

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-18-116-A

Date: 29 June 2022

Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Alphons Orie
Judge Seymour Panton

Registrar: Mr. Abubacarr Tambadou

Judgement of: 29 June 2022

PROSECUTOR

v.

**MARIE ROSE FATUMA
DICK PRUDENCE MUNYESHULI
AUGUSTIN NGIRABATWARE**

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy

Counsel for the Defence:

Mr. Gatera Gashabana for Ms. Marie Rose Fatuma
Mr. Kurt Kerns for Mr. Dick Prudence Munyeshuli
Mr. David Hooper for Mr. Augustin Ngirabatware

CONTENTS

| | |
|---|-----------|
| I. INTRODUCTION..... | 1 |
| A. BACKGROUND | 1 |
| B. THE APPEALS | 3 |
| C. ORAL ARGUMENTS..... | 4 |
| II. STANDARDS OF APPELLATE REVIEW..... | 5 |
| III. THE APPEAL OF MARIE ROSE FATUMA..... | 8 |
| A. ALLEGED ERRORS IN RELYING ON WITNESS ANAL/TNN6’S EVIDENCE (FATUMA’S FIRST AND THIRD GROUNDS OF APPEAL)..... | 8 |
| B. ALLEGED ERRORS IN FAILING TO CONSIDER ASPECTS OF WITNESS ANAL/TNN6’S TESTIMONY (FATUMA’S SECOND GROUND OF APPEAL)..... | 14 |
| C. ALLEGED ERROR IN FINDING THAT FATUMA SENT RELATIVES OF WITNESS ANAL/TNN6 TO CONVINCE THE WITNESS TO RECANT (FATUMA’S FOURTH GROUND OF APPEAL) | 17 |
| D. ALLEGED ERROR IN DISMISSING FATUMA’S DEFENCE THEORY (FATUMA’S FIFTH GROUND OF APPEAL) | 20 |
| E. ALLEGED ERROR IN FAILING TO CONSIDER FATUMA’S FINAL TRIAL BRIEF IN ENGLISH (FATUMA’S SIXTH GROUND OF APPEAL)..... | 21 |
| F. ALLEGED ERRORS IN RELATION TO SENTENCING (FATUMA’S SEVENTH AND EIGHTH GROUNDS OF APPEAL) | 23 |
| IV. THE APPEAL OF THE PROSECUTION | 26 |
| A. ALLEGED ERROR IN FAILURE TO CONVICT MUNYESHULI OF CONTEMPT FOR DISCLOSING THE IDENTITIES OF PROTECTED WITNESSES (PROSECUTION’S FIRST GROUND OF APPEAL) | 26 |
| 1. Alleged Error in Relation to <i>Actus Reus</i> | 27 |
| 2. Alleged Error in Relation to <i>Mens Rea</i> | 31 |
| 3. Conclusion | 34 |
| B. ALLEGED ERROR IN FAILURE TO CONVICT MUNYESHULI OF CONTEMPT FOR INDIRECTLY CONTACTING PROTECTED WITNESSES (PROSECUTION’S SECOND GROUND OF APPEAL) | 34 |
| C. ALLEGED ERROR IN ORDERING THAT NGIRABATWARE’S SENTENCE FOR CONTEMPT BE SERVED CONCURRENTLY (PROSECUTION’S THIRD GROUND OF APPEAL) | 38 |
| V. IMPACT OF THE APPEALS CHAMBERS’ FINDINGS ON SENTENCE..... | 42 |
| A. IMPACT ON FATUMA’S SENTENCE | 42 |
| B. IMPACT ON MUNYESHULI’S SENTENCE | 43 |
| C. IMPACT ON NGIRABATWARE’S SENTENCE..... | 44 |
| VI. DISPOSITION..... | 46 |
| VII. PARTIALLY DISSENTING OPINION OF JUDGE ALPHONS ORIE | 48 |
| VIII. ANNEX A: CITED MATERIALS AND DEFINED TERMS..... | 51 |
| A. JURISPRUDENCE | 51 |
| 1. Mechanism..... | 51 |
| 2. ICTR | 53 |
| 3. ICTY | 54 |
| 4. Other jurisprudence..... | 56 |
| B. SELECTED CITED FILINGS | 57 |
| C. OTHER MATERIALS | 58 |
| D. DEFINED TERMS AND ABBREVIATIONS | 58 |

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of appeals by Ms. Marie Rose Fatuma (“Fatuma”) and the Office of the Prosecutor of the Mechanism (“Prosecution”) against the Judgement in the case of *Prosecutor v. Anselme Nzabonimpa et al.*, which was pronounced, pursuant to Rule 90 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), by a Single Judge of the Mechanism (“Single Judge”) on 25 June 2021 and filed in writing on 20 September 2021 (“Trial Judgement”).

I. INTRODUCTION

A. Background

2. On 20 December 2012, Trial Chamber II of the International Criminal Tribunal for Rwanda (“ICTR”) convicted Mr. Augustin Ngirabatware (“Ngirabatware”) of direct and public incitement to commit genocide, relying primarily on the direct evidence of Prosecution Witnesses ANAN and ANAT.¹ It further found Ngirabatware guilty of instigating and aiding and abetting genocide, principally on the basis of the direct evidence of Prosecution Witnesses ANAE and ANAM, which was corroborated by the evidence of Prosecution Witness ANAL.² On 18 December 2014, the Appeals Chamber affirmed Ngirabatware’s conviction for committing direct and public incitement to commit genocide and, by majority, his conviction for instigating and aiding and abetting genocide, and imposed on him a sentence of 30 years of imprisonment.³

3. On 8 July 2016, Ngirabatware filed a motion before the Appeals Chamber, seeking review of his convictions on the basis that, following the rendering of the *Ngirabatware* Appeal Judgement, Witnesses ANAN, ANAT, ANAE, and ANAM had recanted their trial testimonies (“Recanting Witnesses”, collectively).⁴ On 19 June 2017, the Appeals Chamber granted Ngirabatware’s request, having found that a review of the *Ngirabatware* Appeal Judgement was warranted.⁵ On 27 September 2019, the Appeals Chamber issued the *Ngirabatware* Review

¹ *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012, filed in writing on 21 February 2013 (“*Ngirabatware* Trial Judgement”), paras. 300-319, 1394. See *Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014 (“*Ngirabatware* Appeal Judgement”), para. 62.

² *Ngirabatware* Trial Judgement, paras. 708-724, 789-815, 817, 838, 1394. See *Ngirabatware* Appeal Judgement, para. 117; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Review Judgement, 27 September 2019 (“*Ngirabatware* Review Judgement”), para. 45.

³ *Ngirabatware* Appeal Judgement, para. 279.

⁴ *Ngirabatware* Review Judgement, para. 6. See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Motion for Review of Judgement, 8 July 2016 (confidential), paras. 2, 3, 10-15, 18, 19, 22, 23, 26, 27, 30, 31, 33, 39, 40, Annexes A-D.

⁵ *Ngirabatware* Review Judgement, para. 7. See *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on Ngirabatware’s Motion for Review, 19 June 2017, pp. 2, 3.

Judgement, in which it found that Ngirabatware had failed to prove that the Recanting Witnesses had truthfully recanted their trial testimonies and, consequently, affirmed the *Ngirabatware* Appeal Judgement in all respects.⁶

4. On 24 August 2018, while the *Ngirabatware* review proceedings were still ongoing, Mr. Anselme Nzabonimpa (“Nzabonimpa”), Mr. Jean de Dieu Ndagijimana (“Ndagijimana”), Fatuma, and Mr. Dick Prudence Munyeshuli (“Munyeshuli”) were charged with contempt and/or incitement to commit contempt, pursuant to Article 1(4)(a) of the Statute of the Mechanism (“Statute”) and Rules 90(A) and 90(B) of the Rules, on the basis of allegations of interference with, *inter alios*, the Recanting Witnesses and/or Witness ANAL, or violation of court orders.⁷ Following several amendments, the operative indictment against Nzabonimpa, Ndagijimana, Fatuma, and Munyeshuli was filed on 12 May 2021.⁸ Shortly after the conclusion of the *Ngirabatware* review proceedings, on 10 October 2019 an indictment was confirmed against Ngirabatware, charging him, pursuant to Article 1(4)(a) of the Statute and Rules 90(A) and 90(B) of the Rules, with three counts of contempt and incitement to commit contempt on the basis of allegations of interference with, *inter alios*, the Recanting Witnesses and Witness ANAL, and violation of court orders.⁹ On 10 December 2019, Ngirabatware’s case was joined with the case against Nzabonimpa, Ndagijimana, Fatuma, and Munyeshuli.¹⁰

5. In the Trial Judgement, the Single Judge found Nzabonimpa, Ndagijimana, and Fatuma guilty under Count 1 of the *Nzabonimpa et al.* Indictment of contempt for having interfered with the administration of justice and acquitted them of incitement to commit contempt under Count 2 of the *Nzabonimpa et al.* Indictment.¹¹ The Single Judge sentenced each of them to “time served”.¹² The Single Judge acquitted Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment

⁶ *Ngirabatware* Review Judgement, paras. 44, 62, 65.

⁷ Trial Judgement, para. 7; *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116, Order on Confirmation of Indictment, 24 August 2018, p. 1; *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116, Indictment, 5 June 2018 (confidential; public redacted version filed on 5 September 2018), paras. 13-31, pp. 1, 10, 11.

⁸ Trial Judgement, para. 9; *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Prosecution’s Notice of Compliance with Order to Amend the Indictment Due to Termination of Proceedings Against Maximilien Turinabo, 12 May 2021, Annex A: Revised Third Amended Indictment (“*Nzabonimpa et al.* Indictment”). Following his death, the proceedings against Mr. Maximilien Turinabo (“Turinabo”), who was one of the accused in this case, were terminated on 19 April 2021. See *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-T, Decision Terminating Proceedings Against Maximilien Turinabo, 19 April 2021, pp. 1, 2.

⁹ Trial Judgement, para. 10; *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-19-121-I, Notice of Filing Indictment, 10 October 2019 (“*Ngirabatware* Indictment”).

¹⁰ Trial Judgement, para. 11; *Prosecutor v. Maximilien Turinabo et al. & Prosecutor v. Augustin Ngirabatware*, Case Nos. MICT-18-116-PT & MICT-19-121-PT, Decision on Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 10 December 2019, pp. 14, 15.

¹¹ Trial Judgement, para. 409(i).

¹² Trial Judgement, paras. 407, 409(i).

and issued a warning to him.¹³ The Single Judge found Ngirabatware guilty under Counts 1 and 3 of the *Ngirabatware* Indictment of contempt for having interfered with the administration of justice and violated court orders, and acquitted him of incitement to commit contempt under Count 2 of the same indictment, sentencing him to two years of imprisonment, to run concurrently with the sentence of 30 years of imprisonment that he is already serving.¹⁴

B. The Appeals

6. On 23 September 2021, Nzabonimpa, Ndagijimana, Fatuma, and Ngirabatware filed a joint request, seeking an extension of time for filing notices of appeal against the Trial Judgement and appeal briefs.¹⁵ On 28 September 2021, the Appeals Chamber granted the Joint Request, finding that it was in the interests of justice to grant the Prosecution the same extension of time for filing a notice of appeal against the Trial Judgement and an appeal brief, if any.¹⁶ Fatuma and the Prosecution filed their respective notices of appeal against the Trial Judgement on 18 October 2021.¹⁷ Nzabonimpa, Ndagijimana, and Ngirabatware did not appeal against the Trial Judgement.

7. On 16 November 2021, the Appeals Chamber dismissed Munyeshuli's motion to strike the Prosecution's notice of appeal against his acquittal and to terminate the proceedings against him.¹⁸ Fatuma and the Prosecution filed their respective appeal briefs on 17 November 2021.¹⁹ The Prosecution, Munyeshuli, and Ngirabatware filed their respective response briefs on 8 December 2021,²⁰ and Munyeshuli re-filed his response brief on 17 December 2021.²¹ Fatuma and the Prosecution filed their respective reply briefs on 16 December 2021.²²

¹³ Trial Judgement, paras. 368, 409(ii).

¹⁴ Trial Judgement, paras. 339, 341, 385, 408, 409(iii).

¹⁵ Joint Defence Request for Expedited Ruling Pursuant to Rule 154, 23 September 2021 ("Joint Request"), paras. 1, 9.

¹⁶ Decision on a Request for an Extension of Time to File Notices of Appeal and Appeal Briefs, 28 September 2021, p. 2.

¹⁷ Fatuma Defence Notice of Appeal, 18 October 2021 ("Fatuma Notice of Appeal"); Prosecution Notice of Appeal, 18 October 2021 ("Prosecution Notice of Appeal").

¹⁸ Decision on Munyeshuli's Motion to Strike Prosecution's Notice of Appeal, 16 November 2021, pp. 2, 3. *See* Munyeshuli's Motion to Strike Prosecution's Notice of Appeal, 26 October 2021, paras. 1, 6, 14-22.

¹⁹ Fatuma Defence Appeal Brief, 17 November 2021 (confidential) ("Fatuma Appeal Brief"); Prosecution Appeal Brief, 17 November 2021 ("Prosecution Appeal Brief").

²⁰ Prosecution's Response to Fatuma's Appeal, 8 December 2021 (confidential) ("Prosecution Response Brief"); Munyeshuli's Response to the Prosecution's Appeal Brief, 8 December 2021; Ngirabatware's Response to "Prosecution Appeal Brief", 8 December 2021 ("Ngirabatware Response Brief").

²¹ Munyeshuli's Notice of Compliance with President's Order of 16 December 2021, 17 December 2021, Registry Pagination ("RP.") 456-429 ("Munyeshuli Response Brief"). *See also* Order to Dick Prudence Munyeshuli to Re-File His Response Brief, 16 December 2021.

²² Fatuma Defence Reply to Prosecution Response to Appeal Brief, 16 December 2021 (confidential) ("Fatuma Reply Brief"); Prosecution's Reply to Munyeshuli's Response, 16 December 2021 ("Prosecution Reply Brief (Munyeshuli)");

8. Fatuma advances eight grounds of appeal, challenging her conviction and sentence.²³ She requests that the Appeals Chamber vacate her conviction and quash her sentence or, in the event her conviction remains undisturbed, impose either a significantly lesser sentence of imprisonment or a fine, deemed paid by virtue of the time she had spent in detention.²⁴

9. The Prosecution presents three grounds of appeal, challenging Munyeshuli's acquittal and the sentence imposed on Ngirabatware.²⁵ It requests that the Appeals Chamber convict Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment for disclosing protected information and for having had prohibited indirect contact with protected witnesses in violation of court orders, and that it sentence him accordingly.²⁶ With respect to Ngirabatware, the Prosecution requests that the Appeals Chamber order that he serve his sentence of two years of imprisonment for contempt consecutively with the sentence of 30 years of imprisonment that he is already serving for committing direct and public incitement to commit genocide and instigating and aiding and abetting genocide.²⁷

C. Oral Arguments

10. In accordance with paragraph 24 of the Practice Direction on Requirements and Procedures for Appeals, the Appeals Chamber may decide an appeal from judgement, rendered pursuant to Rule 90 of the Rules, without further submissions from the parties after the completion of the written briefing.²⁸ On 12 January 2022, Fatuma and Munyeshuli filed a joint motion, requesting that the Appeals Chamber exercise its discretion and hold an oral appeal hearing in this case.²⁹ On 4 February 2022, the Appeals Chamber dismissed the Joint Motion, finding that the information before it well enabled it to reach an informed decision on the appeals and that, balancing all interests involved, holding an oral hearing was not necessary.³⁰

Prosecution's Reply to Ngirabatware's Response, 16 December 2021 (public with confidential Annex) ("Prosecution Reply Brief (Ngirabatware)").

²³ Fatuma Notice of Appeal, paras. 4, 7-23; Fatuma Appeal Brief, paras. 1, 2, 6, 11-96. Fatuma presented nine grounds of appeal in her Notice of Appeal but, in her Appeal Brief, gave notice that she abandoned one ground. *See* Fatuma Notice of Appeal, paras. 5, 6; Fatuma Appeal Brief, para. 3.

²⁴ Fatuma Notice of Appeal, paras. 8, 10, 12, 14, 16, 18, 23; Fatuma Appeal Brief, paras. 25, 44, 53, 67, 71, 76, 92, 96.

²⁵ Prosecution Notice of Appeal, paras. 3-6, 8-10, 12; Prosecution Appeal Brief, paras. 3-5, 7-26, 28-33, 35-44.

²⁶ Prosecution Notice of Appeal, paras. 7, 11; Prosecution Appeal Brief, paras. 6, 27, 34.

²⁷ Prosecution Notice of Appeal, para. 13; Prosecution Appeal Brief, paras. 6, 45.

²⁸ *See* Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019, n. 2, indicating, *inter alia*, that appeals from judgements rendered pursuant to Rule 90 of the Rules shall be subject to the provisions applicable to appeals from Rule 90 decisions.

²⁹ Joint Motion for an Oral Appeal Hearing, 12 January 2022 ("Joint Motion"), paras. 1-3, 6, 13.

³⁰ Decision on a Joint Motion for an Oral Appeal Hearing, 4 February 2022, p. 2.

II. STANDARDS OF APPELLATE REVIEW

11. The Mechanism was established pursuant to United Nations (“UN”) Security Council Resolution 1966 (2010) and continues the material, territorial, temporal, and personal jurisdiction of the ICTR and the International Criminal Tribunal for the former Yugoslavia (“ICTY”).³¹ The Statute and the Rules of the Mechanism reflect normative continuity with the Statutes and the Rules of Procedure and Evidence of the ICTR and the ICTY.³² The Appeals Chamber considers that it is bound to interpret the Statute and the Rules in a manner consistent with the jurisprudence of the ICTR and the ICTY.³³ Likewise, where the Statutes and Rules of the ICTR and ICTY are at issue, the Appeals Chamber is bound to consider the relevant precedent of these tribunals when interpreting them.³⁴

12. While not bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR and the ICTY Appeals Chambers and depart from them only for cogent reasons in the interest of justice.³⁵ It is for the party submitting that the Appeals Chamber should depart from such jurisprudence to demonstrate that there are cogent reasons in the interest of justice that justify such departure.³⁶

13. Article 23(2) of the Statute stipulates that the Appeals Chamber may affirm, reverse, or revise decisions taken by a single judge. An appeal is not a trial *de novo*.³⁷ The settled standard of review for appeals against judgements on charges of crimes covered by Article 1(1) of the Statute

³¹ UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010 (“Security Council Resolution 1966”), paras. 1, 4, Annex 1, Statute, Preamble, Article 1. *See also* Security Council Resolution 1966, Annex 2, Transitional Arrangements (“Transitional Arrangements”), Article 2(2); *Mladić* Appeal Judgement, para. 13; *Karadžić* Appeal Judgement, para. 12; *Šešelj* Appeal Judgement, para. 11; *Ngirabatware* Appeal Judgement, para. 6.

