Safari and Thomas were the first names of Kabarata and Habimana". Trial Judgement, para. 111.
[220] Trial Judgement, para. 89.
[221] Appellant's Brief, paras. 92-96.
[222] Respondent's Brief, paras. 96-98.
[223] Trial Judgement, para. 113.
[224] Trial Judgement, para. 113.
[225] Trial Judgement, para. 115.
[226] Trial Judgement, para. 115.

left his house on 10 April 1994.[227] The Trial Chamber also accepted Witness BMU's evidence about the policemen and their crimes at the roadblock in front of the Appellant's house in April 1994, including that they claimed to be subordinates of the Appellant and not of the prefect of Kigali-Ville.[228]

111. The Appellant asserts without more detail that the Trial Chamber erred in considering Witness BMU's evidence because he lied.[229] A review of the Trial Judgement reveals that the Trial Chamber accepted the witness's evidence only after a careful consideration of the various factors relevant to the assessment of his credibility.[230] In this respect, the Appellant has failed to establish that the Trial Chamber erred in accepting the evidence of Witness BMU.

112. The Appellant further argues that contrary to Witness BMU's explanation in cross-examination that in the 1998 and 2002 Statements he only recounted what people had told him, those statements in fact included details of what he saw in the sector after 6 April 1994 and even mentioned the specific persons who manned the roadblocks and those who were killed at such roadblocks.[231] In addition, the Appellant asserts that Witness BMU should have mentioned the names of the policemen in his statements since he stated that he learned their names from a report he received from someone else.[232] Finally, he argues that Witness BMU provided a different explanation in court by stating that he had omitted mentioning the role of the Appellant and the policemen "because he was not asked any question [*sic*] about them".[233]

113. In the 1998 Statement, Witness BMU recounted in general terms the events in Rwanda and in his sector from the beginning of the war in October 1990 to the end in 1994.[234] The focus was not on specific situations arising in the area of Nyamirambo but rather on broader events. The witness mentioned in general the setting up of roadblocks where Tutsis were killed and the failure of competent authorities to stop these killings, but gave no description of a particular roadblock or killing. In addition, the Appeals Chamber notes that, as with the 2002 Statement, the 1998 Statement focussed on the role of Tharcisse Renzaho in the genocide. In these circumstances, it is understandable that Witness BMU did not mention the presence of three particular policemen at a roadblock and the crimes they committed under the Appellant's alleged authority. In addition, Witness BMU was not only recounting what he witnessed personally, but also referred to what he had heard from others. The Appeals Chamber therefore considers that Witness BMU's explanations

[227] Trial Judgement, paras. 115, 116.
[228] Trial Judgement, para. 115.
[229] Appellant's Brief, para. 96.
[230] Trial Judgement, paras. 113, 115, 116.
[231] Appellant's Brief, para. 92.
[232] Appellant's Brief, para. 92.
[233] Appellant's Brief, para. 93.

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were not at odds with the content of the 1998 Statement. Turning to the 2002 Statement, it is clear that the focus again was Renzaho's role during the genocide. While in this statement, the witness recounted the existence and functioning of roadblocks in general, he did not describe specific events at roadblocks.

114. Witness BMU explained in his testimony that he did not, in these previous statements, mention the setting up of a roadblock in front of the Appellant's house and the commission of crimes by policemen under the Appellant's control because he was not asked any questions about them. This explanation is consistent with the subject-matter of these statements.[235] The Appellant has not demonstrated that no reasonable trier of fact could have found that these omissions did not affect Witness BMU's credibility.

115. Pointing to the alleged contradiction between Witness BMU's testimony and the 2002 Statement regarding the number of roadblocks in Nyamirambo, the Appellant claims that the "inflated number of roadblocks clearly shows Witness BMU's desire to aggravate the charges against Karera".[236] The Appeals Chamber recalls that the Trial Chamber addressed this alleged inconsistency and accepted the explanation provided by the witness that in the 2002 Statement he was asked only about the number of roadblocks on the main road from the regional stadium to the centre of town, and not about the entire sector.[237] The Appellant has not shown that the Trial Chamber erred in reaching this conclusion. Witness BMU's explanation is consistent with the fact that in the 2002 Statement, the number of roadblocks was mentioned in relation to his own role in distributing weapons at roadblocks in the sector.[238] In addition, the Appeals Chamber notes that the Appellant's assertion that the witness inflated the number of roadblocks to aggravate the charges against him is mere speculation.

116. The Appellant further contends that, of the three witnesses who testified to the presence of policemen at a roadblock in front of the Appellant's house, only Witness BMU established a link between the policemen and the Appellant, and that this link was too tenuous to support a finding that the Appellant exercised any authority over the policemen.[239] The Appellant asserts that "[a]ll

[234] 1998 Statement, pp. 3-5.
[235] Trial Judgement, paras. 115, 116.
[236] Appellant's Brief, para. 95. In addition, the Appellant points to the Trial Chamber's observation at paragraph 116 of the Trial Judgement that Witness BMU stated in his 1998 Statement that he was astonished to notice the roadblocks some time after 10 April 1994, whereas at trial he testified that he had previously received reports about the roadblocks. Appellant's Brief, para. 95. However, the Appellant does not claim that the Trial Chamber erred in accepting Witness BMU's explanation for that apparent discrepancy.
[237] Trial Judgement, para. 116.
[238] 2002 Statement, pp. 4, 5.
[239] Appellant's Brief, para. 98.

what [*sic*] Witness BMU said on this point is that the policemen boasted that they reported to Karera rather than to Renzaho, the *préfet* of Kigali-*Ville*".[240]

117. The Appeals Chamber disagrees. The link established by Witness BMU between the three policemen and the Appellant was not tenuous. According to Witness BMU, the policemen, who were aware of the witness's official position, told him that they were obeying instructions of the Appellant and were working for him, not for Renzaho, the prefect of Kigali-Ville prefecture.[241] In addition, the Trial Chamber's finding on the Appellant's position of authority over the policemen does not stand on Witness BMU's testimony alone. This aspect of his testimony was corroborated by the testimonies of Witnesses BMF, BMH, BMG, and BME.[242]

118. The Appellant's contention that the Trial Chamber erred in the assessment of Witness BMU's evidence is therefore dismissed.

(b) Witnesses BMA and BLX

119. The Appellant submits that he cannot "comprehend how Witnesses BMA and BLX could have been believed on the issue of commune policemen, whereas the [Trial] Chamber rejected their testimonies in relation to [other allegations against the Appellant and] also rejected Witness BLX's testimony as to the distribution of weapons in Nyamirambo".[243]

120. The Appeals Chamber recalls that it is not unreasonable for a Trial Chamber to accept some parts of a witness's testimony while rejecting others.[244] The Appellant has not shown how the Trial Chamber erred in accepting only portions of the evidence of these witnesses. The Appellant's contention is therefore dismissed.

(c) Witnesses BMF and BMH

121. The Trial Chamber found that "[t]he testimonies of [...] Witnesses BMF and BMH, are generally consistent about the police officers. They said that Karera left Nyamirambo but continued to visit there, that policemen remained at his house, regarded Karera as their superior and communicated with him by phone, that they committed crimes, distributed machetes, and ordered others to commit crimes."[245]

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[240] Appellant's Brief, para. 98.
[241] T. 23 January 2006 p. 24. *See also* T. 24 January 2006 pp. 3, 6, 7.
[242] *See* Trial Judgement, paras. 112, 117, 118.
[243] Appellant's Brief, para. 97.
[244] *See supra* Chapter IV Alleged Errors Relating to the Appellant's Involvement in the MRND and his Authority over the *Interahamwe* (Ground of Appeal 4), para. 87.
[245] Trial Judgement, para. 112.

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122. With regard to Witness BMF, the Appellant claims that she provided many details regarding the presence of commune policemen in front of the Appellant's house, but that nothing in her testimony shows that a superior-subordinate relationship existed between him and the policemen.[246]

123. The Appeals Chamber finds that contrary to the Appellant's contention, Witness BMF's testimony supports the finding that the Appellant exercised authority over the three policemen. Indeed, the witness testified that she knew the policemen and that they had been guarding the Appellant's house before April 1994.[247] She also testified that in the second half of May 1994, she heard policeman Kalimba tell his colleague Habimana that the Appellant had instructed him by telephone to spare some Tutsi families.[248] The Trial Chamber was therefore entitled to take these aspects of Witness BMF's testimony into account in assessing whether the Appellant exercised authority over the policemen.

124. The Appellant submits that Witness BMH lied with regard to the relationship between the Appellant and the policemen and that the Trial Chamber erred in assessing the evidence on this point.[249] The Appellant argues that Witness BMH could not have witnessed the Appellant ordering the policemen to destroy houses of Tutsi between 10 and 15 April 1994, since she was not present in the area during that period, as evidenced by her 1998 Statement where she said that prior to 22 May 1994, she had spent one and a half months in a place other than her house.[250] He further submits that when confronted with this discrepancy, she provided an explanation that even the Prosecution did not believe and which, therefore, should not have been accepted by the Trial Chamber. The Appellant asserts that Witness BMH's explanation to the effect that she had informed the Prosecution that there was an error in her 1998 Statement one year prior to her testimony contradicts the Prosecution's assertion that this information had been made available to it only twenty-four hours before her testimony.[251]

125. These arguments were already addressed and dismissed by the Trial Chamber.[252] The Appellant has not shown how the Trial Chamber erred in accepting Witness BMH's explanations as to the discrepancies between her trial testimony and prior statements. This contention is therefore dismissed.

[246] Appellant's Brief, para. 101.
[247] Trial Judgement, para. 97.
[248] Trial Judgement, paras. 137, 171.
[249] Appellant's Brief, para. 102.
[250] Appellant's Brief, para. 103. The Appellant's Brief refers to a statement of 19 August 2006. It is apparent from the context as well as the exhibit number that the Appellant meant to refer to the Statement of 19 August 1998.
[251] Appellant's Brief, paras. 104-106.
[252] Trial Judgement, paras. 163, 164.

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126. The Appellant further contends that the testimonies of Witnesses BMF and BMH were not accepted by the Trial Chamber in several respects, namely with regard to the Appellant's presence during an attack on 8 April 1994, the order to kill Kabuguza, and the circumstances of his death.[253] He argues that Witness BMF's testimony regarding the killing of her younger brother and twenty Tutsis was also not admitted.[254] He further submits that the Trial Chamber did not find these witnesses credible with regard to the events of 8 April 1994 and should have rejected these testimonies in their entirety.[255]

127. With regard to the attack of 8 April 1994, the Trial Chamber found that Witnesses BMH and BMF were generally credible and concluded based on their testimony that the attack had taken place.[256] However, it did not find established beyond reasonable doubt that the Appellant observed the attack and that members of his family were also present, despite the evidence provided by both witnesses to this effect. The Appellant claims that since the Trial Chamber's findings suggested that Witnesses BMF and BMH had falsely attempted to implicate him, the Trial Chamber erred in law "in believing the rest of their testimonies."[257] The Appeals Chamber recalls that the Trial Chamber had the discretion to accept only part of the witnesses' evidence. The Trial Chamber reached its conclusion on the evidence of these witnesses after having carefully considered the credibility challenges made by the Defence, including the allegation of collusion.[258] It did not find that these witnesses had attempted to falsely implicate the Appellant, but merely refrained from entering a finding on the presence of the Appellant at the attack because it was not persuaded beyond reasonable doubt with respect to the part of their evidence that directly implicated the Appellant.[259] The Trial Chamber expressed doubt as to whether it would have been possible for the witnesses to recognize someone from their vantage points, given the circumstances of the attack.[260] The Trial Chamber's reasoning shows that it did not disbelieve the witnesses' accounts of the attack but that it applied additional caution to their identification of the Appellant and declined to enter a conviction on the basis of their evidence. The Appellant has not shown how the Trial Chamber erred in failing to disregard the testimonies of these witnesses in their entirety.

(d) Witness BME

128. The Trial Chamber found credible Witness BME's evidence regarding a meeting held on the morning of 15 April 1994 at the Appellant's house where the Appellant ordered a large crowd to

[253] Appellant's Brief, para. 100, referring to Trial Judgement, paras. 133, 139, 140, 145.
[254] Appellant's Brief, para. 100, referring to Trial Judgement, para. 199.
[255] Trial Judgement, paras. 107, 108.
[256] Trial Judgement, para. 135.
[257] Appellant's Brief, para. 108.
[258] Trial Judgement, paras. 130-135.
[259] Trial Judgement, para. 135.

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destroy houses of Tutsis.[261] It noted that the witness testified that the policemen who stayed at the Appellant's house participated in the meeting and concluded that her testimony corroborated the evidence given by other witnesses regarding the Appellant and the policemen.[262]

129. The Appellant claims that the testimony of Witness BME at best permits a finding that he gave orders to the commune policemen on the morning of 15 April 1994, but does not support any inference that he exercised authority over them during the entire month of April 1994.[263]

130. The Appeals Chamber agrees that the evidence of Witness BME alone could not support a finding of the Appellant's authority over the policemen through April 1994. However, the Trial Chamber only considered this evidence as corroborative of other evidence regarding the relationship between the Appellant and the policemen. From a review of the relevant portion of the Trial Judgement, it is evident that the Trial Chamber considered that Witness BME's evidence corroborated the testimonies of Witnesses BMF, BMH, BLX, BMA, BMU, and BMG in relation to the presence and role of the policemen at the Appellant's house and the nature of their relationship with the Appellant.[264] Witness BME's testimony was not only corroborative of these other testimonies, but also supported a finding that, on 15 April 1994, the Appellant was in a position to give orders to the policemen.

131. The Appellant further contends that the testimony of Witness BME could not be believed.[265] He avers that, if believed, this testimony would conflict with the Prosecution's allegation that the Appellant was in Ntarama on the same day.[266] He further claims that Witness BME's evidence that the Appellant ordered a crowd to kill Tutsis and destroy houses belonging to Tutsis on 15 April 1994 also contradicts the Trial Chamber's findings that the killings resulting from these orders had been committed prior to that date.[267] These submissions will be considered below under Section C.

(e) Witness BMG

132. With regard to Witness BMG, the Appellant merely states that the Trial Chamber did not believe him regarding the killing of Félix Dix and Kabuguza and recites his testimony that the Appellant's house was guarded by commune policemen, namely Kalimba, Habimana, and

[260] Trial Judgement, paras. 133,134.
[261] Trial Judgement, paras. 103, 118.
[262] Trial Judgement, para. 118.
[263] Appellant's Brief, paras. 109, 110.
[264] Trial Judgement, para. 118.
[265] Appellant's Brief, para. 111.
[266] Appellant's Brief, para. 111.
[267] Appellant's Brief, para. 111, referring to other sub-sections of the Appellant's Brief dealing with the killings of Kabuguza, Kahabaye, Murekezi, and Ndingutse.

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Kabarate.[268] The Appellant acknowledges that Witness BMG gave details of the links which existed between these policemen and the Appellant and points out that the witness clearly explained that he did not see the Appellant committing or ordering any crime.[269]

133. The Appellant does not attempt to show an error on the part of the Trial Chamber in assessing this witness's evidence. Accordingly, the Appeals Chamber rejects the Appellant's vague and unclear assertions in relation to Witness BMG.

3. Alleged Error in Failing to Give Proper Weight to Defence Evidence

134. At the outset of its assessment of the Defence evidence related to the Appellant's authority over the policemen, the Trial Chamber recalled its findings under a previous section of the Trial Judgement that it accorded "limited weight" to the evidence of the Appellant's relatives, Witnesses ATA, KD, and BBK.[270] The Trial Chamber then proceeded to consider the testimonies of Defence Witnesses KBG, KNK, and ZBM, but accorded them limited or no weight. In so doing, it reasoned that "Witness KBG, who did not notice anything peculiar, only passed by Karera's house in Nyamirambo about three times in April [1994]".[271] It noted that "[a]lthough he did not personally see crimes being committed, he confirmed that the people who manned the roadblock in Nyarugenge committed crimes against civilians."[272] With regard to Witness KNK, the Trial Chamber noted that her evidence that "there was no roadblock near Karera's house was based on her visits in the area between January and 6 April 1994, whereas the roadblocks were set up later".[273] The Trial Chamber found that Witness ZBM "lacked first-hand knowledge about the events," and that "[h]is testimony that he was not told about the involvement of Karera or the policemen in the killings in Cyivugiza in 1994 carries limited weight compared to direct and consistent evidence from other witnesses implicating them in the killings."[274]

135. The Appellant submits that the Trial Chamber erred by "unreasonably dismiss[ing] the testimonies of Witnesses ATA, KD, BBK, KBG, KNK and ZBM, without providing satisfactory explanations for such a decision."[275]

136. The Appeals Chamber notes that eight Defence witnesses, namely, the Appellant, three witnesses related to him (Witnesses ATA, KD, and BBK), and Witnesses KBG, KNK, ZBM, and

[268] Appellant's Brief, para. 112.
[269] Appellant's Brief, para. 112.
[270] Trial Judgement, para. 119.
[271] Trial Judgement, para. 119.
[272] Trial Judgement, para. 119.
[273] Trial Judgement, para. 119.
[274] Trial Judgement, para. 119.
[275] Appellant's Brief, para. 114, referring to Trial Judgement, para. 119.

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BMP, testified in relation to the Prosecution's allegation that the Appellant was present in Nyamirambo in April 1994 and that he gave orders to the policemen under his authority.[276]

137. In the course of its assessment of the relevant Defence evidence, the Trial Chamber stated that it accorded limited weight to the evidence of witnesses who were related to the Appellant on the ground that "[w]hile these relationships do not, in themselves, discredit the witnesses, they may account for the witnesses' inclination to resolve any lapse in their recollections in a manner favourable to Karera."[277] These observations merely demonstrate that the Trial Chamber viewed the evidence from Defence witnesses who had close relationships with the Appellant or his family members with caution and does not demonstrate *per se* that the Trial Chamber erred in law in its assessment of this evidence.

138. The Appeals Chamber notes that Witnesses ATA, KD, and BBK were away from the Appellant's house in Nyamirambo after 7 April 1994.[278] Therefore, the evidence of these three witnesses was not significant with regard to the presence and role of the three policemen at the Appellant's house after 7 April 1994. In these circumstances, the Appeals Chamber sees no error in the Trial Chamber according limited weight to the evidence of these witnesses on this point.

139. With regard to Witnesses KBG, KNK, and ZBM, the Trial Chamber considered their testimonies but it is apparent from the Trial Judgement that it did not find their evidence relevant or significant regarding the Appellant's authority over the three policemen and their role in the commission of crimes in Nyamirambo.[279] The Appellant has not shown any error in this approach.

140. The Appeals Chamber recalls that the the task of weighing and assessing evidence lies, in the first place, with the Trial Chamber. The Trial Chamber had therefore the discretion to assess the relevance and weight of evidence given by both Prosecution and Defence witnesses when reaching a decision as to the Appellant's authority.[280] The Appellant has not demonstrated how the Trial Chamber abused its discretion in this respect. Accordingly, the Appeals Chamber dismisses this sub-ground of appeal.

[276] Trial Judgement, paras. 104-109.
[277] Trial Judgement, para. 499.
[278] *See* Trial Judgement, para. 105 for the summary of the witnesses' testimonies.
[279] Trial Judgement, para. 119.
[280] *Musema* Appeal Judgement, para. 18; *Rutaganda* Appeal Judgement, para. 392; *Kupreškić et al.* Appeal Judgement, para. 31.

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B. Alleged Errors relating to the Appellant's Orders to Kill Kabuguza's Family

141. The Trial Chamber found that between 7 and 10 April 1994, the Appellant gave, via telephone, an order to kill Kabuguza.[281] At the same time, the Trial Chamber held that it could not conclude beyond reasonable doubt that Kabuguza was killed by the policemen stationed at the Appellant's house, since the time and place of the killing were unclear, no one observed the alleged killing, and no one heard anyone assume responsibility for it.[282]

142. The Appellant submits that the Trial Chamber erred in law by making this finding based on contradictory and implausible evidence.[283] Since the Trial Chamber based its finding on the testimonies of Witnesses BMH, BMU, and BMF, the Appellant first reiterates his previous submissions that the testimonies of these three witnesses should be rejected in their entirety.[284] Next, the Appellant recalls that the Trial Chamber listed the various contradictions and inconsistencies in the testimonies of Witnesses BMF and BMH and claims that there were additional inconsistencies that the Trial Chamber did not note.[285] However, he points to only one example: the fact that Witness BMF testified that the Appellant ordered that Kabuguza's entire family be killed, while Witness BMH stated that the Appellant instructed that the other members of Kabuguza's family be spared.[286] The Appellant contends that Witnesses BMF, BMH, and BMU lied in their testimonies.[287] He argues that the Trial Chamber "speculated in order to make up for the shortcomings of the Prosecutor's case," thus ignoring the "reasonable possibility that Karera had nothing to do with the killing."[288] The Appellant asserts that this finding has impacted on the Trial Chamber's conclusion that the Appellant exercised authority over the policemen in Nyamirambo.[289]

143. The Prosecution responds that this sub-ground of appeal is unfounded.[290] It submits that the Trial Chamber duly examined the witnesses' evidence, considered the contradictions, and provided a reasoned explanation for accepting the testimonies.[291] It claims that the Appellant has failed to show how the Trial Chamber's explanation was unreasonable or unfounded.[292] Moreover, the Prosecution notes that even though the Trial Chamber found that the Appellant ordered Kabuguza

[281] Trial Judgement, para. 145.
[282] Trial Judgement, para. 145.
[283] Notice of Appeal, paras. 94, 95; Appellant's Brief, para. 127; AT. 28 August 2008 pp. 14, 42, 43.
[284] Appellant's Brief, paras. 92-96, 120.
[285] Appellant's Brief, para. 125, citing Trial Judgement, paras. 140-144.
[286] Appellant's Brief, para. 125.
[287] Appellant's Brief, para. 126.
[288] Appellant's Brief, paras. 127, 128.
[289] AT. 28 August 2008 p. 14.
[290] Respondent's Brief, para. 101.
[291] Respondent's Brief, para. 99.
[292] Respondent's Brief, para. 99.

to be killed, a "reading of the Trial Chamber's legal findings shows that it did not hold the Appellant responsible for this murder."[293] The Prosecution concludes that the Appellant has not demonstrated the impact that a possible error as to his role in Kabuguza's killing could have had on the verdict and that this sub-ground of appeal should accordingly be dismissed.[294]

144. The Trial Chamber's impugned finding stands on the evidence of Witnesses BMU, BMF, and BMH. The Trial Chamber found that "Witnesses BMF and BMH gave a generally consistent account about overhearing a policeman talk on the telephone in Karera's house about killing Kabuguza".[295] However, it noted a number of problematic elements in the evidence related to the Appellant's alleged order to kill Kabuguza and to his alleged murder. Specifically, Witness BMU stated that the killing of Kabuguza occurred between 7 and 10 April 1994, Witness BMH did not provide a date for the phone conversation, but implicitly situated it in April 1994, and Witness BMF said that both the phone conversation and the killing of Kabuguza took place in May 1994. In addition, Witness BMH's testimony indicated that several days separated the phone conversation and the killing of Kabuguza while Witness BMF testified that the killing took place on the morning after the conversation. Furthermore, Witness BMF testified that Kabuguza's entire family was killed, information corroborated by Witness BMU, while Witness BMH stated that the Appellant had decided that Kabuguza's wife and children could live.[296] On the basis of these inconsistencies, the Trial Chamber considered that the circumstances, the location, and the time of the killing remained unclear and as a consequence, refrained from concluding "beyond reasonable doubt that Kabuguza was actually killed by the police officers stationed at Karera's house".[297]

145. The Appeals Chamber finds, however, that the Trial Chamber should have adopted a more cautious approach in its assessment of the Prosecution evidence regarding the person who ordered the killing. The testimonies of Witnesses BMF and BMH were not corroborative as to the period of the Appellant's purported order to kill Kabuguza. The evidence provided by Witness BMH is speculative as to the identity of the person who ordered the killing.[298] Furthermore, no clarity exists as to whether the scope of the order was to kill the entire family of Kabuguza or to spare his wife and children. The Appeals Chamber therefore finds that the Trial Chamber erred in finding that, between 7 and 10 April 1994, the Appellant ordered the murder of Kabuguza.

146. Nevertheless, this error could not lead to a miscarriage of justice since no conviction was entered on the basis of the alleged order to murder Kabuguza. The Trial Chamber's assessment of

[293] Respondent's Brief, para. 100, citing Trial Judgement, paras. 538-559.
[294] Respondent's Brief, para. 101; AT. 28 August 2008 pp. 42, 43.
[295] Trial Judgement, para. 139.
[296] Trial Judgement, paras. 139-144.
[297] Trial Judgement, para. 145.

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the Appellant's authority over the policemen is primarily based on the evidence that in 1994, they lived in and guarded his house, that they received orders from him, that they referred to him as "boss" and that they manned a roadblock near his house.[299] Accordingly, the Appeals Chamber dismisses this sub-ground of appeal.

C. Alleged Errors relating to the Finding that the Appellant Ordered the Killing of Tutsis and Destruction of their Homes in Nyamirambo

147. The Trial Chamber found that between 7 and 15 April 1994, the Appellant gave orders to kill Tutsis and destroy their houses in Nyamirambo at locations near his house.[300] It further found that between 8 and 10 April 1994 or around these dates, the policemen who guarded the Appellant's house destroyed the houses of Kahabaye and Félix Dix with the assistance of the *Interahamwe*.[301] In finding that these events took place pursuant to the Appellant's orders, it relied on the evidence provided by Witnesses BME, BMG, BMH, BMF, BMU, and BLX.[302]

148. The Appellant submits that the Trial Chamber erred in law and fact in finding that he had ordered the killing of Tutsis and the destruction of their property in Nyamirambo.[303]

149. The Appeals Chamber will consider the Appellant's arguments in turn.[304]

1. Alleged Error in Making a Finding of Fact on a General and Redundant Allegation

150. The Appellant first contends that the Prosecution's underlying allegation itself was "general and redundant" and that the Trial Chamber erred by making a finding of fact from evidence in support of such an allegation.[305] This argument is summarily dismissed as the Appellant only raised it in the Notice of Appeal and did not develop it sufficiently to enable the Appeals Chamber to assess the alleged error.

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[298] *See* Trial Judgement, para. 136.
[299] Trial Judgement, paras. 110-122, 139-145, 162-168, 173, 182, 192, 195-196, 203.
[300] Trial Judgement, para. 168.
[301] Trial Judgement, para. 168, cross-referring Section II.4.7 of the Trial Judgement where these killings are discussed.
[302] Trial Judgement, paras. 159-166.
[303] Notice of Appeal, para. 99; Appellant's Brief, paras. 129-145.
[304] The Appellant's arguments in relation to his alibi (Appellant's Brief, para. 130) are considered below under Chapter IX.
[305] Notice of Appeal, paras. 96, 99.