³² *Mladić* Appeal Judgement, para. 13; *Karadžić* Appeal Judgement, para. 12; *Šešelj* Appeal Judgement, para. 11; *Ngirabatware* Appeal Judgement, para. 6. *See also* *Phénéas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama’s Case to Rwanda and Prosecution Motion to Strike, 5 October 2012 (“*Munyarugarama* Decision of 5 October 2012”), para. 5.

³³ *Mladić* Appeal Judgement, para. 13; *Karadžić* Appeal Judgement, para. 12; *Šešelj* Appeal Judgement, para. 11; *Ngirabatware* Appeal Judgement, para. 6; *Munyarugarama* Decision of 5 October 2012, para. 6.

³⁴ *Mladić* Appeal Judgement, para. 13; *Karadžić* Appeal Judgement, para. 12; *Šešelj* Appeal Judgement, para. 11; *Ngirabatware* Appeal Judgement, para. 6; *Munyarugarama* Decision of 5 October 2012, para. 6.

³⁵ *Mladić* Appeal Judgement, para. 14; *Karadžić* Appeal Judgement, para. 13; *Šešelj* Appeal Judgement, para. 11. *Cf. Munyarugarama* Decision of 5 October 2012, para. 5 (noting the “normative continuity” between the Rules and the Statutes of the Mechanism, ICTR, and ICTY and that the “parallels are not simply a matter of convenience or efficiency but serve to uphold principles of due process and fundamental fairness, which are the cornerstones of international justice”).

³⁶ *Mladić* Appeal Judgement, para. 14; *Karadžić* Appeal Judgement, para. 13; *Šešelj* Appeal Judgement, para. 11.

³⁷ *Mladić* Appeal Judgement, para. 15; *Karadžić* Appeal Judgement, para. 14; *Šešelj* Appeal Judgement, para. 12; *Nshogoza* Contempt Appeal Judgement, para. 14.

similarly applies to appeals against judgements on charges of contempt covered by Rule 90 of the Rules.³⁸

14. A party alleging an error of law must identify the alleged error, present arguments in support of its claim, and explain how the error invalidates the decision.³⁹ An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.⁴⁰ However, even if the party's arguments are insufficient to support the contention of an error, the Appeals Chamber may find, for other reasons, that there is an error of law.⁴¹

15. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the single judge accordingly.⁴² In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, also 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.⁴³ The Appeals Chamber will not review the entire trial record *de novo*; rather, it will, in principle, only take into account evidence referred to by the single judge in the body of the judgement or in a related footnote, evidence contained in the trial record and referred to by the parties, and, where applicable, additional evidence admitted on appeal.⁴⁴

16. When considering alleged errors of fact, the Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.⁴⁵ The Appeals Chamber applies the same standard of reasonableness to alleged errors of fact regardless of whether the finding of fact was based on direct or circumstantial

³⁸ See *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 24; *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 9; *Nshogoza* Contempt Appeal Judgement, para. 12; *Jović* Contempt Appeal Judgement, para. 11; *Marijačić and Rebić* Contempt Appeal Judgement, para. 15.

³⁹ *Mladić* Appeal Judgement, para. 16; *Karadžić* Appeal Judgement, para. 15; *Šešelj* Appeal Judgement, para. 13; *Ngirabatware* Appeal Judgement, para. 8; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 25; *Nshogoza* Contempt Appeal Judgement, para. 13.

⁴⁰ *Mladić* Appeal Judgement, para. 16; *Karadžić* Appeal Judgement, para. 15; *Šešelj* Appeal Judgement, para. 13; *Ngirabatware* Appeal Judgement, para. 8; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 25.

⁴¹ *Mladić* Appeal Judgement, para. 16; *Karadžić* Appeal Judgement, para. 15; *Šešelj* Appeal Judgement, para. 13; *Ngirabatware* Appeal Judgement, para. 8.

⁴² *Mladić* Appeal Judgement, para. 17; *Karadžić* Appeal Judgement, para. 16; *Šešelj* Appeal Judgement, para. 14; *Ngirabatware* Appeal Judgement, para. 9; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 25.

⁴³ *Mladić* Appeal Judgement, para. 17; *Karadžić* Appeal Judgement, para. 16; *Šešelj* Appeal Judgement, para. 14; *Ngirabatware* Appeal Judgement, para. 9.

⁴⁴ *Mladić* Appeal Judgement, para. 17; *Karadžić* Appeal Judgement, para. 16; *Šešelj* Appeal Judgement, para. 14.

⁴⁵ *Mladić* Appeal Judgement, para. 18; *Karadžić* Appeal Judgement, para. 17; *Šešelj* Appeal Judgement, para. 15; *Ngirabatware* Appeal Judgement, para. 10; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 26; *Nshogoza* Contempt Appeal Judgement, para. 13.

evidence.⁴⁶ It is not any error of fact that will cause the Appeals Chamber to overturn a decision by a single judge, but only one that has caused a miscarriage of justice.⁴⁷ In determining whether a single judge's finding was reasonable, the Appeals Chamber will not lightly overturn findings of fact made by a single judge.⁴⁸

17. The same standard of reasonableness and the same deference to factual findings of the single judge apply when the Prosecution appeals against an acquittal.⁴⁹ The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding.⁵⁰ Nevertheless, considering that, at trial, it is the Prosecution that bears the burden of proving the guilt of an accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction.⁵¹ Whereas a convicted person must show that the single judge's factual errors create reasonable doubt as to his or her guilt, the Prosecution must show that, when account is taken of the errors of fact committed by the single judge, all reasonable doubt of guilt has been eliminated.⁵²

18. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the single judge's rejection of those arguments constituted an error warranting an intervention of the Appeals Chamber.⁵³ 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.⁵⁴

⁴⁶ *Mladić* Appeal Judgement, para. 18; *Karadžić* Appeal Judgement, para. 17; *Šešelj* Appeal Judgement, para. 15; *Ngirabatware* Appeal Judgement, para. 10.

⁴⁷ *Mladić* Appeal Judgement, para. 18; *Karadžić* Appeal Judgement, para. 17; *Šešelj* Appeal Judgement, para. 15; *Ngirabatware* Appeal Judgement, para. 10; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 26.

⁴⁸ *Mladić* Appeal Judgement, para. 18; *Karadžić* Appeal Judgement, para. 17; *Šešelj* Appeal Judgement, para. 15; *Ngirabatware* Appeal Judgement, para. 10; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 26; *Nshogoza* Contempt Appeal Judgement, para. 13.

⁴⁹ *Mladić* Appeal Judgement, para. 19; *Karadžić* Appeal Judgement, para. 18; *Šešelj* Appeal Judgement, para. 16.

⁵⁰ *Mladić* Appeal Judgement, para. 19; *Karadžić* Appeal Judgement, para. 18; *Šešelj* Appeal Judgement, para. 15; *Ngirabatware* Appeal Judgement, para. 10.

⁵¹ *Mladić* Appeal Judgement, para. 19; *Karadžić* Appeal Judgement, para. 18; *Šešelj* Appeal Judgement, para. 16.

⁵² *Mladić* Appeal Judgement, para. 19; *Karadžić* Appeal Judgement, para. 18; *Šešelj* Appeal Judgement, para. 16.

⁵³ *Mladić* Appeal Judgement, para. 20; *Karadžić* Appeal Judgement, para. 19; *Šešelj* Appeal Judgement, para. 17; *Ngirabatware* Appeal Judgement, para. 11; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 27; *Nshogoza* Contempt Appeal Judgement, para. 14.

⁵⁴ *Mladić* Appeal Judgement, para. 20; *Karadžić* Appeal Judgement, para. 19; *Šešelj* Appeal Judgement, para. 17; *Ngirabatware* Appeal Judgement, para. 11; *Šešelj* Contempt Appeal Judgement of 30 May 2013, para. 27; *Nshogoza* Contempt Appeal Judgement, para. 14.

III. THE APPEAL OF MARIE ROSE FATUMA

19. The Single Judge found Fatuma guilty, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(iv) of the Rules, for having interfered with the administration of justice by: (i) prompting Witness ANAL/TNN6's relatives to persuade and offer a financial incentive to the witness in exchange for recanting the testimony she had given in the *Ngirabatware* ICTR trial ("*Ngirabatware* trial testimony"); (ii) instructing Witness ANAL/TNN6 on what to say when interviewed by *Ngirabatware*'s Defence ("Defence"); and (iii) offering Witness ANAL/TNN6 a financial incentive to cooperate and recant.⁵⁵ The Single Judge sentenced Fatuma to "time served".⁵⁶

20. Fatuma advances eight grounds of appeal, challenging her conviction and sentence.⁵⁷ The Prosecution responds that Fatuma's appeal should be dismissed in its entirety.⁵⁸ The Appeals Chamber will address the parties' contentions in turn.

A. Alleged Errors in Relying on Witness ANAL/TNN6's Evidence (Fatuma's First and Third Grounds of Appeal)

21. As set out in the Trial Judgement, Witness ANAL/TNN6 testified that she was told by her younger sister that Fatuma had asked her to convince the witness to testify for *Ngirabatware* in exchange for 3,000 United States Dollar ("USD").⁵⁹ Witness ANAL/TNN6 further testified that, having received advice from the Witness Support and Protection Unit of the Mechanism ("WISP") staff in Gisenyi to accept the money,⁶⁰ she initiated a meeting with Fatuma near the Stella Maris Church ("Stella Maris Church Meeting"), during which Fatuma handed Witness ANAL/TNN6's sister a piece of paper and pen and instructed her to write down questions that the witness was supposed to study and repeat before the "Tribunal", for the purpose of recanting her *Ngirabatware* trial testimony.⁶¹ According to the witness, during the meeting she was given this same piece of

⁵⁵ Trial Judgement, paras. 336, 339, 409(i).

⁵⁶ Trial Judgement, paras. 407, 409(i).

⁵⁷ See Fatuma Notice of Appeal, paras. 4, 7-23; Fatuma Appeal Brief, paras. 1, 2, 6, 11-96. See also *supra* n. 23.

⁵⁸ Prosecution Response Brief, paras. 3, 70.

⁵⁹ Trial Judgement, para. 290, *referring to, inter alia*, T. 3 November 2020 pp. 76-78, T. 4 November 2020 pp. 60-63. This event appears to have taken place sometime in October 2016. See T. 4 November 2020 pp. 51, 52, 60.

⁶⁰ Trial Judgement, para. 291, *referring to* T. 3 November 2020 p. 81, T. 4 November 2020 pp. 63, 64. See Trial Judgement, n. 843 (indicating that it was made clear during closing arguments that the purported WISP employee in Gisenyi, with whom the witness spoke, was a staff member associated with the Gisenyi Public Prosecutor's office).

⁶¹ Trial Judgement, para. 291, *referring to, inter alia*, T. 3 November 2020 pp. 79-83, T. 4 November 2020 pp. 1, 24, 33, 77-82.

paper and USD 3,000 in cash and, after she stated that the sum was too little, Fatuma told the witness that she will receive more money to buy a house.⁶²

22. In considering the testimony of Witness ANAL/TNN6, the Single Judge noted that there was “good reason to view several aspects of it with suspicion”.⁶³ The Single Judge nonetheless concluded that, although his “concerns with [the witness’s] credibility demand[ed] viewing her evidence with caution”, they did not require dismissing it entirely.⁶⁴ The Single Judge accepted those parts of Witness ANAL/TNN6’s account that were corroborated by other direct and circumstantial evidence on the record.⁶⁵ Consequently, although the Single Judge did not accept Witness ANAL/TNN6’s account in relation to the precise amount of money that was offered, he accepted her account that Fatuma had offered the witness a financial incentive to cooperate with the Defence and recant her prior testimony.⁶⁶ The Single Judge further found that, during the Stella Maris Church Meeting, Fatuma provided Witness ANAL/TNN6 “direct and explicit instructions on what [the witness] would be asked and what she should say in response” before the Appeals Chamber in the *Ngirabatware* review proceedings.⁶⁷ In making these findings, the Single Judge relied on Witness ANAL/TNN6’s testimony given in this contempt case, the witness’s statement to the WISP that was contemporaneous to the events, intercept evidence, and “circumstantial evidence of the pattern of witness interference involving financial inducements in anticipation of review proceedings in the *Ngirabatware* case”.⁶⁸

23. Fatuma submits that the Single Judge erred in fact in accepting Witness ANAL/TNN6’s evidence that she had offered the witness a financial incentive to recant her *Ngirabatware* trial testimony.⁶⁹ In relation to the Single Judge’s reliance on Witness ANAL/TNN6’s 2016 WISP Statement, Fatuma argues that, as a matter of law, the testimony of an unreliable witness cannot be corroborated by an earlier statement since mere consistency does not establish that the witness was truthful on either occasion, and contends that the Single Judge should have approached the previous

⁶² Trial Judgement, para. 291, *referring to, inter alia*, T. 3 November 2020 p. 82, T. 4 November 2020 pp. 1, 2, 28, 29, 32, 34, 64, 66, T. 5 November 2020 pp. 10, 11.

⁶³ Trial Judgement, para. 298.

⁶⁴ Trial Judgement, para. 300.

⁶⁵ See Trial Judgement, para. 300.

⁶⁶ Trial Judgement, paras. 300, 301, 304, 336.

⁶⁷ Trial Judgement, paras. 300, 301, 305.

⁶⁸ Trial Judgement, para. 301. See Trial Judgement, paras. 289-297, *referring to, inter alia*, confidential Exhibits 4D1, 4D2, P776, pp. 2, 3. The Appeals Chamber considers the Single Judge’s reference to multiple contemporaneous statements given by Witness ANAL/TNN6 to the WISP (see Trial Judgement, para. 301) to be a result of a clerical error. The trial record demonstrates that there was only one statement, dated 7 November 2016, which was contemporaneous to the Stella Maris Church Meeting. See Trial Judgement, para. 294, *referring to* confidential Exhibits 4D1, 4D2 (corrected English translation of confidential Exhibit 4D1) (collectively, “2016 WISP Statement”). As the Single Judge noted, Witness ANAL/TNN6 subsequently gave another statement to the WISP on 9 August 2017. See Trial Judgement, n. 831.

statement of Witness ANAL/TNN6 with as much caution as her later testimony.⁷⁰ According to Fatuma, given the witness's lack of credibility, the 2016 WISP Statement, intercept evidence, and the fact that other unrelated witnesses may have been offered money, did not provide reasonable corroboration to Witness ANAL/TNN6's account.⁷¹ Fatuma further argues that the Single Judge erred in fact in accepting Witness ANAL/TNN6's uncorroborated evidence that, at the Stella Maris Church Meeting, Fatuma gave the witness the answers to the questions that the Defence would ask her.⁷² According to Fatuma, as a result of these factual errors, the Single Judge erred in law in accepting contested portions of Witness ANAL/TNN6's evidence in the absence of independent and reliable corroboration.⁷³

24. The Prosecution responds that Fatuma fails to demonstrate that the Single Judge erred in relying on parts of Witness ANAL/TNN6's evidence and contends that the Single Judge's conclusion that Fatuma offered Witness ANAL/TNN6 a financial incentive to recant her testimony was reasonable and based on the totality of the evidence on the record.⁷⁴ The Prosecution argues that it was reasonable for the Single Judge to rely, *inter alia*, on an intercepted telephone conversation, in which Fatuma and Turinabo agreed on the amount of money to be offered to the witness to "deny everything" ("August 2017 Intercept"), as well as on the pattern of witness interference involving financial inducements in this case.⁷⁵ The Prosecution also contends that there is no error in the Single Judge's finding that Fatuma instructed Witness ANAL/TNN6 on what to say when interviewed by the Defence in view of the list of questions, which Fatuma provided at the Stella Maris Church Meeting, setting out the topics that the witness was instructed to deny.⁷⁶ The Prosecution further submits that the Single Judge was correct in taking into account Witness ANAL/TNN6's 2016 WISP Statement concerning Fatuma's conduct, which provided circumstantial support to the witness's testimony due to its contemporaneous nature.⁷⁷

25. In reply, Fatuma submits that the lack of evidence of any communication between her and her co-accused discussing offers of payments, contemporaneous to the Stella Maris Church Meeting, as well as of any record of a payment being made to Witness ANAL/TNN6, create doubt

⁶⁹ Fatuma Notice of Appeal, paras. 7, 8; Fatuma Appeal Brief, paras. 6, 17, 25.

⁷⁰ Fatuma Notice of Appeal, paras. 11, 12; Fatuma Appeal Brief, paras. 6, 45-52, *referring to, inter alia, Ntakirutimana Appeal Judgement*, para. 147, *Nahimana et al. Appeal Judgement*, para. 428; Fatuma Reply Brief, paras. 17, 18.

⁷¹ Fatuma Appeal Brief, paras. 18-20.

⁷² Fatuma Notice of Appeal, para. 7; Fatuma Appeal Brief, paras. 21-24.

⁷³ Fatuma Notice of Appeal, para. 7; Fatuma Appeal Brief, paras. 15, 16.

⁷⁴ Prosecution Response Brief, paras. 4, 11-14.

⁷⁵ Prosecution Response Brief, paras. 15-18, *referring to, inter alia, confidential Exhibit P776*.

⁷⁶ Prosecution Response Brief, paras. 19-25, *referring to, inter alia, confidential Exhibits P13, 4D5*.

⁷⁷ Prosecution Response Brief, paras. 33-39, *referring to 2016 WISP Statement*.

that it was ever envisaged that Fatuma would pay any money to the witness.⁷⁸ Fatuma further submits that the conversation recorded in the August 2017 Intercept took place over ten months after the Stella Maris Church Meeting, and that there is no evidence of any contact between Fatuma and the witness following that conversation.⁷⁹

26. The Appeals Chamber turns first to Fatuma's submission that the Single Judge erred in law in relying on Witness ANAL/TNN6's 2016 WISP Statement in finding that Fatuma had offered the witness a financial incentive in exchange for her recantation. The Appeals Chamber observes that in her 2016 WISP Statement, Witness ANAL/TNN6 is recorded as saying that prior to the Stella Maris Church Meeting, Fatuma had asked the witness's sister to convince the witness to testify for the Defence and that if the witness accepted to do this, the witness would receive a house.⁸⁰ Witness ANAL/TNN6 is also recorded to have stated that, at the meeting, Fatuma promised the witness that she would give her money to buy a house if the witness met with the Defence and answered their questions.⁸¹ The Single Judge found that this contemporaneous statement offered, to some degree, circumstantial corroboration to the witness's account that Fatuma met the witness at the Stella Maris Church and promised to give her money for a house, provided that the witness met with the Defence and answered questions.⁸² The Single Judge clarified that the corroboration stemmed from the contemporaneous nature of the 2016 WISP Statement emphasizing, however, that the fact that parts of the statement were consistent with the witness's ultimate testimony did not bolster her credibility.⁸³

27. The Appeals Chamber recalls that prior consistent statements cannot be used to bolster a witness's credibility, except to rebut a charge of recent fabrication of testimony.⁸⁴ The references to the trial record contained in the Trial Judgement and in the parties' submissions on appeal do not demonstrate the existence of a challenge to Witness ANAL/TNN6's evidence as being recently fabricated. In these circumstances, the Single Judge's reliance on the 2016 WISP Statement as corroborating Witness ANAL/TNN6's later testimony was in error. Nevertheless, the Appeals Chamber finds that, in view of the other evidence relied on by the Single Judge as corroborating

⁷⁸ Fatuma Reply Brief, paras. 7, 8.

⁷⁹ Fatuma Reply Brief, paras. 10, 11.

⁸⁰ 2016 WISP Statement.

⁸¹ 2016 WISP Statement.

⁸² See Trial Judgement, para. 294.

⁸³ Trial Judgement, n. 830, referring to *Ntakirutimana* Appeal Judgement, para. 147.

⁸⁴ *Nyiramasuhuko et al.* Appeal Judgement, para. 2955, referring to *Ntakirutimana* Appeal Judgement, para. 147.

Witness ANAL/TNN6's testimony,⁸⁵ this error does not invalidate the Single Judge's conclusion that Fatuma had offered the witness a financial incentive in exchange for her recantation.

28. In finding that Fatuma offered Witness ANAL/TNN6 a financial incentive in exchange for the witness's recantation, the Single Judge further relied on the August 2017 Intercept, recording a conversation between Fatuma and Turinabo.⁸⁶ During the conversation, Fatuma stated that she had inquired with a relative of Witness ANAL/TNN6 how much money the witness would like to be paid, the amount of money that the witness had demanded, and Fatuma's explanation that the sought amount was not affordable.⁸⁷ In view of the content of the August 2017 Intercept, the Appeals Chamber finds that it was not unreasonable for the Single Judge to conclude that this evidence supported the conclusion that Fatuma had offered Witness ANAL/TNN6 a financial incentive for cooperating with the Defence.⁸⁸

29. The Single Judge also reasonably found that "circumstantial evidence of the pattern of witness interference involving financial inducements" further supported the conclusion that Fatuma offered Witness ANAL/TNN6 a financial incentive for cooperating with the Defence.⁸⁹ The Single Judge considered extensive evidence showing that Ngirabatware made thousands of euros available to Nzabonimpa and that the "[m]onies provided by Ngirabatware served as the backbone of a highly organized effort" aimed at obtaining the recantations of other Prosecution witnesses in anticipation of the *Ngirabatware* review proceedings.⁹⁰ In this regard, the Single Judge found that substantial payments, facilitated by Nzabonimpa and Ndagijimana, were made on Ngirabatware's behalf to protected witnesses in order to induce and maintain their cooperation with the Defence.⁹¹ The Single Judge also considered evidence that Fatuma was acting pursuant to Ngirabatware's instructions,⁹² and that Nzabonimpa, Turinabo, and Ngirabatware communicated in relation to Fatuma's involvement with Witness ANAL/TNN6.⁹³ The Appeals Chamber finds that, in view of the interaction among the accused and the highly organized nature of the effort to have protected witnesses recant their previous testimonies in exchange for payment, Fatuma fails to demonstrate that it was unreasonable for the Single Judge to find that evidence of the pattern of witness

⁸⁵ See *infra* paras. 28, 29.

⁸⁶ Trial Judgement, para. 297, referring to confidential Exhibit P776, pp. 2, 3.

⁸⁷ See confidential Exhibit P776, p. 2.

⁸⁸ Trial Judgement, paras. 297, 300, 301, 304.

⁸⁹ Trial Judgement, para. 301.

⁹⁰ Trial Judgement, para. 332, referring to Trial Judgement, Section II.A and the evidence discussed therein.

⁹¹ Trial Judgement, paras. 333-335 and references cited therein.

⁹² See Trial Judgement, para. 303, referring to, *inter alia*, confidential Exhibit P105.

⁹³ See Trial Judgement, paras. 295, 296, referring to, *inter alia*, confidential Exhibits P293, P295, P480, P585, P651. See also Trial Judgement, n. 852 (wherein the Single Judge noted that contemporaneous communication suggested that Nzabonimpa and Turinabo were behind Fatuma's interaction with the witness), referring to confidential Exhibits P312, P481.

interference, involving financial inducements, provided circumstantial support to the conclusion that Fatuma offered Witness ANAL/TNN6 a financial incentive for recanting her prior testimony and cooperating with the Defence.

30. The Appeals Chamber turns next to Fatuma’s contention that the Single Judge erred in finding that she supplied Witness ANAL/TNN6 with the answers to the questions provided at the Stella Maris Church Meeting.⁹⁴ In considering the record before him, the Single Judge noted Witness ANAL/TNN6’s testimony that, at the Stella Maris Church Meeting, Fatuma provided the witness with questions that the witness was supposed to study for the purpose of testifying that her *Ngirabatware* trial testimony was untruthful.⁹⁵ The Single Judge also took into account the August 2017 Intercept, according to which Fatuma and Turinabo discussed the financial incentive to be offered to Witness ANAL/TNN6 in order for the witness to “deny everything”.⁹⁶ Having considered this evidence, as well as evidence of the pattern of witness interference involving financial inducements in anticipation of the *Ngirabatware* review proceedings,⁹⁷ the Single Judge found that, at the Stella Maris Church Meeting, Fatuma told Witness ANAL/TNN6 that the witness “needed to recant her *Ngirabatware* trial testimony when talking with the Defence”.⁹⁸ On the basis of this finding, the Single Judge concluded that “Fatuma provided direct and explicit instructions on what Witness ANAL/TNN6 would be asked and what she should say in response”.⁹⁹ In view of the totality of the evidence considered by the Single Judge, the Appeals Chamber finds that it was not unreasonable for the Single Judge to conclude that Fatuma provided Witness ANAL/TNN6 with direct and explicit instructions on what to say when interviewed by the Defence.

31. Based on the foregoing, the Appeals Chamber finds that Fatuma fails to show an error in the Single Judge’s conclusion that she offered Witness ANAL/TNN6 a financial incentive to recant her *Ngirabatware* trial testimony and provided the witness with instructions on what to say when interviewed by the Defence.

32. Accordingly, the Appeals Chamber dismisses Fatuma’s First and Third Grounds of Appeal.

⁹⁴ See Fatuma Notice of Appeal, para. 7; Fatuma Appeal Brief, paras. 21-24, *referring to, inter alia*, confidential Exhibit P13.

⁹⁵ Trial Judgement, para. 291, *referring to, inter alia*, T. 3 November 2020 pp. 82, 83, T. 4 November 2020 pp. 80-82.

⁹⁶ Trial Judgement, para. 297, *referring to* confidential Exhibit P776, pp. 2, 3.

⁹⁷ Trial Judgement, para. 301.

⁹⁸ Trial Judgement, para. 304.

⁹⁹ Trial Judgement, para. 305.

B. Alleged Errors in Failing to Consider Aspects of Witness ANAL/TNN6's Testimony
(Fatuma's Second Ground of Appeal)

33. The Single Judge expressed concern about Witness ANAL/TNN6's credibility stemming from, primarily, her account that she received USD 3,000 from Fatuma and that WISP or Rwandan Prosecutor's office officials advised her to accept and keep the money.¹⁰⁰ The Single Judge noted that this aspect of Witness ANAL/TNN6's testimony was not mentioned in her prior contemporaneous statements to WISP and the Prosecution and considered her explanation that, although she shared this information, it was not included in the statements to be not convincing.¹⁰¹ The Single Judge concluded however that, while his concerns with Witness ANAL/TNN6's credibility required viewing her evidence with caution, they did not warrant the dismissal of her entire evidence.¹⁰²

34. Fatuma submits that the Single Judge erred in law in failing to take into consideration other aspects of Witness ANAL/TNN6's testimony that were untruthful, thus minimizing the extent to which her evidence should have been treated with caution.¹⁰³ According to Fatuma, these other aspects of Witness ANAL/TNN6's testimony include the witness's: (i) "dishonest insistence" that she had mentioned in her earlier accounts, provided to the WISP and the Prosecution, that Fatuma gave her USD 3,000;¹⁰⁴ (ii) account of what she did with the money that she had received from Fatuma;¹⁰⁵ (iii) answers during cross-examination about the duration of her proofing sessions with the Prosecution;¹⁰⁶ (iv) testimony about her father's nickname;¹⁰⁷ (v) evidence about features of her *Ngirabatware* trial testimony;¹⁰⁸ and (vi) "general evasiveness and prevarication during her testimony".¹⁰⁹ Fatuma argues that, as a result of this error, the Single Judge failed to treat Witness ANAL/TNN6's contested evidence with an appropriately high level of caution, accepting evidence that no reasonable trier of fact would have accepted.¹¹⁰

¹⁰⁰ Trial Judgement, para. 298. *See* Trial Judgement, n. 843 (indicating that it was made clear during closing arguments that the purported WISP employee in Gisenyi, with whom the witness spoke, was a staff member associated with the Gisenyi Public Prosecutor's office).

¹⁰¹ Trial Judgement, para. 298.

¹⁰² Trial Judgement, para. 300.

¹⁰³ *See* Fatuma Notice of Appeal, paras. 9, 10; Fatuma Appeal Brief, paras. 6, 27-29, 31-43.

¹⁰⁴ Fatuma Appeal Brief, paras. 27, 31.

¹⁰⁵ Fatuma Appeal Brief, paras. 27, 33, 34, *referring to* T. 4 November 2020 p. 59, confidential Exhibit 4D15.

¹⁰⁶ Fatuma Appeal Brief, paras. 27, 35, 36, *referring to, inter alia*, T. 4 November 2020 p. 22 (private session).

¹⁰⁷ Fatuma Appeal Brief, paras. 27, 37, 38, *referring to* T. 3 November 2020 pp. 66, 67 (closed session).

¹⁰⁸ Fatuma Appeal Brief, paras. 27, 39, 40, *referring to* confidential Exhibit 4D3, pp. 53, 137, 139, T. 4 November 2020 pp. 38-40, 41-44 (private session).

¹⁰⁹ Fatuma Appeal Brief, paras. 27, 41, 42, *referring to, inter alia*, T. 4 November 2020 pp. 14, 17, 28, 29, 37, 40, 46 (private session), 49 (private session), 57 (private session), 77, T. 5 November 2020 pp. 7, 18 (private session).

¹¹⁰ Fatuma Notice of Appeal, paras. 9, 10; Fatuma Appeal Brief, paras. 28, 43.

35. The Prosecution responds that the Single Judge thoroughly addressed Fatuma's arguments concerning Witness ANAL/TNN6's evidence and acted within his discretion in assessing the witness's credibility.¹¹¹ It further submits that some of the contested aspects of Witness ANAL/TNN6's testimony concern collateral issues that could not be definitely resolved based on the record, and argues that Fatuma fails to demonstrate that the challenges to Witness ANAL/TNN6's demeanour would have altered the Single Judge's approach to the assessment of her evidence.¹¹²

36. In reply, Fatuma maintains that the Single Judge failed to make the necessary findings on the contested aspects of Witness ANAL/TNN6's testimony in relation to her credibility.¹¹³ She also argues that the Prosecution misrepresents the trial record in relation to the matter of the length of the proofing sessions and whether Witness ANAL/TNN6 committed perjury while testifying during the *Ngirabatware* ICTR trial.¹¹⁴

37. The Appeals Chamber recalls that a single judge may accept some but reject other parts of a witness's testimony,¹¹⁵ and that there is a presumption that the single judge evaluated all the relevant evidence provided that there is no indication that he completely disregarded any particular piece of evidence.¹¹⁶ In the present case, the Single Judge explicitly noted Witness ANAL/TNN6's account that she received USD 3,000 from Fatuma and that this information was not included in her statements to the WISP or the Prosecution, despite her having mentioned it,¹¹⁷ as well as her evidence of what she did with the money.¹¹⁸ However, the Single Judge found these parts of Witness ANAL/TNN6's evidence to be "entirely unconvincing".¹¹⁹ The Single Judge considered the impact of this conclusion on the witness's credibility and decided to treat her evidence with caution, relying on it only where corroborated by other direct and circumstantial evidence.¹²⁰ Accordingly, Fatuma's claim that the Single Judge failed to properly assess the impact of these

¹¹¹ Prosecution Response Brief, paras. 26-29.

¹¹² Prosecution Response Brief, paras. 30, 31.

¹¹³ Fatuma Reply Brief, paras. 12-14.

¹¹⁴ Fatuma Reply Brief, paras. 15, 16.

¹¹⁵ See, e.g., *Karadžić* Appeal Judgement, para. 378; *Prlić et al.* Appeal Judgement, para. 201; *Nyiramasuhuko et al.* Appeal Judgement, paras. 3043, 3167, n. 6750.

¹¹⁶ See, e.g., *Mladić* Appeal Judgement, para. 423; *Karadžić* Appeal Judgement, paras. 563, 702; *Prlić et al.* Appeal Judgement, para. 187; *Stanišić and Župljanin* Appeal Judgement, para. 138; *Nyiramasuhuko et al.* Appeal Judgement, para. 1308.

¹¹⁷ Trial Judgement, paras. 291, 298.

¹¹⁸ Trial Judgement, para. 291, *referring to, inter alia*, T. 4 November 2020 pp. 64, 65.

¹¹⁹ Trial Judgement, paras. 298-300.

¹²⁰ Trial Judgement, para. 300.

aspects of Witness ANAL/TNN6's testimony on her overall credibility as a witness is without merit.¹²¹

38. While Witness ANAL/TNN6's testimony about the duration of her proofing sessions with the Prosecution is not expressly noted in the Trial Judgement, the Single Judge noted at trial that he had before him uncontested information on the length of the proofing sessions.¹²² The Single Judge was also apprised of the alleged inconsistencies between the actual length of the proofing sessions and Witness ANAL/TNN6's account.¹²³ In light of the Single Judge's express observation at trial, and considering the presumption that the Single Judge evaluated all the relevant evidence,¹²⁴ Fatuma fails to demonstrate that the Single Judge did not consider this aspect of Witness ANAL/TNN6's evidence in assessing the witness's overall credibility.

39. Turning to Fatuma's argument about Witness ANAL/TNN6's testimony concerning her father's nickname,¹²⁵ the Appeals Chamber considers that other than disagreeing with this aspect of the witness's evidence, Fatuma does not demonstrate that the Single Judge failed to consider an aspect of the witness's testimony that had an impact on her credibility. Similarly unconvincing is Fatuma's argument that the Single Judge failed to consider that Witness ANAL/TNN6 had lied during her *Ngirabatware* trial testimony and "persist[ed] in that lie under oath in her evidence against [Fatuma]".¹²⁶ The Single Judge observed that evidence related to whether witnesses had lied during the *Ngirabatware* ICTR trial was collateral to the charges in the present case.¹²⁷ In adopting a cautious approach to the witness's evidence, the Single Judge sufficiently accounted for the challenges raised by Fatuma, and relied on Witness ANAL/TNN6's evidence only where corroborated by other direct and circumstantial evidence.¹²⁸

¹²¹ See Fatuma Notice of Appeal, para. 10; Fatuma Appeal Brief, paras. 27, 31.

¹²² See T. 8 April 2021 pp. 25, 26.

¹²³ See Trial Judgement, para. 288, n. 799, *referring to, inter alia, Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Marie Rose Fatuma Defence Final Trial Brief, 31 May 2021 (confidential with confidential Annex A) (originally filed in French, English translation filed on 6 September 2021) ("Fatuma Final Trial Brief"), paras. 80-83. See also *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-T, Marie Rose Fatuma's Joinder to "Ndagijimana Defence Bar Table Motion: Duration of Prosecution Proofing Sessions", 1 February 2021 (originally filed in French, English translation filed on 3 February 2021) (confidential), paras. 1, 3; *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-T, Ndagijimana Defence Bar Table Motion: Duration of Prosecution Proofing Sessions, 18 January 2021 (confidential), paras. 2, 8, 12.

¹²⁴ See, e.g., *Mladić* Appeal Judgement, para. 423; *Karadžić* Appeal Judgement, paras. 563, 702; *Prlić et al.* Appeal Judgement, para. 187; *Stanišić and Župljanin* Appeal Judgement, para. 138; *Nyiramasuhuko et al.* Appeal Judgement, para. 1308.

¹²⁵ Fatuma Appeal Brief, paras. 27, 37, 38. See T. 5 November 2020 pp. 16-18 (private session).

¹²⁶ Fatuma Appeal Brief, paras. 27, 39, 40 *referring to, inter alia*, T. 4 November 2020 pp. 38-40, 41-44 (private session).

¹²⁷ See Trial Judgement, n. 913. See also T. 4 November 2020 pp. 43, 44.

¹²⁸ See Trial Judgment, para. 300.

40. Finally, the Appeals Chamber finds no merit in Fatuma’s submission that the Single Judge failed to consider the “general evasiveness and prevarication” of Witness ANAL/TNN6’s testimony. The Single Judge explicitly noted Fatuma’s submission at trial regarding the evasive nature of Witness ANAL/TNN6’s testimony.¹²⁹ The Appeals Chamber recalls that a single judge’s assessment of a witness’s demeanour may be implicit in his assessment of the witness’s credibility,¹³⁰ and that this assessment is one of the fundamental functions of a single judge to which the Appeals Chamber must accord considerable deference.¹³¹ Bearing these principles in mind and given that the Single Judge explicitly noted Fatuma’s submission regarding this issue at trial, Fatuma fails to demonstrate that the Single Judge did not take into consideration Witness ANAL/TNN6’s demeanour during cross-examination in assessing her credibility.

41. Based on the foregoing, the Appeals Chamber finds that Fatuma does not demonstrate that the Single Judge erred by failing to consider the aspects of Witness ANAL/TNN6’s testimony, which she refers to as specifically relevant, in assessing the witness’s credibility. The Appeals Chamber, therefore, dismisses Fatuma’s Second Ground of Appeal.

C. Alleged Error in Finding that Fatuma Sent Relatives of Witness ANAL/TNN6 to Convince the Witness to Recant (Fatuma’s Fourth Ground of Appeal)

42. The Single Judge found that, in September and October 2016, Fatuma sent “M” and “F”, who are relatives of Witness ANAL/TNN6, as well as Witness ANAL/TNN6’s younger sister, to try to convince the witness to change her *Ngirabatware* trial testimony.¹³² The Single Judge further concluded that the only reasonable inference from the evidence was that Fatuma encouraged “M” and “F” to speak with Witness ANAL/TNN6 for the purpose of having the witness recant her testimony, and that Fatuma prompted Witness ANAL/TNN6’s younger sister to persuade the witness to recant in exchange for a financial incentive.¹³³

43. Fatuma submits that the Single Judge erred in finding that she sent “M” and “F” to try to convince Witness ANAL/TNN6 to change her *Ngirabatware* trial testimony, and that she sent Witness ANAL/TNN6’s younger sister to try to convince the witness to recant in exchange for a financial incentive.¹³⁴ Fatuma argues that the Single Judge’s finding that she sent “M” and “F” to

¹²⁹ See Trial Judgement, para. 288, *referring to, inter alia*, Fatuma Final Trial Brief, paras. 101, 102.

¹³⁰ See, e.g., *Nyiramasuhuko et al.* Appeal Judgement, para. 1746; *Nizeyimana* Appeal Judgement, para. 177.