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2. Alleged Error in the Assessment of Prosecution and Defence Evidence

151. The Appellant next contends that the Trial Chamber committed a number of errors, which are detailed below, in the assessment of Prosecution and Defence evidence related to this allegation.[306]

(a) Alleged Inconsistencies in Dates and Times Provided by Prosecution Witnesses

152. The Appellant lists and highlights alleged inconsistencies in the dates and times provided by Prosecution witnesses in relation to the alleged orders.[307] He contends that "[i]t is absolutely unbelievable that the Chamber found, on the basis of this evidence, that Karera gave orders, **between 7 and 15 April 1994**, to kill the Tutsi and destroy their houses in Nyamirambo and that, consequently, **between 8 and 10 April 1994**, the policemen who were guarding [his] house destroyed the houses of Kahabaye and Félix Dix, with the assistance of the *Interahamwe*".[308] He suggests that "[t]he evidence must have been examined in an offhand manner to make the finding that an impossible fact has been proven beyond a reasonable doubt".[309]

153. The Appellant argues that the testimonies of the Prosecution witnesses who testified about the alleged order to kill Tutsis were "so contradictory" that the Trial Chamber "ought to admit" that they were probably speaking of different events.[310] He further submits that the Trial Chamber erred in concluding that there were several stages of destruction resulting from more than one order given by the Appellant, despite the fact that all the witnesses who testified about the destruction of the houses of Tutsis stated that it occurred immediately after the order had been given.[311]

154. The Prosecution responds that the Appellant simply lists inconsistencies in the Prosecution witnesses' evidence "without demonstrating specifically and in a well argued manner how the Trial Chamber failed to make good use of its power to assess the evidence."[312] It submits that the Trial Chamber duly considered the testimonies of all the witnesses, including Defence witnesses, and recalls that it is within a Trial Chamber's discretion to assess the contradictions in light of the entire evidence and determine a witness's credibility.[313]

155. The Appeals Chamber recalls that the task of weighing and assessing evidence lies, in the first place, with the Trial Chamber and that it is within the Trial Chamber's discretion to assess any

[306] Appellant's Brief, paras. 131-144.
[307] Appellant's Brief, paras. 131-136, summarizing the testimonies of Witnesses BMU, BMG, BMF, BMH and BME.
[308] Appellant's Brief, para. 137 (emphasis in original), referring to Trial Judgement, para. 168.
[309] Appellant's Brief, para. 137 (emphasis in original).
[310] Appellant's Brief, para. 138.
[311] Appellant's Brief, para. 139, referring to Trial Judgement, para. 166.
[312] Respondent's Brief, para. 103.

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inconsistencies in the testimony of witnesses and to determine whether, in light of the overall evidence, the witnesses are nonetheless reliable and credible.[314]

156. The Appeals Chamber notes that, under Section 4.7 of the Trial Judgement,[315] the Trial Chamber found that "the *Interahamwe* in Nyamirambo followed after Kahabaye, killed him in [the neighbouring *commune* of] Butamwa between 8 and 10 April [1994], and reported to Karera's policemen that the killing had taken place" and that "[t]he killing was a consequence of Karera's order".[316] As to the killing of Félix Dix, the Trial Chamber found that "it must have occurred between 8 and 15 April [1994], when the Tutsi houses were destroyed" but declined to enter a conviction on that basis, reasoning that there was not "sufficient evidence to find beyond reasonable doubt that the three policemen were responsible of killing Félix Dix [*sic*]."[317]

157. There is no doubt that the Trial Chamber's mention of the destruction of houses of Tutsis in this section of the Trial Judgement is a reference to its prior findings in Section 4.5 of the Trial Judgement.[318] There the Trial Chamber held that "between 8 and 10 April 1994 or around these days, the policemen who guarded Karera's house destroyed the houses of Kahabaye and Dix, with the assistance of the *Interahamwe*".[319]

158. It is apparent that in making this finding, the Trial Chamber relied chiefly on Witness BMU's testimony.[320] The Trial Chamber also considered the testimonies of Witnesses BMG, BMF, BMH, BLX, and BME, and it appears to have found them corroborative of Witness BMU's testimony on this point.[321] The Trial Chamber considered the differences in these testimonies as to the date of the events and did not find that these differences amounted to a conflict in the evidence.[322] The Appeals Chamber notes that the range of dates provided by Witnesses BMG, BMF, BME, and BMH included the shorter time-frame given by Witness BMU. The Trial Chamber specifically concluded that "Witness BMH's testimony that Karera gave the order to destroy houses between 10 and 15 April [1994] does not contradict Witness BMU's evidence that Kahabaye's and Dix's houses had been demolished by 10 April [1994]" and that the "evidence suggests that there was more than one order and several stages of destruction".[323] The Appellant has not demonstrated

[313] Respondent's Brief, para. 104.
[314] *See Bagilishema* Appeal Judgement, para. 78.
[315] Trial Judgement, Section 4.7 (Killings of Joseph Kahabaye and Félix Dix).
[316] Trial Judgement, paras. 182, 183.
[317] Trial Judgement, paras. 184, 185.
[318] Trial Judgement, Section 4.5 (Order to Kill Tutsi and Destroy their Houses).
[319] Trial Judgement, para. 168.
[320] Trial Judgement, paras. 152, 166, 167.
[321] Trial Judgement, paras. 159-166.
[322] Trial Judgement, para. 166.
[323] Trial Judgement, para. 166.

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that no reasonable trier of fact could have concluded that the evidence of Witnesses BMG, BMF, BMH, BLX, and BME was consistent as to the date of the events.

159. The Trial Chamber found Witness BME's testimony credible and accepted that her testimony that the events in question occurred on 15 April 1994 was given honestly.[324] It however concluded that "it [was] likely that Witness BME erred regarding the precise date of the event, in view of her traumatic situation" and the circumstances.[325] The Trial Chamber considered whether her testimony contradicted Witness BMU's evidence that Kahabaye's and Dix's houses had been destroyed between 7 and 10 April 1994.[326] It concluded that Witness BME's evidence that the order to destroy houses took place on 15 April 1994 did "not exclude that Kahabaye's and Dix's houses had already been demolished".[327] The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in making such a finding.

160. The Appeals Chamber finds no error in the Trial Chamber's finding that "between 7 and 15 April 1994, Karera gave orders to kill Tutsi and destroy their houses in Nyamirambo, at locations near his house."[328] This finding is supported by the evidence given by Witnesses BMU, BMG, BMF, BMH, BLX, and BME, which the Appellant has not successfully challenged. The Appeals Chamber will address below, under Sections E, F, G, and H, the Appellant's arguments related to the link between the alleged killings and these orders.

(b) Allegation of a Reasonable Possibility that the Houses Had Been Destroyed before the Appellant Allegedly Ordered their Destruction

161. The Appellant claims that the Trial Chamber's holding leaves open the "reasonable possibility that the houses were destroyed before [he] gave the order to destroy them."[329]

162. The Appeals Chamber notes that in its reasoning leading to the conclusion that the Appellant committed genocide based on the killing of Kabahaye, Murekezi, Ndingutse, and Nyagatare the Trial Chamber found that they "were killed pursuant to Karera's orders to the policemen and *Interahamwe* to kill Tutsi[s] and destroy their homes, which were given between 7 and 15 April [1994]"[330] and that the Appellant's order to destroy the houses of Kahabaye and Felix Dix also demonstrate his genocidal intent.[331] The Trial Chamber considered the alleged

[324] Trial Judgement, paras. 159-161, 162, 166.
[325] Trial Judgement, para. 160.
[326] Trial Judgement, para. 166.
[327] Trial Judgement, para. 166.
[328] Trial Judgement, para. 168.
[329] Appellant's Brief, para. 140.
[330] Trial Judgement, para. 538.
[331] Trial Judgement, para. 539.

inconsistency between the time-frames identified by some witnesses of the order and the timing of the houses' destruction. While one witness stated that the Appellant ordered the destruction of houses on 10 April 1994, another witness testified that the order was given on 15 April 1994, and two other witnesses testified that similar orders were made on or after 8 April 1994. The Trial Chamber reasoned that "[t]he evidence suggests that there was more than one order and several stages of destruction"[332] and accepted the possibility that Kahabaye's and Dix's houses had already been destroyed on 10 April 1994. The Appeals Chamber sees no error in this reasoning and finds therefore that the Appellant has not shown that no reasonable trier of fact could have reached the conclusion that the Appellant ordered the destruction of the houses on the basis of the evidence. Furthermore, the Appellant has not shown that no reasonable trier of fact could have reached the conclusion that his order to destroy houses of Tutsis as well as the destruction of the houses of Kahabaye and Felix Dix illustrate his genocidal intent.

(c) Alleged Differential Treatment of Defence and Prosecution Witnesses

163. The Appellant further alleges, without elaboration, differential treatment of Defence and Prosecution witnesses by the Trial Chamber and claims that the Trial Chamber failed to explain why it did not believe the Defence evidence.[333]

164. A review of the Trial Judgement reveals that the Trial Chamber took into account the totality of the evidence and discussed in detail the evidence given by both Prosecution and Defence witnesses.[334] Contrary to the Appellant's claim, the Trial Chamber explained why the evidence given by Defence witnesses "did not weaken the evidence adduced by Prosecution witnesses".[335]

> Witness KGB confirmed that, generally, those who manned the roadblocks attacked and looted civilians. Witness ATA's testimony confirms that Kahabaye's house had been destroyed between 7 April 1994 and 1997. Witness KD, who said that it was demolished in late June 1994, did not observe its destruction and her account was based on information from others and is not in conformity with evidence from other witnesses.[336]

165. The Appellant has not demonstrated how the Trial Chamber erred in making this finding. His appeal on this point is therefore dismissed.

[332] Trial Judgement, para. 166.
[333] Appellant's Brief, paras. 142, 143, 145.
[334] Trial Judgement, paras. 146-167.
[335] Trial Judgement, para. 167.
[336] Trial Judgement, para. 167.

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(d) Alleged Shifting of the Burden of Proof

166. The Appellant alleges that the Trial Chamber's statement that the Defence witnesses did not weaken the Prosecution evidence illustrates that it erroneously shifted the burden of proof.[337]

167. The Prosecution responds that the Trial Chamber did not reverse the burden of proof and that "[h]aving seen and heard the witnesses testify, the Trial Chamber could very well prefer the testimonies [of the] Prosecution witnesses [...] to the extent that these witnesses gave reliable and credible descriptions of what they observed in person, although with minor contradictions."[338]

168. The Appellant has not shown how the statement in question demonstrates that the Trial Chamber shifted the burden of proof.

3. Conclusion

169. For the foregoing reasons, this sub-ground of appeal is dismissed.

D. Alleged Errors relating to the Finding that the Appellant Ordered that Certain Houses of Tutsis be Spared

170. The Trial Chamber concluded that in the period between 7 and 15 April 1994, the Appellant ordered that certain houses of Tutsis should not be destroyed.[339] In making this finding, the Trial Chamber relied mainly on the testimony of Witnesses BMF and BMH[340] and also considered that Witness BMG's evidence corroborated that of Witness BMF about sparing the life of a Tutsi man named Callixte Kalisa.[341]

171. The Appellant submits that the Trial Chamber's assessment of the evidence of these witnesses and its finding that certain houses of Tutsis were spared on the Appellant's orders are erroneous.[342] The Prosecution responds that the Trial Chamber properly assessed the evidence concerning the order that certain houses of Tutsis be spared.[343]

172. The Appellant first contends that Prosecution Witnesses BMG, BMF, and BMH do not corroborate each other since none of them "gave the same reasons advanced by [the Appellant] or

[337] Appellant's Brief, para. 144, citing Trial Judgement, para. 167.
[338] Respondent's Brief, para. 107 (citations omitted), citing Trial Judgement, paras. 159, 162, 165.
[339] Trial Judgement, para. 173.
[340] Trial Judgement, paras. 173, 174.
[341] Trial Judgement, para. 174.
[342] Notice of Appeal, para. 102; Appellant's Brief, para. 149.
[343] Respondent's Brief, paras. 110, 111.

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by those persons who were quoting him, as to why the lives and houses of some Tutsi had to be spared."[344]

173. The Appeals Chamber recalls its holding in the *Nahimana et al.* Appeal Judgement that:

> two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.[345]

174. The Appeals Chamber further recalls that minor inconsistencies commonly occur in witness testimony without rendering it unreliable and that it is within the discretion of the Trial Chamber to evaluate such inconsistencies and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[346]

175. While the Trial Chamber did not explicitly address this matter, the Appeals Chamber finds that the alleged inconsistency is minor and that it is not relevant to the material facts underlying the conviction. Accordingly, the Trial Chamber's failure to address this issue does not render its reliance on the witnesses erroneous.

176. The Appellant next alleges that Witness BMG's testimony is "very confusing" and contradicts Witness BMF as to the time period of the orders allegedly given by the Appellant.[347]

177. The Appeals Chamber notes that the Trial Chamber chiefly relied on Witness BMF's testimony, not Witness BMG's, in making the finding on the Appellant's order to spare the lives of certain Tutsis.[348] While Witness BMG's testimony suggests that the order to spare Callixte's life was given sometime before 15 April 1994, Witness BMF testified that the order was given in the second half of May 1994.[349] In reaching its conclusion that the evidence of Witness BMG corroborated that of Witness BMF "about the sparing of Callixte",[350] the Trial Chamber reasoned that it was not clear from Witness BMG's testimony whether he personally heard the Appellant make the order, or learned about it from others[351] without addressing the apparent discrepancy between the dates identified by the two witnesses as to when the Appellant ordered that the life and

[344] Appellant's Brief, para. 148.
[345] *Nahimana et al.* Appeal Judgement, para. 428.
[346] *Kvočka et al.* Appeal Judgement, para. 23.
[347] Appellant's Brief, para. 148.
[348] Trial Judgement, para. 174.
[349] Trial Judgement, paras. 137, 171.
[350] Trial Judgement, para. 174.
[351] Trial Judgement, para. 174.

house of Callixte Kalisa be spared. While it would have been preferable for the Trial Chamber to address such an apparent discrepancy, the Appeals Chamber does not find that this omission amounts to an error since the testimonies are not incompatible.

178. The Appellant finally submits that Witness BMH's evidence must be dismissed since it was "obtained from other persons and does not tally with the evidence of the two other witnesses [BMF and BMG]."[352] This unsubstantiated submission is dismissed since the Appellant has not explained what differences exist between the testimony of Witness BMH and Witnesses BMF and BMG. To the extent that the Appellant is challenging the hearsay nature of Witness BMH's testimony, the Appeals Chamber recalls that "hearsay evidence is admissible as long as it is of probative value," and that a Trial Chamber has the discretion to cautiously consider hearsay evidence and to rely on it.[353]

179. The Appeals Chamber finds that the Appellant has not shown that the Trial Chamber erred in relying on Witnesses BMF, BMH, and BMG in reaching its finding on this point.

180. This sub-ground of appeal is therefore dismissed.

E. Alleged Errors relating to the Finding that Kahabaye was Killed on the Appellant's Orders

181. The Trial Chamber found that, pursuant to the Appellant's order to kill Tutsis, *Interahamwe* in Nyamirambo followed Joseph Kahabaye and killed him in Butamwa between 8 and 10 April 1994.[354] The *Interahamwe* then reported the killing to the Appellant's policemen.[355] Partly on the basis of these findings, the Trial Chamber found the Appellant guilty of ordering genocide and extermination and murder as crimes against humanity.[356]

182. The Appellant submits that the Trial Chamber erred in finding that Kahabaye was killed on his orders[357] and contends that the Trial Chamber erred in the assessment of the evidence.[358] The

[352] Appellant's Brief, para. 148. *See also* Notice of Appeal, para. 101.
[353] *See supra* para. 39.
[354] Trial Judgement, paras. 182, 536.
[355] Trial Judgement, para. 182.
[356] Trial Judgement, paras. 540, 555, 557, 559, 560.
[357] Notice of Appeal, paras. 103-115; Appellant's Brief, paras. 150-165.
[358] Appellant's Brief, paras. 151-165. The Appellant cites paragraphs 108-113 of the Trial Judgement to demonstrate that the Trial Chamber was wary of Witness BMU and "noted all the same that he was lying." The Appeals Chamber notes that the Trial Chamber held that Witness BMU's testimony should be considered with caution (since he may have been influenced by a wish to positively affect the criminal proceedings against him in Rwanda) but, contrary to the statement in the Appellant's Brief, the Trial Chamber did not conclude that the witness was lying. Trial Judgement, para. 113. Therefore, the Appeals Chamber need not address the unsubstantiated argument that this fact was never pleaded in the Amended Indictment. Notice of Appeal, para. 112.

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Appellant contends that all three Prosecution witnesses, upon whom the Trial Chamber relied in making the above finding, Witnesses BMU, BMF, and BMG, gave hearsay evidence and provided no direct evidence implicating the Appellant in Kahabaye's murder.[359] He claims that the Trial Chamber relied on the "incomplete accounts" of witnesses and particularly opposes the Trial Chamber's acceptance of the testimony of Witness BMU in light of its prior assessment of this witness.[360] He further alleges that no causal link was established between the order and Kahabaye's killing.[361] The Appellant claims that the Trial Chamber failed to examine the factual contradictions in the witnesses' testimonies and erroneously made its finding even though "it has not been proved beyond a reasonable doubt that Kahabaye was killed on Karera's orders."[362]

183. The Prosecution responds that the Trial Chamber correctly found that Kahabaye was killed on the Appellant's orders.[363] It submits that the Trial Chamber relied on the testimonies it deemed credible and found that the Appellant had given orders to the *Interahamwe* and policemen.[364] Further, the Prosecution points to the Trial Chamber's previous finding that the Appellant exercised authority over the *Interahamwe* and the three policemen guarding his house.[365] Thus, the Prosecution concludes that "the death of Kahabaye was undoubtedly the direct consequence of the Appellant's orders, and the Trial Chamber did not commit any error in this regard."[366]

184. The Appeals Chamber notes that the Trial Chamber relied on the testimonies of Witnesses BMU, BMG, and BMF in making its finding on this point.[367] Witness BMG stated that he heard that Kahabaye had been killed in Butamwa, a location outside Nyamirambo, but did not know by whom.[368] Witness BMF observed the Appellant telling Kalimba that he no longer wanted to see the "filth" of houses of Tutsis in front of his house, pointing to the houses nearby, such as those of Joseph Kahabaye, Felix, and Vianney Hitimana.[369] He testified that Kahabaye was arrested and killed by *Interahamwe* in April 1994.[370] As summarized by the Trial Chamber, Witness BMF also testified that *Interahamwe* boasted "to the policemen about having killed [Kahabaye]".[371] Witness

[359] Appellant's Brief, para. 163. *See also* Brief in Reply, para. 33.
[360] Appellant's Brief, para. 152.
[361] Appellant's Brief, para. 159.
[362] Appellant's Brief, para. 159.
[363] Respondent's Brief, para. 112.
[364] Respondent's Brief, para. 114.
[365] Respondent's Brief, para. 114, citing Trial Judgement, paras. 563, 567.
[366] Respondent's Brief, para. 115.
[367] Trial Judgement, paras. 175-180, 182.
[368] Trial Judgement, paras. 177, 182.
[369] Trial Judgement, para. 178.
[370] Trial Judgement, paras. 178, 182.
[371] Trial Judgement, para. 178. No specific information is given as to the identity of the said policemen. It seems that the Trial Chamber inferred from the context that the people involved here were the policemen guarding the Appellant's house. Witness BMF testified that he was not present when Kahabaye was killed but that "[t]his information [...] was related to [him]." He further stated that "*Interahamwes* [*sic*] were boasting about what they had done, and so they had no reason to lie". He specified that he did "not remember exactly the name of the person from whom [he] got that

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BMU received a telephone report from a subordinate that "the policemen at Karera's roadblock had killed Joseph Kahabaye and Félix Dix and their families [and that] they also destroyed their houses, accompanied by *Interahamwe*".[372] He further testified that on the same day he personally saw the ruins of the houses and noticed that "Joseph Kahabaye's folks" had been killed.[373]

185. The Appeals Chamber notes that no direct evidence supports the Trial Chamber's conclusion that the "*Interahamwe* in Nyamirambo followed after Kahabaye, killed him in Butamwa between 8 and 10 April [1994], and reported to Karera's policemen that the killing had taken place".[374] The Trial Judgement is insufficiently clear as to how the Trial Chamber reached this conclusion. Furthermore, in finding that "the killing was a consequence of Karera's order"[375] the Trial Chamber omitted to specify which order it referred to and did not reveal how it established a link between the murder of Kahabaye and any order given by the Appellant.

186. Based on the Trial Chamber's factual findings, the Appeals Chamber finds that no reasonable trier of fact could have concluded beyond reasonable doubt that Kahabaye's murder was a consequence of an order to kill Tutsis given by the Appellant. The evidence regarding the location of the crime and the identity of the perpetrators accepted by the Trial Chamber was not corroborated and, in fact, remained conflicting. Witness BMG testified that the murder occurred in Butamwa, while Witness BMU seemed to place it in Nyamirambo. Witness BMF testified that the murder had been perpetrated by *Interahamwe* while, according to Witness BMU, the perpetrators were the policemen under the Appellant's authority. The Trial Chamber itself recognized that there was "limited information concerning the specific circumstances of his death [and that] no witness observed the killing"[376] but entered a finding that "the killing [of Kahabaye] was the consequence of Karera's order",[377] without explaining how it reached this conclusion.

187. In sum, the Appeals Chamber finds that the Trial Chamber erred in finding that Joseph Kahabaye's killing was "a consequence of Karera's order". Accordingly, the Appeals Chamber grants this sub-ground of appeal and reverses the Appellant's convictions for genocide and extermination and murder as crimes against humanity based on this event.

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information, but [that] there were many *Interahamwes* [*sic*] passing by this location, and they came to brief the policemen regarding the people that they had killed". Finally, he stated that he "heard this from the *Interahamwes* [*sic*] themselves because they were reporting to the policemen. They were not telling me about the incident. They were talking to the policemen." T. 18 January 2006 p. 7.

[372] Trial Judgement, paras. 177, 182.
[373] Trial Judgement, para. 179.
[374] Trial Judgement, para. 182.
[375] Trial Judgement, para. 182.
[376] Trial Judgement, para. 182.
[377] Trial Judgement, para. 182.

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F. Alleged Errors relating to the Finding that the Appellant Ordered Policeman Kalimba to Kill Murekezi

188. The Trial Chamber found that between 8 and 10 April 1994, policeman Kalimba forced a man to kill Murekezi, a Tutsi, at the roadblock near the Appellant's house and later boasted that he had carried out the killing following the Appellant's order.[378] It found that the testimonies of Witnesses BMU and BMG corroborated each other and were reliable despite their hearsay nature.[379] Partly on this basis, the Trial Chamber found the Appellant guilty of ordering genocide and extermination and murder as crimes against humanity.[380]

189. The Appellant submits that the Trial Chamber erred in finding that he had ordered Kalimba to kill Murekezi.[381] The Appellant claims that the Trial Chamber based its finding on "purely circumstantial evidence" and that this finding "amounts to speculation and is, therefore, erroneous."[382]

190. The Appellant claims that the testimonies of Witnesses BMG and BMU, on the basis of which the Trial Chamber made this finding, are inconsistent and fail to provide a sufficient link between him and the murder.[383] The Appellant highlights that the Trial Chamber "never mentioned or explained how it could be satisfied that conflicting evidence which it treated with caution proves a contested fact beyond reasonable doubt."[384]

191. The Prosecution responds that the Trial Chamber did not err in making this finding.[385]

192. The Trial Chamber relied primarily on the testimony of Witness BMG in making the impugned finding.[386] It also found that Witness BMU's evidence corroborated Witness BMG's evidence.[387] The Appeals Chamber has recalled above that two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts and that it is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way.[388] It follows that corroboration may exist even when the testimonies differ on some details, provided that no credible

[378] Trial Judgement, para. 192.
[379] Trial Judgement, para. 189.
[380] Trial Judgement, paras. 540, 557, 560.
[381] Notice of Appeal, paras. 116-127; Appellant's Brief, paras. 166-173; Brief in Reply, para. 34.
[382] Notice of Appeal, para. 125.
[383] Notice of Appeal, paras. 118, 119, 121; Appellant's Brief, para. 169; Brief in Reply, para. 34.
[384] Brief in Reply, para. 34.
[385] Respondent's Brief, paras. 116-119.
[386] Trial Judgement, paras. 186, 188-190.
[387] Trial Judgement, para. 189.
[388] *See supra* para. 173.

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testimony describes the facts in question in a way which is incompatible with the description given in another credible testimony.[389]

193. Contrary to the Appellant's contention, the evidence of Witnesses BMG and BMU is not inconsistent or conflicting. The witnesses corroborate each other as to the fact that Murekezi was killed and as to the location of his killing. Witness BMG saw policeman Kalimba force a young man to kill Murekezi at the roadblock in front of the Appellant's house between 8 and 15 April 1994.[390] Subsequently, Kalimba boasted that the Appellant had ordered him "to go and get Murekezi and his wife", but that he did not find the wife.[391] Witness BMU testified that between 7 and 10 April 1994 a subordinate reported to him over the phone that the *Interahamwe* and the policemen who guarded the Appellant's house had killed Murekezi and his two sons at the roadblock in front of the Appellant's house.[392] The time-frames provided by the two witnesses are consistent. The Appellant has not shown how the Trial Chamber erred in finding these testimonies corroborative.

194. The Appellant submits that the Trial Chamber relied on evidence containing "three hearsays" and favoured Witness BMG without providing an explanation for why it found his evidence reliable.[393]

195. The Appeals Chamber dismisses the Appellant's contention. The Trial Chamber chiefly relied on the testimony of Witness BMG who saw policeman Kalimba force a man to kill Murekezi. Witness BMG was therefore an eyewitness to the killing. He was also a direct witness to Kalimba boasting that he had carried out the Appellant's order "to go and get Murekezi and his wife."[394]

196. In any case, the Appeals Chamber has already recalled that it is for the appealing party to demonstrate that no reasonable trier of fact could have taken into account hearsay evidence in

[389] *See supra* para. 173.
[390] Trial Judgement, para. 186.
[391] Trial Judgement, para. 186.
[392] Trial Judgement, para. 187.
[393] Appellant's Brief, para. 170.
[394] Trial Judgement, para. 186. Witness BMG stated that: "[h]e was brought there by *Interahamwes* who were accompanied by a policeman who was guarding [the Appellant's] house, and when they got next to [the Appellant's] house, the policeman led Murekezi and compelled him to lie down, and then he ordered a young man to kill him, but the young man refused to do that. I no longer remember the name of that young man. So when the young man refused to do so, the policeman loaded his rifle and – in order to fire – to shoot at the young man. So when the young man saw that, he just took his machete and killed Murekezi. That was the circumstance of Murekezi's death. He had been taken from a place which was further away from there, and he was brought to the roadblock in order to be killed. And I would also like to add that the policeman's name was Kalimba. Later on, he boasted that it was [the Appellant] who ordered him to go and get Murekezi and Helen, that is Murekezi's wife, but the policeman did not find Murekezi's wife. He provided this information later, but I was there when he brought Murekezi there at the roadblock." T. 9 January 2006 p. 21.

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reaching a specific finding.[395] The Appellant has not done so in this instance and therefore his contention that the Trial Chamber erred in relying on hearsay testimony is dismissed.

197. Finally, the Appellant reiterates his argument made at trial that he was not cross-examined about his denial of the incident and submits that the Trial Chamber erred in law by not considering that such unchallenged denial constitutes tacit acceptance of his account.[396]

198. The Appeals Chamber recalls that a Trial Chamber has the discretion as to whether or not to infer that statements which have not been challenged during cross-examination are true.[397] It has already rejected the general contention that the Trial Chamber erred in not making such an inference from the fact that the Prosecution did not cross-examine the Appellant.[398] Contrary to the Appellant's assertion, the absence of cross-examination does not imply that the Prosecution accepted the Appellant's denial of this incident. The Appellant's argument is dismissed.

199. This sub-ground of appeal is therefore dismissed.

G. Alleged Errors relating to the Finding that the Appellant was Involved in the Murder of Ndingutse

200. The Trial Chamber found that on 10 April 1994, Jean Bosco Ndingutse, a Tutsi, was arrested and killed not far away from the Appellant's house by *Interahamwe* and the policemen who were guarding the Appellant's house.[399] The Trial Chamber found that this killing was one of the killings perpetrated pursuant to the Appellant's orders given to the policemen and *Interahamwe* between 7 and 15 April 1994 to kill Tutsi members of the population.[400] In making this finding, the Trial Chamber primarily relied on Witness BMU who testified that he saw Ndingutse being arrested by the policemen during the afternoon of 10 April 1994, about 300 metres from the Appellant's house.[401] Later that day, one of Witness BMU's subordinates reported to him that Ndingutse had been killed by the policemen and *Interahamwe*.[402] Partly on this basis, the Trial Chamber found the Appellant guilty of ordering genocide and extermination and murder as crimes against humanity.[403]

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[395] *See supra* para. 39.
[396] Appellant's Brief, para. 171.
[397] *See supra* para. 29.
[398] *See supra* para. 30.
[399] While the Trial Chamber did not specify which policemen perpetrated the crime, it is clear from the context that it meant to refer to the policemen who, under the authority of the Appellant, guarded his house in Nyamirambo. *See* Trial Judgement, paras. 193, 196, 535.
[400] Trial Judgement, paras. 535, 536, 538.
[401] Trial Judgement, paras. 193-195.
[402] Trial Judgement, para. 193.
[403] Trial Judgement, paras. 540, 557, 560.

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201. The Appellant submits that the Trial Chamber made an erroneous finding since the evidence did not show that he ordered the murder of Ndingutse.[404] He contends that the Trial Chamber relied solely on the hearsay testimony of Witness BMU, which did not provide any direct evidence of the Appellant's involvement in the incident leading to Ndingutse's murder.[405]

202. The Prosecution responds that the Trial Chamber properly assessed the evidence concerning the murder of Ndingutse.[406] It submits that the Trial Chamber was within its discretion in finding Witness BMU credible and relying solely on his testimony.[407]

203. The Appeals Chamber finds that the Trial Chamber erred in finding that Ndingutse had been killed pursuant to the Appellant's orders given between 7 and 15 April 1994 to the policemen and *Interahamwe* to kill Tutsi. The Trial Chamber found that the killing occurred shortly after the Appellant had given an order to kill Tutsis and destroy their houses and in a place near the location where the order was given. However, Witness BMU was the only witness who testified about this event and the Trial Chamber decided to consider his testimony with caution,[408] since he might "have been influenced by a wish to positively affect the criminal proceedings against [him] in Rwanda".[409]

204. Witness BMU testified that he saw the policemen guarding the Appellant's house arrest Ndingutse and that later they "took two vehicles [belonging to Ndingutse], a minibus and a Peugeot 504" to the Appellant's compound.[410] He also testified that he was told by a subordinate that Ndingutse was killed by "Karera's policemen" and *Interahamwe*.[411] The Appeals Chamber finds that no reasonable trier of fact could have accepted this witness's uncorroborated hearsay testimony that the policemen who killed Ndingutse were the policemen who guarded the Appellant's house. Furthermore, no reasonable trier of fact could have concluded on the basis of that circumstantial evidence that the only reasonable inference was that Ndingutse had been killed pursuant to the Appellant's orders to kill Tutsis.

205. In sum, the Appeals Chamber finds that the Trial Chamber erred in fact in finding that Ndingutse had been killed pursuant to the Appellant's order. Accordingly, the Appeals Chamber grants this sub-ground of appeal and reverses the Appellant's convictions for genocide and extermination and murder as crimes against humanity based on this event.

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[404] Notice of Appeal, para. 131; Appellant's Brief, para. 179.
[405] Brief in Reply, para. 34; Appellant's Brief, para. 176.
[406] Respondent's Brief, para. 120.
[407] Respondent's Brief, para. 122, citing *Niyitegeka* Appeal Judgement, para. 171. *See also Muhimana* Appeal Judgement, para. 101; *Niyitegeka* Appeal Judgement, para. 92; *Gacumbitsi* Appeal Judgement, para. 72.
[408] Trial Judgement, para. 113.
[409] Trial Judgement, para. 113.

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H. Alleged Errors relating to the Killing of Nyagatare on the Appellant's Orders

206. The Trial Chamber found that a Tutsi man named Palatin Nyagatare was killed at a roadblock by policeman Kalimba on 24 April 1994 and that this followed the Appellant's orders to kill Tutsis in Nyamirambo.[412] Partly on this basis, the Trial Chamber found the Appellant guilty for ordering genocide and extermination and murder as crimes against humanity.[413]

207. The Appellant submits that the Trial Chamber erred in fact in finding that he was responsible for the killing of Palatin Nyagatare.[414] He contends that even assuming that he gave the order to kill Tutsis in Nyamirambo, the Trial Chamber committed a factual error in finding that this order resulted in Nyagatare's killing.[415] The Appellant recalls that the witnesses who claimed that he gave such an order pointed to the time period between 7 and 15 April 1994, whereas Nyagatare was killed on 24 April 1994.[416] This, the Appellant contends, coupled with the fact that the Prosecution was unable to prove that the Appellant gave a specific order to kill Nyagatare, illustrates that there is no evidence that Nyagatare's murder was the result of his alleged order.[417] He further claims that the Trial Chamber failed to meet its obligation to provide a reasoned opinion on this finding.[418]

208. The Prosecution responds that the Trial Chamber properly found that the Appellant's order resulted in the killing of Nyagatare.[419] First, it submits that Witnesses BMH and BMF corroborated each other on the facts of the killing.[420] Second, the Prosecution argues that the Appellant's contention relating to the ten day difference between the date of the alleged order and the killing is "without merit" since "the period of ten days is not too far removed" and the Trial Chamber found beyond reasonable doubt that policeman Kalimba killed Nyagatare on the Appellant's orders.[421]

209. In making the impugned finding, the Trial Chamber relied on the circumstantial hearsay evidence of Witnesses BMF and BMH. Both witnesses stated that Nyagatare was killed on 24 April 1994 and mentioned the involvement of Kalimba, one of the policemen who were guarding the Appellant's house, in the killing of Nyagatare.[422] Witness BMF testified that Kalimba confirmed to

[410] T. 23 January 2006 pp. 17, 24.
[411] Trial Judgement, para. 193.
[412] Trial Judgement, para. 203.
[413] Trial Judgement, paras. 540, 557, 560.
[414] Notice of Appeal, para. 140; Appellant's Brief, para. 181; Brief in Reply, para. 33.
[415] Notice of Appeal, para. 135; Appellant's Brief, para. 181.
[416] Notice of Appeal, paras. 136, 137; Appellant's Brief, para. 181.
[417] Appellant's Brief, para. 181.
[418] Appellant's Brief, para. 183.
[419] Respondent's Brief, paras. 123, 124.
[420] Respondent's Brief, para. 123.
[421] Respondent's Brief, para. 123.
[422] Trial Judgement, paras. 200, 201.

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her that he (Kalimba) had ordered Nyagatare's execution.[423] Witness BMH stated that Nyagatare was killed by a group which included *Interahamwe* and the Appellant's policemen.[424] Witness BMH further testified that Kalimba subsequently told the assailants at Nyagatare's house to spare his children, stating "we have just killed their father".[425]

210. In assessing the testimonies of Witnesses BMF and BMH on this point, the Trial Chamber noted:

> The testimony of the two relatives was consistent in relation to the time, location and perpetrators. They both testified that Palatin [Nyagatare] was killed on 24 April and heard Kalimba admitting to being involved in the killing. The Chamber recalls that the witnesses were personally acquainted with Kalimba, and that Witness BMF enjoyed his protection [...]. It is also clear that Palatin was killed at a roadblock in the area [...].[426]

211. The Appeals Chamber recalls that a person in a position of authority may incur responsibility for ordering another person to commit an offence[427] if the person who received the order subsequently commits the offence. Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is committed by the person who received the order.[428] No formal superior-subordinate relationship between the accused and the perpetrator is required; it is sufficient that there is proof of some position of authority on the part of the accused that would compel the perpetrator to commit a crime pursuant to the accused's order.[429]

212. The Appeals Chamber notes that, contrary to the Appellant's contention, the Prosecution was not compelled to prove that the Appellant gave the specific order to kill Nyagatare. However, the Appeals Chamber is not satisfied, in the circumstances of the case, that the elements of the mode of responsibility of ordering were established beyond reasonable doubt. While the evidence demonstrates that Kalimba was involved in the murder of Nyagatare, a relatively long time lapsed between the Appellant's general order to kill Tutsis and the killing of Nyagatare, and no clear link has been established between the order and the evidence relating to the murder. The Appeals Chamber finds therefore that no reasonable trier of fact could have found that the only reasonable conclusion available from the circumstantial hearsay evidence of Witnesses BMF and BMH was that Nyagatare was killed as a result of the Appellant's general order to kill Tutsis in Nyamirambo.

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[423] T. 18 January 2006 p. 31; Trial Judgement, para. 200.
[424] Trial Judgement, para. 201.
[425] Trial Judgement, para. 201.
[426] Trial Judgement, para. 202.
[427] *Nahimana et al.* Appeal Judgement, para. 481. *See also Galić* Appeal Judgement, para. 176; *Ntagerura et al.* Appeal Judgement, para. 365; *Kordić and Čerkez* Appeal Judgement, paras. 28, 29.

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213. Accordingly, this sub-ground of appeal is granted.

I. Conclusion

214. The Appeals Chamber grants the Fifth Ground of Appeal in part and reverses the Appellant's convictions for ordering genocide and extermination and murder as crimes against humanity, based on the alleged murders of Kahabaye, Ndingutse, and Nyagatare.

[428] *Nahimana et al.* Appeal Judgement, para. 481. *See also Galić* Appeal Judgement, paras. 152, 157; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, para. 42.
[429] *Semanza* Appeal Judgement, para. 361.

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VII. ALLEGED ERRORS RELATING TO THE KILLING OF TUTSIS IN NTARAMA (GROUND OF APPEAL 6)

215. The Trial Chamber found that at a meeting at Ntarama sector office on 14 April 1994, the Appellant promised to provide security by bringing soldiers to protect the refugees.[430] It further found that on 15 April 1994, the Appellant encouraged a group of *Interahamwe* and soldiers to attack the refugees at the Ntarama Church instead of providing the security he had promised.[431] Several hundred Tutsis were killed during the attack.[432] Based on these findings, the Trial Chamber found that the Appellant "substantially contributed" to the attack and thus instigated genocide.[433] Additionally, the Trial Chamber found that the Appellant was present during the attack and that he participated in it by shooting, thus committing genocide.[434] Based on these findings, the Trial Chamber also found that the Appellant instigated and committed extermination as a crime against humanity,[435] and instigated murder as a crime against humanity.[436]

216. The Appellant challenges these findings and contends that the Trial Chamber committed errors of fact and law in reaching them.[437] He submits that the Trial Chamber erred in its assessment of the evidence and that it should have found that the allegation that he was present and participated in the attack at the Ntarama Church was "pure fabrication".[438] The Appellant claims that the Trial Chamber's findings are "unreasonable"[439] and that, at the very least, there is reasonable doubt as to his participation in this attack.[440] The Prosecution responds that this ground of appeal has no merit and should be summarily dismissed.[441] The Appeals Chamber will consider the Appellant's specific contentions in turn.[442]

A. Alleged Errors in the Assessment of Prosecution Evidence

217. The Appellant submits that the Trial Chamber erred in relying on witnesses who lied.[443] He also submits that the Trial Chamber erred by admitting testimonies of Prosecution witnesses who

[430] Trial Judgement, paras. 246-254.
[431] Trial Judgement, paras. 292-315.
[432] Trial Judgement, para. 315.
[433] Trial Judgement, paras. 541-544.
[434] Trial Judgement, para. 543.
[435] Trial Judgement, paras. 554, 557.
[436] Trial Judgement, para. 560.
[437] Notice of Appeal, paras. 141-179; Appellant's Brief, paras. 185-225.
[438] Appellant's Brief, paras. 188-225, sp. para. 211.
[439] Appellant's Brief, para. 191.
[440] Appellant's Brief, para. 211.
[441] Respondent's Brief, para. 127.
[442] The Appellant's contention that his alibi raised a reasonable doubt will be considered below in Chapter IX.
[443] Appellant's Brief, para. 191.

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colluded among themselves to implicate him,[444] and that the inconsistencies in the evidence of the Prosecution witnesses raise reasonable doubt as to his involvement in the attack on the Ntarama Church on 15 April 1994.[445]

1. Alleged Error in Relying on Prosecution Witnesses Who Lied

218. The Appellant argues that Prosecution Witnesses BMI and BMK lied and that the Trial Chamber erred in explaining or accepting inconsistencies in their testimonies.[446]

(a) Witness BMI

219. Witness BMI testified that on 15 April 1994, the Appellant, in the company of soldiers, *gendarmes*, and *Interahamwe*, attacked the Ntarama Church.[447] The witness described the Appellant as a "commander" who directed the attackers.[448] The Trial Chamber accepted Witness BMI's evidence as to the Appellant's involvement in the attack on the Ntarama Church.[449] The Trial Chamber considered that there were similarities between Witness BMI's account of the events and the accounts of the three other Prosecution Witnesses BMJ, BML, and BMK who testified about this attack.[450]

220. The Appellant contends that Witness BMI lied[451] and claims that the Trial Chamber provided an explanation for Witness BMI's "lies" without any basis in the evidence.[452]

221. The Prosecution responds that even if the Trial Chamber did find that it had not been proved beyond reasonable doubt that, as testified by Witness BMI, the Appellant issued, on 9 April 1994, an order to kill Tutsis and loot their property, the Trial Chamber had discretion to accept other aspects of the witness's evidence.[453]

222. The Appellant argues that the Trial Chamber did not believe Witness BMI when he testified that, at a meeting in Gatoro *cellule* on 9 April 1994, the Appellant ordered the killing of Tutsis and the looting of their property.[454] In this regard, the Trial Chamber stated that "Witness BMI was not clear" in that he testified not only to the alleged meeting in April 1994 but also to an event in 1992

[444] Appellant's Brief, paras. 200-205.
[445] Appellant's Brief, para. 209; AT. 28 August 2008 pp. 25, 26. The Appellant asserts that the Trial Chamber examined these inconsistencies at paragraphs 293 to 303 of the Trial Judgement. Appellant's Brief, para. 209.
[446] Appellant's Brief, paras. 188, 196-199.
[447] Trial Judgement, paras. 269-274, summarizing Witness BMI's testimony.
[448] Trial Judgement, para. 272.
[449] Trial Judgement, para. 303.
[450] Trial Judgement, para. 294.
[451] Appellant's Brief, para. 196.
[452] Appellant's Brief, para. 198, referring to Trial Judgement, para. 229.
[453] Respondent's Brief, para. 129.
[454] Appellant's Brief, para. 196; Corrigendum to the Appellant's Brief, para. 2.

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and that his "testimony also raised other issues".[455] The Trial Chamber stated that even if some of the discrepancies in his testimony could be ascribed to the fact that he was not accustomed to court proceedings and that he had communication problems,[456] the witness's seeming confusion of two different meetings remained a matter of concern.[457] The Trial Chamber took into account the lack of corroborating evidence and concluded that the allegation relating to the meeting in Gatoro *cellule* had not been proved beyond reasonable doubt.[458]

223. The Trial Chamber's reasoning does not suggest that it found Witness BMI to be dishonest or to otherwise lack credibility. Rather, it suggests that the Trial Chamber considered that the substance of the witness's evidence, particularly since he was the only witness to testify about the alleged meeting in Gatoro *cellule*, did not support a finding beyond reasonable doubt in relation to this allegation. This finding did not preclude the Trial Chamber from considering and relying on Witness BMI's evidence in relation to other allegations. As already recalled, it is not unreasonable for a Trial Chamber to accept some parts of a witness's testimony while rejecting others.[459] Consequently, the Appellant's argument is rejected.

224. The Appellant further argues that there is a discrepancy between Witness BMI's prior statement of 4 May 2001[460] and his testimony at trial in relation to the burning down of his house.[461] The Appeals Chamber notes that the evidence at trial was that the witness discovered that his house was burned down on 14 April 1994.[462] The witness's prior statement of 4 May 2001 indicates that his house was burned down on 8 April 1994.[463] The Appellant also argues that Witness BMI denied meeting a member of the Prosecution team after 18 January 2006, yet the Prosecution's will-say statements indicate that the witness informed the Prosecution on 23 January 2006 and 26 January 2006 that there were errors in his written statement.[464] A review of the transcripts indicates that, under cross-examination, the witness testified that he arrived in Arusha on 16 January 2006 and met the Prosecution on 18 January 2006 and that he did not meet with the Prosecution on 23 or 26 January 2006.[465]

225. Having observed Witness BMI in court, the Trial Chamber considered that the witness was not accustomed to court proceedings and had problems communicating, and that some

[455] Trial Judgement, para. 228.
[456] Trial Judgement, para. 229.
[457] Trial Judgement, para. 229.
[458] Trial Judgement, paras. 229, 230.
[459] *See supra* para. 88.
[460] Appellant's Brief, para. 197, referring to Exhibit D19 containing Witness BMI's statement of 4 May 2001.
[461] Appellant's Brief, para. 197.
[462] Trial Judgement, paras. 227, 241.
[463] Exhibit D19A.
[464] *See* Exhibits D20, D21.
[465] T. 31 January 2006 p. 9.

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inconsistencies could be attributed to this.[466] The Trial Chamber expressly noted the inconsistencies relating to the date Witness BMI's house was burned down and the date when he met with the Prosecution prior to his testimony.[467] The Appeals Chamber recalls that it falls within the Trial Chamber's discretion to determine whether an inconsistency is sufficient to cast doubt on a witness's credibility.[468] The Appellant's arguments fail to show that the Trial Chamber erred in assessing Witness BMI's credibility and in relying on his evidence.

(b) Witness BMK

226. Witness BMK testified that, on 14 April 1994, he attended a meeting chaired by the Appellant at the Ntarama sector office.[469] He stated that the Appellant opened the meeting by announcing the death of the President.[470] The witness also stated that the Appellant addressed the Tutsis at the meeting and claimed that they were the ones who killed the President and that they were "going to pay for that".[471] Witness BMK further testified that, on 15 April 1994, the Appellant, in the company of *Interahamwe* and soldiers, arrived in Ntarama sector on board one of six buses.[472] He stated that the attackers, including the Appellant, emerged from the buses and started to shoot at the refugees[473] who were in the vicinity of the Ntarama Church, the sector office, and the school.[474]

227. The Trial Chamber found that it had not been established beyond reasonable doubt that the Appellant threatened Tutsi refugees in a meeting at the Ntarama sector office on 14 April 1994.[475] It reasoned that a threat of this nature "would be of a dramatic character and not easy to forget" and that it was "significant" that only one of the three Prosecution witnesses who testified about this meeting, Witness BMK,[476] mentioned this threat.[477] The Trial Chamber found, nevertheless, no basis to conclude that Witness BMK lied.[478]

228. The Appellant contends that Witness BMK lied and "tried to implicate [him] falsely" in the events at the Ntarama Church.[479] In this regard, he claims that the witness also falsely testified that

[466] Trial Judgement, para. 229.
[467] Trial Judgement, para. 229, fn. 288.
[468] *Seromba* Appeal Judgement, para. 116, referring to *Rutaganda* Appeal Judgement, para. 443; *Musema* Appeal Judgement, para. 89; *Čelebići* Appeal Judgement, para. 497; *Kupreškić et al.* Appeal Judgement, para. 156.
[469] Trial Judgement, para. 237.
[470] Trial Judgement, para. 238.
[471] Trial Judgement, para. 238.
[472] Trial Judgement, para. 262.
[473] Trial Judgement, para. 263.
[474] Trial Judgement, para. 262.
[475] Trial Judgement, para. 253.
[476] *See* Trial Judgement, para. 253.
[477] Trial Judgement, para. 253.
[478] Trial Judgement, para. 307.
[479] Appellant's Brief, para. 199.

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the Appellant "threatened thousands of Tutsis" at a meeting the day before the attack on the Ntarama Church.[480]

229. The Prosecution responds that even if the Trial Chamber found that it had not been proven beyond reasonable doubt that the Appellant threatened Tutsi refugees, it did not conclude that Witness BMK's entire evidence was not credible.[481]

230. The Appeals Chamber considers that the fact that the Trial Chamber did not rely on this witness's testimony about the Appellant threatening Tutsis at this meeting does not mean that his testimony about the Appellant's involvement in the attack at the Ntarama Church on 15 April 1994 lacked credibility. As stated above, it is not unreasonable for a Trial Chamber to accept some parts of a witness's testimony while rejecting others.[482] Consequently, the Appellant has failed to show that the Trial Chamber erred in relying in part on Witness BMK's evidence.

2. Alleged Collusion by Prosecution Witnesses

231. The Appellant submits that the Trial Chamber erred in law by admitting, without corroboration, the testimonies of Prosecution Witnesses BML, BMJ, BMK, and BMI, despite having found implicitly that it was likely that there was collusion among them.[483] He asserts that these witnesses colluded to implicate him.[484] The Appellant argues that there were details in the witnesses' testimonies that they would not have remembered without discussing them with each other, particularly since they testified to an event which had occurred twelve years earlier.[485] The Appellant states that all four witnesses testified that, on 15 April 1994, buses with soldiers and *Interahamwe* arrived in Ntarama and that the Appellant alighted from the second bus carrying a long rifle and wearing a long coat.[486] He submits that Witnesses BML and BMJ were interviewed on the same day and at the same location, and that on another occasion Witnesses BMI and BMK were also interviewed on the same day and at the same location.[487] The Appellant also claims that Witnesses BMJ and BML made similar "corrections" to their statements, as well as similar "mistakes",[488] and that there were striking similarities in the descriptions they provided.[489] He argues that the discrepancy in the testimonies of the four witnesses with regard to their "mutual

[480] Appellant's Brief, para. 199; AT. 28 August 2008 p. 26.
[481] Respondent's Brief, para. 129.
[482] *See supra* para. 88.
[483] Appellant's Brief, paras. 200, 224.
[484] Appellant's Brief, paras. 204, 205.
[485] Appellant's Brief, para. 202.
[486] Appellant's Brief, para. 202.
[487] Appellant's Brief, para. 195.
[488] Appellant's Brief, para. 201. The Appellant claims that both witnesses initially stated that Bizimana was a school director and later changed their statements to say that he was a prison director.
[489] Appellant's Brief, para. 205.

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acquaintances" is "suspicious" and asserts that Witness BMI admitted that they all stayed in the same witness protection house while in Arusha and even shared their meals.[490] The Appellant submits that the only rational conclusion that could be drawn from this is that the witnesses had discussed the events and that their attempt to deny this fact should have urged the Trial Chamber to dismiss their testimonies in their entirety.[491]

232. The Appellant also submits that paragraphs 250 and 307 of the Trial Judgement contain contradictory findings.[492] He argues that in paragraph 250 of the Trial Judgement, the Trial Chamber did not exclude that there might have been collusion, while in paragraph 307 of the Trial Judgement, the Trial Chamber found no basis for the Defence contention that the witnesses discussed the events before testifying.[493]

233. The Prosecution responds that the Trial Chamber properly dismissed, as "unfounded", the Appellant's allegation of collusion.[494] It submits that the Appellant's arguments do not show an error on the part of the Trial Chamber[495] and argues that the fact that there were similarities in the descriptions of the events by Witnesses BMK, BMJ, BML, and BMI does not in itself amount to collusion.[496]

234. The Appeals Chamber notes that collusion can be defined as an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose.[497] If an agreement between witnesses for the purpose of untruthfully incriminating an accused were indeed established, their evidence would have to be excluded pursuant to Rule 95 of the Rules.[498] In the present instance, the Trial Chamber rejected the possibility of collusion between the four

[490] Appellant's Brief, para. 203.
[491] Appellant's Brief, para. 204.
[492] Notice of Appeal, paras. 169, 170.
[493] Notice of Appeal, paras. 169, 170.
[494] Respondent's Brief, paras. 132-137.
[495] Respondent's Brief, para. 132.
[496] Respondent's Brief, para. 133.
[497] The Appeals Chamber notes that Black's Law Dictionary, 6th Edition defines collusion as "[a]n agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of unlawful means for the accomplishment of an unlawful purpose".
[498] Rule 95 of the Rules states: "No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings." *See, also, mutatis mutandis, Nahimana et al.* where the Appeals Chamber dismissed the testimony of a witness insofar as it was not corroborated by other credible evidence, having found that even if the evidence was "insufficient to establish with certainty that [this witness] was paid for his testimony against [the accused], it [was] nonetheless difficult to ignore this possibility, which undeniably casts doubt on the credibility of this witness." It also ruled that "if the Trial Chamber had been aware of the fact that the Prosecutor's investigator questioned the witness' moral character, suspecting him of having been involved in the subornation of other witnesses and of being prepared to testify in return for money – the Trial Chamber would have been bound to find that these matters cast serious doubt on [this witness's] credibility. Hence, like any reasonable trier of fact, it would have disregarded his testimony, or at least would have required that it be corroborated by other credible evidence." *Nahimana et al.* Appeal Judgement, para. 545.

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Prosecution witnesses testifying about the events in Ntarama.[499] The Trial Chamber held that it could not "exclude that the witnesses may have discussed the events of 1994, in spite of [their] general denials of having done so".[500] It took into account that two of the witnesses gave their respective statements to investigators on the same day at the same place and that the other two gave their statements on another day at the same location.[501] It also considered that all four witnesses lived in the same area, travelled together to Arusha in connection with the trial, and had their meals together in the safe house.[502] However, the Trial Chamber reasoned that the differences in the testimonies of the four witnesses did not support the allegation of collusion[503] and concluded that there was no basis to find that they colluded to untruthfully implicate the Appellant.[504] The Appellant has failed to show that the Trial Chamber erred in reaching this conclusion.