¹³¹ See, e.g., *Ngirabatware* Appeal Judgement, para. 90; *Hategekimana* Appeal Judgement, para. 202.

¹³² Trial Judgement, para. 301. See also Trial Judgement, n. 806, *referring to* T. 3 November 2020 pp. 69, 70 (closed session).

¹³³ Trial Judgement, para. 304.

¹³⁴ Fatuma Notice of Appeal, para. 13; Fatuma Appeal Brief, paras. 55, 61, 62, 66.

meet with Witness ANAL/TNN6 has no support in the evidence,¹³⁵ and submits that another reasonable inference remained open on the evidence, namely that “M” and “F” were approached by another accused in the present case.¹³⁶ Fatuma further submits that there was no reliable evidence before the Single Judge to support the conclusion that she suggested to Witness ANAL/TNN6’s sister that money may be paid in exchange for the witness’s recantation.¹³⁷

44. The Prosecution responds that the Single Judge’s conclusion is supported by intercept evidence showing that “M” and “F” were sent to meet with Witness ANAL/TNN6 and that Fatuma was the “point person” in securing Witness ANAL/TNN6’s recantation.¹³⁸ In relation to Fatuma’s contact with Witness ANAL/TNN6’s sister, the Prosecution submits that the Single Judge reasonably relied on intercept evidence implicating Fatuma, including the August 2017 Intercept, which corroborated Witness ANAL/TNN6’s account of the events.¹³⁹

45. In considering the evidence before him, the Single Judge observed that intercept communications among the accused in 2017 reflected that Fatuma was the point person in efforts led by Ngirabatware to get Witness ANAL/TNN6 to recant, and that Fatuma used “M” and “F” to liaise with the witness.¹⁴⁰ Subsequently, the Single Judge concluded that he had no doubt that Fatuma sent “M” and “F” to try to convince Witness ANAL/TNN6 to change her *Ngirabatware* trial testimony.¹⁴¹ The Appeals Chamber observes that evidence relied upon by the Single Judge in reaching this conclusion,¹⁴² as well as evidence of other intercepted communications cited in the Trial Judgement,¹⁴³ indicates the involvement of Fatuma, “M”, and “F” with Witness ANAL/TNN6. However, this evidence contains no reference to Fatuma establishing contact with “M” and “F” and encouraging them to liaise with the witness. Other evidence referred to by the Single Judge in the Trial Judgement, including Witness ANAL/TNN6’s evidence, similarly does not implicate Fatuma in contacting “M” and “F” and using them to liaise with the witness.¹⁴⁴

¹³⁵ Fatuma Notice of Appeal, para. 13; Fatuma Appeal Brief, paras. 55-61, 66.

¹³⁶ Fatuma Appeal Brief, para. 61.

¹³⁷ Fatuma Notice of Appeal, para. 13; Fatuma Appeal Brief, paras. 62-66.

¹³⁸ Prosecution Response Brief, para. 42, *referring to, inter alia*, Trial Judgement, paras. 295, 296, n. 839, confidential Exhibits P293, P480, P495, P1018.

¹³⁹ Prosecution Response Brief, paras. 43-45, *referring to, inter alia*, Trial Judgement, paras. 290, 296, nn. 838, 839, confidential Exhibits P295, P505, P509, P776, T. 3 November 2020 pp. 76-78, T. 4 November 2020 pp. 60-63, T. 8 April 2021 pp. 54, 55, 57, 58.

¹⁴⁰ Trial Judgement, para. 296.

¹⁴¹ Trial Judgement, para. 301.

¹⁴² See Trial Judgement, para. 296, nn. 838, 839, *referring to, inter alia*, confidential Exhibits P480, P505, P585, P1018.

¹⁴³ See Trial Judgement, para. 295, *referring to* confidential Exhibits P293, P295.

¹⁴⁴ See Trial Judgement, para. 301 (wherein the Single Judge held that his conclusion followed from “Witness ANAL/TNN6’s account, her contemporaneous statements to the WISP, the exchanges described above referencing these events and Fatuma’s role in them, and the circumstantial evidence of the pattern of witness interference involving financial inducements”). See also Trial Judgement, paras. 289-297, 332-338.

46. The Appeals Chamber, therefore, considers that the evidence before the Single Judge could not lead a reasonable trier of fact to conclude that the only reasonable inference was that Fatuma sent “M” and “F” to speak with Witness ANAL/TNN6 for the purpose of having the witness recant her testimony. Another reasonable inference remained open on the evidence, namely that someone other than Fatuma may have sent “M” and “F” to meet with Witness ANAL/TNN6. Accordingly, the Appeals Chamber finds that the Single Judge erred in fact in his conclusion in this regard.

47. The Appeals Chamber turns next to Fatuma’s challenge to the Single Judge’s conclusion that she prompted Witness ANAL/TNN6’s younger sister to persuade the witness to recant in exchange for a financial incentive. In reaching this conclusion, the Single Judge considered, *inter alia*, Witness ANAL/TNN6’s testimony, according to which Fatuma asked the witness’s younger sister to try to convince the witness to testify for the Defence by offering the witness money.¹⁴⁵ Additionally, the Single Judge considered evidence of exchanges between Ngirabatware, Turinabo, and Nzabonimpa, indicating that Fatuma met with Witness ANAL/TNN6’s sister.¹⁴⁶ The Single Judge further referred to the August 2017 Intercept, where Fatuma is recorded saying that she had discussed with a relative of Witness ANAL/TNN6 the amount of money to be paid to the witness.¹⁴⁷ Fatuma’s submission that the content of the August 2017 Intercept indicates that the witness sought to benefit from this financial arrangement is inapposite.¹⁴⁸ The Appeals Chamber finds that it was reasonable for the Single Judge to rely on the above evidence as corroborating Witness ANAL/TNN6’s account that Fatuma prompted the witness’s younger sister to persuade the witness to recant her prior testimony in exchange for a financial incentive.

48. The Appeals Chamber has found above that the Single Judge erred in concluding that Fatuma encouraged “M” and “F” to speak with Witness ANAL/TNN6 for the purpose of having her recant her *Ngirabatware* trial testimony.¹⁴⁹ However, the Appeals Chamber has upheld the Single Judge’s assessment of the evidence that Fatuma prompted Witness ANAL/TNN6’s younger sister to persuade the witness to change her *Ngirabatware* trial testimony, as well as his finding that, during the Stella Maris Church Meeting, Fatuma provided the witness with the questions that she would be asked by the Defence, instructed the witness what to say, and offered the witness a financial incentive for cooperating with the Defence and recanting her prior testimony.¹⁵⁰ The Appeals Chamber, therefore, finds that the Single Judge’s error in finding that Fatuma encouraged

¹⁴⁵ Trial Judgement, para. 290, *referring to, inter alia*, T. 3 November 2020 pp. 76-78, T. 4 November 2020 pp. 60-63.

¹⁴⁶ Trial Judgement, para. 296, *referring to, inter alia*, confidential Exhibits P505, P1018.

¹⁴⁷ Trial Judgement, para. 297, *referring to* confidential Exhibit P776, pp. 2, 3.

¹⁴⁸ See Fatuma Appeal Brief, paras. 63, 64, *citing* Trial Judgement, para. 299.

¹⁴⁹ See *supra* para. 46.

¹⁵⁰ See *supra* paras. 30, 31, 47.

“M” and “F” to speak with Witness ANAL/TNN6 does not result in a miscarriage of justice as it did not undermine the conclusion that Fatuma interfered with the administration of justice.

49. Accordingly, the Appeals Chamber dismisses Fatuma’s Fourth Ground of Appeal.

D. Alleged Error in Dismissing Fatuma’s Defence Theory (Fatuma’s Fifth Ground of Appeal)

50. In her final trial brief, Fatuma argued that a reasonable conclusion from the evidence was that, following the rejection of her extortion attempts, Witness ANAL/TNN6 felt angered or endangered and reported the Stella Maris Church Meeting to the WISP in order to falsely portray herself as a victim of intimidation and bribery, and to avoid allegations of perjury.¹⁵¹ In the Trial Judgement, the Single Judge considered that, in view of the trial record, there was no reasonable basis supporting this defence theory.¹⁵²

51. Fatuma argues that the Single Judge erred in failing to provide a reasoned opinion for rejecting her defence theory.¹⁵³ In support of her submission, Fatuma refers to the August 2017 Intercept, which she claims convincingly demonstrates that it was Witness ANAL/TNN6 who asked for money and that the request was rejected by Fatuma.¹⁵⁴ According to Fatuma, it would have been reasonable for the Single Judge to conclude that, following the rejection of her extortion attempts, Witness ANAL/TNN6 tried to portray herself as the victim of intimidation and bribery by contacting the WISP and reporting the incident.¹⁵⁵

52. The Prosecution responds that Fatuma’s arguments are speculative and that it was reasonable for the Single Judge to reject Fatuma’s defence theory.¹⁵⁶ The Prosecution argues that the Single Judge reasonably relied on evidence demonstrating that Fatuma was involved in a larger scheme aimed at securing recantations from a number of witnesses who had testified during the *Ngirabatware* ICTR trial.¹⁵⁷ It further submits that Fatuma’s defence theory is contradicted by other evidence on the record, and argues that, regardless of who first raised the issue of payment, the

¹⁵¹ Fatuma Final Trial Brief, paras. 166, 167.

¹⁵² Trial Judgement, n. 831.

¹⁵³ Fatuma Notice of Appeal, paras. 15, 16; Fatuma Appeal Brief, paras. 69, 71.

¹⁵⁴ Fatuma Appeal Brief, para. 69, *referring to, inter alia*, confidential Exhibit P776.

¹⁵⁵ Fatuma Appeal Brief, para. 70.

¹⁵⁶ Prosecution Response Brief, paras. 47-51.

¹⁵⁷ Prosecution Response Brief, para. 48, *referring to, inter alia*, Trial Judgement, para. 296, n. 852.

August 2017 Intercept supports the conclusion that she offered Witness ANAL/TNN6 a financial incentive to recant her *Ngirabatware* trial testimony.¹⁵⁸

53. The Appeals Chamber recalls that the Single Judge was not required to articulate every step of his reasoning and that a trial judgement must be read as a whole.¹⁵⁹ In dismissing Fatuma's defence theory, the Single Judge considered the record before him that included, in addition to Witness ANAL/TNN6's account, intercept evidence of exchanges between Nzabonimpa, Turinabo, Ngirabatware, and Fatuma, as well as extensive evidence of a highly organized effort of payments made to witnesses in exchange for their recantations.¹⁶⁰ In addition, in relation to the August 2017 Intercept, the Appeals Chamber has previously found that it was not unreasonable for the Single Judge to conclude that this evidence supported the conclusion that Fatuma had offered Witness ANAL/TNN6 a financial incentive.¹⁶¹ The Appeals Chamber finds that, in relation to her defence theory of the case, Fatuma repeats arguments that were unsuccessful at trial and merely presents an alternative interpretation of the evidence, without showing an error in the Single Judge's consideration of the trial record as a whole.

54. Accordingly, the Appeals Chamber dismisses Fatuma's Fifth Ground of Appeal.

E. Alleged Error in Failing to Consider Fatuma's Final Trial Brief in English (Fatuma's Sixth Ground of Appeal)

55. Fatuma filed her final trial brief in French on 31 May 2021.¹⁶² On 25 June 2021, the Single Judge pronounced the Trial Judgement.¹⁶³ The English translation of Fatuma's final trial brief was filed on 6 September 2021¹⁶⁴ and the written reasons for the Trial Judgement were issued on 20 September 2021.¹⁶⁵

56. Fatuma submits that the Single Judge erred in law in failing to take into account her written submissions in a language that he understood because, at the time of the pronouncement of the Trial Judgement, there was no English translation of her final trial brief and the Single Judge did not

¹⁵⁸ Prosecution Response Brief, para. 50, *referring to, inter alia*, confidential Exhibit P776, pp. 2, 3.

¹⁵⁹ See, e.g., *Mladić* Appeal Judgement, paras. 339, 423; *Karadžić* Appeal Judgement, paras. 563, 702; *Prlić et al.* Appeal Judgement, para. 771; *Nyiramasuhuko et al.* Appeal Judgement, paras. 645, 1954.

¹⁶⁰ See Trial Judgement, paras. 289-297. See also, e.g., Trial Judgement, paras. 109-112, 126-130, 137, 138, 159-161, 164-166, 170-175, 178-180, 188-190, 196, 200, 201, 216-218, 224-226, 241-244, 253, 254, 259-261, 264, 265 and the evidence cited therein.

¹⁶¹ See *supra* para. 28. See Trial Judgement, paras. 297, 304.

¹⁶² *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, *Mémoire final de la défense de Marie Rose Fatuma*, 31 May 2021 (confidential with confidential Annex A).

¹⁶³ T. 25 June 2021 pp. 3-14. See also *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Order Scheduling Pronouncement of Judgement, 23 June 2021, p. 1.

¹⁶⁴ See Fatuma Final Trial Brief, RP. 59/21588 BIS.

understand French.¹⁶⁶ Fatuma claims that, as a result, the Single Judge violated her “right to be heard before a decision affecting her rights is made”,¹⁶⁷ and failed to make, or erred in making, findings relevant to the determination of her criminal responsibility.¹⁶⁸ Fatuma argues that, as a result, the Appeals Chamber should declare her not guilty.¹⁶⁹

57. The Prosecution responds that Fatuma fails to establish that the Single Judge did not fully consider her final trial brief because it was originally filed in French.¹⁷⁰ It contends that Fatuma’s final trial brief was extensively referenced in the Trial Judgement, which, according to the Prosecution, demonstrates that the Single Judge understood her submissions and relied on the brief.¹⁷¹ The Prosecution also notes that, at trial, the Single Judge adjudicated motions filed by Fatuma in French, prior to the filing of English translations.¹⁷² The Prosecution contends that, in addition, Fatuma fails to show that the alleged error invalidates the Single Judge’s decision or affects the relevant conclusions underlying her conviction.¹⁷³

58. The Appeal Chamber recalls that English and French are the working languages of the Mechanism.¹⁷⁴ The fact that one of the working languages is commonly used by a judge does not demonstrate, *per se*, that the judge is unable to comprehend documents written in the other working language of the Mechanism. The Appeals Chamber observes that, in assessing Fatuma’s involvement in interfering with Witness ANAL/TNN6, the Single Judge cited an extract in French from the annex of Fatuma’s final trial brief that had no English translation available at the time.¹⁷⁵ In addition, on several occasions at trial, the Single Judge issued decisions disposing of motions filed by Fatuma in French, without awaiting the filing of English translations thereof.¹⁷⁶ In light of

¹⁶⁵ Trial Judgement, para. 1.

¹⁶⁶ Fatuma Notice of Appeal, paras. 17, 18; Fatuma Appeal Brief, paras. 6, 72-76. *See also* Fatuma Reply Brief, para. 19.

¹⁶⁷ Fatuma Appeal Brief, paras. 73-75.

¹⁶⁸ Fatuma Appeal Brief, para. 76.

¹⁶⁹ Fatuma Appeal Brief, para. 76.

¹⁷⁰ Prosecution Response Brief, para. 53.

¹⁷¹ Prosecution Response Brief, para. 54.

¹⁷² Prosecution Response Brief, para. 55.

¹⁷³ Prosecution Response Brief, para. 53.

¹⁷⁴ Article 31 of the Statute; Rule 3(A) of the Rules.

¹⁷⁵ *See* Trial Judgement, n. 849, *referring to, inter alia*, Fatuma Final Trial Brief, paras. 137-141, Annex, p. 20 (“*Il n’est pas contesté que l’écriture sur la pièce 4D00005 est celle de la soeur de TNN6/ANAL.*”).

¹⁷⁶ *See, e.g., Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-T, Decision on Marie Rose Fatuma’s Request for Video-Teleconference Link, 1 April 2021, p. 1, *referring to Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-T, *Requête tendant à obtenir l’autorisation de permettre au témoin de la Défense Augustin Kanyabitiro de témoigner par voie de vidéoconférence depuis Kigali*, 19 March 2021 (English translation not yet available); *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Decision on Marie Rose Fatuma’s and Maximilien Turinabo’s Motion for Disclosure of Prosecution’s First Contacts with Witness TNN6, 21 October 2020, p. 1, *referring to Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, *Requête conjointe des Défenses de Marie Rose Fatuma et Maximilien Turinabo en divulgation des premiers contacts de l’Accusation avec le témoin ANAL/TNN6*, 28 September 2020 (confidential with confidential Annexes A and B).

these observations, the Appeals Chamber finds that Fatuma's submissions are speculative and that she fails to demonstrate that the Single Judge did not fully consider her final trial brief in determining her criminal responsibility at the time of the pronouncement of the Trial Judgement.

59. The Appeals Chamber, therefore, dismisses Fatuma's Sixth Ground of Appeal.

F. Alleged Errors in Relation to Sentencing (Fatuma's Seventh and Eighth Grounds of Appeal)

60. Having found Fatuma guilty of interfering with the administration of justice under Count 1 of the *Nzabonimpa et al.* Indictment, the Single Judge sentenced Fatuma to "time served".¹⁷⁷

61. Fatuma submits that the Single Judge erred in law in imposing a manifestly excessive sentence equivalent to 352 days of imprisonment, which is the amount of time she had spent in pre-trial detention.¹⁷⁸ In particular, Fatuma contends that the Single Judge failed to individualise her sentence, which did not reflect her "relatively minor role" in the commission of the offence, good moral standing, commitment to family life, and good conduct while on provisional release, as well as her "subjective and honest belief" that Ngirabatware had been convicted of crimes that he did not commit.¹⁷⁹ Fatuma also submits that the sentence imposed was not reflective of the fact that Witness ANAL/TNN6 demanded money in exchange for her recantation and that the witness eventually did not recant her *Ngirabatware* trial testimony.¹⁸⁰ Fatuma argues that, by way of comparison, even in the most serious cases of contempt before the ICTY and the ICTR, the prison sentence imposed did not exceed 10 months.¹⁸¹ As a remedy, Fatuma requests that the Appeals

(English translation of French original filed on 2 November 2020); *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Decision on Marie Rose Fatuma's Motion to Exclude Parts of the Prosecution Revised Pre-Trial Brief, 30 January 2020, pp. 1, 2, referring to *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, *Requête de la défense de Marie Rose Fatuma aux fins d'exclusion de parties du mémoire préalable au procès de l'accusation*, 26 December 2019 (confidential) (English translation of French original filed on 11 February 2020).

¹⁷⁷ Trial Judgement, paras. 339, 386, 407, 409(i). See Trial Judgement para. 405 (wherein the Single Judge noted that Fatuma, Nzabonimpa, and Ndagijimana were arrested on 3 September 2018 and that each had spent more than eleven months in pre-trial detention prior to their provisional release on 22 August 2019).

¹⁷⁸ Fatuma Notice of Appeal, para. 19; Fatuma Appeal Brief, paras. 2, 6, 81; Fatuma Reply Brief, paras. 20-23.