235. Furthermore, the Appeals Chamber is not convinced by the Appellant's claim that the Trial Chamber contradicted itself at paragraphs 250 and 307 of the Trial Judgement. The Trial Chamber consistently stated in both paragraphs that it did not exclude the possibility that the witnesses may have jointly discussed the events of 1994 but that there was insufficient basis to conclude that they colluded amongst themselves in order to untruthfully implicate the Appellant. Consequently, the Appellant's argument is rejected.

3. Alleged Inconsistencies in the Prosecution Evidence

236. The Appellant contends that the inconsistencies in the evidence of Witnesses BMK, BML, BMI, and BMJ raise a reasonable doubt as to his alleged involvement in the attack on the Ntarama Church on 15 April 1994[505] and that the Trial Chamber down-played these inconsistencies by finding explanations for them.[506] He also suggests that the forensic report[507] tendered by the Prosecution as well as the Trial Chamber's observations during its site visit are inconsistent with the evidence of the Prosecution witnesses.[508] Also in this regard, he claims that Prosecution Witness BME testified that the Appellant was not present in Ntarama in the morning of 15 April 1994, but rather that he was in Nyamirambo.[509] He also contends that the site visit showed, with respect to

[499] Trial Judgement, paras. 250, 308, 313.
[500] Trial Judgement, para. 250. *See also* Trial Judgement, para. 308 ("[a]s observed previously, it cannot be excluded that the witnesses may have discussed the events of 1994, either previously or in connection with travelling to Arusha or taking their meals together.").
[501] Trial Judgement, para. 250.
[502] Trial Judgement, para. 250.
[503] Trial Judgement, para. 250.
[504] Trial Judgement, para. 308.
[505] Appellant's Brief, para. 209. The Appellant asserts that the Trial Chamber examined these inconsistencies at paragraphs 293 to 303 of the Trial Judgement.
[506] Notice of Appeal, paras. 150, 167.
[507] Exhibit P30.
[508] Appellant's Brief, paras. 43, 207.
[509] Appellant's Brief, para. 210.

Ntarama, "that it was impossible to see the school from the Church [and] that the rear of the Church was more damaged than the front".[510] The Appellant submits that this "could mean that the attackers came from the hill rather than from the road".[511] The Appellant further contends that since "the doors of ONATRACOM buses opened to the right and not to the left, as asserted by the witnesses suspected of collusion" if the buses were coming from Kigali, the Prosecution witnesses who testified on the circumstances of the attack could not have seen the people who were alighting from them.[512]

237. The Prosecution responds that the differences and variations in the testimonies of these witnesses can be reasonably explained.[513] It submits that the Appellant has not demonstrated that there are no reasonable explanations to justify these discrepancies and variations.[514]

238. The Appeals Chamber recalls that a Trial Chamber, as the primary trier of fact, has the responsibility to consider inconsistencies that may arise among the testimonies of witnesses.[515] In undertaking this responsibility, the Trial Chamber is required to consider any explanations offered for these inconsistencies when weighing the probative value of the evidence.[516] In the present case, the Appellant does not specify any of the alleged inconsistencies, but refers generally to paragraphs 293 to 303 of the Trial Judgement where, he notes, the Trial Chamber examined the inconsistencies.[517] The Trial Chamber held that the four Prosecution witnesses described the attack similarly in terms of location, time, attackers, mode of transport, and the Appellant's presence.[518] It considered that there were variations in the evidence in relation to the Appellant allegedly addressing the attackers, but held that these variations did not affect the credibility of the witnesses.[519] The Trial Chamber reasoned that these witnesses may not have heard some parts of the Appellant's "alleged statement because their positions were different" and also because "their memories may vary, due to the lapse of time since the event".[520] The Appeals Chamber accepts that different people may see and hear things differently from different vantage points.[521] Consequently, the Appeals Chamber is not satisfied that the Appellant has demonstrated that the Trial Chamber's finding is unreasonable.

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[510] Appellant's Brief, para. 43.
[511] Appellant's Brief, para. 43.
[512] Appellant's Brief, para. 43.
[513] Respondent's Brief, para. 135.
[514] Respondent's Brief, para. 135.
[515] *Simba* Appeal Judgement, para. 103.
[516] *Muhimana* Appeal Judgement, para. 58; *Niyitegeka* Appeal Judgement, para. 96.
[517] Appellant's Brief, para. 209.
[518] Trial Judgement, para. 294.
[519] Trial Judgement, para. 295.
[520] Trial Judgement, para. 295.
[521] *See Gacumbitsi* Appeal Judgement, para. 80, referring to *Niyitegeka* Appeal Judgement, para. 142.

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239. With regard to the Appellant's contention that it was impossible to see the Ntarama school from the Ntarama Church, the Appeals Chamber notes that the Appellant is merely reiterating an argument which he already presented at trial and which was fully addressed in the Trial Judgement. The Defence challenged Witness BMK's testimony, who stated that, from his vantage point, somewhere in the valley, below the Ntarama school, he saw the Appellant attacking the Ntarama Church on the morning of 15 April 1994.[522] The Trial Chamber, in assessing the credibility of Witness BMK, considered the evidence of Defence Witnesses ZAC and NKZ to the effect that it was impossible to see the school from the church because eucalyptus trees and banana plantations were blocking the view.[523] The Trial Chamber concluded that Witness BMK was credible on this point. In reaching this conclusion, the Trial Chamber took into account the following elements: Witness ZAC was not in a position to assess the visibility conditions; Witness BMK, who "was at a considerable distance from the school, towards the church", stated that while there was an eucalyptus forest nearby, at his location the land was free of vegetation.[524] The Appeals Chamber finds that the Appellant has failed to show how the Trial Chamber erred in its assessment of Witness BMK's testimony on this point. The Appeals Chamber defers to the finding of the Trial Chamber and notes that it legitimately exercised its discretion in determining which version of the events relating to the attack on the Ntarama Church was credible.[525]

240. With respect to his argument that the forensic report tendered as a Prosecution exhibit is inconsistent with other Prosecution evidence in relation to the attack on the Ntarama Church,[526] the Appellant asserts that the forensic report indicates that the weapons found at the site were a machete, a knife, several clubs, one lance, and one broken arrow; that the assault took place through holes made below the Church windows with the massacre taking place in the middle of the Church; and that most of the victims were killed with machetes or blows to the head.[527] The Appellant also states that it is evident from the site visit and the photographs in the forensic report that the attackers entered the Church through the front, which faced the hill.[528] He claims that this scenario is in conformity with the Defence evidence that the attack commenced on Kinkwi Hill and that the Tutsis were chased to the Ntarama Church, and that it is inconsistent with the Prosecution's evidence that the attackers arrived at the Church in buses.[529]

[522] Trial Judgement para. 305; T. 17 August 2006 p. 15.
[523] Trial Judgement, para. 305.
[524] Trial Judgement, para. 305.
[525] *See supra* para. 10.
[526] Appellant's Brief, paras. 192-194, 207, 208.
[527] Appellant's Brief, para. 194.
[528] Appellant's Brief, para. 207.
[529] Appellant's Brief, para. 207.

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241. The Prosecution responds that the forensic report is not conclusive regarding the weapons that were used by the attackers.[530]

242. The Trial Chamber is primarily responsible for assessing and weighing evidence presented at trial and it is incumbent on the Trial Chamber to take an approach it considers most appropriate in this regard.[531] In the present case, the Trial Chamber had the discretion to consider the forensic report in its assessment of the totality of the evidence. While the Trial Chamber acknowledged the existence of the forensic report,[532] it only referred to it in relation to its finding that, at Ntarama, a large number of refugees were killed.[533] Although certain evidence may not have been referred to by a Trial Chamber, in the particular circumstances of a given case it may nevertheless be reasonable to assume that the Trial Chamber took it into account.[534]

243. The Appeals Chamber agrees with the Prosecution's submission that the forensic report is not conclusive regarding the weapons that were used by the attackers, and that the forensic doctors identified the causes of death only from the skulls they had analyzed.[535] The Appeals Chamber further notes that the forensic report does not *per se* contradict the Trial Chamber's findings, based on Prosecution evidence, that the attackers of Ntarama Church used guns, traditional weapons and grenades.[536] Indeed, the forensic report acknowledges that the number of bodies examined is appreciably less than the number of people killed.[537] The forensic report also notes the existence of the impact of shrapnel "on the corner of the building".[538] In these circumstances, the Appeals Chamber considers that the Appellant has failed to demonstrate that the Trial Chamber erroneously failed to consider any inconsistency in the Prosecution's evidence arising from the forensic report.

244. With regard to the claim that the site visit and the photographs in the forensic report show that the attack commenced on Kinkwi Hill and that the Tutsis were chased to the Ntarama Church is inconsistent with the Prosecution's evidence that the attackers arrived at the church in buses, the Appeals Chamber observes that the Trial Chamber concluded that several hundred attackers participated in the attack against Ntarama Church which started at 10.00 a.m. on 15 April 1994 and that several hundred Tutsis were killed during the attack.[539] The Appeals Chamber notes that contrary to the Appellant's contention, the forensic report does not necessarily show that the attack started on Kinkwi Hill. Furthermore, the fact that the attackers might have come from a surrounding

[530] Respondent's Brief, para. 140.
[531] *Rutaganda* Appeal Judgement, para. 188.
[532] Trial Judgement, paras. 256, 292, fn. 354.
[533] Trial Judgement, paras. 257-315, sp. 292, fn. 354.
[534] *Simba* Appeal Judgement, para. 152, referring to *Musema* Appeal Judgement, para. 19.
[535] Respondent's Brief, para. 140.
[536] Trial Judgement, para. 292; Forensic Report, p. 15.
[537] Respondent's Brief, para. 140.
[538] Exhibit P30.

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hill does not necessarily contradict the Trial Chamber's findings that the Appellant and other assailants came in buses and that the Appellant "encouraged a group of *Interahamwe* and soldiers to hurry up and attack the refugees" assembled in the church.[540] Finally, the Appeals Chamber finds that since the question at stake is related to the chronology of the attack the Appellant could not have been prejudiced by the absence of a record of the site visit on this point.

245. The Appellant claims that Witness BME testified that the Appellant was not in Ntarama but rather in Nyamirambo on the morning of 15 April 1994.[541] He further contends that in finding that the Appellant was at Ntarama on 15 July 1994, the Trial Chamber failed "to address the conflicting evidence by Witness BME, who allege[d] that on 15 April 1994, between 9 a.m. and 10 a.m., Karera was instead in Nyamirambo".[542] The Appellant avers that, if believed, this testimony conflicts with the Prosecution's allegation that he was in Ntarama on the same day.[543]

246. The Appellant merely reiterates an argument that he presented at trial and that the Trial Chamber addressed and dismissed.[544] He does not show how the Trial Chamber erred in doing so. The Appeals Chamber notes that Witness BME's testimony that the Appellant was at Nyamirambo between 9.00 a.m. and 10.00 a.m.[545] might conflict with the testimonies of Prosecution Witnesses BMK and BMI placing the Appellant at the Ntarama Church on the same day at or around 10.00 a.m.[546] However, while the Trial Chamber found Witness BME credible with regard to her testimony that she saw the Appellant instructing a large crowd to kill Tutsis and destroy their houses,[547] it found it "likely that Witness BME erred regarding the precise date of the event, in view of her traumatic situation"[548] and thus refrained from entering any specific finding as to the date and time of that event based on her testimony. In these circumstances, it was within the discretion of the Trial Chamber to consider that Witness BME's testimony that the Appellant was in Nyamirambo on 15 April 1994 did not raise any reasonable doubt as to his presence in Ntarama on the same day. The Appellant has therefore failed to show how the Trial Chamber erred in not considering that Witness BME's evidence raised a reasonable doubt as to his involvement in the attack on the Ntarama Church on 15 April 1994.

247. Accordingly, the Appeals Chamber dismisses this sub-ground of appeal.

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[539] Trial Judgement, paras. 292, 315.
[540] Trial Judgement, para. 315.
[541] Appellant's Brief, para. 210.
[542] Brief in Reply, para. 54.
[543] Appellant's Brief, para. 111.
[544] *See* Trial Judgement, para. 160, referring to Defence Closing Brief, para. 229.
[545] *See* Trial Judgement, para. 147.
[546] *See* Trial Judgement, paras. 262, 269.
[547] Trial Judgement, paras. 147, 159.
[548] Trial Judgement, para. 160.

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B. Alleged Errors in the Assessment of Defence Evidence

248. The Appellant contends that the evidence presented by the Defence, through Witnesses NKZ, ZIH, ZAC, MZN, and DSM, renders the Trial Chamber's findings unreasonable.[549] He provides his account of the testimonies of these five witnesses,[550] but only makes specific arguments in relation to Witnesses NKZ, ZIH, and ZAC.[551] The Appellant argues that the Trial Chamber erred in law by failing to consider "a reasonable probability" offered by his alibi that he was not present at the attack at the Ntarama Church[552] and by failing to accept the corroborating testimonies of the Defence witnesses who testified that he did not participate in this attack.[553] He asserts that this evidence raises a reasonable doubt in the Prosecution's case[554] and that the Trial Chamber erred in finding that he participated in the attack in view of the inconsistencies in the testimonies of the Prosecution witnesses when weighed against the probative value of the Defence evidence.[555]

249. The Prosecution responds that the Appellant's submissions should fail as they are insufficient to call into question the Trial Chamber's approach in assessing the Defence evidence or the reasonableness of the impugned findings.[556]

250. Witnesses NKZ and ZIH both testified that they participated in the attack and did not see the Appellant.[557] The Appellant challenges the Trial Chamber's observation that it was possible for him to be present without Witnesses NKZ and ZIH seeing him.[558] The Appeals Chamber notes that in assessing the evidence of Witness NKZ, the Trial Chamber took into account that the witness was not certain about the date of the attack but learned about it from others, that he had seen the Appellant only once before, when the Appellant was *bourgmestre* of Nyarugenge commune, and that it was not clear when in this period (from 1975 to 1990) the witness had seen him.[559] The Trial

[549] Appellant's Brief, paras. 212-219.
[550] Appellant's Brief, paras. 213-219. The Appellant asserts *inter alia* that Witness NKZ, who participated in the attack, testified that he did not see the Appellant and that the Appellant was not mentioned in the *Gacaca* hearings in relation to the attack; Witness ZIH, who participated in the attack, did not see the Appellant and also did not hear that the Appellant was involved in the attack when he attended the *Gacaca* hearings; Witness ZAC, who participated in a "committee similar to that of the *Gacaca* Courts" (italics added) as well as in the *Gacaca* hearings and who heard twenty prisoners testify about the Ntarama attacks, including confessions of Witnesses NKZ and ZIH, did not hear the Appellant's name mentioned in relation to this attack until recently when four persons returning from Arusha testified to his involvement; Witness MZN, a soldier who was acquitted of genocide, testified that he did not hear that the Appellant was involved in the attack; and Witness DSM, a police office, did not hear of the Appellant being involved in the attack.
[551] Appellant's Brief, paras. 212-219.
[552] The Appellant's submissions concerning alibi will be addressed below in Chapter IX.
[553] Appellant's Brief, para. 223.
[554] Appellant's Brief, para. 223.
[555] Notice of Appeal, para. 177.
[556] Respondent's Brief, para. 148.
[557] Trial Judgement, paras. 279, 282, 283, 286.
[558] Appellant's Brief, para. 221, referring to Trial Judgement, para. 309.
[559] Trial Judgement, para. 309.

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Chamber also took into account that the witness was not present when the attack commenced and would not therefore have observed the Appellant's arrival.[560] Furthermore, the witness did not observe any buses, which contradicts the consistent evidence of four Prosecution witnesses.[561] The Trial Chamber concluded that Witness NKZ's evidence had "limited weight".[562]

251. In relation to Witness ZIH, the Trial Chamber took into account that a friend had pointed out the Appellant to the witness when the Appellant was *bourgmestre* and that between 1978 and 1994 the witness had seen the Appellant on only three occasions.[563] The Trial Chamber considered that under these circumstances, the witness's ability to recognize the Appellant in the midst of "a high number of persons running helter-skelter" would be limited and that the witness's assumption that Thaddée Sebuhindo, who by the witness's account led the attack,[564] would have pointed out the Appellant to the witness was speculative.[565] The Trial Chamber concluded that the witness's evidence had limited reliability.[566]

252. It is within a Trial Chamber's discretion to accept or reject a witness's testimony after seeing the witness testify and observing him or her under cross-examination.[567] The Appellant has failed to show that the Trial Chamber erred in assigning limited weight to the evidence of Witnesses NKZ and ZIH.

253. In relation to Witness ZAC, the Appellant argues that the Trial Chamber's assessment of this witness's evidence demonstrated its "biased manner" when it reasoned that the evidence was of limited significance because it was hearsay.[568] Witness ZAC testified that he was a prisoner who chaired the "Urumali committee" and listened to the confessions made by Witnesses NKZ and ZIH and three other prisoners relating to the Ntarama attacks.[569] In addition, the witness listened to approximately twenty civilian prisoners describe the Ntarama attacks at the *Gacaca* proceedings and, according to him, none of them mentioned the Appellant.[570] The witness asserted that it was only in the *Gacaca* proceedings in 2006, and after having testified before the Tribunal, that four survivors indicated that the Appellant was present at the attacks in Ntarama.[571] The Trial Chamber

[560] Trial Judgement, para. 309.
[561] Trial Judgement, para. 309.
[562] Trial Judgement, para. 309.
[563] Trial Judgement, para. 310.
[564] Trial Judgement, para. 283.
[565] Trial Judgement, para. 310.
[566] Trial Judgement, para. 310.
[567] *Seromba* Appeal Judgement, para. 116, referring to *Akayesu* Appeal Judgement, para. 147.
[568] Appellant's Brief, para. 222.
[569] Trial Judgement, para. 287.
[570] Trial Judgement, para. 287.
[571] Trial Judgement, para. 288.

assessed the evidence of Witness ZAC and concluded that it had "limited significance" because it was "hearsay" evidence.[572]

254. The Appeals Chamber notes the Appellant's argument concerning bias on behalf of the Trial Chamber Judges. As stated in previous judgements of the Appeals Chambers of this Tribunal and the ICTY, it is for the appealing party alleging bias to rebut the presumption of impartiality enjoyed by Judges of the Tribunals.[573] In this respect, the Appeals Chamber consistently held that there is "a high threshold to reach in order to rebut the presumption of impartiality" that attaches to a Judge or a Tribunal.[574]

255. In support of his contention that the Trial Chamber was biased, the Appellant argues that the Trial Chamber did not hesitate to convict him "solely on questionable hearsay evidence, and sometimes by triple hearsay, but was not swayed by the honest and consistent testimony of an individual like Witness ZAC".[575] The Appellant refers to paragraphs 162, 167, 168,[576] and 192 to 194 of the Trial Judgement in support of his argument.[577]

256. Hearsay evidence is admissible if it has probative value, and the Trial Chamber has the discretion to consider this evidence.[578] In paragraph 162 of the Trial Judgement, the Trial Chamber expressed its satisfaction that Prosecution Witnesses BMG, BMF, and BMH gave truthful accounts of what they had observed. Witnesses BMG, BMF, and BMH testified to what they had heard the Appellant say, but their testimonies must be distinguished from Witness ZAC's testimony, which was based on what he heard from third parties. These three witnesses also provided their respective observations of what the Appellant was doing and whom he was addressing. In these circumstances, it was reasonable for the Trial Chamber to prefer the direct evidence of Witnesses BMG, BMF, and BMH to the hearsay evidence of Witness ZAC.

257. In view of the above, the Appeals Chamber finds that the Appellant has failed to demonstrate bias on the part of the Trial Chamber as a result of its assessment of Witness ZAC's evidence. The Appellant has also not shown that a reasonable trier of fact would have found that the evidence of Defence witnesses raised reasonable doubt about the Appellant's participation in the attack at the Ntarama Church and that the Trial Chamber's finding is unreasonable. The Appeals Chamber therefore dismisses this sub-ground of appeal.

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[572] Trial Judgement, para. 312.
[573] *See e.g. Nyitegeka* Appeal Judgement, para. 45; *Rutaganda* Appeal Judgement, paras. 39-125.
[574] *Nahimana et al.* Appeal Judgement, paras. 47-90. *See also Furundžija* Appeal Judgement, para. 197.
[575] Appellant's Brief, para. 222.
[576] In paragraph 168 of the Trial Judgement, the Trial Chamber found that the Appellant had ordered the killing of Tutsis and the destruction of their houses and that the policemen guarding the Appellant's house had destroyed the houses of Kahabaye and Dix. This finding has no direct significance to the Appellant's argument.

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C. Conclusion

258. The Appeals Chamber finds that the Appellant has failed to demonstrate any error in the Trial Chamber's findings in relation to his participation in the meeting at the Ntarama sector office on 14 April 1994 and his participation in an attack at the Ntarama Church on 15 April 1994. Accordingly, this ground of appeal is dismissed in its entirety.

[577] Appellant's Brief, para. 222.
[578] *See supra* para. 39.

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VIII. ALLEGED ERRORS RELATING TO THE KILLING OF TUTSIS IN RUSHASHI COMMUNE (GROUNDS OF APPEAL 1 AND 7 AND GROUND OF APPEAL 2, IN PART)

259. The Trial Chamber found that many Tutsis were killed in Rushashi commune starting on 7 April 1994.[579] The Trial Chamber found that the Appellant was aware that, from that date, roadblocks had been set up in Rushashi commune where Tutsis were killed.[580] The Trial Chamber also found that between April and June 1994, the Appellant held meetings in Rushashi commune, where he raised money for weapons, encouraged youths to join the *Interahamwe*, and urged the commission of crimes against Tutsis.[581] The Trial Chamber found that in April or May 1994, the Appellant brought more than twenty guns to the Rushashi commune office, which were subsequently used to kill Tutsis at roadblocks.[582] Based on these findings, the Trial Chamber convicted the Appellant, pursuant to Article 6(1) of the Statute, for instigating and aiding and abetting genocide and extermination as a crime against humanity.[583]

260. The Trial Chamber also found that in April or May 1994, at a roadblock in Rushashi commune, the Appellant instigated the killing of Théoneste Gakuru.[584] Based on this finding, the Trial Chamber convicted the Appellant, pursuant to Article 6(1) of the Statute, for instigating and aiding and abetting murder as a crime against humanity.[585]

261. The Appellant raises several challenges to the Trial Chamber's findings which the Appeals Chamber addresses in turn.

A. Alleged Errors relating to Roadblocks

262. The Trial Chamber found that

> several roadblocks, at least four, were established in Rushashi commune following the President's death on or about 7 April 1994. Civilians, including *Interahamwe*, were amongst those who manned them. Tutsis were targeted at the roadblocks. The Chamber is satisfied that Karera visited Rushashi briefly between 7 and 10 April and that he was fully aware that roadblocks existed there and that Tutsi were being killed at them from April onwards.[586]

[579] Trial Judgement, para. 545, referring to the factual findings in Section II.6 of the Trial Judgement.
[580] Trial Judgement, para. 546, referring to the factual findings in Section II.6.3 of the Trial Judgement.
[581] Trial Judgement, para. 546, referring to the factual findings in Section II.6.4 of the Trial Judgement.
[582] Trial Judgement, para. 547, referring to the factual findings in Section II.6.5 of the Trial Judgement.
[583] Trial Judgement, paras. 548, 557.
[584] Trial Judgement, para. 559, referring to the factual findings in Section II.6.6 of the Trial Judgement.
[585] Trial Judgement, para. 560.
[586] Trial Judgement, para. 376. *See also* Trial Judgement, para. 546.

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In making this finding, the Trial Chamber relied on Prosecution Witnesses BMR, BMM, BMO, and BMB.[587] While the Trial Chamber did not rely solely on the aforementioned finding to enter a conviction against the Appellant, it considered this finding in holding that the Appellant's conduct during the meetings held in Rushashi between April and June 1994 amounted to instigating genocide and extermination as a crime against humanity.[588] Similarly, the Trial Chamber's finding is relevant to its finding that he brought guns to the Rushashi commune office "which were aimed for the use at the roadblocks."[589]

263. The Appellant's main contention is that the Trial Chamber erred in preferring Prosecution evidence to Defence evidence in order to find that the Appellant was present in Rushashi before 19 April 1994 and was aware that there were roadblocks and that Tutsis were being killed at them from April onwards.[590] The Appeals Chamber will address this submission below.[591]

264. The Appellant further submits that the Trial Chamber's finding that the decision to erect roadblocks could not have been taken without consultation with senior officials at the prefecture office did not support the Trial Chamber's finding that he was aware of the existence of roadblocks before 19 April 1994.[592] The Appellant argues that he could not have been one of those "senior officials" because he had exercised no authority in Rushashi commune prior to his appointment as prefect of Kigali prefecture on 17 April 1994, and he did not have a direct link with the commune authorities.[593]

265. The Appellant also submits that the Prosecution[594] and Defence witnesses[595] presented the Trial Chamber with "two diametrically opposed versions of testimonies" regarding the killings at roadblocks.[596] According to the Prosecution witnesses, the Appellant "was indifferent to the killings at roadblocks", whereas Defence witnesses testified that he "did his best, and not without success,

[587] Trial Judgement, paras. 363-376.
[588] Trial Judgement, para. 546, referring to the factual findings in Section II.6.3 of the Trial Judgement (*see* Trial Judgement, para. 376); Trial Judgement, paras. 555-557.
[589] Trial Judgement, para. 547.
[590] Notice of Appeal, paras. 188-190; Appellant's Brief, paras. 240-243. The title of this sub-ground of appeal (Notice of Appeal, p. 20, title of Section 7.1: "The Trial Chamber erred in finding that Karera was involved in setting up roadblocks at Rushashi"; Appellant's Brief, p. 42, title of Section 7.1: "The Trial Chamber erred by finding that Karera was involved in the erection of roadblocks in Rushashi") is misleading. While the title refers to alleged errors in finding that the Appellant was involved in setting up roadblocks in Rushashi, the Appellant has not developed this argument in his Appellant's Brief and, in fact, has acknowledged that the Trial Chamber made no finding to this effect. Appellant's Brief, para. 239, referring to Trial Judgement, para. 367.
[591] *See infra* Sections (B) and (C) and Chapter IX.
[592] Notice of Appeal, paras. 192, 193.
[593] Notice of Appeal, para. 192. In this regard, he recalls Witness BMR's account that the commune authorities had organized the erection of the roadblocks. Notice of Appeal, para. 192, referring to Trial Judgement, para. 327.
[594] The Appellant refers to the testimony of Prosecution Witnesses BMR, BMM, BMB, BMO, and BMN. Appellant's Brief, paras. 226-231.
[595] The Appellant refers to his own testimony as well as the testimony of Defence Witnesses YNZ, YCZ, YAH, and MZR. Appellant's Brief, paras. 232-238.
[596] Appellant's Brief, para. 240.

to pacify the region where he was stationed".[597] The Appellant finally submits that the Trial Chamber "presumed his liability" and "accorded weight only to the evidence which supports a finding of the Appellant's liability".[598]

266. A review of the Trial Judgement reveals, however, that the Trial Chamber did not "presume his liability" or rely on its implicit finding that he was a senior official at the prefecture office to conclude that the Appellant knew about the erection of roadblocks in Rushashi prior to 19 April 1994. Instead it relied on the evidence of Prosecution Witnesses BMM, BMR, and BMO, who saw him at roadblocks.[599]

267. Accordingly, this sub-ground of appeal is dismissed.

B. Alleged Errors relating to Meetings Held in Rushashi between April and June 1994

268. The Trial Chamber found that between April and June 1994, the Appellant held several meetings in Rushashi commune, where he raised money for weapons, encouraged youths to join the *Interahamwe*, and urged the commission of crimes against Tutsis.[600] The Trial Chamber found that "[t]hese statements instigated the commission of crimes against Tutsis", that "[a]s an authority figure, Karera's encouragement would have a substantial effect in the killings which followed" and that "[h]is threats against those who did not participate in anti-Tutsi acts would be taken seriously."[601] The Trial Chamber relied on these factual findings in convicting the Appellant for instigating genocide and extermination as a crime against humanity.[602]

269. The Appellant submits that the Trial Chamber committed errors of law and fact in making these findings.[603] The Appeals Chamber will consider each of these alleged errors in turn.

1. Alleged Errors relating to a Meeting Held at Rwankuba Secondary School in April 1994

270. The Trial Chamber found that "[a]t the Rwankuba secondary school in April 1994, Karera spoke in favour of establishing and reinforcing roadblocks and encouraged the youth to co-operate with the army."[604] It found that "[t]his was done in a period when Tutsis were being targeted at

[597] Appellant's Brief, para. 240.
[598] Notice of Appeal, paras. 189, 190.
[599] Trial Judgement, paras. 368-370.
[600] Trial Judgement, paras. 417, 546.
[601] Trial Judgement, para. 546.
[602] Trial Judgement, paras. 546, 548, 555 (referring to Trial Judgement, Section II.6 and to the legal findings on genocide), 557.
[603] Notice of Appeal, paras. 198, 201, 204; Appellant's Brief, paras. 245-258.
[604] Trial Judgement, para. 417. *See also* Trial Judgement, para. 406.

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roadblocks by *Interahamwe*."[605] In making this finding, the Trial Chamber relied on the evidence of Witness BMB.[606] The Trial Chamber also considered the Appellant's testimony "that he held a pacification meeting at the school on 22 or 23 April" and did not find it convincing "[t]o the extent this is alleged to have been the same meeting as the one referred to by Witness BMB."[607] The Trial Chamber further found that "[h]is evidence that it was decided to remove roadblocks from certain places [in Rushashi] [was] unclear, and not corroborated by other evidence".[608]

271. The Appellant submits that the Trial Chamber erred in law and in fact when it rejected his account concerning the alleged meeting in Rwankuba in April 1994.[609] He contends that, contrary to the Trial Chamber's finding, his testimony was corroborated by Witness YAH.[610] The Appellant further submits that the Trial Chamber erred in law in relying on the uncorroborated evidence of Witness BMB while requesting corroboration for the Appellant's testimony.[611] The Prosecution responds that the Appellant has not demonstrated that the Trial Chamber abused its discretion.[612]

272. The Appellant's contention that the Trial Chamber erred in fact in failing to find that his testimony was corroborated by Witness YAH is unfounded. While the Appellant testified about a meeting held at Rwankuba secondary school on 22 or 23 April 1994,[613] Witness YAH testified about a meeting held in the second week of May 1994 in Rushashi commune,[614] without describing more specifically the location where the meeting was held or the persons who allegedly attended it.[615] Thus the fact that the Trial Chamber did not make a finding to the effect that Witness YAH referred to the same meeting as the Appellant and therefore corroborated the latter's account reveals no error.

273. Turning to the Appellant's contention that the Trial Chamber erred in accepting Witness BMB's uncorroborated testimony, the Appeals Chamber recalls that it is well established that a Trial Chamber has the discretion to decide in the circumstances of each case whether corroboration of evidence is necessary.[616] The Trial Chamber observed that Witness BMB was about sixteen metres away from the Appellant when listening to his speech and was satisfied that the witness

[605] Trial Judgement, para. 417.
[606] Trial Judgement, para. 406.
[607] Trial Judgement, paras. 392, 406.
[608] Trial Judgement, para. 406, referring to Trial Judgement, Section II.6.3.
[609] Appellant's Brief, para. 252.
[610] Appellant's Brief, para. 252, referring to Trial Judgement, para. 399.
[611] Notice of Appeal, paras. 200, 201. Appellant's Brief, paras. 251, 252.
[612] Respondent's Brief, para. 158.
[613] Trial Judgement, para. 392.
[614] T. 11 May 2006 pp. 67-70; T. 12 May 2006 p. 2.
[615] T. 11 May 2006 pp. 67-70; T. 12 May 2006 p. 2.
[616] *See supra* para. 45.

"must have heard what he said".[617] The Appellant challenges the Trial Chamber's reliance on Witness BMB's testimony on the sole basis that it lacked corroboration without advancing any reason why Witness BMB's testimony would have required corroboration. As noted above, acceptance of and reliance on uncorroborated evidence, *per se*, does not constitute an error in law.

274. The Trial Chamber rejected the Appellant's testimony in relation to this incident noting that it was unclear and not corroborated by other evidence.[618] In light of Witness BMB's account, which the Trial Chamber found credible, and in light of its observations about the Appellant's testimony in relation to this incident, the Appeals Chamber does not find that the Trial Chamber acted unreasonably in rejecting the Appellant's uncorroborated testimony. Accordingly, this sub-ground of appeal is dismissed.

2. Alleged Errors relating to a Meeting Held at Rushashi Sub-Prefecture Office in June 1994

275. The Trial Chamber found that "[a]t the Rushashi [sub-prefecture] office in June 1994, Karera asked whether the 'work' had been done, which in that context meant the killing of Tutsis, and asked why Vincent Mundyandamutsa [*sic*], a moderate Hutu belonging to the MDR party, had not been killed."[619] In making this finding, the Trial Chamber relied on the account of Witness BMB which it found credible, noting that it was generally in conformity with the witness's prior statement to investigators.[620]

276. The Appellant submits that the Trial Chamber erred in fact and in law in making this finding.[621] The Appellant contends that, according to Defence Witnesses YCZ and YAH, he had in fact protected Vincent Munyandamutsa.[622] In his view, the Trial Chamber erred in law by failing to find that their testimonies on this point shed reasonable doubt on the Prosecution's evidence.[623] The Appellant also submits that the Trial Chamber committed an error of fact in its assessment of the credibility of Witnesses YCZ and YAH.[624] He argues that the Trial Chamber's approach shows bias.[625] The Prosecution responds that the Trial Chamber correctly rejected the evidence given by Witnesses YCZ and YAH that the Appellant had protected Vincent Munyandamutsa.[626]

[617] Trial Judgement, para. 406.
[618] Trial Judgement, para. 406.
[619] Trial Judgement, para. 417.
[620] Trial Judgement, para. 408.
[621] Appellant's Brief, para. 253.
[622] Appellant's Brief, para. 253, referring to Trial Judgement, paras. 357, 360.
[623] Appellant's Brief, paras. 253, 254, referring to Trial Judgement, para. 374. The Appellant also submits that he and Witnesses YNZ and MZR testified that he had held several meetings for the restoration of peace in Rushashi commune. Notice of Appeal, para. 202.
[624] Appellant's Brief, paras. 255, 256, referring to Trial Judgement, para. 416.
[625] Appellant's Brief, para. 258.
[626] Respondent's Brief, paras. 159, 160.

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277. A review of the Trial Judgement reveals that the Trial Chamber explicitly considered that "Witnesses YCS [*sic*][627] and YAH testified that Vincent Munyandamutsa, a Tutsi, was protected by Karera", but rejected their testimony.[628] The Trial Chamber assessed the evidence given by these witnesses as follows:

> Witness YAH testified about a meeting held by Karera in May 1994, saying that the commune had become calm. However, he also stated that his wife continued to be threatened by bandits. This contradiction weakens his credibility. Furthermore, the witness said that the meeting in the third week of May in Musasa was co-chaired by Karera and a civil defence officer, who was responsible for recruiting youths to reinforce the military. Witness YCZ also said that Karera and a military officer were the key speakers at an outdoor meeting in Musasa in June 1994. It is surprising that meetings chaired by military and civil defence leaders were aimed at contributing to reconciliation and pacification, rather than encouraging youths to join the battle. The Chamber has some doubts about these two testimonies.[629]

278. The Appeals Chamber sees no error in the Trial Chamber's assessment of the evidence of Witnesses YAH and YCZ. The Appellant has not submitted any argument to demonstrate that it was unreasonable for the Trial Chamber to prefer the Prosecution evidence on this point. Furthermore, the Appellant has failed to advance any argument in support of his submission that the Trial Chamber's reasoning shows bias.

3. Conclusion

279. For the foregoing reasons, this sub-ground of appeal is dismissed.

C. Alleged Errors relating to "Pacification Meetings"

280. The Appellant submits that the Trial Chamber was faced with two conflicting versions of events regarding meetings held in Rushashi between April and June 1994.[630] Based on the evidence given by the Prosecution witnesses, the Appellant notes, the Trial Chamber found that between April and June 1994, he participated in six meetings in Rushashi during which he incited the looting and killing of Tutsis.[631] On the other hand, he notes that the Trial Chamber deduced from his testimony and the evidence given by Defence witnesses that he might have participated in "pacification meetings" in Rushashi and Musasa.[632] The Appellant contends that the Trial Chamber erred in law by failing to address the conflicting evidence in respect of the meetings, and by failing

[627] It is apparent from the context of this paragraph that the Trial Chamber was referring to Witness YCZ.
[628] Trial Judgement, para. 374, referring to Trial Judgement, Section II.6.4.
[629] Trial Judgement, para. 416.
[630] Appellant's Brief, para. 247.
[631] Appellant's Brief, paras. 245 (referring to Trial Judgement, paras. 379-389), 247 (referring to Trial Judgement, paras. 401-417).
[632] Appellant's Brief, paras. 246 (referring to Trial Judgement, paras. 390, 400), 247 (referring to Trial Judgement, paras. 402, 403).

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to conclude that it cast a reasonable doubt on the Prosecution evidence.[633] In particular, the Appellant challenges the Trial Chamber's statement that it would "focus on the meetings at which Karera, according to the Prosecution Witnesses, allegedly was present".[634] He submits that this statement reveals that the Trial Chamber incorrectly assessed the evidence and "might have even shifted the burden of proof" to him, raising the issue of bias.[635]

281. The Appellant argues that the Trial Chamber in the *Mpambara* case was faced with a similar situation where the witnesses gave two different versions of events, one in which the accused encouraged killings and the other in which he discouraged attacks.[636] The Appellant notes that in that case the Trial Chamber gave the accused the benefit of the doubt in light of the conflicting evidence, and contends that the Trial Chamber in his case should have at least articulated its reasons for not relying on the conflicting evidence it had previously accepted.[637]

282. The Prosecution responds that the Appellant's arguments are premised on a misinterpretation of the facts and of the Trial Chamber's finding.[638] It submits that the Appellant merely summarizes the evidence of Prosecution and Defence witnesses as recounted in the Trial Judgement and suggests "another way to assess the evidence" without establishing any error on the part of the Trial Chamber.[639] It argues that the fact that Prosecution and Defence witnesses gave contradictory accounts of the events does not in itself imply a reasonable doubt.[640]

283. The Trial Chamber assessed the Defence evidence relating to the "pacification meetings" in detail.[641] While it found that these meetings, except for one,[642] did not relate to any of the meetings alleged by the Prosecution,[643] it noted that the evidence could "arguably throw some light" on what the Appellant may have said at other meetings.[644] When reaching its findings about the incriminating meetings held in Rushashi, the Trial Chamber explicitly stated that it did not "exclude that [the] so-called pacification meetings were held" and that it "assessed the totality of the evidence" on this point.[645]

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[633] Notice of Appeal, para. 198; Appellant's Brief, paras. 27-29, 249, 250; Brief in Reply, paras. 77, 78. The Appellant contends that the only reasonable inference the Trial Chamber could have made from the evidence was one similar to the inference made by the Trial Chamber in *Mpambara*.
[634] Appellant's Brief, para. 248, citing Trial Judgement, paras. 404, 415.
[635] Appellant's Brief, para. 248.
[636] Appellant's Brief, para. 243, pointing to *Mpambara* Trial Judgement, paras. 64-68, 70.
[637] Appellant's Brief, paras. 27, 28, referring to *Mpambara* Trial Judgement, paras. 70, 144, 146.
[638] Respondent's Brief, para. 151.
[639] Respondent's Brief, paras. 152, 153.
[640] Respondent's Brief, para. 153.
[641] Trial Judgement, paras. 402, 403, 415, 416.
[642] Trial Judgement, para. 406. *See infra* Sub-section 2, discussing alleged errors relating to this meeting.
[643] Trial Judgement, paras. 415, 416.
[644] Trial Judgement, para. 404.
[645] Trial Judgement, para. 417.

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284. In accepting that "pacification meetings" had taken place,[646] the Trial Chamber observed that the evidence was "not clear as to whether such pacification meetings were aimed at preventing crimes being committed between the Hutus (for instance by the *Abaseso* from Ruhengeri against the *Abambogo*), preventing infiltration by unknown persons, achieving reconciliation between extreme and moderate Hutus, or mitigating animosity between Hutu and Tutsi."[647] However, the sole fact that the Trial Chamber made no determinative conclusion regarding the purpose of these meetings does not constitute an error. In the instant case, the remaining doubt about the purpose of these meetings was to the benefit of the Appellant, because the Trial Chamber made its findings based on the presumption that such meetings had taken place.[648] It is implicit from the Trial Judgement that the Trial Chamber considered the fact that the Appellant held these "so-called pacification meetings" was not irreconcilable with the fact that he participated in other meetings in Rushashi.[649] It is well established that a Trial Chamber does not have to articulate every step of its reasoning.[650] Taking into account that the aim of the "so-called pacification meetings" was unclear, the Appeals Chamber finds no merit in the Appellant's contention that the Trial Chamber failed to provide a reasoned opinion with regard to the alleged conflict between the evidence regarding the "pacification meetings" and the evidence in relation to the Appellant's participation in meetings encouraging crimes in Rushashi.

285. A review of the Trial Judgement further reveals that the Appellant cited the Trial Chamber's statement that it would focus on the meetings alleged by the Prosecution out of context. The Appeals Chamber finds that this statement[651] simply reflects the Trial Chamber's approach to first consider the evidence related to the meetings alleged by the Prosecution, and to subsequently assess whether the Defence evidence cast reasonable doubt on it. As noted above, the Trial Chamber explicitly recognized that statements the Appellant made at meetings which did not form part of the Prosecution's case might have some relevance as to "what he [was] likely to have stated elsewhere in the same period" and it thus explicitly considered the Defence evidence in this regard.[652] The Appellant has not demonstrated that the Trial Chamber's approach shows bias or that it shifted the burden of proof. Accordingly, this submission is dismissed.

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[646] Trial Judgement, para. 375.
[647] Trial Judgement, para. 375.
[648] Trial Judgement, paras. 375, 417.
[649] Trial Judgment, para. 417. *See, inter alia*, the Trial Chamber's findings that (i) at the sector office in Rushashi, the Appellant publicly ordered the looting and the killing of Tutsis; (ii) outside the commune office, he sought contributions for weapons in order to fight the *Inkotanyi*, their accomplices and the MRND opponents; and (iii) outside the commune office, he sought contributions and encouraged hundreds of administrative, intellectual and business leaders to fight the *Inkotanyi* saying that there should be no survivors at the roadblocks.
[650] *Simba* Appeal Judgement, para. 152.
[651] Trial Judgement, para. 404.
[652] Trial Judgement, paras. 404, 415, 416.

286. The Appeals Chamber finds that the Appellant has not substantiated his allegation that the evidence that he participated in "pacification meetings" is incompatible with evidence that he was involved in the killings in Rushashi and Nyamirambo. Although the Trial Chamber did not make a specific finding on how the Appellant could have been involved in the killings in Rushashi and Nyamirambo while he participated in "so-called pacification meetings", this omission does not amount to an error. The Trial Chamber legitimately exercised its discretion in determining which version of events was more credible and the Appeals Chamber defers to this finding.

287. Accordingly, the Appeals Chamber dismisses this sub-ground of appeal.

D. Alleged Errors relating to the Distribution of Weapons

288. The Trial Chamber found that during April and May 1994, the Appellant transported weapons to the Rushashi commune office and that these weapons were given to the *conseillers* and subsequently reached the *Interahamwe* at the roadblocks, where they were used to kill Tutsis.[653] The Trial Chamber held that "[b]y bringing guns" the Appellant assisted in the killing of Tutsis and convicted him pursuant to Article 6(1) of the Statute for aiding and abetting genocide and extermination as a crime against humanity.[654]

289. Under his First Ground of Appeal, the Appellant submits that the Trial Chamber erred in law in entering his conviction for aiding and abetting genocide and extermination as a crime against humanity based on this event.[655] The Appellant primarily contends that he did not have adequate notice of these charges since the allegation of weapons distribution in Rushashi was not pleaded in the Amended Indictment.[656] He also argues that the Trial Chamber erred in its assessment of the evidence.[657] The Appellant finally submits, under his Seventh Ground of Appeal, that the Prosecution failed to establish a nexus between the Appellant and the events at the roadblocks.[658]

290. With respect to the lack of adequate notice, the Appellant submits that the allegation that he distributed weapons in Rushashi did not feature in the Amended Indictment and that, as a matter of law, the omission of this allegation could not have been cured through timely, clear, and consistent

[653] Trial Judgement, para. 438.
[654] Trial Judgement, paras. 547, 548, 555, 557.
[655] Notice of Appeal, paras. 9-15, 205-210; Appellant's Brief, paras. 5, 259-280.
[656] Notice of Appeal, paras. 9-15, 205; Appellant's Brief, paras. 259-274.
[657] Notice of Appeal, paras. 9-15, 206-210; Appellant's Brief, paras. 275-286.
[658] Notice of Appeal, para. 191; Appellant's Brief, para. 244.

information.[659] He claims that this omission could have been cured only through an amendment of the Amended Indictment,[660] which the Prosecution failed to request.[661]

291. The Prosecution responds that the Trial Chamber correctly found that the Appellant had received sufficient notice of the allegation of weapons distribution in Rushashi and that any defect in the Amended Indictment had been cured by subsequent timely, clear, and consistent information provided to the Appellant.[662] The Prosecution submits that the distribution of weapons in Rushashi was not a new charge but rather a material fact underpinning the charges of genocide and extermination and murder as crimes against humanity.[663]

292. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to an accused.[664] Whether a fact is "material" depends on the nature of the Prosecution's case.[665] The Appeals Chamber has previously held that where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation, or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[666]

293. An indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.[667] The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.[668] However, a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.[669] While it is possible, as stated above, to remedy the vagueness

[659] Notice of Appeal, paras. 9-15, 205; Appellant's Brief, paras. 265, 267.
[660] Appellant's Brief, para. 267; AT. 28 August 2008 pp. 52, 53.
[661] Appellant's Brief, para. 259; AT. 28 August 2008 p. 52.
[662] Respondent's Brief, paras. 28, 38.
[663] Respondent's Brief, paras. 36, 37; AT. 28 August 2008 p. 34.
[664] *Muvunyi* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100. *See also Simba* Appeal Judgement, para. 63, referring to *Muhimana* Appeal Judgement, paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement, para. 49.
[665] *Nahimana et al.* Appeal Judgement, para. 322; *Ndindabahizi* Appeal Judgement, para. 16; *Ntagerura et al.* Appeal Judgement, para. 23.
[666] *Seromba* Appeal Judgement, para. 27, citing *Ntagerura et al.* Appeal Judgement, para. 25.
[667] *Ntagerura et al.* Appeal Judgement, para. 22; *Niyitegeka* Appeal Judgement, para. 195; *Kupreškić et al.* Appeal Judgement, para. 114.
[668] *Muvunyi* Appeal Judgement, para. 20, referring to *Seromba* Appeal Judgement, para. 100; *Simba* Appeal Judgement, para. 64; *Muhimana* Appeal Judgement, paras. 76, 195, 217; *Gacumbitsi* Appeal Judgement, para. 49. *See also Ntagerura et al.* Appeal Judgement, paras. 28, 65.
[669] *Ntagerura et al.* Appeal Judgement, para. 32. *See also Muvunyi* Appeal Judgement, para. 20, citing *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, para. 30.

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of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.[670]

294. The Trial Chamber found that the distribution of weapons in Rushashi did not form part of the Amended Indictment and that, as a material fact underpinning the counts relating to genocide and extermination as a crime against humanity, it should have been pleaded therein.[671] However, the Trial Chamber further found that the Appellant received sufficient notice of this allegation through the Prosecution Pre-Trial Brief and the summaries of the anticipated testimonies of Witnesses BMA, BLY, BMM, and BMN, which were annexed to the Prosecution Pre-Trial Brief, as well as the Prosecution Opening Statement.[672] The Trial Chamber found that since the Defence had "at no time during the trial"[673] objected to the admission of evidence concerning the distribution of weapons in Rushashi, the burden of proof had shifted to it to "demonstrate that lack of notice prejudiced Karera."[674] The Trial Chamber held that the Defence failed to meet this burden.[675]

295. None of the paragraphs in the Amended Indictment makes an allegation of weapons distribution in Rushashi. The Amended Indictment includes two allegations of weapons distribution. Paragraphs 9 and 10 allege that the Appellant distributed weapons to commune police or civilian militias in Nyamirambo and that as a direct consequence of his conduct, many Tutsi civilians were killed by commune police or civilian militias and local residents in Nyamirambo in April and May 1994.[676] Paragraphs 25, 26, and 27 of the Amended Indictment allege that from 7 April 1994, the Appellant organized and ordered a campaign of extermination against Tutsi civilians in the commune of Nyarugenge, which included, *inter alia*, the distribution of firearms to commune police.[677] These paragraphs are not vague, but specifically describe the circumstances of two particular incidents of weapons distribution in locations other than Rushashi.[678]

296. Therefore, in alleging the distribution of weapons in Rushashi, the Prosecution Pre-Trial Brief, the annexed witness summaries, and the Prosecution's Opening Statement did not simply add

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[670] *Ntagerura et al.* Appeal Judgement, para. 32. *See also Muvunyi* Appeal Judgement, para. 20, citing *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, para. 30.
[671] Trial Judgement, paras. 418, 419.
[672] Trial Judgement, paras. 420, 421.
[673] The Trial Chamber noted that "[o]nly [the Defence] Closing Brief contained an objection." Trial Judgement, para. 421.
[674] Trial Judgement, para. 421.
[675] Trial Judgement, para. 421.
[676] Amended Indictment, paras. 9, 10.
[677] Amended Indictment, paras. 25-27.
[678] The Appeals Chamber notes that the Trial Chamber addressed in two different sections of the Trial Judgement the allegation in paragraphs 9 and 10 of the Amended Indictment. *See* Trial Judgement, Section 4.14, addressing the

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greater detail to a more general allegation already pleaded in the Amended Indictment. Rather, these submissions expanded the charges specifically pleaded in the Amended Indictment by charging an additional incident of weapons distribution at a new location. This is an impermissible, *de facto* amendment of the Amended Indictment.

297. For the foregoing reasons, the Appeals Chamber finds that the Trial Chamber erred in finding that, as a matter of law, the Prosecution's post-indictment communications could cure the failure to include the allegation of the Rushashi weapons distribution in the Amended Indictment and that they in fact did so. The Appeals Chamber therefore need not address the Appellant's remaining arguments under the First and Seventh Grounds of Appeal in relation to the Rushashi weapons distribution. The Appeals Chamber grants the First Ground of Appeal and reverses in part the Appellant's convictions for aiding and abetting genocide and extermination as a crime against humanity in so far as they are based on the Rushashi weapons distribution.

E. Alleged Errors relating to the Murder of Gakuru, *Conseiller* of Kimisange Sector

298. Relying on Witnesses BMR, BMO, BMN, and BMM,[679] the Trial Chamber found that

> in April or May 1994, Karera said to the *Interahamwe* at the Kinyari centre roadblock that Gakuru, the *conseiller* of Kimisange sector, was an *Inkotanyi* or *Inyenzi* and ordered that he be arrested. By doing so, Karera left him in the hands of *Interahamwe*. Under the prevailing circumstances, he must have understood that Gakuru would be killed.[680]

299. The Trial Chamber concluded from the Appellant's conduct at several locations, including the incident at the Kinyari centre roadblock, that "the principal perpetrators as well as Karera had the intention to kill prior to the act of killing."[681] It found that by these acts, the Appellant "intended to bring about the death of these persons or at the very least was aware of the substantial likelihood that murder would be committed as a result of his conduct."[682] Based on this event, the Trial Chamber convicted the Appellant for instigating and aiding and abetting murder as a crime against humanity.[683]

300. The Appellant submits that the Trial Chamber erred in law in entering this conviction.[684] In this section, the Appeals Chamber considers three principal questions arising from the Appellant's contentions discussed below: (i) whether the Trial Chamber erred in relying on Prosecution Witnesses BMR, BMO, BMN, and BMM despite contradictions between their testimonies; (ii)

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allegation of weapons distribution in Nyamirambo; and Trial Judgement, Section 6.5. addressing the allegation of weapons distribution in Rushashi.
[679] Trial Judgement, paras. 449-456.
[680] Trial Judgement, para. 456.
[681] Trial Judgement, para. 560.
[682] Trial Judgement, para. 560.
[683] Trial Judgement, paras. 560, 561.

whether the Trial Chamber erred in rejecting the Appellant's testimony without providing adequate reasons; and (iii) whether the Trial Chamber erred in holding him responsible for instigating and aiding and abetting Gakuru's murder when it was unable to determine the place, the date, and the perpetrators thereof.