¹⁷⁹ Fatuma Appeal Brief, paras. 80, 86-91.

¹⁸⁰ Fatuma Appeal Brief, para. 89.

¹⁸¹ See Fatuma Appeal Brief, paras. 82-85, referring to, *inter alia*, *Nshogoza* Contempt Appeal Judgement, *Margetić* Contempt Trial Judgement, *Jović* Contempt Trial Judgement, *Jović* Contempt Appeal Judgement. Fatuma further submits that the Single Judge erred in law in failing to differentiate her sentence from the sentences imposed on Nzabonimpa and Ndagijimana, notwithstanding his finding that her criminal responsibility was relatively minor in comparison. See Fatuma Notice of Appeal, paras. 21, 22; Fatuma Appeal Brief, paras. 2, 6, 93-95; Fatuma Reply Brief, para. 24.

Chamber quash her sentence or, alternatively, impose either a significantly lower sentence of imprisonment or a fine, deemed paid by virtue of the time she had spent in detention.¹⁸²

62. The Prosecution responds that, contrary to Fatuma's claim, the Single Judge did not sentence her to a term of 352 days of imprisonment, but instead acknowledged that her sentence was completely served as a result of credit being given pursuant to Rule 125(C) of the Rules for the time she had spent in pre-trial custody.¹⁸³ The Prosecution further submits that the Single Judge properly considered all relevant sentencing factors, tailoring her sentence to her individual circumstances and the gravity of the crime, and that Fatuma fails to show that the sentence of "time served" was manifestly excessive.¹⁸⁴ It further argues that Fatuma's reliance on sentences imposed in other cases does not demonstrate that the Single Judge abused his discretion¹⁸⁵ and that, had the Single Judge imposed a specific term of imprisonment, it remains possible that he would have sentenced Fatuma to a lesser term than she had spent in pre-trial custody.¹⁸⁶ Finally, the Prosecution submits that Fatuma fails to show the impact of the alleged errors on her sentence, given that "time served" was the minimum sentence available.¹⁸⁷

63. The Appeals Chamber recalls that appeals against a sentence, as appeals from a trial judgement, are appeals *stricto sensu*; they are of a corrective nature and are not trials *de novo*.¹⁸⁸ The single judge has broad discretion in determining an appropriate sentence due to his obligation to individualise the penalty to fit the circumstances of the accused and the gravity of the crime.¹⁸⁹ As a general rule, the Appeals Chamber will not revise a sentence unless the single judge has committed a discernible error in exercising his discretion or has failed to follow the applicable law.¹⁹⁰ It is for the party challenging the sentence to demonstrate how the single judge ventured outside his discretionary framework in imposing the sentence.¹⁹¹ To demonstrate that the single judge committed a discernible error in exercising his discretion, an appellant must show that the single judge gave weight to extraneous or irrelevant considerations; failed to accord weight or

¹⁸² Fatuma Notice of Appeal, para. 23; Fatuma Appeal Brief, paras. 92, 96; Fatuma Reply Brief, paras. 2, 25.

¹⁸³ Prosecution Response Brief, para. 61.

¹⁸⁴ Prosecution Response Brief, paras. 57, 62-64.

¹⁸⁵ Prosecution Response Brief, para. 65.

¹⁸⁶ Prosecution Response Brief, paras. 67, 68 (wherein the Prosecution submits that Fatuma's argument that she received the same sentence as Nzabonimpa and Ndagijimana is speculative given that the Single Judge did not specify particular terms of imprisonment for any of them and that, had he done so, each would have received a sentence tailored to their personal conduct).

¹⁸⁷ Prosecution Response Brief, paras. 58, 59 (wherein the Prosecution posits that an imposition of a fine would not have resulted in a decrease in Fatuma's overall punishment).

¹⁸⁸ *Mladić* Appeal Judgement, para. 539; *Karadžić* Appeal Judgement, para. 749.

¹⁸⁹ *Mladić* Appeal Judgement, para. 539; *Karadžić* Appeal Judgement, para. 749; *Ngirabatware* Appeal Judgement, para. 255. See also Rule 2(C) of the Rules.

¹⁹⁰ *Mladić* Appeal Judgement, para. 539; *Karadžić* Appeal Judgement, para. 749; *Ngirabatware* Appeal Judgement, para. 255.

sufficient weight to relevant considerations; made a clear error as to the facts upon which he exercised his discretion; or that the single judge's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the single judge failed to properly exercise his discretion.¹⁹²

64. Pursuant to Article 22(1) of the Statute and Rule 90(G) of the Rules, the penalties that may be imposed on a person found guilty of contempt are a term of imprisonment not exceeding seven years and/or a fine not exceeding 50,000 euros.¹⁹³ Rule 125(C) of the Rules further provides that credit shall be given to the convicted person for the period, if any, during which he or she has been detained in custody pending surrender to the Mechanism or pending trial or appeal. The Appeals Chamber notes that the Single Judge correctly cited the applicable law in this regard.¹⁹⁴ The Single Judge also noted that Fatuma had spent more than 11 months in pre-trial detention and was entitled to credit for time served pursuant to Rule 125(C) of the Rules.¹⁹⁵

65. However, considering that “time served” is not among the penalties provided in the Statute and the Rules that may be imposed on a person found guilty of contempt, the Appeals Chamber finds that, by sentencing Fatuma to “time served”, the Single Judge did not impose a permissible sentence. It was incumbent on the Single Judge, when electing to impose a sentence of imprisonment, to first determine the term of imprisonment and then, in accordance with Rule 125(C) of the Rules, give credit for the time that Fatuma had spent in detention in the custody of the Mechanism pending trial. Accordingly, the Appeals Chamber finds, *proprio motu*, that by not determining a specific term of imprisonment, the Single Judge committed an error in failing to follow the applicable law. Having articulated the correct legal standard, the Appeals Chamber will review the Single Judge's findings and determine itself the appropriate sentence.¹⁹⁶

66. In view of the foregoing, the Appeals Chamber, *proprio motu*, sets aside the sentence of “time served” imposed by the Single Judge. Fatuma's Seventh and Eighth Grounds of Appeal are dismissed as moot.

¹⁹¹ *Mladić* Appeal Judgement, para. 539; *Karadžić* Appeal Judgement, para. 749.

¹⁹² *Mladić* Appeal Judgement, para. 539; *Karadžić* Appeal Judgement, para. 749; *Ngirabatware* Appeal Judgement, para. 255.

¹⁹³ Article 22(4) of the Statute provides that, in addition to imprisonment, the Single Judge may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

¹⁹⁴ See Trial Judgement, paras. 387, 388.

¹⁹⁵ Trial Judgement, para. 405.

¹⁹⁶ See *infra* Section V.A. See also *supra* para. 15.

IV. THE APPEAL OF THE PROSECUTION

67. The Prosecution presents three grounds of appeal: two grounds of appeal challenging Munyeshuli's acquittal of contempt under Count 3 of the *Nzabonimpa et al.* Indictment, and one ground of appeal contesting the Single Judge's order that Ngirabatware's sentence of two years of imprisonment for contempt run concurrently with the sentence of 30 years of imprisonment that he is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide.¹⁹⁷ Munyeshuli and Ngirabatware respond that the Prosecution's respective grounds of appeal should be dismissed.¹⁹⁸ The Appeals Chamber will address the parties' contentions in turn.

A. Alleged Error in Failure to Convict Munyeshuli of Contempt for Disclosing the Identities of Protected Witnesses (Prosecution's First Ground of Appeal)

68. Under Count 3 of the *Nzabonimpa et al.* Indictment, the Prosecution alleged that, on 15 July 2017, Munyeshuli revealed to Turinabo the identities of the Recanting Witnesses in knowing violation of the protective measures ordered in the *Ngirabatware* case.¹⁹⁹ The Single Judge acquitted Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment in relation to this allegation because he was not convinced that Munyeshuli disclosed the identity of any protected witness in his conversation with Turinabo or that Munyeshuli knowingly and wilfully violated the Protective Measures Decisions.²⁰⁰

69. The Prosecution submits that the Single Judge erred in failing to convict Munyeshuli of contempt by: (i) applying an incorrect definition of disclosure and finding that Munyeshuli did not disclose protected information in violation of court orders; and (ii) finding that Munyeshuli did not possess the *mens rea* for contempt when disclosing protected information.²⁰¹ The Prosecution requests that the Appeals Chamber convict Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment for disclosing the identities of the Recanting Witnesses and sentence

¹⁹⁷ See Prosecution Notice of Appeal, paras. 3-6, 8-10, 12; Prosecution Appeal Brief, paras. 3-5, 7-26, 28-33, 35-44. See Trial Judgement, paras. 368, 408, 409(ii), (iii).

¹⁹⁸ See Munyeshuli Response Brief, paras. 8, 51, p. 28; Ngirabatware Response Brief, paras. 1, 50.

¹⁹⁹ *Nzabonimpa et al.* Indictment, paras. 9, 29, p. 13, referring to *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution's Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009 ("*Ngirabatware* Decision of 7 May 2009"), *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution Motion for Leave to Vary Its Witness List, 28 January 2010 ("*Ngirabatware* Decision of 28 January 2010"), *Prosecutor v. Augustin Ngirabatware*, Case No. MICT-12-29-R, Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) ("*Ngirabatware* Decision of 5 August 2016") (collectively, "Protective Measures Decisions").

²⁰⁰ Trial Judgement, paras. 357-361, 368, 409(ii).

²⁰¹ Prosecution Notice of Appeal, paras. 3-6; Prosecution Appeal Brief, paras. 3, 7-26; Prosecution Reply Brief (Munyeshuli), paras. 2-14.

him accordingly.²⁰² Munyeshuli responds that the Appeals Chamber should uphold the Single Judge's findings and dismiss the Prosecution's First Ground of Appeal in its entirety.²⁰³

1. Alleged Error in Relation to *Actus Reus*

70. The Trial Judgement reflects evidence that, on 14 July 2017, Ngirabatware's former counsel Mr. Peter Robinson ("Robinson") wrote to Munyeshuli in an e-mail:

[The Prosecution] was reportedly in Gisenyi this week interviewing some former [Prosecution] witnesses in Ngirabatware's case. Today they sent me the below e-mail. I plan to come to Rwanda in August and attend those interviews of persons who consent. WISP will probably contact them next week to ask if they consent. *I would appreciate it if you could inform [Turinabo] and [Maniraguha] about that in advance.* We should take no position on whether the witnesses consent to be interview[ed] – that is totally up to them.²⁰⁴

71. The Trial Judgement further reflects that, on 15 July 2017, Munyeshuli called Turinabo, informing him that the Prosecution wanted to meet with nine individuals, that the WISP would be in contact with them, that the individuals could refuse or agree to the meeting, and that the Defence would attend the meeting if the individuals agreed.²⁰⁵ In this conversation, Munyeshuli referred to Witnesses ANAE/TNN30, ANAM/TNN31, and ANAN by their first names and to Witness ANAT by his full name.²⁰⁶

72. The Single Judge found that, while he had "no doubt that Munyeshuli mentioned the names of protected witnesses to Turinabo during their conversation on 15 July 2017",²⁰⁷ he was not convinced that, in so doing, Munyeshuli committed a crime.²⁰⁸ The Single Judge noted that Turinabo was a "resource person" for the Defence during the *Ngirabatware* ICTR trial and the *Ngirabatware* review proceedings and that the Recanting Witnesses' identities had already been revealed to Turinabo by Nzabonimpa in November 2015 in the course of the preparation of the *Ngirabatware* review proceedings.²⁰⁹ The Single Judge stated that, according to the Oxford English Dictionary, the plain meaning of the term "disclosure" is "the action or fact of disclosing or revealing *new or secret* information" and "of making something *openly* known".²¹⁰ The Single Judge found that "[i]t cannot be reasonably said that Munyeshuli revealed any identifying

²⁰² Prosecution Notice of Appeal, para. 7; Prosecution Appeal Brief, paras. 6, 27; Prosecution Reply Brief (Munyeshuli), para. 1.

²⁰³ Munyeshuli Response Brief, para. 51.

²⁰⁴ Trial Judgement, para. 351, *citing* confidential Exhibit 5D10 (emphasis added in Trial Judgement).

²⁰⁵ Trial Judgement, para. 352, *referring to* confidential Exhibit 5D4.

²⁰⁶ Trial Judgement, para. 352, *referring to* confidential Exhibit 5D4, pp. 3-5.

²⁰⁷ Trial Judgement, para. 357.

²⁰⁸ Trial Judgement, para. 358.

²⁰⁹ Trial Judgement, paras. 358, 361.

²¹⁰ Trial Judgement, para. 359 (emphasis added in Trial Judgement).

information to Turinabo that was somehow new or secret to Turinabo or that, in doing so in a private conversation, Munyeshuli made this information openly known.”²¹¹

73. The Prosecution submits that the Single Judge erred in law by introducing a new element to the offence of contempt: requiring that disclosure of protected information in a private conversation reveal something “new or secret”.²¹² The Prosecution asserts that it is well established in the jurisprudence that prior disclosure does not exonerate a person who re-publishes protected information.²¹³ According to the Prosecution, the Single Judge’s definition of disclosure goes against the object, purpose, and spirit of Rule 90(A) of the Rules, and undermines the Mechanism’s authority and ability to enforce witness protection orders.²¹⁴

74. Munyeshuli responds that the Single Judge correctly interpreted and applied the jurisprudence in the specific circumstances of the case.²¹⁵ Munyeshuli argues that mentioning the name of a protected witness to someone who already knows their identity and status as a protected witness does not compromise the object and purpose of protective measures orders, which is to protect witnesses’ identities – where there is an objective fear for their safety and security – from “persons *extraneous* to the proceedings”.²¹⁶

75. The Appeals Chamber recalls that Rule 90(A)(ii) of the Rules provides that the Mechanism may hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who discloses information relating to proceedings before the ICTR or the Mechanism in knowing violation of an order of a Chamber or a Single Judge. It is well established in the jurisprudence that, for the purposes of a conviction for contempt, any defiance of an order of

²¹¹ Trial Judgement, para. 360.

²¹² Prosecution Appeal Brief, para. 8. *See also* Prosecution Notice of Appeal, para. 4; Prosecution Reply Brief (Munyeshuli), para. 4.

²¹³ Prosecution Appeal Brief, para. 10, *referring to, inter alia, Jović* Contempt Appeal Judgement, para. 30, *Hartmann* Contempt Appeal Judgement, para. 53, *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 29, *Nshogoza* Contempt Appeal Judgement, para. 65, *Marijačić and Rebić* Contempt Appeal Judgement, para. 45. *See also* Prosecution Reply Brief (Munyeshuli), para. 3, *referring to, inter alia, Nshogoza* Contempt Trial Judgement, paras. 187-189.

²¹⁴ Prosecution Appeal Brief, paras. 11, 12; Prosecution Reply Brief (Munyeshuli), para. 5. The Prosecution further submits that, even if disclosure required that something “new or secret” be revealed, this requirement was satisfied in Munyeshuli revealing to Turinabo the identity of the witnesses that the Prosecution wished to interview and in confirming “anew the accuracy and currency” of the information that Turinabo had previously obtained. *See* Prosecution Appeal Brief, paras. 16, 17; Prosecution Reply Brief (Munyeshuli), paras. 8-12.

²¹⁵ Munyeshuli Response Brief, paras. 14-20, 40, 41.

²¹⁶ Munyeshuli Response Brief, para. 21 (emphasis in original). Munyeshuli adds that the Prosecution’s “theory”, raised for the first time on appeal, as to what may have constituted “new or secret” information that he revealed to Turinabo, is without merit and unsupported by the content of the 15 July 2017 conversation, the findings in the Trial Judgement, or the evidence on the record. *See* Munyeshuli Response Brief, paras. 26-41. Munyeshuli further submits that, even if the Appeals Chamber finds that the Single Judge erred in law, given that Turinabo was already aware of the identity and protected status of the Recanting Witnesses, and that he worked closely with the Defence as a “resource person”, no

a Chamber *per se* interferes with the administration of justice²¹⁷ and no additional proof of harm to the administration of justice is required.²¹⁸ Moreover, in the *Jović* case, the ICTY Appeals Chamber held that the fact that protected information may have been disclosed by a third party does not mean that this information was no longer protected, that court orders had been *de facto* lifted, or that their violation would not interfere with the administration of justice.²¹⁹ The Appeals Chamber notes that the Single Judge cited this jurisprudence.²²⁰

76. The Single Judge, however, distinguished the facts in this case from those in the *Jović* case, stating that “[g]iving additional publicity to protected material in the public domain is plainly different from telling one individual in a private conversation information that he already knows”.²²¹ The Single Judge also made a distinction between the present case and the *Nshogoza* case, where a witness’s identity and protected status were disclosed to a third party who had no prior knowledge of this information.²²²

77. The Appeals Chamber notes that there is no requirement in the jurisprudence that unauthorised disclosure of protected information must take place in a public domain or be accessible to the general public in order to amount to an interference with the administration of justice under Rule 90(A)(ii) of the Rules.²²³ In addition, the Rules and previous contempt jurisprudence do not sustain the proposition that release of protected information does not amount to “disclosure” in circumstances where the recipient is already in possession of such information. To the contrary, the ICTY Appeals Chamber in the *Jović* case expressly confirmed that the fact that protected information may have been previously disclosed by a third party does not mean that such information is no longer protected or that its subsequent disclosure will not be in violation of a

conviction should be entered against him on appeal and his acquittal should remain undisturbed. *See* Munyeshuli Response Brief, para. 25.

²¹⁷ *Jović* Contempt Appeal Judgement, para. 30. *See also* *Hartmann* Contempt Appeal Judgement, para. 107; *Marijačić and Rebić* Contempt Appeal Judgement, para. 44; *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 20; *Nshogoza* Contempt Appeal Judgement, para. 56.

²¹⁸ *Jović* Contempt Appeal Judgement, para. 30 (concerning Rule 77(A)(ii) of the ICTY Rules of Procedure and Evidence (“ICTY Rules”), which is essentially identical to Rule 90(A)(ii) of the Rules). *See also* *Hartmann* Contempt Appeal Judgement, para. 107; *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 20; *Nshogoza* Contempt Appeal Judgement, para. 56.

²¹⁹ *Jović* Contempt Appeal Judgement, para. 30. *See also* *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 29; *Marijačić and Rebić* Contempt Appeal Judgement, para. 45.

²²⁰ Trial Judgement, paras. 359, 367, *referring to, inter alia*, *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 29, *Nshogoza* Contempt Appeal Judgement, para. 56, *Jović* Contempt Appeal Judgement, para. 30.

²²¹ Trial Judgement, para. 360.

²²² Trial Judgement, n. 971.