1. Alleged Inconsistencies between the Testimonies of Witnesses BMR, BMO, BMN and BMM

301. The Appellant submits that the Trial Chamber erred in assessing the evidence by finding that he was involved in the killing of Gakuru.[685] He contends that the Trial Chamber "mainly relied on the testimonies of [Witnesses] BMR and BMO to construct the narrative of this event" and alleges a number of contradictions between the testimonies.[686] He submits that the Trial Chamber erred in law in failing to address these contradictions.[687] The Appellant submits that in light of the differences between the various accounts given by the witnesses, the Trial Chamber erred in finding that the allegation was proven beyond reasonable doubt.[688]

302. The Appellant, in particular, highlights the following inconsistencies:

- Witness BMR testified that the event occurred at the end of May 1994 while Witness BMO testified that it was sometime in April 1994;[689]

- Witness BMR testified to having seen Gakuru arrive in a Toyota Corolla while Witness BMO claimed he saw a Peugeot 505.[690] The Appellant submits that the Trial Chamber relied on the evidence of Witnesses BMR and BMO who allegedly had seen the Appellant using Gakuru's vehicle after he had been killed. In his view, this finding "is of little relevance" in light of the contradictory accounts regarding the vehicle driven by Gakuru, as well as the fact that the Appellant owned a car similar to the car described by Witness BMO.[691]

- Witness BMR testified that the *conseiller*, his wife, and a driver were inside the car while Witness BMO testified that he saw the *conseiller*, his wife, and their two children.[692]

303. The Prosecution responds that the Appellant has not advanced any argument establishing that the passage of time, referred to by the Trial Chamber, was not a reasonable explanation for justifying the discrepancy in the testimony regarding the precise date and time relevant to the events

[684] Notice of Appeal, paras. 211-220; Appellant's Brief, paras. 281-290.
[685] Appellant's Brief, para. 290.
[686] Appellant's Brief, para. 284.
[687] Appellant's Brief, para. 289.
[688] Notice of Appeal, para. 219.
[689] Notice of Appeal, para. 216.
[690] Notice of Appeal, para. 216; Appellant's Brief, para. 284.
[691] Notice of Appeal, para. 217; Appellant's Brief, paras. 284, 286.

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that led to the killing of Gakuru.[693] It submits that the Appellant has failed to challenge the common features of the witnesses' accounts accepted by the Trial Chamber. In its view, the Trial Chamber duly assessed the evidence before it, including the Appellant's arguments and the alleged discrepancies.[694]

304. As a preliminary matter, the Appeals Chamber considers that the alleged inconsistencies should be viewed against the backdrop of the numerous similarities found by the Trial Chamber in Witnesses BMR's and BMO's accounts which are not challenged on appeal:

> Both testified that the *conseiller* arrived at the Kinyari centre roadblock in a white sedan car with others, that Karera and a man called Vianney Simparikubwabo were there, that Karera was asked to confirm the *conseiller's* identity, that he ordered his arrest and detention, and that the *conseiller* was later killed. These two witnesses, as well as Witness BMM, also said that Karera had the power to save the *conseiller*. It is noted that they both saw Karera use Gakuru's car after he was killed.[695]

Moreover, contrary to the Appellant's contention, the Trial Chamber explicitly addressed the alleged inconsistencies and noted that "[i]n light of the important similarities outlined above, the Chamber does not consider these discrepancies significant."[696] It further explained that "[c]onsiderable time has passed since the event, and the witnesses may have recalled the date and perceived the vehicle differently."[697]

305. It is within a Trial Chamber's discretion to assess any inconsistencies in the testimony of witnesses, and to determine whether, in the light of the overall evidence, the witnesses were nonetheless reliable and credible.[698] The Appellant has not advanced any reason to demonstrate that the Trial Chamber's explanation was unreasonable.

306. The Appellant further submits that Witness BMR testified that the Appellant had stated that the passengers at the roadblock were Tutsis whereas, according to Witness BMO, the Appellant did not mention their ethnicity.[699] He contends that this contradiction is particularly significant because it is central to the allegation that he told the *Interahamwe* at the roadblock that Gakuru was a Tutsi.[700]

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[692] Notice of Appeal, para. 216; Appellant's Brief, para. 284.
[693] Respondent's Brief, para. 169.
[694] Respondent's Brief, para. 170.
[695] Trial Judgement, para. 450.
[696] Trial Judgement, paras. 451, 452.
[697] Trial Judgement, para. 452.
[698] *See supra* para. 155.
[699] Notice of Appeal, para. 216; Appellant's Brief, para. 284.
[700] Appellant's Brief, para. 285.

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307. The Trial Chamber explicitly addressed this difference and considered it insignificant.[701] It explained that "[b]oth witnesses conveyed that Karera created an impression that the *conseiller* or his companions were Tutsi or accomplices."[702] The Appellant has not explained why this explanation by the Trial Chamber was unreasonable.

308. The Appellant submits that Witnesses BMR, BMO, BMM, and BMN also differed in their testimonies as to the date and time when they had learnt about Gakuru's murder.[703] He submits that Witness BMR learned at 3 p.m. from people who "seemed" to have been eyewitnesses to these killings that the detainees had been killed.[704] According to the Appellant, Witness BMO heard "later" when he returned to the area that the *conseiller* and his wife had been killed.[705] Witness BMM[706] had seen after 6 p.m., on a date he could not specify, four individuals killed at the commune office following an order from the Appellant.[707] Witness BMN testified that she saw Gakuru at the commune office at 1 p.m., that he was led away, and that she saw him again at the prison. Witness BMN further testified that she later heard some *Interahamwe* boasting that they had killed Gakuru.[708]

309. The Appeals Chamber fails to see how the fact that the witnesses learned about the murder of Gakuru at different times and occasions presents a contradiction in their accounts. Moreover, the Trial Chamber addressed the alleged contradiction between Witnesses BMR's, BMO's, and BMM's testimonies on this point in the Trial Judgement and stated that "[t]he fact that one of the witnesses may have given an incorrect time estimate, thirteen years after the event, does not affect his overall credibility."[709] The Appellant has not challenged the Trial Chamber's reasoning. This sub-ground of appeal is accordingly dismissed.

310. Finally, the Appeals Chamber notes the Appellant's contention that Witness BMR testified that he and his colleagues sent someone to look for the Appellant in a bar whereas Witness BMO testified that the Appellant was at the roadblock when the *conseiller* requested to speak to *him*.[710]

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[701] Trial Judgement, para. 451.
[702] Trial Judgement, para. 451.
[703] Appellant's Brief, para. 286.
[704] Notice of Appeal, para. 218; Appellant's Brief, para. 286, citing Trial Judgement, para. 442.
[705] Notice of Appeal, para. 218.
[706] The Appellant erroneously refers to Witness BMN. However, the context reveals that he intended to refer to Witness BMM.
[707] Notice of Appeal, para. 218; Appellant's Brief, para. 286.
[708] Notice of Appeal, para. 218; Appellant's Brief, para. 287.
[709] Trial Judgement, para. 454.
[710] Notice of Appeal, para. 216; Appellant's Brief, para. 284. He also submits that Witness BMN testified that the Appellant was at the commune office while Witness BMM stated that he was at Kinyari centre. Appellant's Brief, para. 284.

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311. The Trial Chamber did not explicitly address this matter. The Appeals Chamber recalls that minor inconsistencies commonly occur in witness testimony without rendering it unreliable and that it is within the discretion of a Trial Chamber to evaluate the testimony and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.[711] In light of the Trial Chamber's detailed analysis of both similarities and differences in the witnesses' accounts, the Appeals Chamber finds that the alleged inconsistency is minor. The Trial Chamber's failure to address this issue does not render its reliance on the witnesses erroneous.

312. Accordingly, the Appellant's appeal on this point is dismissed.

2. Alleged Failure to Provide Reasons for Rejecting the Appellant's Testimony

313. The Appellant recalls that he testified at trial that he knew Gakuru but that he had never heard that Gakuru was present or that he was killed in Rushashi.[712] He submits that the Trial Chamber erred in law in failing to justify its decision to reject his testimony on this point.[713]

314. The Appeals Chamber has previously held that if a "Trial Chamber did not refer to the evidence given by a witness, even if it is in contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings."[714] The Trial Chamber explicitly noted that it based its finding on the totality of the evidence before it, including the Appellant's testimony.[715] The Appellant has not shown that the Trial Chamber acted unreasonably by not explicitly discussing his evidence, particularly in light of the fact that the testimony was limited to denying the allegation against him.[716] Accordingly this appeal is dismissed.

3. Alleged Failure to Determine the Place, Date, and Identity of the Perpetrators

315. The Appellant submits that the Trial Chamber erred in law in finding that it had been proven beyond reasonable doubt that he had instigated and aided and abetted Gakuru's murder when in fact it was unable to determine the place, the date, and the perpetrators of that crime.[717] The Appellant submits that the elements of the modes of responsibility for which he was held responsible were not established.[718] He contends that the evidence does not reflect that those persons who received his

[711] *See supra* para. 20.
[712] Appellant's Brief, para. 283.
[713] Appellant's Brief, para. 289.
[714] *See supra* para. 20.
[715] Trial Judgement, para. 456.
[716] Trial Judgement, para. 448.
[717] Notice of Appeal, para. 220; Appellant's Brief, paras. 288, 289; AT. 28 August 2008 pp. 27, 59.
[718] AT. 28 August 2008 p. 27. The French original version of the transcripts reflects that Counsel for the Appellant makes reference to the Trial Judgement in *Orić*. *See* AT. 28 August 2008 p. 35 of the French transcripts.

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"contribution" committed any crime.[719] In his view, it was impossible to establish the elements of aiding and abetting since it was unknown who eventually killed Gakuru on whose orders, and where he was killed.[720] He submits that according to the Prosecution evidence he never asked that Gakuru be killed, but merely instructed that he be taken away and detained.[721]

316. The Prosecution responds that the Appellant prompted the *Interahamwe* to commit the offence, and that he at least knew that Gakuru was likely to be killed.[722] It submits that the Appellant did not merely facilitate the killing of Gakuru, and that Gakuru had hoped that the Appellant would save his life.[723] When the Appellant was asked to confirm Gakuru's identity, the Appellant said that Gakuru was an "*Inyenzi*". In the Prosecution's view this statement indicated to the *Interahamwe* that they had to kill Gakuru.[724] The Prosecution also refers to Witness BMR's testimony, which the Trial Chamber found credible: according to that witness, "these people would be taken to a place where everything was taken away from them, their clothes, shoes, watches and so on, and then they were killed."[725]

317. The *actus reus* of "instigating" implies prompting another person to commit an offence.[726] It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused; it is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.[727]

318. Contrary to the Appellant's contention, the specific identification of the perpetrators, who were identified in the Trial Judgement as *Interahamwe*, was not required for a finding that the Appellant instigated the killing of Gakuru. In any event, the Trial Chamber did identify the perpetrators. It is implicit, but certain, in the Trial Judgement that the Trial Chamber found that Gakuru was killed by the *Interahamwe* who were informed by the Appellant that Gakuru was an "*Inyenzi*" and who received his order to arrest him. The Trial Chamber found that "[b]y doing so, Karera left him [Gakuru] in the hands of *Interahamwe*" and that "[u]nder the prevailing circumstances, he must have understood that Gakuru would be killed".[728] That the Trial Chamber

[719] AT. 28 August 2008 p. 27.
[720] AT. 28 August 2008 p. 27.
[721] AT. 28 August 2008 p. 27.
[722] AT. 28 August 2008 p. 40.
[723] AT. 28 August 2008 p. 40.
[724] AT. 28 August 2008 p. 40.
[725] AT. 28 August 2008 p. 40, citing T. 1 February 2006 p. 24.
[726] *Nahimana et al.* Appeal Judgement, para. 480; *Ndindabahizi* Appeal Judgement, para. 117; *Kordić and Čerkez* Appeal Judgement, para. 27.
[727] *Nahimana et al.* Appeal Judgement, para. 480; *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27.
[728] Trial Judgement, para. 456.

made such a finding is implicit in its recollection of the evidence of Witnesses BMO and BMN.[729] While it would have been preferable for the Trial Chamber to explicitly state that it identified the perpetrators of Gakuru's murder as being the *Interahamwe* to whom the Appellant indicated that Gakuru was an "*Inyenzi*" and who received the order to arrest him, this omission does not amount to an error.

319. However, based on the Trial Chamber's factual findings, the Trial Chamber could not have reasonably concluded that the Appellant prompted the perpetrators to kill Gakuru. The Trial Chamber made no factual findings supporting such a conclusion. It merely concluded that the Appellant had informed the *Interahamwe* who later killed Gakuru that he was an "*Inyenzi*" and ordered them to arrest him. The Trial Chamber should have further explained how, on the basis of these factual findings, it inferred that the Appellant had prompted the *Interahamwe* to kill Gakuru. In the absence of such an explanation, the Appeals Chamber finds that the Trial Chamber erred in convicting the Appellant for instigating Gakuru's murder.

320. The Appeals Chamber now turns to the Appellant's submission that the Trial Chamber erred in entering a conviction for aiding and abetting murder as a crime against humanity.

321. The *actus reus* of aiding and abetting is constituted by acts or omissions that assist, further, or lend moral support to the perpetration of a specific crime, and which substantially contribute to the perpetration of the crime.[730] The *mens rea* for aiding and abetting is knowledge that acts performed by the aider and abettor assist in the commission of the crime by the principal.[731] It is well established that it is not necessary for an accused to know the precise crime which was intended and which in the event was committed, but he must be aware of its essential elements.[732] If an accused is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime.[733]

322. The Trial Chamber found that the Appellant told the *Interahamwe* that Gakuru was an "*Inyenzi*" and that he ordered his arrest by the *Interahamwe*, which he must have understood would result in his murder.[734] On the basis of these findings, it was reasonable for the Trial Chamber to conclude that the Appellant aided and abetted the murder of Gakuru.[735] By instructing the *Interahamwe* to arrest Gakuru and telling them that Gakuru was an "*Inyenzi*", it was reasonable to conclude that the Appellant substantially contributed to the commission of his murder through

[729] *See* Trial Judgement, paras. 445, 447.
[730] *Nahimana et al.* Appeal Judgement, para. 482.
[731] *Nahimana et al.* Appeal Judgement, para. 482.
[732] *Nahimana et al.* Appeal Judgement, para. 482.
[733] *See Stakić* Appeal Judgement, para. 50; *Nahimana et al.* Appeal Judgement, para. 482.
[734] Trial Judgement, para. 456.

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specifically assisting and providing moral support to the principal perpetrators. Furthermore, in light of the evidence adduced, the Appeals Chamber finds no error in the Trial Chamber's finding that the Appellant had the requisite *mens rea*.

323. For the foregoing reasons, the Appeals Chamber grants this sub-ground of appeal in part and reverses the Appellant's conviction for instigating murder as a crime against humanity based on this event. The Appellant's conviction for aiding and abetting murder as a crime against humanity based on the killing of Gakuru is upheld.

F. Conclusion

324. The Appeals Chamber grants the Appellant's First Ground of Appeal and reverses the Appellant's conviction for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged weapons distribution in Rushashi commune.

325. The Appeals Chamber further grants the Seventh Ground of Appeal, in part, and reverses the Appellant's conviction for instigating murder as a crime against humanity based on the killing of Gakuru.

[735] Trial Judgement, para. 560.

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IX. ALLEGED ERRORS RELATING TO THE ALIBI (GROUND OF APPEAL 8)

326. At trial, the Appellant raised an alibi in his defence.[736] He submitted that on 7 April 1994, he left his house in Nyamirambo for his son Ignace's house at the Nyakinama campus of the Rwanda National University in Ruhengeri prefecture.[737] The Appellant stated that he arrived at the campus on that day and did not leave until 19 April 1994, when he moved to Rushashi to assume the post of prefect of Kigali prefecture.[738] The Trial Chamber found that the Appellant and his relatives travelled from Nyamirambo to his son's house in Nyakinama on 7 April 1994[739] and that he stayed there until 19 April 1994.[740] However, the Trial Chamber concluded that the Appellant did not remain "consistently and exclusively" in Ruhengeri prefecture and stated that it had no doubt that he was present in Nyamirambo and Ntarama sectors and Rushashi commune when the crimes were committed.[741]

327. The Appellant contends that the Trial Chamber erred in law and in fact in not finding that he remained in Ruhengeri during the period from 7 to 19 April 1994.[742] He submits that the Trial Chamber erred in its application of the burden of proof, in its assessment of the possibility of travelling from Ruhengeri during the period covered by his alibi, and in its assessment of the Defence evidence relating to the alibi.[743]

A. Alleged Errors in the Application of the Burden of Proof

328. The Appellant contends that the Trial Chamber incorrectly applied the burden of proof in relation to his alibi.[744] He submits that the Trial Chamber's consideration of his alibi at the very end of the evidence constitutes an "important indication that the [Trial] Chamber shifted the burden of proof".[745] He argues that the Trial Chamber erroneously assessed the "plausibility" of his alibi on the basis of whether the evidence of the Prosecution witnesses eliminated the reasonable possibility that he remained consistently in Nyakinama,[746] and assessed this issue in the context of the "number

[736] Notice of alibi pursuant to Rule 67 (A)(ii) of the Rules served on the Prosecution on 9 January 2006 (unredacted version) annexed to the Prosecution's Motion for Further and Better Alibi's Particulars, filed on 23 January 2006 and the Corrigendum filed on 26 January 2006 ("Notice of Alibi"). *See also* Decision on Motion for Further Alibi Particulars, 7 March 2006 (TC); Trial Judgement, paras. 457-510.
[737] Trial Judgement, para. 459.
[738] Trial Judgement, para. 459.
[739] Trial Judgement, para. 478.
[740] Trial Judgement, para. 510.
[741] Trial Judgement, para. 510.
[742] Notice of Appeal, paras. 221-239; Appellant's Brief, paras. 291-309.
[743] Notice of Appeal, paras. 221-239; Appellant's Brief, paras. 291-309.
[744] Appellant's Brief, para. 291; AT. 28 August 2008 p. 15.
[745] Appellant's Brief, para. 30; Brief in Reply, paras. 9, 87.
[746] Appellant's Brief, para. 295; AT. 28 August 2008 p. 16.

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of times" he was seen in Nyakinama, the possibility of travelling by road from Ruhengeri at that time, and the credibility and reliability of Prosecution evidence.[747] He also argues that according to the Trial Chamber's reasoning, he was required to prove beyond reasonable doubt that he did not at any time between 7 and 19 April 1994 leave Nyakinama, if his alibi were to be accepted.[748] He claims that the Trial Chamber erred in its analysis of the evidence by simply comparing the credibility of Prosecution and Defence evidence,[749] as well as in its finding that the Defence witnesses who testified to the alibi had credibility problems.[750]

329. The Prosecution responds that the Trial Chamber committed no error in its statement of the applicable law[751] and that there is no merit in the Appellant's argument that the Trial Chamber misdirected itself in the application of the legal standards and evidential burden when considering the alibi.[752] It argues that the approach adopted by the Trial Chamber is consistent with the established jurisprudence of the Appeals Chamber, and that the Appellant has not demonstrated that the Trial Chamber reversed the burden of proof in relation to his alibi.[753] The Prosecution asserts that the Trial Chamber committed no error in considering the credibility and reliability of the witnesses and correctly placed the burden of proof on the Prosecution.[754]

330. The Appeals Chamber recalls that where an alibi is pleaded, an accused denies that he was in a position to commit the crime for which he is charged because at the time of its commission, he was not at the scene of the crime, but elsewhere.[755] It is settled jurisprudence of the two *ad hoc* Tribunals that in putting forward an alibi, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case.[756] The onus remains on the Prosecution to prove beyond reasonable doubt the facts underpinning the crimes charged.[757] Indeed, it is incumbent on the Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.[758]

[747] Appellant's Brief, para. 296.
[748] Appellant's Brief, para. 303.
[749] Appellant's Brief, para. 304.
[750] Appellant's Brief, para. 306.
[751] Respondent's Brief, para. 185.
[752] Respondent's Brief, paras. 72, 186. The Prosecution also submits that the Trial Chamber's placing of the factual findings in relation to the alibi evidence towards the end of the Trial Judgement "cannot be construed as indicia of the reversal of the burden of proof and an error of law by the Trial Chamber". Respondent's Brief, para. 60 (citation omitted).
[753] Respondent's Brief, para. 186.
[754] Respondent's Brief, para. 208.
[755] *Kajelijeli* Appeal Judgement, para. 42, citing *Niyitegeka* Appeal Judgement, para. 60, citing *Kayishema and Ruzindana* Appeal Judgement, para. 106.
[756] *Niyitegeka* Appeal Judgement, para. 60, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 113.
[757] *Niyitegeka* Appeal Judgement, para. 60.
[758] *Niyitegeka* Appeal Judgement, para. 60, referring to *Musema* Appeal Judgement, para. 202.

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331. In the present case, the Appeals Chamber is satisfied that the Trial Chamber correctly enunciated the law applicable in relation to the burden and standard of proof concerning an alibi[759] by stating that

> an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution case. The alibi does not carry a separate burden. The burden of proving beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true remains squarely on the shoulders of the Prosecution.[760]

332. With regard to the Appellant's contention that the Trial Chamber erred by failing to consider his testimony and alibi first, the Appeals Chamber notes that at the beginning of the section on alibi in the Trial Judgement, the Trial Chamber stated that "[n]otwithstanding [the] structure [of the Trial Judgement], in making its factual findings, [it] has assessed the Prosecution and Defence evidence in its totality"[761] and went on to analyze in detail the Appellant's testimony and alibi.[762] The Appeals Chamber therefore finds that the discussion of the Appellant's alibi towards the end of the Trial Judgement does not indicate that it shifted the burden to the Appellant.

333. The Appellant argues that the Trial Chamber erred when it considered the issue to be, and accordingly assessed, whether the Prosecution witnesses eliminated the reasonable possibility that he remained consistently at Nyakinama between 7 and 19 April 1994.[763] The Appellant contends that the Trial Chamber erred in its assessment of his alibi by first considering the Prosecution's evidence tendered to discredit it.[764] In this regard, the Appellant argues that this approach imposed a burden of proof on him, as he was required to produce "more convincing alibi evidence" than the Prosecution's evidence tendered to discredit the alibi.[765]

334. The Appeals Chamber notes that the Trial Chamber articulated the issue to be whether the evidence of Prosecution witnesses who testified to seeing the Appellant in Nyamirambo sector, Ntarama sector, and Rushashi commune eliminates the reasonable possibility that the Appellant "remained consistently in Nyakinama in Ruhengeri prefecture".[766] The Trial Chamber further explained that in its view "this depends on how frequently [Karera] was observed in Nyakinama, whether he could use the roads to the other areas, and the reliability and credibility of the

[759] *See e.g. Nahimana et al.* Appeal Judgement, para. 414; *Musema* Appeal Judgement, paras. 205, 206.
[760] Trial Judgement, para. 462.
[761] Trial Judgement, para. 457.
[762] In the introductory paragraphs of the chapters addressing the events in Nyamirambo and Ntarama, the Trial Chamber specified that the Appellant presented an alibi and summarized his defence. Trial Judgement, paras. 81, 222. For each factual finding, and when appropriate, the Trial Chamber systematically summarized both the Prosecution and Defence evidence, and discussed them. It also specifically considered the Appellant's testimony (*see* Trial Judgement, paras. 30, 34, 48, 49, 64, 65, 72, 73, 104, 133, 275-278, 309, 342-345, 373, 390-394, 402, 406, 415, 430, 448), and his alibi (*see* Trial Judgement, paras. 4, 26, 81, 123, 222, 275) throughout the Trial Judgement.
[763] Appellant's Brief, para. 295; Brief in Reply, para. 11; AT. 28 August 2008 p. 16.
[764] Appellant's Brief, para. 303.
[765] Appellant's Brief, para. 303; AT. 28 August 2008 p. 16.
[766] Trial Judgement, para. 500.

Prosecution's evidence placing him in Nyamirambo and Ntarama sectors and Rushashi commune".[767]

335. The Trial Chamber found that the reasonable possibility that the Appellant remained "consistently and exclusively" in Ruhengeri prefecture is eliminated by the "credibility issues raised in connection with Defence evidence", as well as the "reliable and credible evidence" which placed the Appellant in Nyamirambo sector, Ntarama sector, and Rushashi commune during this period.[768] Consequently, the Trial Chamber concluded that there was no doubt that the Appellant was present in Nyamirambo and Ntarama sectors and Rushashi commune when the crimes were committed.[769] The Trial Chamber's approach is consistent with the legal standards discussed above. Therefore, the Appeals Chamber finds that the Appellant has failed to demonstrate any error on the part of the Trial Chamber in this regard.

336. The Appellant finally argues that the Trial Chamber's reasoning erroneously suggests that for his alibi to be accepted he had to prove beyond reasonable doubt that he did not leave Nyakinama between 7 and 19 April 1994.[770] In this regard, the Appeals Chamber notes the Trial Chamber's finding that the "credibility issues" in relation to the alibi evidence, coupled with the "reliable and credible" Prosecution evidence placing the Appellant in Nyamirambo, Ntarama, and Rushashi, together eliminated the reasonable possibility that the Appellant remained consistently and exclusively in Ruhengeri prefecture.[771] The Trial Chamber's reasoning does not indicate the imposition of any obligation on the Appellant to prove beyond reasonable doubt that he stayed permanently in Nyakinama between 7 and 19 April 1994.

337. Contrary to the Appellant's contention, the Trial Chamber did not conclude that the Appellant returned every day to Nyakinama. Instead, it found that the Appellant could travel on the morning and return "on some days".[772] The Trial Chamber found that there were significant gaps in the alibi evidence allowing for his presence on some days at the crime sites.[773] There is no indication that the Trial Chamber considered that the Appellant must necessarily have undertaken the journeys from Nyakinama to the crime sites and back on the same day, between the morning and the afternoon.[774] The Trial Chamber's assessment of the Defence evidence about accessibility of the roads does not contradict this interpretation. The Trial Chamber focused on whether it was

[767] Trial Judgement, para. 500.
[768] Trial Judgement, para. 510.
[769] Trial Judgement, para. 510.
[770] Appellant's Brief, para. 303; AT. 28 August 2008 p. 15.
[771] Trial Judgement, para. 510.
[772] Trial Judgement, para. 505.
[773] *See* Trial Judgement, para. 505.
[774] The Appeals Chamber notes the following statement "It is important that [Witness YMK] did not see Karera every day, as he testified that he occasionally missed the program." (footnote omitted). Trial Judgement, para. 505.

possible to travel at that period between Nyakinama and the crime sites and not whether it was feasible on the same day. Consequently, the Appeals Chamber finds no merit in the Appellant's argument.

338. This sub-ground of appeal is accordingly dismissed.

B. Alleged Errors relating to the Possibility of Travelling from Ruhengeri

339. The Appellant submits that the Trial Chamber erroneously assessed the Prosecution's evidence in relation to the possibility of travelling from Ruhengeri prefecture after 6 April 1994.[775] The Appellant argues that the Trial Chamber determined, in error, that Defence Witness KNK corroborated the evidence of Defence Witnesses BBA and KBG that the main road between Ruhengeri and Kigali was blocked but that an alternative road was available passing through Gitarama.[776] The Appellant also contends that speculating on the possibility of travelling from Ruhengeri to Kigali, without evidence that such a journey was actually undertaken, does not impair the reasonable possibility that he remained in Ruhengeri.[777] He further argues that the Trial Chamber's finding that he moved around without difficulty because of his position and the fact that he could use an official vehicle is not supported by evidence.[778] In addition, he asserts that the Trial Chamber erred in finding that he was at the Ntarama Church on the morning of 15 April 1994 while accepting his alibi that he was in Ruhengeri every day in the morning and after 4 p.m.[779] The Appellant argues that the evidence demonstrated that it was impossible and unrealistic for him to undertake in such a time-frame the 410 kilometre return journey from Ruhengeri to the Ntarama Church through the itinerary accepted by the Trial Chamber which would have meant passing through Gitarama town, Kigoma commune, and Ngenda commune, as it was the only possible route.[780]

340. In response, the Prosecution submits that the Trial Chamber correctly found that Witness KNK's evidence corroborated the evidence of Witnesses BBA and KBG on the point of the accessibility of the Ruhengeri-Kigali road.[781] It further submits that the Appellant adduced no tangible evidence to demonstrate that it was impossible to travel during the period in question, and the evidence adduced by both parties was that although travel was difficult, it was possible through

[775] Appellant's Brief, paras. 298-302; AT. 28 August 2008 p. 22.
[776] Appellant's Brief, para. 299.
[777] Appellant's Brief, para. 300.
[778] Appellant's Brief, paras. 301, 302.
[779] Brief in Reply, paras. 50-52.
[780] Brief in Reply, paras. 50-52.
[781] Respondent's Brief, paras. 196-198.

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secondary roads.[782] The Prosecution argues that the Appellant's submission in relation to the Trial Chamber's finding that the Appellant moved around without difficulty is false.[783]

341. In relation to the Appellant's argument that the Trial Chamber erred in finding that Witness KNK corroborated the testimonies of Witnesses BBA and KBG, the Appeals Chamber notes that the Trial Chamber concluded that it was possible to travel from Nyakinama to Nyamirambo, through Gitarama, without using the main Ruhengeri-Kigali road, based on the following assessment:

> Witness BBA testified that travel was possible from Nyakinama to Gitarama without using the main Ruhengeri-Kigali road, and Witness KBG said that the road from Gitarama to Nyamirambo was open for travel between April and July 1994. Their evidence is corroborated by Witness KNK, who testified that she travelled from Ruhengeri via Gitarama to Kigali on 16 April 1994.[784]

342. During cross-examination, Witness BBA testified that there was an unpaved road leading from Ruhengeri to Gitarama, through Nyakinama, without passing through Kigali. However, he could not testify on whether the road was accessible by a motor vehicle.[785]

343. The Appeals Chamber also notes that Witness KBG testified that in April 1994, after the killing of President Habyarimana, and in May 1994,[786] the only road accessible by a motor vehicle from Kigali to Gitarama passed through the Nyamirambo road, Mt. Kigali, and Nyabarongo.[787] Witness KBG specified that he followed that road because it was the only safe road and that the other roads were blocked.[788]

344. Witness KNK also indicated that the "usual road" from Kigali to Ruhengeri was "blocked" but that it was possible to travel by an alternate route through Gitarama, which was safe.[789]

345. Therefore, according to the testimony of Witness KNK, corroborated by the evidence of Witnesses BBA and KBG, it was possible to travel from Nyakinama to Nyamirambo, through Gitarama, without using the main Ruhengeri-Kigali road. The Appellant has not shown any error in the Trial Chamber's finding that Witness KNK corroborated the evidence of Witnesses BBA and KBG.

346. The Appellant argues that even if it was possible to travel between Ruhengeri and the Kigali region, the reasonable possibility that he remained in Ruhengeri cannot be questioned without

[782] Respondent's Brief, para. 201.
[783] Respondent's Brief, paras. 203, 204.
[784] Trial Judgement, para. 506.
[785] T. 15 August 2006 p. 48.
[786] T. 9 May 2006 p. 3.
[787] T. 9 May 2006 p. 11.
[788] T. 9 May 2006 p. 37.
[789] T. 9 May 2006 p. 39.

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evidence that he actually took such a journey.[790] The Appeals Chamber disagrees. The Trial Chamber excluded the reasonable possibility that the Appellant remained "consistently and exclusively" in Ruhengeri.[791] In reaching these findings, the Trial Chamber considered the evidence of a number of witnesses and reasoned that "it was possible to travel from Nyakinama to Nyamirambo, through Gitarama, without using the main Ruhengeri-Kigali road";[792] that "Karera could have travelled from Nyakinama to Ntarama between April and July 1994"[793] using an official vehicle; and that since he had an influential government position and was well known he would have passed roadblocks without major problems.[794]

347. The Trial Chamber also considered the credibility of the Defence evidence in relation to the Appellant being in Nyakinama and the reliability and credibility of the Prosecution's evidence which placed him at Nyamirambo and Ntarama sectors and Rushashi commune, the locations of the crimes.[795] The Appeals Chamber therefore finds that the Appellant has failed to show that the Trial Chamber committed an error in reaching this conclusion.

348. The Appellant finally contends that the Trial Chamber's finding that he moved around without difficulty by virtue of his position and the fact that he could use an official vehicle is not supported by evidence and is therefore erroneous.[796] Having considered this finding,[797] the Appeals Chamber notes that while the Trial Chamber did not cite any evidence in relation to it, there was relevant evidence on the record supporting this conclusion. The Appeals Chamber notes, for instance, that when the Appellant testified, he stated that on the morning of 7 April 1994 he was recognized as an authority by one of the "gendarmes" manning a roadblock and could continue his travel after his vehicle had been checked.[798] The Appellant also testified that on 7 April 1994, he travelled through "three roadblocks and one military check-point".[799] Therefore, the Appeals Chamber finds no merit in the Appellant's argument.

349. The Appeals Chamber notes that the Trial Chamber generally did not embark on an assessment of the time needed to travel from Nyakinama to the crime scenes.[800] However, the

[790] Appellant's Brief, para. 300.
[791] Trial Judgement, para. 510.
[792] Trial Judgement, para. 506.
[793] Trial Judgement, para. 507.
[794] Trial Judgement, para. 508.
[795] Trial Judgement, paras. 500-510.
[796] Appellant's Brief, paras. 301, 302.
[797] Trial Judgement, para. 508 which reads: "[...] However, as Karera had an influential governmental position and was well known, the Chamber considers that he would have passed roadblocks controlled by *Interahamwe*, *gendarmes*, soldiers or civilians, without major problems. The use of an official vehicle, which Karera said that he had while in Ruhengeri, would facilitate his travel."
[798] T. 23 August 2006 p. 18.
[799] T. 23 August 2006 p. 17.
[800] *See* Trial Judgement, paras. 506, 507.

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Appeals Chamber finds that the Trial Chamber did not necessarily conclude that the Appellant had to travel from Nyakinama to the crimes sites in Nyamirambo or Ntarama on the same day. Rather, its finding that "Karera could have lived in Ruhengeri, but travelled during the daytime to Nyamirambo or Ntarama sectors, returning on some days to the Nyakinama campus by 4.00 p.m"[801] does not preclude an interpretation that although on some days he returned to Nyakinama by 4.00 p.m., on other days he travelled from Nyakinama to a crime site and returned on another day.

C. Alleged Errors in the Assessment of the Evidence on Alibi

350. The Appellant contends that the Trial Chamber erroneously found that the Defence witnesses who testified to his alibi had credibility problems.[802] He states that the contradictions relating to Defence Witnesses ATA and KD are trivial when compared to the problems of credibility affecting the Prosecution witnesses.[803] He also argues that the Trial Chamber did not provide good reasons for doubting the alibi evidence.[804]

351. The Prosecution responds that the Trial Chamber has unfettered discretion in assessing the evidence presented by the parties, and that the Appellant has failed to demonstrate in what way the Trial Chamber abused that discretion.[805]

352. Witness ATA testified that she enrolled in school a week after her arrival in Ruhengeri and that the Appellant was at home when she left for school at 7.00 a.m. and when she returned at 3.00 or 4.00 p.m.[806] The witness stated that in mid-April 1994, the Appellant was appointed prefect and began travelling to Rushashi.[807] The Trial Chamber found that the witness's testimony could only relate to a few days since she started school around 14 April 1994 and the Appellant was appointed

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[801] Trial Judgement, para. 505.
[802] Appellant's Brief, para. 306.
[803] Appellant's Brief, para. 306.
[804] Appellant's Brief, para. 307.
[805] Respondent's Brief, para. 210.
[806] Trial Judgement, para. 482. During her testimony Witness ATA stated that when she was going to school she would leave her home at about 7 a.m. and would return home every evening after school. She specified that classes started at 8 a.m. and that the distance between her home and the school was quite long. The classes ended at about 2 p.m., and she "was able to get back home between 3 p.m. and 4 p.m." When returning from school she found the Appellant at home. She further testified that from 7 April 1994, the Appellant had no specific work because he stayed at home, in Ruhengeri and that, before the period when she was going to school, the Appellant "was with us because he had no other work to do, so he didn't go anywhere" T. 5 May 2006 p. 6.
[807] Trial Judgement, para. 482. *See*: T. 5 May 2006 p. 6 [Q. As for your father, in April 1994, to the best of your recollection, did he leave Ruhengeri? ATA. (...) I remember that in the middle of April, he informed us that he had been appointed *préfet* of Kigali-rural and that he intended to go to Rushashi, which was one of the *communes* in Kigali-rural *préfecture*. Q. Do you remember whether he, indeed, went to Rushashi? A. I remember that he went there because during that period I no longer saw him at home, but during the weekends – that is, on Saturday or Sunday, he came back to see us. Q. And when did he leave again? A. I said that he would arrive on Saturday and return to Rushashi on Monday morning. Q. (...) For how long did your father, François Karera, travel from Ruhengeri to Rushashi and from Rushashi back to Ruhengeri? A. As I have already pointed out, he went to Rushashi in mid-April and returned to Ruhengeri in early July.].

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prefect on 17 April 1994. The Trial Chamber further noted that the witness was less specific about the period before 14 April 1994 stating that the Appellant stayed at home all the time.[808]

353. Witness KD testified that between 7 April 1994 and mid-April 1994, the Appellant occasionally left his son's house at the Nyakinama campus of the Rwanda National University to watch television at the university campus or to visit professors, but he never left the campus and did not visit the sub-prefecture office in Rushashi.[809] The witness stated that after mid-April, she started a business and that the Appellant was at home when she left for work in the morning and when she returned home for lunch and from work.[810] The Trial Chamber took into account that the witness stated that the Appellant did occasionally leave the house[811] and that during the period of 7 to 15 April 1994, she had not yet started her business.[812]

354. The Appeals Chamber recalls that it is within a Trial Chamber's discretion to accept or reject a witness's testimony, after seeing the witness, hearing the testimony, and observing him or her under cross-examination.[813] In the present case, the Appeals Chamber finds that the Appellant has failed to demonstrate that the Trial Chamber erred in the assessment of the testimonies of Witnesses ATA and KD.

355. The Appellant further argues that the Trial Chamber did not advance any reason for doubting the evidence adduced in support of the alibi.[814] The Appeals Chamber disagrees. In its assessment of the relevant Defence witnesses, the Trial Chamber articulated that there were "credibility issues".[815] In relation to Witness KD, the Trial Chamber was of the view that inconsistencies in her testimony affected her credibility.[816] The Trial Chamber was also of the view that Witnesses KD and ATA sought to exaggerate the Appellant's presence in Ruhengeri.[817] In relation to Defence Witnesses BBA and YMK, the Trial Chamber considered that their evidence

[808] Trial Judgement, para. 501.
[809] Trial Judgement, para. 483. The Appellant testified that the sub-prefect office was in Rushashi. Trial Judgement, para. 342. *See* testimony of Witness KD: T. 8 May 2006 p. 27. Q. [...] So is it your testimony that from the 7th of April to the 15th of April, which is the middle of April, during those approximately eight days, he did not go to the sub-*préfecture* office? A. He did not go there. During that period, I, myself, had not yet started my commercial activities. From the 7th up until he left for Ruhashya, he did not leave the compound.).
[810] Trial Judgement, para. 483. *See* testimony of Witness KD: T. 5 May 2006 p. 45. (Q. From what time to what time were you involved in this small business? A. It depended on whether we had gone to purchase other foodstuffs in the market or not, but we started at 10 a.m. and we closed at 5 p.m. or 5:30 p.m. [...] Q. When you left your brother [...]'s home in the mornings, was your father there? A. Yes, I left after breakfast and my father was there. [...] Q. Was your father home when you returned? A. Yes, I found my father at home.).
[811] Trial Judgement, para. 502.
[812] Trial Judgement, para. 502.
[813] *Seromba* Appeal Judgement, para. 116, referring to *Akayesu* Appeal Judgement, para. 147.
[814] Appellant's Brief, para. 307; AT. 28 August 2008 p. 24.
[815] Trial Judgement, para. 510.
[816] Trial Judgement, para. 502.
[817] Trial Judgement, para. 503.

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did not reliably indicate that the Appellant remained consistently in Ruhengeri.[818] The Appellant has not shown how the Trial Chamber abused its discretion in making these findings.

356. Therefore, this sub-ground of appeal is dismissed.

D. Conclusion

357. The Appeals Chamber finds that the Appellant has failed to demonstrate any error in the Trial Chamber's reasoning and findings in relation to the Appellant's alibi. Therefore, this ground of appeal is dismissed in its entirety.

[818] Trial Judgement, paras. 504, 505.

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X. ALLEGED ERRORS RELATING TO THE TRIAL CHAMBER'S LEGAL FINDINGS (GROUND OF APPEAL 10)

358. Under this ground of appeal, the Appellant submits that the Trial Chamber's legal findings are erroneous and "must obviously be revisited in the light of admissible evidence".[819]

359. The Appeals Chamber observes that all of the arguments advanced under this ground of appeal challenge the Trial Chamber's factual findings. The Appeals Chamber has already addressed these arguments in the respective sections of this Judgement.[820] Since no additional arguments are presented under this ground of appeal, no further discussion is warranted.

360. However, the Appeals Chamber, *proprio motu*, has considered the question of whether the Trial Chamber erred in using its findings that the Appellant was responsible for the killings of Joseph Kahabaye, Murekezi, Jean Bosco Ndingutse, and Palatin Nyagatare in support of the convictions it entered under Count 1 of the Amended Indictment for genocide and under Count 3 for extermination as a crime against humanity.[821] The Appeals Chamber invited the parties to address this issue at the appeal hearing.

361. The Appellant did not directly address this issue.[822] The Prosecution submits that it was permissible for the Trial Chamber to use its finding on the killings of these four individuals in support of the Appellant's conviction for genocide and extermination since the Appellant had received timely, clear, and sufficient notice that these killings were to be used in support of these charges.[823] In this respect, the Prosecution contends that the Amended Indictment has to be read as a whole,[824] and that the Prosecution Pre-Trial Brief discussed the factual allegations by location, including Nyamirambo, rather than with respect to each count. According to the Prosecution, the Appellant was therefore given proper notice that these four individuals were among the victims of his genocidal and extermination campaign at that location.[825]

362. The Appeals Chamber has already quashed the Trial Chamber's findings in relation to the killings of Joseph Kahabaye, Jean Bosco Ndingutse, and Palatin Nyagatare for other reasons.[826] Therefore, it need only consider whether it was permissible for the Trial Chamber to convict the

[819] Notice of Appeal, para. 243.
[820] *See supra* Chapters V to IX.
[821] Order for Preparation of the Appeal Hearing, p. 2.
[822] The Defence addressed the issue of the defects in the Amended Indictment without making direct reference to the sufficiency of notice relating to the killings of the four individuals which were charged under Count 4 of the Amended Indictment for murder as a crime against humanity. AT. 28 August 2008 pp. 52-54.
[823] AT. 28 August 2008 p. 37.
[824] AT. 28 August 2008 p. 37.
[825] AT. 28 August 2008 p. 38.

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Appellant for genocide and extermination as a crime against humanity based on the murder of Murekezi.

363. The Appeals Chamber notes that the allegation of the murder of Murekezi is only made at paragraph 33 of the Amended Indictment in support of Count 4 for murder as a crime against humanity. The Appeals Chamber further notes that, at trial, the Defence objected that "several allegations relating to events in Nyamirambo and Rushashi are too vague or not mentioned in the Indictment, or relate only to Count 4 (murder) [and that the] [e]vidence in support of these allegations should therefore be excluded or considered only with respect to the murder charge".[827] The Trial Chamber rejected the Defence objection on the grounds that:

> [...] the Defence did not object to any of this evidence at the time it was admitted or at the close of the Prosecution case. Nor did it make a general pre-trial objection. Rather, the Defence makes these exclusion requests for the first time in its closing submissions. It offers no explanation for failing to object to this evidence at the time it was admitted or at a later point during the trial proceedings. The Chamber finds that there is no reasonable explanation for the Defence's lack of objections at an earlier stage in the trial. In the exercise of its discretion, it holds that the burden of proof has shifted to the Defence to demonstrate that the lack of notice prejudiced the Accused in the preparation of his defence.[828]

364. Subsequently, the Trial Chamber considered the Defence objection in connection with the allegation of killings at Nyamirambo on 7 April 1994.[829] The Trial Chamber found "it clear that Counts 1, 2 and 3 include events that occurred on 7 April [1994]".[830] When considering the alleged killings of Joseph Kahabaye, Félix Dix, Murekezi, Jean Bosco Ndingutse, and Palatin Nyagatare,[831] the Trial Chamber discussed whether paragraph 33 of the Amended Indictment pleaded these events with sufficient specificity.[832] However, the Trial Chamber did not consider whether the allegations contained in this paragraph, under Count 4 (murder) could also support the charges of genocide and extermination as a crime against humanity.

365. In *Muvunyi*, the Appeals Chamber observed that "the Prosecution's failure to expressely state that a paragraph in the Indictment supports a particular count in the Indictment is indicative that the allegation is not charged as a crime".[833] The Appeals Chamber considers that the same may be said where a particular allegation is charged under a particular count only. In the present case, the Amended Indictment put the Appellant on notice that the Prosecution was charging him for the

[826] *See supra* Chapter VI, sp. para. 214.
[827] Defence Closing Brief, paras. 193-197, 318-319; Defence closing arguments (T. 24 November 2006 pp. 12-14). The Defence stated that the allegations of killing made under Count 4 (murder) could "only be taken into consideration [under that Count]". Defence Closing Brief, para. 197. *See also* Trial Judgement, paras. 18, 85.
[828] Trial Judgement, para. 19.
[829] Trial Judgement, para. 85.
[830] Trial Judgement, para. 86.
[831] *See* Trial Judgement, Sections 4.7, 4.8, 4.9, 4.11.
[832] *See* Trial Judgement, paras. 183, 184, 196, 202.
[833] *Muvunyi* Appeal Judgement, para. 156.

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murder of Murekezi only under Count 4. In view of this, there is some basis for argument that by reading the Amended Indictment alone, the Appellant would not have understood that he was also charged for the same fact under Counts 1 and 3. In regard to the Amended Indictment, the Prosecution knew the identity of a finite number of victims and was able, when it sought to amend the Indictment, to specify the circumstances of their murder. It chose not to list Murekezi's killing in the statements of facts pertaining to counts alleging genocide and extermination as a crime against humanity. The Appeals Chamber has previously held that "[e]ven in cases where a high degree of specificity is 'impractical [...] since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so.'"[834]

366. Turning to the Prosecution's submission that the Amended Indictment has to be read as a whole, the Appeals Chamber notes that while the statement of facts supporting Count 4 incorporates the statements of facts supporting Counts 1 and 3, the reverse is not true. The statements of facts supporting Counts 1 and 3 do not incorporate the statement of facts supporting Count 4. This lack of reciprocity might have added to the impression that Murekezi's murder was not incorporated in Counts 1 and 3 of the Amended Indictment.

367. The Appeals Chamber further notes that the process of amending the initial Indictment might have laid the groundwork for confusion on this issue. Originally, Murekezi's killing was listed in a statement of facts pertaining to both Counts 3 and 4. However, this statement of facts was eventually severed, and Murekezi's killing was subsequently mentioned only in the statement of facts applicable to Count 4. While the rationale for the severing of the original, combined statement of facts did not centre on Murekezi, the amendment may have given the message that Murekezi's killing related only to Count 4 of the Indictment, rather than serving as a key basis for the gravest of the charges involved.[835] The Prosecution's decision not to refer to Murekezi at all in Counts 1 and 3 of the Amended Indictment, especially in the context of the Indictment amendment process,

[834] *Ntakirutimana* Appeal Judgement, para. 25 (quoting *Kupreškić et al.* Appeal Judgement, para. 90).

[835] More specifically, on 25 November 2005, the Prosecution filed a request for leave to amend the Indictment. The Prosecution, *inter alia*,, requested authorization to present Counts 3 (extermination as a crime against humanity) and 4 (murder as a crime against humanity) cumulatively instead of alternatively. *See* Prosecution's Motion for Leave to Amend the Indictment, paras. 1.2, 3.5-3.7. The Trial Chamber granted the Prosecution's request in part, allowing the cumulative pleading of Counts 3 and 4, the deletion of some paragraphs, sections and words, and the insertion of names of victims in one paragraph. The Trial Chamber also instructed the Prosecution to specify "the location, time and manner of the death of Theoneste Gakuru" and "clarify the facts which are *intended to support the charge of murder as a crime against humanity, as opposed to extermination as a crime against humanity*" (emphasis added). It specified that "such clarification should include the names of the victims, the location, time and manner of the alleged murders". *See* Decision on the Prosecutor's Request for Leave to Amend the Indictment, Rule 50 of the Rules of Procedure and Evidence, 12 December 2005 p. 5. The Amended Indictment, incorporating the Trial Chamber's instructions, was filed on 19 December 2005. *See The Prosecutor v. François Karera*, Amended Indictment, 19 December 2005. The concise statement of facts supporting Counts 3 and 4 was severed and the murder of Murekezi was no longer mentioned under Count 3, only being pleaded under Count 4. *Compare* Amended Indictment pp. 5, 6, *with* Amended Indictment, p. 7.

resulted in vagueness with potentially serious consequences for the preparation of the Appellant's defence. In these circumstances, the Appeals Chamber considers that reversal of the affected convictions is appropriate.[836]

368. The Appeals Chamber further notes that the Amended Indictment was issued on 19 December 2005, seven days *after* the filing of the Prosecution Pre-Trial Brief.[837] As a result, while the Prosecution Pre-Trial Brief included a summary of anticipated witness testimony, the text of the Prosecution Pre-Trial Brief and the summaries referred to either the Indictment or the draft amended indictment annexed to the Prosecution Motion to Amend the Indictment,[838] but not to the Amended Indictment itself. Turning to the Prosecution's contention that the Prosecution Pre-Trial Brief presented "the factual allegations by location, including Nyamirambo, rather than with respect to each count", the Appeals Chamber does not see how this argument is capable of demonstrating that any defect in the Amended Indictment relating to the facts underlying Counts 1 and 3 was cured by the Prosecution Pre-Trial Brief.

369. In a world of limited legal resources, the Appellant's counsel might have focused more attention on Murekezi's killing had this key material fact been more specifically linked to a larger number of counts concerning crimes such as genocide and extermination as a crime against humanity, which on their face appear even more serious than murder. Instead, the Amended Indictment may have given the opposite impression. This error and the confusion it might have generated justify reversal of the Appellant's convictions under Counts 1 and 3, insofar as they rely on the murder of Murekezi.

370. Accordingly, these convictions are quashed.

[836] *See Ntakirutimana* Appeal Judgement, para. 27.
[837] *Compare The Prosecutor v. François Karera*, Amended Indictment, 19 December 2005, *with* Prosecution Pre-Trial Brief, 12 December 2005.
[838] The Prosecution Pre-Trial Brief, which was filed after the Prosecution Motion to Amend the Indictment, merely refers to "the indictment" without specifying whether it points to the Initial Indictment or the draft amended indictment.

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XI. ALLEGED ERROR IN HEARING THE CASE OF THARCISSE RENZAHO WHILE PARTICIPATING IN DELIBERATIONS ON THE APPELLANT'S CASE (GROUND OF APPEAL 11)

371. The Appellant submits that the Trial Chamber erred in law by hearing the case of Tharcisse Renzaho,[839] the former prefect of Kigali,[840] while it was deliberating on the Appellant's case.[841] The Appellant alleges an appearance of bias on the part of the Trial Judges.[842] He submits that a reasonable observer would have concluded "that the deliberations of the Trial Chamber [in the present case] were tainted by its hearing of the *Renzaho* case".[843]

372. In his Appellant's Brief, the Appellant states that "[f]or now" he "formally declines to raise this ground of appeal".[844] Instead, the Appellant makes several "observations" in relation to the Prosecution's obligation to disclose potentially exculpatory material pursuant to Rule 68 of the Rules.[845] He submits that it is impossible for him to know whether protected witnesses who testified in his trial will subsequently return to testify in other cases[846] since they will testify under different pseudonyms.[847] The Appellant contends that he therefore has to rely on the Prosecution's compliance with its disclosure obligations pursuant to Rule 68 of the Rules.[848] In this regard, he submits that the Prosecution has failed to disclose potentially exculpatory witness statements and testimonies of three protected witnesses who testified in the *Renzaho* trial and who had previously testified in his trial.[849] The Appellant also alleges a violation of his right to be tried without undue delay.[850]

373. The Prosecution provides no argument in response, noting that the Appellant abandoned this ground of appeal.[851]

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[839] *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T. The trial in that case started on 8 January 2007.
[840] Notice of Appeal, paras. 245-248; Appellant's Brief, para. 320; Brief in Reply, para. 63.
[841] Notice of Appeal, para. 245.
[842] Notice of Appeal, paras. 246-248.
[843] Notice of Appeal, para. 248.
[844] Appellant's Brief, para. 319.
[845] Brief in Reply, paras. 63-68.
[846] Brief in Reply, paras. 65, 67.
[847] Brief in Reply, paras. 65, 67.
[848] Brief in Reply, para. 68.
[849] Brief in Reply, para. 64. He also submits that the testimony of Witness AIA, a protected witness in the *Renzaho* case, could be relevant to a determination whether the Appellant had authority over the policemen in the region, since Witness AIA stated that he was a policeman in Nyarugenge. The Appellant submits that the witness gave the remaining part of his testimony in closed session, and that, as such, it was not accessible to the Appellant. Brief in Reply, para. 66.
[850] Appellant's Brief, para. 320.
[851] Respondent's Brief, para. 7.

374. The Appeals Chamber notes that the Appellant's submissions relating to the Prosecution's failure to discharge its disclosure obligations and the Trial Chamber's violation of his right to a trial without undue delay were raised for the first time in the Appeal Brief and the Brief in Reply.[852] In light of the fact that the Appellant failed to "indicate the substance of the alleged errors" in his Notice of Appeal, as required by Rule 108 of the Rules, the Appeals Chamber finds that the Appellant's arguments do not warrant any consideration to ensure the fairness of the proceedings and the Appeals Chamber declines to consider them.