²²³ In the *Nshogoza* case, for example, the accused was held responsible for disclosing to Augustin Nyagatare and a notary Witness GAA’s identity, as a Prosecution witness, and Witness A7/GEX’s identity, as either someone who had given a statement to the Prosecution or as a potential Prosecution witness. *See* *Nshogoza* Contempt Appeal Judgement, para. 48, *referring to, inter alia*, *Nshogoza* Contempt Trial Judgment, para. 186.

court order.²²⁴ The Appeals Chamber considers that the *Jović* Contempt Appeal Judgement and the *Nshogoza* Contempt Appeal Judgement both support the principle that release, whether in a public or private domain, of protected information may constitute unauthorised disclosure, irrespective of whether the intended recipient of such information was already aware of it due to previous disclosure by another person.

78. In light of these considerations, the Appeals Chamber finds that the Single Judge erred in law in considering that Munyeshuli did not disclose protected information in violation of the Protective Measures Decisions, on the basis that Turinabo was already aware of the information and because Munyeshuli shared it with him in a private conversation that did not make the information openly known.²²⁵ The Appeals Chamber will therefore apply the correct legal standard to the evidence contained in the trial record and determine whether it is itself convinced beyond a reasonable doubt that Munyeshuli disclosed protected information in violation of the Protective Measures Decisions.

79. The Appeals Chamber notes that the Protective Measures Decisions prohibit disclosure of information identifying the Recanting Witnesses, directly or indirectly, to any person or entity outside of the Defence and Prosecution teams, and provide no conditions that would permit release of such information beyond these terms, including on the basis of prior disclosure.²²⁶ Having reviewed the evidence in relation to the conversation on 15 July 2017, the Appeals Chamber agrees with the Single Judge's finding that there is no doubt that Munyeshuli mentioned the names of the Recanting Witnesses to Turinabo.²²⁷ While the Appeals Chamber accepts Munyeshuli's submission that during this conversation he did not refer to them explicitly as "witnesses" nor mentioned their pseudonyms,²²⁸ the only reasonable inference from the evidence is that, when talking to Turinabo, Munyeshuli identified these individuals as protected witnesses, who will soon be contacted by the WISP for the purposes of ascertaining their consent to meet with the Prosecution in the presence of

²²⁴ *Jović* Contempt Appeal Judgement, para. 30. See also *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 29.

²²⁵ In light of this finding, the Appeals Chamber considers it unnecessary to address the remaining arguments of the Prosecution and Munyeshuli on appeal in relation to this alleged error. See *supra* nn. 214, 216.

²²⁶ *Ngirabatware* Decision of 5 August 2016, p. 4 ("The parties shall keep confidential any information concerning the witnesses and their identities, and shall not share, discuss, or reveal, directly or indirectly, such information to any person or entity outside of the Defence and the Prosecution teams."); *Ngirabatware* Decision of 7 May 2009, p. 7 ("The Defence shall keep confidential any identifying information, and shall not share, discuss, or reveal, directly or indirectly, such information to any person or entity; [...] The Defence shall provide a written list, and immediately following a change to the Defence provide an updated written list, to the Prosecution and the Registry, designating all officially authorised persons working with the Defence who will have access to any identifying information. In the event that any such persons leave the Defence, the Defence must provide written notification to the Registry and confirm that any such persons have remitted all materials containing identifying information"). See also *Ngirabatware* Decision of 28 January 2010, p. 15 ("ORDERS that the protective measures set out in the [Decision of 7 May 2009] be applied to the new [w]itnesses").

²²⁷ Trial Judgement, para. 357. See confidential Exhibit 5D4, pp. 3-5.

the Defence.²²⁹ The Appeals Chamber further notes that, although Turinabo was a “resource person” for the Defence during the *Ngirabatware* ICTR trial and the *Ngirabatware* review proceedings,²³⁰ Munyeshuli confirmed in his testimony that Turinabo was not officially part of the Defence team in the *Ngirabatware* review proceedings.²³¹ The Appeals Chamber is therefore convinced beyond reasonable doubt that, by mentioning the names of the Recanting Witnesses to Turinabo, who was not a member of the Defence team, during their conversation on 15 July 2017, Munyeshuli disclosed protected information in violation of the Protective Measures Decisions.

2. Alleged Error in Relation to *Mens Rea*

80. The Single Judge found that, even if Munyeshuli’s conversation with Turinabo on 15 July 2017 could be construed as prohibited disclosure of protected information, he was not satisfied beyond reasonable doubt that Munyeshuli had the requisite *mens rea* – knowledge that disclosure of a particular information is done in violation of a court order – for a violation of Rule 90(A)(ii) of the Rules.²³²

81. The Prosecution submits that the Single Judge erred in fact by failing to find that Munyeshuli possessed the *mens rea* for contempt.²³³ The Prosecution contends that the Single Judge’s findings that Munyeshuli was aware – and able to comprehend the content – of the applicable protective measures, that he understood that information concerning the Recanting Witnesses should not be revealed to anyone outside the Defence team, and that he knew that Turinabo was not on the list of Defence team members are sufficient to conclude that Munyeshuli had the requisite *mens rea*.²³⁴ The Prosecution adds that there was no ambiguity about the list of people with whom Munyeshuli was allowed to share confidential information, and the Single Judge’s implication that there may be some “grey area” of permissible sharing of confidential information with “resource persons” or intermediaries is not supported by evidence.²³⁵ The Prosecution submits that considering Munyeshuli’s knowledge of the applicable protective measures, his extensive professional experience as a defence investigator, and the extraordinary witness protection regime in place to avoid witness interference, no reasonable trier of fact could

²²⁸ Munyeshuli Response Brief, para. 31.

²²⁹ See confidential Exhibit 5D4, pp. 2-5. See also Trial Judgement, para. 357.

²³⁰ See Trial Judgement, para. 358, *referring to, inter alia*, T. 18 March 2021 pp. 23, 61, 62, 70, 74 (private session), T. 7 April 2021 pp. 64, 68, T. 8 April 2021 p. 7.

²³¹ Trial Judgement, n. 935, *referring to, inter alia*, T. 8 April 2021 pp. 59, 60.

²³² Trial Judgement, paras. 361, 368.

²³³ See Prosecution Notice of Appeal, para. 6; Prosecution Appeal Brief, paras. 3, 18-26.

²³⁴ Prosecution Appeal Brief, paras. 19, 20, *referring to, inter alia*, Trial Judgement, paras. 361, n. 935.

²³⁵ Prosecution Appeal Brief, paras. 22, 23.

have concluded that Munyeshuli was not at least wilfully blind or recklessly indifferent to the possibility that he was violating the Protective Measures Decisions.²³⁶

82. Munyeshuli responds that, given the definition of disclosure applied by the Single Judge, the requisite intent to interfere with the administration of justice can only be met if the intention was to reveal something previously unknown to a third party.²³⁷ Munyeshuli contends that his knowledge that Turinabo was already aware of the protected information excludes the possibility that he disclosed the information deliberately or recklessly²³⁸ or that he acted with “lack of good faith”.²³⁹ Munyeshuli submits that, should the Appeals Chamber conclude that the Single Judge erred in finding that he did not possess the requisite *mens rea*, the Prosecution nevertheless fails to demonstrate that a miscarriage of justice has occurred, particularly given that the task of hearing, assessing and weighing the evidence is left primarily to the single judge.²⁴⁰

83. The Prosecution replies that the *mens rea* standard requires only wilful blindness or reckless indifference and not the specific intent to interfere with the administration of justice.²⁴¹ It further argues that any supposed “good faith” Munyeshuli might have had in discussing confidential information with Turinabo has no bearing on his *mens rea*.²⁴²

84. The Appeals Chamber recalls that the *mens rea* for a violation under Rule 90(A)(ii) of the Rules is the knowledge that the disclosure in question is in violation of an order of a Chamber or a Single Judge.²⁴³ No demonstration of a “specific intent to interfere with the administration of justice” is required in this respect.²⁴⁴ The ICTY Appeals Chamber in the *Hartmann* case accepted the Trial Chamber’s interpretation that:

[I]t is sufficient to establish that the conduct which constituted the violation was deliberate and not accidental. This may be inferred from circumstantial evidence. Where it is established that an accused had knowledge of the existence of a Court order, a finding of intent to violate the order will almost necessarily follow. Wilful blindness to the existence of the order, or reckless

²³⁶ Prosecution Appeal Brief, paras. 18, 23-26.

²³⁷ Munyeshuli Response Brief, para. 44.

²³⁸ Munyeshuli Response Brief, para. 44.

²³⁹ Munyeshuli Response Brief, para. 45.

²⁴⁰ Munyeshuli Response Brief, para. 47. *See also* Munyeshuli Response Brief, paras. 46, 48-50.

²⁴¹ Prosecution Reply Brief (Munyeshuli), para. 14.

²⁴² Prosecution Reply Brief (Munyeshuli), para. 13.

²⁴³ *See Hartmann* Contempt Appeal Judgement, para. 127; *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 26; *Nshogoza* Contempt Appeal Judgement, para. 77; *Jović* Appeal Judgement, para. 27 (wherein the ICTY Appeals Chambers held that: “The *mens rea* that attaches to contempt under Rule 77(ii) [of the ICTY Rules] requires only knowledge of the facts that make the conduct of the accused illegal; that is, knowledge that the disclosure was in violation of an order of the Chamber. It is not a valid defence that one did not know that disclosure of the protected information in violation of an order of a Chamber was unlawful.”)

²⁴⁴ *Hartmann* Contempt Appeal Judgement, para. 128.

indifference to the consequences of the act by which the order is violated may satisfy the mental element. Mere negligence in failing to ascertain whether an order had been made is insufficient.²⁴⁵

85. The Single Judge acknowledged that it was not disputed that Munyeshuli was aware that protective measures were in place and that he was able to comprehend their contents, including that information concerning the Recanting Witnesses shall not be revealed to anyone outside of the Defence team.²⁴⁶ The Single Judge further noted Munyeshuli's evidence that, when joining the case, he signed a document undertaking to maintain confidentiality and understood that he was not permitted to provide confidential information to anyone not listed among the Defence team members, including Turinabo.²⁴⁷ The Appeals Chamber considers that the fact that Turinabo had been an intermediary for the Defence for many years and was informed of the Recanting Witnesses' identities since at least November 2015,²⁴⁸ does not alter the fact that Munyeshuli was aware that the Protective Measures Decisions prohibit the disclosure of information identifying protected witnesses to Turinabo.

86. The Appeals Chamber recalls that it will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding, and that this same standard of reasonableness and deference to findings of the single judge applies when the Prosecution appeals against an acquittal.²⁴⁹ The Appeals Chamber is also mindful that mere negligence in failing to ascertain whether an order had been made is insufficient for the purposes of establishing *mens rea* for contempt.²⁵⁰ Bearing these principles in mind, the Appeals Chamber finds that, in light of the evidence cited in the Trial Judgement and the Single Judge's findings recalled above,²⁵¹ particularly that Munyeshuli was aware of the protective measures in place and understood that he was not permitted to provide the confidential information to Turinabo, no reasonable trier of fact could have concluded that, by sharing information on the identity of the Recanting Witnesses with Turinabo, Munyeshuli did not knowingly and wilfully violate the

²⁴⁵ *Hartmann Contempt Appeal Judgement*, para. 128, citing *Hartmann Contempt Trial Judgement*, para. 22. See also *Nobilo Contempt Appeal Judgement*, paras. 44, 45, 54 (wherein the ICTY Appeals Chamber held that: "In most cases where it has been established that the alleged contemnor had knowledge of the existence of the order (either *actual* knowledge or a wilful blindness of its existence), a finding that he intended to violate it would almost necessarily follow. There may, however, be cases where such an alleged contemnor acted with reckless indifference as to whether his act was in violation of the order. In the opinion of the Appeals Chamber, such conduct is sufficiently culpable to warrant punishment as contempt, even though it does not establish a specific intention to violate the order. [...] it is sufficient to establish that the act which constituted the violation was deliberate and not accidental." (emphasis in original)).

²⁴⁶ Trial Judgement, para. 361.

²⁴⁷ Trial Judgement, n. 935, referring to, *inter alia*, T. 8 April 2021 pp. 59, 60.

²⁴⁸ See Trial Judgement, para. 361.

²⁴⁹ See *supra* paras. 16, 17.

²⁵⁰ See *Hartmann Contempt Appeal Judgement*, para. 128.

²⁵¹ See *supra* para. 85.

Protective Measures Decisions. The Appeals Chamber therefore finds that the Single Judge erred in finding that Munyeshuli did not have the requisite *mens rea* for contempt in this regard.

3. Conclusion

87. For the foregoing reasons, the Appeals Chamber concludes that the Single Judge erred in failing to hold Munyeshuli responsible for disclosing the identities of the Recanting Witnesses in knowing violation of the Protective Measures Decisions. The Appeals Chamber further finds that, when account is taken of the errors of law and fact committed by the Single Judge,²⁵² all reasonable doubt of Munyeshuli's guilt is eliminated.²⁵³ The Appeals Chamber, therefore, grants the Prosecution's First Ground of Appeal and finds Munyeshuli guilty of contempt, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(ii) of the Rules, by disclosing the identities of the Recanting Witnesses in knowing violation of a court order.²⁵⁴

B. Alleged Error in Failure to Convict Munyeshuli of Contempt for Indirectly Contacting Protected Witnesses (Prosecution's Second Ground of Appeal)

88. Under Count 3 of the *Nzabonimpa et al.* Indictment, Munyeshuli was also charged with contempt for having had prohibited indirect contact with the Recanting Witnesses, in knowing violation of a court order.²⁵⁵

89. The Single Judge found that, through his conversation with Turinabo on 15 July 2017, Munyeshuli initiated indirect contact with protected witnesses, which amounted to a violation of the Protective Measures Decisions.²⁵⁶ Nevertheless, the Single Judge was not convinced that this violation "should result in criminal responsibility in the circumstances of this case" and declined to enter a conviction against Munyeshuli.²⁵⁷ In this regard, the Single Judge considered that Munyeshuli – who acted on Robinson's instructions – should benefit from the same consideration as Robinson, who was cautioned by the Appeals Chamber for having had direct contact with a protected witness.²⁵⁸ The Single Judge acquitted Munyeshuli under Count 3 of the *Nzabonimpa et al.* Indictment of contempt through having had prohibited indirect contact with the Recanting

²⁵² See *supra* paras. 78, 86.

²⁵³ See *supra* para. 17.

²⁵⁴ The Appeals Chamber will address Munyeshuli's submissions that Turinabo was already aware of the identity of the Recanting Witnesses and that he worked closely with the Defence as a "resource person" (see Munyeshuli Response Brief, para. 25) in the context of determining the appropriate sentence. See *infra* Section V.B.

²⁵⁵ *Nzabonimpa et al.* Indictment, p. 13, Count 3.

²⁵⁶ Trial Judgement, paras. 362, 363, 368.

²⁵⁷ Trial Judgement, paras. 366, 368.

²⁵⁸ Trial Judgement, paras. 364, 366.

Witnesses and, instead, issued him a warning to closely scrutinize applicable witness protection measures in future cases.²⁵⁹

90. The Prosecution submits that the Single Judge erred in declining to enter a conviction against Munyeshuli for contempt through having had prohibited indirect contact with protected witnesses.²⁶⁰ The Prosecution contends that, once all the elements of the crime of contempt were proven, the Single Judge had no discretion and was bound to enter a conviction.²⁶¹ Alternatively, the Prosecution submits that, should the Appeals Chamber find that the Single Judge had the discretion to not enter a conviction against Munyeshuli, the Single Judge erred in law and/or in fact in the exercise of such discretion.²⁶² The Prosecution contends that, in holding that Munyeshuli should “benefit from the same consideration” as Robinson, the Single Judge accorded weight to an irrelevant factor by overlooking “critical differences” between Robinson’s situation and that of Munyeshuli.²⁶³ The Prosecution requests that the Appeals Chamber correct the Single Judge’s error, convict Munyeshuli of contempt under Count 3 of the *Nzabonimpa et al.* Indictment for having had prohibited contact with the protected witnesses, and sentence him accordingly.²⁶⁴

91. Munyeshuli responds that the plain language of Rule 90(A) of the Rules, providing that the Mechanism “may” rather than “shall” hold persons in contempt, clearly indicates the discretionary nature of decisions rendered under this Rule, and contends that the Prosecution’s reliance on jurisprudence concerning cumulative convictions for core crimes, as opposed to contempt convictions, is misplaced.²⁶⁵ He further submits that the Prosecution fails to demonstrate that the Single Judge erred in exercising his discretion to issue a warning rather than enter a conviction for contempt, and contends that the suggestion that his conduct is not comparable to that of Robinson – who was part of the same Defence team and bound by the same protective measures orders – is unreasonable.²⁶⁶

²⁵⁹ Trial Judgement, paras. 368, 409(ii).

²⁶⁰ Prosecution Notice of Appeal, paras. 8-10; Prosecution Appeal Brief, paras. 4, 28-33.

²⁶¹ Prosecution Notice of Appeal, para. 9; Prosecution Appeal Brief, paras. 4, 29, 30, *referring to, inter alia, Popović et al.* Appeal Judgement, paras. 537, 538, *Strugar* Appeal Judgement, para. 324, *Gatete* Appeal Judgement, para. 261. *See also* Prosecution Reply Brief (Munyeshuli), paras. 15, 16.

²⁶² Prosecution Notice of Appeal, para. 10; Prosecution Appeal Brief, paras. 4, 31-33.

²⁶³ Prosecution Appeal Brief, paras. 32, 33. *See also* Prosecution Reply Brief (Munyeshuli), paras. 18-21.

²⁶⁴ Prosecution Notice of Appeal, para. 11; Prosecution Appeal Brief, paras. 6, 34. *See also* Prosecution Reply Brief (Munyeshuli), para. 17.

²⁶⁵ Munyeshuli Response Brief, paras. 54-63.

²⁶⁶ Munyeshuli Response Brief, paras. 69-85. Munyeshuli requests that the Appeals Chamber additionally consider the following: (i) the notion of indirect contact with a witness is an undue expansion of the offence of contempt under Rule 90(A)(iii) of the Rules; and (ii) there is a double standard in the treatment of the Defence and the Prosecution in prosecuting contempt allegations. *See* Munyeshuli Response Brief, paras. 87-97.

92. In reply, the Prosecution submits that Rule 90 of the Rules gives Chambers the discretion to initiate contempt proceedings and determine an appropriate sentence, but not to decide that no criminal responsibility should attach in relation to a proven crime.²⁶⁷ It contends that by declining to enter a conviction despite finding that all elements of the crime of contempt were met, the Single Judge failed to reflect Munyeshuli's criminal conduct.²⁶⁸

93. The Appeals Chamber recalls that the Rules are to be interpreted in accordance with their ordinary meaning in their context and in light of the object and purpose of the Statute and the Rules.²⁶⁹ Under Rule 104 of the Rules, upon completion of the presentation of the parties' cases, a single judge must deliberate and decide separately on each charge contained in the indictment on whether he is satisfied that guilt has been proven beyond reasonable doubt, and shall impose a sentence in respect of each finding of guilt if he finds the accused guilty on one or more of the charges contained in the indictment.²⁷⁰ The Appeals Chamber considers that the textual and contextual interpretation of the Rules supports the principle that once a charge is proven beyond reasonable doubt, a finding of guilt follows. Considering that the Rules apply *mutatis mutandis* to proceedings under Rule 90 of the Rules,²⁷¹ this principle similarly applies to contempt proceedings.