375. The Appeals Chamber now turns to the arguments raised in the Notice of Appeal under this ground to the effect that the Trial Chamber was tainted by the evidence it heard in the *Renzaho* case while deliberating on the present case. The Appeals Chamber notes that, at the appeal hearing and in response to a question raised by the Appeals Chamber, the Appellant declared that he had not abandoned this ground of appeal.[853] The Appeals Chamber finds that the explanations given by the Appellant for reinstating this ground of appeal which it had "formally dropped" in the Appellant's Brief are unclear.[854] However, in light of the particular circumstances of this case and absent an objection by the Prosecution, the Appeals Chamber will address the Appellant's argument concerning the alleged lack of independence and impartiality.

376. The Appellant argues that in light of the positions respectively held by Tharcisse Renzaho and the Appellant in April 1994, respectively, and the locations where they allegedly committed crimes, the facts of both cases are linked.[855] The Appellant submits that the Trial Judges heard witnesses in the *Renzaho* case who had previously testified in his trial and that by doing so they lost the appearance of independence and impartiality.[856] The Appellant alleges that, when hearing the same witnesses in different cases, the Trial Judges would eventually be incapable of distinguishing the witnesses' testimonies.[857]

377. In *Nahimana et al.*, the Appeals Chamber recalled that

> [t]he right of an accused to be tried before an independent tribunal is an integral component of his right to a fair trial as provided in Articles 19 and 20 of the Statute. [...] [T]he independence of the Judges of the Tribunal is guaranteed by the standards for their selection, the method of their appointment, their conditions of service and the immunity they enjoy. The Appeals Chamber further notes that the independence of the Tribunal as a judicial organ was affirmed by the Secretary-General at the time when the Tribunal was created, and the Chamber reaffirms that this institutional independence means that the Tribunal is entirely independent of the organs of the United Nations and of any State or group of States. Accordingly, the Appeals Chamber considers

[852] Appellant's Brief, para. 320; Brief in Reply, paras. 59-68.
[853] AT. 28 August 2008 p. 57.
[854] AT. 28 August 2008 pp. 56, 57.
[855] Appellant's Brief, para. 320; Brief in Reply, para. 67.
[856] Notice of Appeal, paras. 245-248.
[857] AT. 28 August 2008 p. 57.

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> that there is a strong presumption that the Judges of the Tribunal take their decisions in full independence, and it is for the Appellant to rebut this presumption.[858]

378. The Appeals Chamber notes that Judges of this Tribunal are sometimes involved in trials which, by their very nature, cover overlapping issues.[859] In this regard, the Appeals Chamber previously held that

> [i]t is assumed, in the absence of evidence to the contrary, that, by virtue of their training and experience, the Judges will rule fairly on the issues before them, relying solely and exclusively on the evidence adduced in the particular case. The Appeals Chamber agrees with the ICTY Bureau that "a judge is not disqualified from hearing two or more criminal trials arising out of the same series of events, where he is exposed to evidence relating to these events in both cases".[860]

Accordingly, the fact that the Trial Judges heard the *Renzaho* case while, at the same time, they participated in deliberations on the Appellant's case does not in itself demonstrate an appearance of bias on the part of the Trial Judges.

379. For the foregoing reasons, this ground of appeal is dismissed.

[858] *Nahimana et al.* Appeal Judgement, para. 28 (citations omitted).
[859] *Nahimana et al.* Appeal Judgement, para. 78.
[860] *Nahimana et al.* Appeal Judgement, para. 78 (citations omitted).

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XII. ALLEGED ERRORS RELATING TO SENTENCING (GROUND OF APPEAL 12)

380. The Trial Chamber sentenced the Appellant to life imprisonment for the crimes of genocide and extermination and murder as crimes against humanity.[861]

381. The Appellant submits that the Trial Chamber committed an error of law in sentencing him to imprisonment for the remainder of his life.[862] The Appellant claims that "[t]he numerous errors of law and fact that affect the [Trial] Chamber's findings are such that the [Trial] Chamber should have acquitted the Appellant, and a sentence should never have been imposed on him."[863] He posits an alternate factual conclusion that, in his view, the Trial Chamber should have reached,[864] claiming that "[t]his version of [the] factual finding is also as plausible as that made by the [Trial] Chamber."[865] In the alternative, the Appellant argues that the Trial Chamber should have imposed a reduced sentence[866] and pleads for the Appeals Chamber to substitute the current sentence with an "appropriate sentence".[867]

382. The Appellant further submits that the Trial Chamber did not take into account the factors it should have considered in determining the sentence.[868] To this end, the Appellant points to factors that according to him should have mitigated his sentence but were not considered by the Trial Chamber: the "pacification meetings" which he held in Rushashi;[869] his efforts to ensure the safety of Vincent Munyandamutsa, a well-known RPF supporter;[870] the time (thirteen months) spent in detention awaiting judgement during the Trial Chamber's deliberations;[871] and the fact that being sentenced for the remainder of his life, the Appellant is not in a position to benefit from the reduction of the sentence granted by the Presiding Judge during the delivery of the Trial Judgement.[872]

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[861] Trial Judgement, para. 585.
[862] Notice of Appeal, paras. 249-255; Appellant's Brief, paras. 323-326.
[863] Notice of Appeal, para. 250.
[864] Appellant's Brief, para. 324.
[865] Appellant's Brief, para. 326.
[866] Notice of Appeal, para. 253.
[867] Appellant's Brief, para. 326.
[868] Notice of Appeal, para. 251.
[869] Notice of Appeal, para. 252; Appellant's Brief, para. 325.
[870] Appellant's Brief, para. 325 (where the Appellant challenges the Trial Chamber's factual findings).
[871] Notice of Appeal, para. 254; Appellant's Brief, para. 326.
[872] Notice of Appeal, paras. 254, 255. At paragraph 254, the Appellant submits that "[t]he Trial Chamber did not take into account [...] the fact that the Presiding Judge of the [Trial] Chamber had stated, during delivery of the Judgement on 7 December 2007, that the Appellant had to be given credit for the period he spent in detention since his arrest in Kenya, that is, 4 years and 16 days."

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383. The Prosecution responds that this ground of appeal should be summarily dismissed because the Appellant advances no argument to demonstrate that the Trial Chamber failed to exercise its discretion adequately or that it committed a manifest error in determining the sentence.[873]

384. The Appeals Chamber will first address the merits of the Appellant's arguments against the Trial Chamber's determination of the sentence and then will consider how its findings on the Appellant's convictions impact upon the sentence.

385. Article 24 of the Statute allows the Appeals Chamber to "affirm, reverse or revise" a sentence imposed by a Trial Chamber. However, the Appeals Chamber recalls that Trial Chambers are vested with a broad discretion in determining the appropriate sentence. This stems from their obligation to tailor the sentence according to the individual circumstances of the accused and the gravity of the crime.[874] Generally, the Appeals Chamber will not substitute its own sentence for that imposed by the Trial Chamber unless it has been shown that the latter committed a discernible error in exercising its discretion, or failed to follow the applicable law.[875]

386. The Appellant claims that the Trial Chamber failed to consider mitigating factors in sentencing him.

387. In addressing the mitigating circumstances, the Trial Chamber stated that:

> [it] does not consider that there are any significant mitigating circumstances. Since 1958, Karera was a teacher and later became a director of primary education. He helped build schools and establish a soccer team for Kigali city [...]. Prior contributions to community development have been considered by both Tribunals as a mitigating factor and the Chamber accords this some weight. There is no evidence that Karera discriminated against Tutsis before April 1994, and this is also accorded some weight by the Chamber. The Defence claims that Karera saved Tutsi civilians during the genocide, but the Chamber did not find the evidence regarding these rescues credible. Karera showed no remorse and did not cooperate with the Prosecution. The Chamber is of the view that the aggravating circumstances outweigh the mitigating circumstances.[876]

388. The Appellant made no sentencing submissions during closing arguments. In such circumstances, the Trial Chamber was not under an obligation to seek out information that counsel did not see fit to put before it at the appropriate time.[877] Rule 86(C) of the Rules clearly indicates that sentencing submissions shall be addressed during closing arguments, and it was therefore the

[873] Respondent's Brief, para. 244.
[874] *Nahamina et al.* Appeal Judgement, para. 1037; *Ntagerura et al.* Appeal Judgement, para. 429; *Naletilić and Martinović* Appeal Judgement, para. 593; *Kajelijeli* Appeal Judgement, para. 291; *Semanza* Appeal Judgement, para. 312; *Čelebići* Appeal Judgement, para. 717.
[875] *Nahamina et al.* Appeal Judgement, para. 1037; *Ntagerura et al.* Appeal Judgement, para. 429; *Naletilić and Martinović* Appeal Judgement, para. 593; *Jokić* Appeal Judgement, para. 8; *Kajelijeli* Appeal Judgement, para. 291; *Semanza* Appeal Judgement, para. 312; *Musema* Appeal Judgement, para. 379; *Tadić* Judgement on Sentencing Appeal, para. 22.
[876] Trial Judgement, para. 582 (footnotes omitted).
[877] *Kupreškić et al.* Appeal Judgement, para. 414.

Appellant's prerogative to identify any mitigating circumstances instead of directing the Trial Chamber's attention to the record in general.

389. The Appeals Chamber further finds that in pointing to the "pacification meetings" in Rushashi and to his alleged efforts to ensure the safety of Vincent Munyandamutsa, the Appellant merely presents factual assertions without showing how the mitigating circumstances were undervalued by the Trial Chamber. Therefore, the Appellant has not demonstrated that the Trial Chamber committed a discernible error in its assessment of the individual mitigating circumstances. This sub-ground of appeal is accordingly dismissed.

390. The Appeals Chamber considers that, in sentencing, the Trial Chamber correctly took into account the gravity of the offences and the degree of liability of the convicted person,[878] the individual circumstances of the Appellant, and his role in the crimes, including any mitigating circumstances,[879] as well as the sentencing practices of the Tribunal and in Rwanda.[880] It found it appropriate to impose the maximum sentence.[881] The Appellant makes no submission suggesting that the crimes for which he was convicted are not grave. The Appeals Chamber recalls that even where mitigating circumstances exist, a Trial Chamber "is not precluded from imposing a sentence of life imprisonment, where the gravity of the offence requires the imposition of the maximum sentence provided for."[882] Mindful of the gravity of the Appellant's crimes, the Appeals Chamber does not find any discernible error in sentencing.

391. Turning to the Appellant's claims that the Trial Chamber erred in sentencing him to life imprisonment, when the charges against him were not proven beyond reasonable doubt, the Appeals Chamber recalls that it has upheld a number of the Appellant's grounds of appeal and has reversed several of the Appellant's convictions, namely: for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged weapons distribution in Rushashi commune; for ordering genocide and extermination and murder as crimes against humanity, based on the alleged murders of Joseph Kahabaye, Jean Bosco Ndingutse, and Palatin Nyagatare; and for instigating murder as a crime against humanity, based on the murder of Gakuru. In addition, the Appeals Chamber, *proprio motu*, has reversed the Appellant's convictions for ordering genocide and extermination as a crime against humanity, based on the killing of Murekezi.

392. Therefore the question before the Appeals Chamber is whether it should revise the sentence imposed by the Trial Chamber in view of the findings made in this Judgement.

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[878] Trial Judgement, paras. 574, 575.
[879] Trial Judgement, paras. 576-582.
[880] Trial Judgement, paras. 583, 584.

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393. The Appeals Chamber considers that the crimes for which the Appellant remains convicted on appeal are extremely grave: they include genocide and extermination and murder as crimes against humanity, and resulted in the death of a large number of civilians.[883] Considering that the Trial Chamber exercised its discretion to impose a single sentence reflecting the totality of the criminal conduct of the Appellant instead of imposing concurrent sentences,[884] and in light of the seriousness of the outstanding convictions, the Appeals Chamber finds that the reversals do not warrant a reduction of the sentence imposed by the Trial Chamber.

394. The Appeals Chamber has considered the mitigating and aggravating factors discussed by the Trial Chamber, and concurs with the Trial Chamber that the aggravating factors outweigh the mitigating factors.[885]

395. The Appellant's unsubstantiated contention that in assessing the sentence, the time spent in detention during the Trial Chamber's deliberations should have been taken into account is also dismissed. The Appellant has not demonstrated how the deliberations period in this case calls for a reduction of sentence.

396. Accordingly, the Appeals Chamber affirms the Appellant's sentence of imprisonment for the remainder of his life.

397. The Appeals Chamber finally dismisses the Appellant's claim that the sentence deprived him of the benefit of any credit based on the period already spent in detention. Rule 101(C) of the Rules states that "[c]redit shall be given to the convicted person for the period, if any, during which the convicted person was detained in cutody pending his surrender to the Tribunal or pending trial or appeal". This provision does not affect the ability of a Chamber to impose the maximum sentence, as provided by Rule 101(A) of the Rules.

[881] Trial Judgement, para. 585.
[882] *Niyitegeka* Appeal Judgement, para. 267, quoting *Musema* Appeal Judgement, para. 396.
[883] *See* Trial Judgement, paras. 192, 315, 376, 456.
[884] Trial Judgement, para. 585.
[885] Trial Judgement, para. 582.

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XIII. DISPOSITION

398. For the foregoing reasons, **THE APPEALS CHAMBER**,

PURSUANT to Article 24 of the Statute and Rule 118 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 28 August 2008;

SITTING in open session;

ALLOWS the Appellant's First Ground of Appeal and **REVERSES** the Appellant's convictions for aiding and abetting genocide and extermination as a crime against humanity, based on the alleged weapons distribution in Rushashi commune;

ALLOWS, in part, the Appellant's Fifth Ground of Appeal and **REVERSES** the Appellant's convictions for ordering genocide and extermination and murder as crimes against humanity, based on the alleged murders of Joseph Kahabaye, Jean Bosco Ndingutse, and Palatin Nyagatare;

***PROPRIO MOTU*, REVERSES** the Appellant's convictions for ordering genocide and extermination as a crime against humanity, based on the killing of Murekezi;

ALLOWS, in part, the Appellant's Seventh Ground of Appeal and **REVERSES** the Appellant's conviction for instigating murder as a crime against humanity, based on the murder of Gakuru;

DISMISSES the Appellant's appeal in all other respects;

AFFIRMS the Appellant's conviction for instigating and committing genocide during the attack against Tutsi refugees at Ntarama Church on 15 April 1994; **AFFIRMS** the Appellant's convictions for instigating and committing extermination and murder as crimes against humanity through the killings of Tutsi refugees at Ntarama Church on 15 April 1994; **AFFIRMS** the Appellant's conviction for ordering murder as a crime against humanity based on the killing of Murekezi; **AFFIRMS** the Appellant's conviction for aiding and abetting murder as a crime against humanity based on the killing of Gakuru; **AFFIRMS** the Appellant's convictions for instigating genocide and extermination as a crime against humanity, based on his alleged conduct at meetings held in Rushashi commune between April and June 1994.

AFFIRMS the Appellant's sentence of imprisonment for the remainder of his life, subject to credit being given under Rules 101(D) and 107 of the Rules for the period in which the Appellant was deprived of his liberty for the purposes of this case, that is from 20 October 2001;

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RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules; and

ORDERS, in accordance with Rules 103(B) and 107 of the Rules, that the Appellant is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

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

Fausto Pocar
Presiding Judge

Mohamed Shahabuddeen
Judge

Mehmet Güney
Judge

Liu Daqun
Judge

Theodor Meron
Judge

Done this 2nd day of February 2009,

at Arusha,

Tanzania.

[Seal of the Tribunal]

XIV. ANNEX A: PROCEDURAL BACKGROUND

1. The main aspects of the appeal proceedings are summarized below.

A. Notice of Appeal and Briefs

2. The Trial Chamber pronounced the Trial Judgement in this case on 7 December 2007 and rendered it in writing on 14 December 2007.

3. On 21 December 2007, the Pre-Appeal Judge denied the Appellant's request that the time limit for filing his notice of appeal accrue from the date on which the Trial Judgement was served on him and on his Lead Counsel in French, but granted *proprio motu* an extension of time of seven days.[1] On 9 January 2008, the Pre-Appeal Judge denied the Appellant's request for reconsideration of the 21 December 2007 Decision and for a further extension of time.[2]

4. The Appellant filed his Notice of Appeal on 14 January 2008[3] and his Appellant's Brief on 7 April 2008.[4] On 16 May 2008, the Prosecution filed its Respondent's Brief.[5] The Appellant filed his Brief in Reply on 2 June 2008.[6]

B. Assignment of Judges

5. On 14 December 2007, the following Judges were assigned to hear the appeal: Judge Fausto Pocar, Presiding; Judge Mehmet Güney; Judge Liu Daqun; Judge Theodor Meron; and Judge Wolfgang Schomburg.[7] Judge Fausto Pocar issued an order designating himself as the Pre-Appeal Judge in this case.[8] Subsequently, on 19 June 2008, Judge Mohamed Shahabuddeen was assigned to replace Judge Wolfgang Schomburg, with immediate effect.[9]

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[1] Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, issued on 21 December 2007 and filed on 31 December 2007 ("21 December 2007 Decision"). The French translation of the Trial Judgement was filed on 19 May 2008.

[2] Decision on Requests for Extension of Time for Filing the Notice of Appeal and/or for Reconsideration, 9 January 2008 ("9 January 2008 Decision").

[3] Defence Notice of Appeal, filed in French (*Avis d'Appel*) on 14 January 2008.

[4] Appellant's Brief, filed in French (*Mémoire d'appel (Article 24 du Statut, Règle 111 du Règlement de Procédure et de Preuve*) on 7 April 2008. The Appellant initially submitted an Appellant's Brief on 28 March 2008 that exceeded the word limit imposed by the Tribunal's Practice Direction on the Length of Briefs and Motions on Appeal by approximately 7,000 words. The Appellant did not seek advance authorization to exceed the word limit but submitted a motion regarding this issue on the day of filing his Appellant's Brief. The Pre-Appeal Judge dismissed this motion and declared that the Appellant must file an amended motion complying with the word limit by 7 April 2008. *See* Decision on Motion for Leave to Exceed the Word Limit, 3 April 2008.

[5] Respondent's Brief, filed on 16 May 2008.

[6] Brief in Reply, filed in French (*Réplique au Mémoire de l'Intimé*) on 2 June 2008.

[7] Order Assigning Judges to a Case before the Appeals Chamber, 14 December 2007.

[8] Order Designating a Pre-Appeal Judge, 18 December 2007.

[9] Order Replacing a Judge in a Case before the Appeals Chamber, 19 June 2008.

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C. Motion related to the Admission of Additional Evidence

6. On 28 August 2008, the Appellant filed a Motion for Additional Evidence.[10] The Prosecution opposed this motion and requested its dismissal.[11] On 6 October 2008, the Appellant filed a reply.[12] On 29 October 2008, the Appeals Chamber dismissed the Appellant's motion.[13]

D. Hearing of the Appeal

7. Pursuant to a Scheduling Order of 1 July 2008,[14] the Appeals Chamber heard the parties' oral arguments on 28 August 2008 in Arusha, Tanzania. On 22 September 2008, the Appeals Chamber granted an oral motion submitted by the Defence at the appeal hearing[15] requesting the Appeals Chamber to recognize as validly filed the Appellant's Appeal Book and Book of Authorities, submitted to the Registry on 4 August 2008.[16]

[10] Extremely Urgent Defence Motion To Present Additional Evidence, Filed in French (*Requête extrêmement urgente de la Défense aux fins de présenter des éléments de preuve supplémentaires*) on 28 August 2008.
[11] Prosecutor's Response to Appellant *Karera's 'Requête extrêmement urgente de la Défense aux fins de présenter des éléments de preuve supplémentaires'*, filed on 16 September 2008.
[12] Reply to the Prosecutor's Response to Appellant *Karera's 'Requête extrêmement urgente de la Défense aux fins de présenter des éléments de preuve supplémentaires'*, filed in French (*Réplique à la réponse du Procureur à la Requête extrêmement urgente de la Défense aux fins de présenter des éléments de preuve supplémentaires*) on 6 October 2008.
[13] Decision on the Appellant's Request to Admit Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 29 October 2008.
[14] Scheduling Order, 1 July 2008. *See also*: Order for Preparation of Appeal Hearing, 20 August 2008.
[15] AT. 28 August 2008 pp: 29-31.
[16] Decision on the Appellant's Oral Motion to Declare his Appeal Book and Book of Authorities Validly Filed, 22 September 2008.

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XV. ANNEX B: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement, 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagosora *et al.*

The Prosecutor v. Bagosora et al., Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006

Gacumbitsi

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kajelijeli

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("*Kajelijeli* Appeal Judgement")

Kamuhanda

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-95-54A-A, Judgement, 19 September 2005 ("*Kamuhanda* Appeal Judgement")

Karemera *et al.*

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.8, Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

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Mpambara

The Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, Judgement, 11 September 2006 ("*Mpambara* Trial Judgement")

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement, 21 May 2007 ("*Muhimana* Appeal Judgement")

Musema

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement, 16 November 2001 ("*Musema* Appeal Judgement")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 29 August 2008 ("*Muvunyi* Appeal Judgement")

Nahimana *et al.*

Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Ndindabahizi

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement, 16 January 2007 ("*Ndindabahizi* Appeal Judgement")

Niyitegeka

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement, 9 July 2004 ("*Niyitegeka* Appeal Judgement")

Ntagerura *et al.*

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe, Case No. ICTR-99-46-A, Judgement, 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

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Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement")

Semanza

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement, 20 May 2005 ("*Semanza* Appeal Judgement").

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement, 12 March 2008 ("*Seromba* Appeal Judgement")

Simba

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 ("*Simba* Appeal Judgement")

2. ICTY

Aleksovski

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999 ("*Aleksovski* Decision")

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement")

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Čelebići

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement")

Furundžija

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgement")

Galić

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Galić* Appeal Judgement")

Kordić and Čerkez

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2, Judgement, 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement")

Krstić

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstić* Appeal Judgement")

Kupreškić *et al.*

Prosecutor v. Zoran Kupreškić et al, Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka *et al.*

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

Limaj *et al.*

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement, 27 September 2007 ("*Limaj et al.* Appeal Judgement")

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Martić

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement, 8 October 2008 ("*Martić* Appeal Judgement")

Naletilić and Martinović

Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-A, Judgement, 3 May 2006 ("*Naletilić and Martinović* Appeal Judgement")

Orić

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 ("*Orić* Appeal Judgement")

Prlić *et al.*

Prosecutor v. Jadranko Prlić et al., Case No IT-04-74, Decision on Prosecution's Appeal against Trial Chamber's Order on Contact between the Accused and Counsel during an Accused's Testimony Pursuant to Rule 85(C), 5 September 2008 ("*Prlić et al.*, Decision of 5 September 2008").

Stakić

Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 31 July 2003 ("*Stakić* Trial Judgement")

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić* Appeal Judgement")

Vasiljević

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljević* Appeal Judgement")

B. Defined Terms and Abbreviations

Amended Indictment	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-I, Amended Indictment, dated 19 December 2005
Appellant	François Karera

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Appellant's Brief	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Appellant's Brief, filed in French on 7 April 2008 (*Mémoire d'Appel de François Karera*)
AT.	Transcript page from Appeal hearings held on 28 August 2008 in *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A. All references are to the official English transcript, unless otherwise indicated
Brief in Reply	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Reply to the Respondent's Brief, filed in French (*Réplique au Mémoire de l'Intimé*) on 2 June 2008
cf.	[Latin: *confer*] (Compare)
Defence	The Appellant, and/or the Appellant's counsel
Exhibit D / Exhibit P	Defence Exhibit / Prosecution Exhibit
FAR	Rwandan Armed Forces
fn.	footnote
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Indictment	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-I, Indictment, dated 2 August 2001
Karera Final Trial Brief	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Defense Closing Arguments, filed confidentially on 10 November 2006
Kigali prefecture	Préfecture de Kigali
Kigali-Ville prefecture	Préfecture de la Ville de Kigali
MRND	*Mouvement révolutionnaire national pour le développement* [before July 1991] *Mouvement républicain national pour la démocratie et le développement* [after July 1991]
Notice of Appeal	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Defence Notice of Appeal, filed in French on 14 January 2008 (*Avis d'Appel de la Défense*)
para. (paras.)	paragraph (paragraphs)
Prosecution	Office of the Prosecutor
Prosecution Final Trial Brief	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, The Prosecutor's Closing Brief, filed confidentially on 10 November 2006

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Prosecution Pre-Trial Brief	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-I, The Prosecutor's Pre-Trial Brief, filed on 12 December 2005
Respondent's Brief	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Respondent's Brief, filed on 16 May 2008
Rules	Rules of Procedure and Evidence of the ICTR
RPF	Rwandan Patriotic Front
Statute	Statute of the International Tribunal for Rwanda established by Security Council Resolution 955 (1994)
T.	Trial Transcript page from hearings in *Prosecutor v. François Karera*, Case No. ICTR-01-74. All references are to the official English transcript, unless otherwise indicated
Trial Judgement	*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December 2007
Tribunal or ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994
UN	United Nations

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PREUVE DE NOTIFICATION - CHAMBRE D'APPEL

Date: **02/02/2009**	Case Name / *affaire:* **Karera** **ICTR-01-74- A** Case No / *no. de l'affaire*:

To: / *A:*

Appeals Chamber Support Unit, The Hague:
- **Mr. Koffi Afande**
- **Mr. Ramadhani T. Juma**
- **Ms. Rosette Muzigo-Morrison**

☒ **Judge / Juge Fausto Pocar, Presiding**
☒ **Judge / Juge Mohamed Shahabuddeen,**
☒ **Judge / Juge Mehmet Guney,**
☒ **Judge / Juge Theodor Meron**
☒ **Judge / Juge Liu Daqun**

ACCUSED / DEFENSE
☒ Accused / *Accusé* **Karera** see / *voir* CMS4
☒ Lead Counsel / *Conseil Principal*: **Ms. Carmelle Marchessault** ☐ In Arusha / à Arusha: (see / voir CMS3) ☐ Fax:
☐ Co-Counsel / *Conseil Adjoint*:
☐ Arusha (see / voir CMS3) ☐ Fax:

OTP / *BUREAU DU PROCUREUR*
☐ Hassan Bubacar Jallow, Prosecutor
☐ R.Karegyesa, Chief of Prosecutions
☐ B. Majola, Deputy Prosecutor
☐ Don Webster SeniorTrial Attorney in charge of case: (☐name)
☐ The Hague / *La Haye* ☐ Arusha (see / *voir* CMS3) ☐ Kigali

From: / *De:*
☐ JP. Fomété (Chief, CMS) ☒ N. M. DIALLO (TC 1) ☐ F. A. Talon (Appeals/Team IV)
☐ Other

CC:
☐ Registrar ☐ OLA, NY ☒ D. Registrar ☐ P&PA ☐ ICTR Spokesperson
☐ SAR ☐ WVSS ☐ DCMS ☐ CSS ☐ SADR ☐ Other

Subject / *Objet:* **Kindly find attached the following documents / *Veuillez trouver en annexe les documents suivants*:**

Documents name / *titre du document*	Date Filed / *Date enregistré*	Pages
JUDGEMENT	**02/02/2009**	**514/A – 387/A**

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