94. In addition, it is well established in the jurisprudence that "a trial chamber is bound to enter convictions for all distinct crimes which have been proven in order to fully reflect the criminality of the convicted person".²⁷² While this principle emanates from jurisprudence concerning the crimes covered by Article 1(1) of the Statute, the Appeals Chamber sees nothing to suggest that the obligation of a single judge to enter a conviction does not equally apply to the crime of contempt, once all the elements of the crime have been proven. The Appeals Chamber further finds unpersuasive Munyeshuli's argument that the language of Rule 90(A) of the Rules vests in a single judge the discretion not to enter a conviction for a proven crime. While a single judge has discretion to decide whether to initiate contempt proceedings,²⁷³ neither the Rules nor prior jurisprudence

²⁶⁷ Prosecution Reply Brief (Munyeshuli), para. 15.

²⁶⁸ Prosecution Reply Brief (Munyeshuli), para. 16. The Prosecution adds that Munyeshuli's request that the Appeals Chamber consider additional factors should be dismissed as he fails to establish any impact on the Prosecution's appeal. See Prosecution Reply Brief (Munyeshuli), paras. 22-27. See also *supra* n. 266.

²⁶⁹ See *The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005, para. 43; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-AR73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One Formal Statement, 18 September 2000, para. 22.

²⁷⁰ See also Rules 2(C), 121-124 of the Rules.

²⁷¹ See Rule 90(E) of the Rules.

²⁷² See *Prlić et al.* Appeal Judgement, para. 399; *Popović et al.* Appeal Judgement, para. 538; *Gatete* Appeal Judgement, para. 261. See also *Karemera and Ngirumpatse* Appeal Judgement, para. 711, *Strugar* Appeal Judgement, para. 324, citing *Stakić* Appeal Judgement, para. 358.

²⁷³ See, e.g., *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-Misc.1, Decision Regarding Contempt Investigation, 14 September 2011 (confidential), para. 21; *Léonidas Nshogoza v. The Prosecutor*, Case No.

support the conclusion that such discretion extends to the decision whether to enter a conviction for contempt, once all the elements of the offence have been proven.

95. In the Trial Judgement, the Single Judge noted that, on 5 August 2016, the Appeals Chamber placed “extraordinary limitations on either party’s ability to have contact with [the Recanting Witnesses]”, requiring each party to notify the other if it wished to contact any of these witnesses, that the WISP alone ascertain whether the witnesses consented to such contact, and that the WISP be present during – and the opposing party may attend – any interview to which a witness consented.²⁷⁴ Having considered the evidence before him, the Single Judge found that, through his conversation with Turinabo on 15 July 2017, Munyeshuli initiated indirect contact with protected witnesses, including the Recanting Witnesses, in violation of the relevant Protective Measures Decisions.²⁷⁵ The Single Judge further found that, while Munyeshuli did not indirectly contact witnesses on his own initiative, following the instructions of Counsel is not a defence to a violation of witness protection orders.²⁷⁶ Reading the Trial Judgement as a whole, the Appeals Chamber understands that the Single Judge was satisfied that the elements of the *actus reus* of contempt, as charged under Count 3 of the *Nzabonimpa et al.* Indictment, were proven beyond reasonable doubt.

96. Turning to Munyeshuli’s *mens rea*, the Appeals Chamber recalls that the *mens rea* required to enter a conviction for contempt is the knowledge that the act in question was in violation of an order of the Chamber or a Single Judge.²⁷⁷ As previously recalled, “[w]here it is established that an accused had knowledge of the existence of a Court order, a finding of intent to violate the order will

ICTR-07-91-AR77, Decision on Nshogoza’s Appeal of Decision on Allegations of Contempt by Members of the Prosecution, 7 July 2011, para. 11; *The Prosecutor v. Hormisdas Nsengimana*, Case Nos. ICTR-01-69-A & ICTR-10-92, Decision on Prosecution Appeal of Decision Concerning Improper Contact with Prosecution Witnesses, 16 December 2010, para. 17. See also *Nshogoza* Contempt Appeal Judgement, para. 57.

²⁷⁴ Trial Judgement, para. 356, referring to *Ngirabatware* Decision of 5 August 2016, pp. 3, 4. See also *Ngirabatware* Decision of 7 May 2009, p. 7; *Ngirabatware* Decision of 28 January 2010, p. 15.

²⁷⁵ Trial Judgement, paras. 362, 363. The Single Judge noted that evidence of subsequent communications, dating between 15 July and the second half of August 2017, showed that Turinabo was updating Munyeshuli on his direct contact with the witnesses but that these later communications did not appear to have been prompted by Munyeshuli. See Trial Judgement, n. 977.

²⁷⁶ Trial Judgement, paras. 365, 366, referring to, *inter alia*, *Nshogoza* Contempt Appeal Judgement, para. 85. With respect to Munyeshuli’s additional submissions that the notion of “indirect contact” constitutes an undue expansion of the law of contempt under Rule 90(A)(iii) of the Rules, he repeats arguments made at trial without identifying any error. See Munyeshuli Response Brief, paras. 87-93; *Prosecutor v. Anselme Nzabonimpa et al.*, Case No. MICT-18-116-T, Munyeshuli’s Final Trial Brief, 31 May 2021 (confidential) (“Munyeshuli Final Trial Brief”), paras. 178-186. In any event, the Appeals Chamber finds no merit in this argument as Rule 90(A) of the Rules contains a non-exhaustive list of conduct, which could amount to an interference with the administration of justice, including in relation to any person who “without just excuse fails to comply with an order by a Chamber or a Single Judge”. Similarly, Munyeshuli’s arguments at trial, repeated on appeal, that there is a double standard in the treatment of the Defence and the Prosecution in prosecuting contempt allegations does not undermine the Single Judge’s conclusion that Munyeshuli violated the Decision of 5 August 2016 by initiating prohibited contact with the Recanting Witnesses. See Munyeshuli Response Brief, paras. 94-97; Munyeshuli Final Trial Brief, paras. 33-45.

²⁷⁷ See *Hartmann* Contempt Appeal Judgement, para. 127; *Šešelj* Contempt Appeal Judgement of 19 May 2010, para. 26; *Nshogoza* Contempt Appeal Judgement, para. 77; *Jović* Contempt Appeal Judgement, para. 27.

almost necessarily follow.”²⁷⁸ In this regard, the Single Judge noted that it was not disputed that Munyeshuli was aware of the Protective Measures Decisions and able to comprehend their contents.²⁷⁹ Despite this knowledge, Munyeshuli initiated indirect contact with the Recanting Witnesses in violation of the protective measures in place,²⁸⁰ thus knowingly and wilfully interfering with the administration of justice.

97. The Appeals Chamber further considers that, in view of the reasons expounded in the Trial Judgement, had the Single Judge not been convinced that Munyeshuli’s conduct, as charged under Count 3 of the *Nzabonimpa et al.* Indictment, had been proven beyond reasonable doubt, he would not have issued him a warning.²⁸¹

98. In view of the above considerations and the Single Judge’s findings on the basis of the evidence before him, the Appeals Chamber finds that the Single Judge erred in law in concluding that Munyeshuli’s proven violation of the Protective Measures Decisions should not result in criminal responsibility and, consequently, in declining to enter a conviction against him under Count 3 of the *Nzabonimpa et al.* Indictment.²⁸²

99. Accordingly, the Appeals Chamber grants the Prosecution’s Second Ground of Appeal and finds Munyeshuli guilty of contempt, pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(iii) of the Rules, by having had prohibited indirect contact with the Recanting Witnesses in knowing violation of a court order.

C. Alleged Error in Ordering that Ngirabatware’s Sentence for Contempt Be Served Concurrently (Prosecution’s Third Ground of Appeal)

100. Having found Ngirabatware guilty of interfering with the administration of justice under Counts 1 and 3 of the *Ngirabatware* Indictment, the Single Judge sentenced Ngirabatware to two years of imprisonment.²⁸³ The Single Judge ordered that this sentence be served concurrently with

²⁷⁸ *Hartmann* Contempt Appeal Judgement, para. 128, citing *Hartmann* Contempt Trial Judgement, para. 22. See also *Nobilo* Contempt Appeal Judgment, paras. 45, 54.

²⁷⁹ Trial Judgement, para. 361, referring to, *inter alia*, T. 8 April 2021 pp. 8, 9, 36-38, 59, 60, 64 (“Q. [...] So to sum this up, you, Dick Prudence Munyeshuli, knew that you had to get authorisation before making direct or indirect contact with Prosecution witnesses; correct? A. That is correct. Q. And you knew this throughout the time frame you were an investigator on the Ngirabatware review team from late 2015 to December 2017; right? A. That is correct. Q. And you knew that this included direct or indirect contact specifically with Persons A, B, C, D and E in this trial; correct? A. That is correct.”).

²⁸⁰ See Trial Judgement, paras. 362, 363.

²⁸¹ See Trial Judgement, paras. 366, 368.

²⁸² See Trial Judgement, paras. 362, 363, 366, 368.

²⁸³ Trial Judgement, paras. 339, 385, 408, 409(iii).

the sentence of 30 years of imprisonment that Ngirabatware is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide.²⁸⁴

101. The Prosecution submits that the Single Judge erred in law in ordering that Ngirabatware's two-year sentence for contempt be served concurrently with the 30-year sentence that he is already serving.²⁸⁵ According to the Prosecution, neither the Mechanism's Rules nor the sentencing practice of the ICTY and other international criminal tribunals allow for the imposition of concurrent sentences where the charges originate from separate indictments in separate proceedings.²⁸⁶ The Prosecution submits that, in the alternative, the Single Judge abused his discretion in imposing a concurrent sentence that "effectively reduces Ngirabatware's sentence for contempt to zero".²⁸⁷ In this regard, the Prosecution contends that the concurrent sentence is manifestly inadequate as it gives insufficient weight to the gravity of the crime and Ngirabatware's leading role, and cannot be justified by the mitigating factors that were taken into account by the Single Judge.²⁸⁸ As a remedy, the Prosecution requests that the Appeals Chamber order that Ngirabatware serve his sentence for contempt consecutively to the sentence that he is currently serving.²⁸⁹

102. Ngirabatware responds that the Prosecution's arguments should be dismissed in their entirety.²⁹⁰ He submits that both the Rules and the Mechanism's inherent power, which includes the power to suspend a sentence, permit the imposition of a concurrent sentence in this case,²⁹¹ and argues that the Prosecution fails to demonstrate that the Single Judge erred in the exercise of his discretion.²⁹² Ngirabatware further contends that the Prosecution conflates the sentence with its modalities.²⁹³

²⁸⁴ Trial Judgement, paras. 408, 409(iii). See *Ngirabatware* Trial Judgement, paras. 1341, 1345, 1369, 1370, 1394; *Ngirabatware* Appeal Judgement, paras. 3, 279.

²⁸⁵ Prosecution Notice of Appeal, para. 12; Prosecution Appeal Brief, paras. 35, 36; Prosecution Reply Brief (*Ngirabatware*), paras. 1, 19.

²⁸⁶ Prosecution Appeal Brief, paras. 37-39, *referring to, inter alia*, Rule 104(C) of the Rules, *Šešelji* Contempt Appeal Judgement of 28 November 2012, Partially Dissenting Opinion of Judge Pocar, para. 4, *Jokić* Contempt Trial Judgement, para. 42, *Jokić* Contempt Appeal Judgement, paras. 39-41, *Independent Counsel v. Hassan Papa Bangura et al.*, Case No. SCSL-2011-02-T, Sentencing Judgement in Contempt Proceedings, 11 October 2012 (filed on 16 October 2012), paras. 93, 94, *In The Case of The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Case No. ICC-01/05-01/13 A6 A7 A8 A9, Judgement on the Appeals of Prosecutor, Mr. Jean-Pierre Bemba Gombo, Mr. Fidèle Babala Wandu and Mr. Narcisse Arido Against the Decision of Trial Chamber VII Entitled "Decision on Sentence Pursuant to Article 76 of the Statute", 8 March 2018, para. 238.

²⁸⁷ Prosecution Appeal Brief, paras. 35, 40-42.

²⁸⁸ Prosecution Appeal Brief, paras. 41-44.

²⁸⁹ Prosecution Notice of Appeal, para. 13; Prosecution Appeal Brief, para. 45.

²⁹⁰ *Ngirabatware* Response Brief, paras. 1, 50.

²⁹¹ *Ngirabatware* Response Brief, paras. 3-21, *referring to, inter alia*, *Rašić* Contempt Appeal Judgement, para. 17, *Bulatović* Contempt Trial Judgement, paras. 18, 19.

²⁹² *Ngirabatware* Response Brief, paras. 23-49.

²⁹³ *Ngirabatware* Response Brief, paras. 33, 37.

103. In reply, the Prosecution contends that, in the absence of any express power conferred on the Single Judge by the Statute or the Rules to impose concurrent sentences, the additional sentence for an unrelated crime should be added to the original sentence.²⁹⁴ It further maintains that concurrent sentences are premised on the conduct being part of the same criminal transaction or a related sequence of events,²⁹⁵ and that, even if the imposition of a concurrent sentence was available as a matter of law, the Single Judge failed to give effect to the sentencing goals of individual and general deterrence.²⁹⁶

104. The Appeals Chamber recalls that, pursuant to Rule 104(C) of the Rules, if the single judge finds an accused guilty on one or more of the charges contained in an indictment, he shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently. Neither the Statute nor the Rules vest in the single judge the power to order that a sentence for contempt be served concurrently with a previous sentence imposed on the same accused in separate proceedings under a different indictment before the ICTY, the ICTR, or the Mechanism.

105. In addition, the Appeals Chamber is not persuaded by Ngirabatware's submission that, similar to the authority to suspend a sentence, the authority to impose a concurrent sentence is part of the single judge's inherent power to determine the appropriate sentence.²⁹⁷ The ICTY Appeals Chamber has previously recognized that the decision to suspend a sentence for contempt forms an integral part of a trial chamber's judicial discretion in the determination of the sentence.²⁹⁸ However, the power to suspend a sentence for contempt in a single proceeding is distinguishable from the power to order that a sentence for contempt run concurrently with another sentence imposed on the accused in separate proceedings by different judges, concerning unrelated charges under different indictments. The differences are such that the Appeals Chamber cannot accept that the authority to impose a concurrent sentence for contempt is part of the inherent power of the Single Judge in the circumstances of this case.

106. In view of the foregoing, the Appeals Chamber finds that the Single Judge erred in law in ordering that Ngirabatware's sentence of two years of imprisonment for contempt be served

²⁹⁴ Prosecution Reply Brief (Ngirabatware), para. 2.

²⁹⁵ Prosecution Reply Brief (Ngirabatware), paras. 3-11 and references cited therein.

²⁹⁶ Prosecution Reply Brief (Ngirabatware), paras. 12-18.

²⁹⁷ See Ngirabatware Response Brief, para. 14, referring to *Rašić* Contempt Appeal Judgement, para. 17, *Bulatović* Contempt Trial Judgement, paras. 18, 19.

²⁹⁸ See *Rašić* Contempt Appeal Judgement, paras. 17, 18.

concurrently with the sentence of 30 years of imprisonment that he is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide.²⁹⁹

107. Accordingly, the Appeals Chamber grants the Prosecution's Third Ground of Appeal and sets aside the concurrent sentence of two years of imprisonment imposed on Ngirabatware by the Single Judge.

²⁹⁹ In view of this finding, the Appeals Chamber does not need to consider the Prosecution's alternative argument that the Single Judge abused his discretion in ordering that Ngirabatware's sentence be served concurrently.

V. IMPACT OF THE APPEALS CHAMBERS' FINDINGS ON SENTENCE

108. The Appeals Chamber has, *proprio motu*, set aside the sentence of “time served” that the Single Judge imposed on Fatuma.³⁰⁰ The Appeals Chamber has also granted the Prosecution’s appeal in its entirety.³⁰¹ In this section, the Appeals Chamber will determine the impact of its *proprio motu* finding on the sentence to be imposed on Fatuma, as well as the impact of its findings on the sentences to be imposed on Munyeshuli and Ngirabatware.

A. Impact on Fatuma’s Sentence

109. In light of its decision to set aside Fatuma’s sentence of “time served”,³⁰² the Appeals Chamber will review the Single Judge’s findings and determine itself the appropriate sentence to be imposed. The Appeals Chamber notes that, in assessing the gravity of the offence, the Single Judge explicitly considered the factors identified by Fatuma on appeal.³⁰³ Specifically, the Single Judge observed that Witness ANAL/TNN6’s demand for money in exchange for her cooperation did not reduce the gravity of the offence.³⁰⁴ In relation to Fatuma’s degree of participation in the commission of the offence, the Single Judge observed that her role in interfering in the *Ngirabatware* case was relatively minor in comparison to the conduct of Nzabonimpa and Ndagijimana, as it implicated only one witness, but noted that, nonetheless, it was serious.³⁰⁵ The Single Judge was also mindful that Fatuma was acting on behalf and at the behest of Ngirabatware.³⁰⁶

110. In relation to mitigating factors, the Single Judge considered Fatuma’s comportment, including during periods of provisional release, and the general evidence of her good character and positive role in her community, and was mindful of Fatuma’s family circumstances and the personal hardship that she had suffered as a result of the prolonged trial.³⁰⁷ The Appeals Chamber concurs with the Single Judge’s assessment of these sentencing factors. As to the fact that Fatuma’s interference with Witness ANAL/TNN6 failed to produce the expected results,³⁰⁸ the Single Judge explicitly found that it did not diminish or mitigate her responsibility for the purpose of

³⁰⁰ See *supra* para. 66.

³⁰¹ See *supra* paras. 87, 99, 107.

³⁰² See *supra* para. 66.

³⁰³ See Fatuma Appeal Brief, paras. 87, 89, 91; Trial Judgement, paras. 398, 400.

³⁰⁴ See Trial Judgement, paras. 299, 398.

³⁰⁵ Trial Judgement, para. 400.

³⁰⁶ Trial Judgement, para. 400.

³⁰⁷ Trial Judgement, para. 403.

³⁰⁸ See Fatuma Appeal Brief, para. 89.

sentencing.³⁰⁹ The Appeals Chamber considers that, although Witness ANAL/TNN6 did not ultimately recant her prior testimony, Fatuma's conduct posed a risk to the integrity of the *Ngirabatware* review proceedings. The Appeals Chamber, therefore, attaches no weight to this factor in mitigation. The Single Judge further found that there were no aggravating circumstances applicable to Fatuma.³¹⁰

111. The Appeals Chamber notes that, elsewhere in the Trial Judgement, the Single Judge indicated that he could not exclude that Fatuma sincerely believed that the witnesses had lied during the *Ngirabatware* ICTR trial.³¹¹ Fatuma fails to convince the Appeals Chamber, however, that her belief in *Ngirabatware*'s innocence made her crime any less grave or that it should be considered in mitigation.³¹² The Appeals Chamber further notes that none of the contempt cases referred to by Fatuma reflects circumstances similar to the present case.³¹³

112. In light of the gravity of the offence and Fatuma's individual circumstances, and having considered Fatuma's submissions on appeal, the Appeals Chamber finds that the appropriate sentence to be imposed on Fatuma, in the circumstances of this case, is 11 months of imprisonment.

113. Pursuant to Rule 125(C) of the Rules, Fatuma is entitled to credit for the period during which she was detained in custody pending surrender to the Mechanism, or pending trial or appeal. The Appeals Chamber notes in this regard that, from her arrest on 3 September 2018 until her release on 22 August 2019, Fatuma was detained in custody for a period of 352 days.³¹⁴

B. Impact on Munyeshuli's Sentence

114. The Appeals Chamber recalls that it has found Munyeshuli guilty under Count 3 of the *Nzabonimpa et al.* Indictment.³¹⁵ The Appeals Chamber observes that the Single Judge held that, had he convicted Munyeshuli under Count 3 of the *Nzabonimpa et al.* Indictment and bearing in mind the sentencing submissions received at trial, he would have sentenced Munyeshuli to "time

³⁰⁹ Trial Judgement, para. 403.

³¹⁰ Trial Judgement, para. 402.

³¹¹ Trial Judgement, n. 913.

³¹² See Fatuma Appeal Brief, para. 90.

³¹³ See Fatuma Appeal Brief, paras. 82-84. See also Fatuma Appeal Brief, para. 82 (wherein Fatuma acknowledges that there are no cases of a similar nature to that of her case).

³¹⁴ See Trial Judgement, para. 405.

³¹⁵ See *supra* paras. 87, 99.

served”.³¹⁶ The Appeals Chamber recalls, however, that “time served” is not a permissible sentence.³¹⁷

115. The Appeals Chamber recalls that Munyeshuli initiated indirect contact with the Recanting Witnesses in knowing violation of the Protective Measures Decisions.³¹⁸ In that same context he disclosed the Recanting Witnesses’ identities to Turinabo.³¹⁹ Even if this disclosure itself was almost inherent to the initiation of the indirect contact and may not add substantially to the gravity of the latter offence, it still constitutes an element of the contempt charged. Contempt constitutes a serious offence that undermines the protection of victims and witnesses, which is of utmost importance to their safety as well as to the proper functioning of the Mechanism and its ability to discharge its duty under Article 20 of the Statute.³²⁰ The Appeals Chamber is mindful, however, that Turinabo was already aware of the identities of the Recanting Witnesses prior to Munyeshuli’s disclosure and that, in initiating indirect contact with the Recanting Witnesses, Munyeshuli acted under Robinson’s instructions.³²¹ In light of the gravity of the offence and Munyeshuli’s individual circumstances, and having considered Munyeshuli’s submissions on appeal relating to the seriousness of his conduct,³²² the Appeals Chamber finds that the appropriate sentence to be imposed on Munyeshuli, in the circumstances of this case, is five months of imprisonment.

116. Pursuant to Rule 125(C) of the Rules, Munyeshuli is entitled to credit for the period during which he was detained in custody pending surrender to the Mechanism, or pending trial or appeal. The Appeals Chamber notes in this regard that, from his arrest on 3 September 2018 until his release on 2 October 2019, Munyeshuli was detained in custody for a period of 394 days.³²³

C. Impact on Ngirabatware’s Sentence

117. The Appeals Chamber recalls that it has granted the Prosecution’s Third Ground of Appeal and, accordingly, has set aside the Single Judge’s order that Ngirabatware’s sentence of two years

³¹⁶ Trial Judgement, n. 989.

³¹⁷ See *supra* para. 65.

³¹⁸ See *supra* para. 99.

³¹⁹ See *supra* paras. 79, 86, 87.

³²⁰ See *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. MICT-13-33, Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness, 14 November 2016, para. 6; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Decision on the Prosecution’s Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule, 8 July 2015, pp. 3, 4; *Marijačić and Rebić Contempt Appeal Judgement*, para. 24. See also *Nobilo Contempt Appeal Judgement*, para. 36; *Vujin Contempt Appeal Judgement*, para. 18.

³²¹ See Trial Judgement, paras. 358, 365. See also *supra* paras. 72, 95.

³²² See Munyeshuli Response Brief, paras. 25, 53.

³²³ See *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Decision on Order to Show Cause, 1 October 2019, paras. 4-6, 14.

of imprisonment for contempt be served concurrently with the sentence that he is already serving.³²⁴ The Appeals Chamber notes, however, that in determining Ngirabatware's sentence, the Single Judge took into account a number of mitigating circumstances.³²⁵ Having set aside the Single Judge's order that Ngirabatware's sentence for contempt be served concurrently, the Appeals Chamber will review the Single Judge's assessment of the sentencing factors and determine itself the appropriate sentence to be imposed on Ngirabatware.

118. In relation to Ngirabatware's degree of participation in the commission of the offences, the Single Judge observed that Ngirabatware had a leading role in funding and directing the operation to interfere with the proper administration of nearly every aspect of his case, and that he repeatedly violated court orders and protective measures, which are vital to the legacy of the ICTR and the success of the work of the Mechanism.³²⁶ The Single Judge found that there were no aggravating circumstances applicable to Ngirabatware.³²⁷ In relation to mitigating factors, the Single Judge took into account Ngirabatware's age, family circumstances, and the hardship of his detention in the context of the global pandemic.³²⁸ The Single Judge found that no weight should be attached to Ngirabatware's claim that his conduct was motivated by his desire to pursue the truth, considering that the means he chose to do so amounted to an elaborate criminal scheme.³²⁹

119. In light of the gravity of the offence and Ngirabatware's individual circumstances, and having considered Ngirabatware's submissions on appeal,³³⁰ the Appeals Chamber finds, Judge Orie dissenting, that the appropriate sentence to be imposed on Ngirabatware, in the circumstances of this case, is two years of imprisonment, to be served consecutively to the sentence that he is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide.

120. The Appeals Chamber further finds that Ngirabatware is not entitled to credit for time served, pursuant to Rule 125(C) of the Rules, as his detention pending trial and appeal has not been on the basis of the present proceedings, but by virtue of the sentence that has been imposed on him by the Appeals Chamber for his convictions for genocide and direct and public incitement to commit genocide.³³¹

³²⁴ See *supra* para. 107.

³²⁵ Trial Judgement, para. 404.

³²⁶ Trial Judgement, para. 399.

³²⁷ Trial Judgement, para. 402.

³²⁸ Trial Judgement, para. 404.

³²⁹ Trial Judgement, para. 404.

³³⁰ See Ngirabatware Response Brief, paras. 23, 26, 33-36, 39-44, 46.

³³¹ Ngirabatware Appeal Judgement, para. 279. See also Trial Judgement, para. 111.

VI. DISPOSITION

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

PURSUANT to Article 23 of the Statute and Rule 144 of the Rules;

NOTING the written submissions of the parties;

SITTING in open session;

DISMISSES Fatuma’s appeal in its entirety;

SETS ASIDE, *proprio motu*, Fatuma’s sentence of “time served” and **IMPOSES** a sentence of 11 months of imprisonment;

DECLARES, in accordance with Rule 125(C) of the Rules, that Fatuma’s sentence has been served in view of the credit for her detention in the custody of the Mechanism pending trial;

GRANTS the Prosecution’s First and Second Grounds of Appeal and **REVERSES** Munyeshuli’s acquittal under Count 3 of the *Nzabonimpa et al.* Indictment;

FINDS Munyeshuli guilty pursuant to Article 1(4)(a) of the Statute and Rule 90(A)(ii) and (iii) of the Rules and **ENTERS** a conviction under Count 3 of the *Nzabonimpa et al.* Indictment for contempt through knowingly and wilfully interfering with the administration of justice;

IMPOSES on Munyeshuli a sentence of five months of imprisonment;

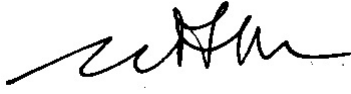
DECLARES, in accordance with Rule 125(C) of the Rules, that Munyeshuli’s sentence has been served in view of the credit for his detention in the custody of the Mechanism pending trial;

GRANTS the Prosecution’s Third Ground of Appeal;

SETS ASIDE Ngirabatware’s concurrent sentence of two years of imprisonment and **IMPOSES**, Judge Orie dissenting, a sentence of two years of imprisonment to be served consecutively to his sentence of 30 years of imprisonment that he is already serving; and

RULES that this Judgement shall be enforced immediately pursuant to Rule 145(A) of the Rules.

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



Judge Carmel Agius, Presiding



Judge Alphons Orie



Judge Seymour Panton

Judge Alphons Orie appends a partially dissenting opinion.

Done this 29th day of June 2022 at Arusha, Tanzania.

[Seal of the Mechanism]

VII. PARTIALLY DISSENTING OPINION OF JUDGE ALPHONS ORIE

1. In the Judgement, the Appeals Chamber grants the Prosecution's Third Ground of Appeal and sets aside the concurrent sentence of two years of imprisonment imposed on Ngirabatware by the Single Judge.¹ I agree with the Majority's conclusion that the Single Judge erred in law in ordering that Ngirabatware's sentence of two years of imprisonment for contempt be served concurrently with the sentence of 30 years of imprisonment that he is already serving in relation to his convictions for genocide and direct and public incitement to commit genocide.² I also agree with the Majority that, in this circumstance, a new sentence shall be imposed on Ngirabatware on appeal, which shall be served consecutively to the sentence that he is already serving in relation to his prior convictions.³ However, for the reasons detailed below, I respectfully disagree with the Majority's decision on the term of imprisonment to be imposed on Ngirabatware on appeal.⁴

2. A review of the sentencing practice of the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda demonstrates that convictions for contempt generally attract a sentence of imprisonment that is considerably less than two years and often well under one year. Particularly in relation to charges of contempt based on witness interference, sentences imposed in previous cases generally vary between a fine⁵ and three to ten months of imprisonment.⁶ Before the *ad hoc* tribunals, the highest sentence ever imposed on an accused with respect to charges of contempt based on witness interference has been 12 months of imprisonment.⁷

3. I am cognizant that higher sentences have been imposed in prior contempt cases involving charges of disclosure of confidential information in violation of court orders. In the *Šešelj* case, the accused was sentenced to two years of imprisonment for repeatedly failing to comply with orders to

¹ Appeal Judgement, paras. 107, 121.

² Appeal Judgement, paras. 104-106.

³ See Appeal Judgement, paras. 117, 119, 121.

⁴ See Appeal Judgement, paras. 119, 121.

⁵ See *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, paras. 132-160, 174 (ordering the payment of 15,000 Dutch Guilders and directing the ICTY Registrar to consider Vujin's removal from the list of defence counsel); *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Appeal Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 27 February 2001, pp. 2, 7 (upholding the first instance judgement and ordering the ICTY Registrar to consider reporting Vujin's conduct to the professional body to which he belongs).

⁶ See *Prosecutor v. Beqa Beqaj*, Case No. IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005, paras. 37-49, 55, p. 19 (4 months of imprisonment); *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Judgement, 23 July 2009, paras. 5, 84 (3 months of imprisonment); *Prosecutor v. Zuhdija Tabaković*, Case No. IT-98-32/1-R77.1, Sentencing Judgement, 18 March 2010, paras. 5-8, 19 (3 months of imprisonment); *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-07-91-A, Judgement, 15 March 2010, paras. 5, 112 (10 months of imprisonment).

remove confidential information pertaining to protected witnesses from a public website.⁸ In that case, the accused's repeated defiance of the ICTY's authority, demonstrated by his continuing refusal to obey the court orders requiring him to remove the confidential material, which he had disclosed on many occasions over the course of several years, was considered to be an aggravating factor.⁹ The accused's two prior convictions for similar conduct, which resulted in the imposition of 15 and 18 months of imprisonment, respectively, were also considered in aggravation.¹⁰

4. It is my view that Ngirabatware's conduct is not comparable to such flagrant and pervasive defiance of court orders to attract the maximum sentence of imprisonment ever imposed by the *ad hoc* tribunals in relation to charges of contempt. I am mindful that Ngirabatware pursued his personal interest by seeking to have his convictions overturned and jeopardised the integrity of the review proceedings that he initiated. He also had, as the Single Judge observed, a leading role in funding and directing an elaborate operation to interfere with the proper administration of nearly every aspect of his case, and repeatedly violated court orders and witness protective measures.¹¹ Importantly, however, it was not established that Ngirabatware employed threats, pressure, or intimidation to secure the cooperation of witnesses and the recantation of their prior testimonies.¹² In this regard, I share the Single Judge's observation that the fact that witnesses were neither threatened nor harmed is a consideration that places the gravity of the offence, which Ngirabatware is convicted of, within its proper context.¹³ Further, it is significant that the disclosure of the identities of protected witnesses was not aimed at distribution to a broader public and thus the risk of uncontrollable interventions by outsiders - as is often aimed at in contemptuous public disclosure of protected identities - was here hardly to be feared.

5. I note that the Single Judge considered a number of mitigating factors in determining that Ngirabatware's sentence for contempt shall run concurrently with the sentence that he is already

⁷ *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2-A, Judgement, 16 November 2012, paras. 3, 4, p. 26 (12 months of imprisonment).

⁸ *Contempt Proceedings Against Vojislav Šešelj*, Case No. IT-03-67-R77.4-A, Public Redacted Version of "Judgement" Issued on 30 May 2013, 30 May 2013, paras. 21, 54 (wherein the ICTY Appeals Chamber affirmed the sentence of two years of imprisonment imposed on Vojislav Šešelj by the ICTY Trial Chamber); *In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Public Redacted Version of "Judgement" Issued on 28 June 2012, 28 June 2012 ("Šešelj Third Contempt Trial Judgement"), paras. 44-49, 58.

⁹ *Šešelj Third Contempt Trial Judgement*, para. 54.

¹⁰ *Šešelj Third Contempt Trial Judgement*, para. 55, referring to Case Nos. IT-03-67-R77.2 & IT-03-67-R77.3. See *In the Case Against Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010 (public redacted version), paras. 5, 42 (wherein the ICTY Appeals Chamber affirmed the sentence of 15 months of imprisonment imposed on Šešelj by the ICTY Trial Chamber); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Judgement, 28 November 2012, paras. 8, 34 (wherein the ICTY Appeals Chamber affirmed the sentence of 18 months of imprisonment imposed on Šešelj by the ICTY Trial Chamber).

¹¹ Trial Judgement, paras. 399, 404.

¹² See Trial Judgement, para. 398.

¹³ Trial Judgement, para. 398.

serving in relation to his convictions for genocide and direct and public incitement to commit genocide.¹⁴ The same factors – Ngirabatware’s age, family circumstances, and the hardship of his detention in the context of the global pandemic – should, in my view, be given weight and, along with the absence of any aggravating factors,¹⁵ considered in determining the new sentence to be imposed on him on appeal.

6. In these circumstances, and having considered all the sentencing factors taken into account by the Majority and by the Single Judge in the Trial Judgement, I find that imposing on Ngirabatware a sentence of 18 months of imprisonment would strike a better balance, fairer to the accused and still serving the interests of justice adequately. To this extent, I respectfully differ from the Majority.

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

Done this 29th day of June 2022,
At Arusha,
Tanzania



Judge Alphons Orie

[Seal of the Mechanism]

¹⁴ Trial Judgement, para. 404.

¹⁵ *See* Trial Judgement, para. 402.

VIII. ANNEX A: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. Mechanism

FATUMA, Marie Rose, *et al.*

Prosecutor v. Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-A, Decision on a Joint Motion for an Oral Appeal Hearing, 4 February 2022

Prosecutor v. Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-A, Order to Dick Prudence Munyeshuli to Re-File His Response Brief, 16 December 2021

Prosecutor v. Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-A, Decision on Munyeshuli's Motion to Strike Prosecution's Notice of Appeal, 16 November 2021

KAMUHANDA, Jean de Dieu

Prosecutor v. Jean de Dieu Kamuhanda, Case No. MICT-13-33, Decision on Appeal of Decision Declining to Rescind Protective Measures for a Deceased Witness, 14 November 2016

KARADŽIĆ, Radovan

Prosecutor v. Radovan Karadžić, Case No. MICT-13-55-A, Judgement, 20 March 2019 (public redacted) ("*Karadžić Appeal Judgement*")

MLADIĆ, Ratko

Prosecutor v. Ratko Mladić, Case No. MICT-13-56-A, Judgement, 8 June 2021 (public redacted) ("*Mladić Appeal Judgement*")

MUNYARUGARAMA, Phénéas

Phénéas Munyarugarama v. Prosecutor, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012 ("*Munyarugarama Decision of 5 October 2012*")

NGIRABATWARE, Augustin

Prosecutor v. Augustin Ngirabatware, Case No. MICT-12-29-R, Review Judgement, 27 September 2019 ("*Ngirabatware Review Judgement*")

Prosecutor v. Augustin Ngirabatware, Case No. MICT-12-29-R, Decision on Ngirabatware's Motion for Review, 19 June 2017

Prosecutor v. Augustin Ngirabatware, Case No. MICT-12-29-R, Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) ("*Ngirabatware Decision of 5 August 2016*")

Augustin Ngirabatware v. The Prosecutor, Case No. MICT-12-29-A, Judgement, 18 December 2014 (“*Ngirabatware Appeal Judgement*”)

NZABONIMPA, Anselme, et al.

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Augustin Ngirabatware, Case No. MICT-18-116-A, Decision on a Request for an Extension of Time to File Notices of Appeal and Appeal Briefs, 28 September 2021

Prosecutor v. Anselme Nzabonimpa et al., Case No. MICT-18-116-T, Order Scheduling Pronouncement of Judgement, 23 June 2021

ŠEŠELJ, Vojislav

Prosecutor v. Vojislav Šešelj, Case No. MICT-16-99-A, Judgement, 11 April 2018 (“*Šešelj Appeal Judgement*”)

TURINABO, Maximilien, et al.

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Decision Terminating Proceedings Against Maximilien Turinabo, 19 April 2021

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Decision on Marie Rose Fatuma's Request for Video-Teleconference Link, 1 April 2021

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-PT, Decision on Marie Rose Fatuma's and Maximilien Turinabo's Motion for Disclosure of Prosecution's First Contacts with Witness TNN6, 21 October 2020

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-PT, Decision on Marie Rose Fatuma's Motion to Exclude Parts of the Prosecution Revised Pre-Trial Brief, 30 January 2020

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli & Prosecutor v. Augustin Ngirabatware, Case Nos. MICT-18-116-PT & MICT-19-121-PT, Decision on Prosecution Motion for Joinder of the *Ngirabatware* and *Turinabo et al.* Contempt Cases, 10 December 2019

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli, Case No. MICT-18-116-PT, Decision on Order to Show Cause, 1 October 2019

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli, Case No. MICT-18-116, Order on Confirmation of Indictment, 24 August 2018

2. ICTR

BAGOSORA, Théoneste, *et al.*

The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva, Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 October 2005

GATETE, Jean-Baptiste

Jean-Baptiste Gatete v. The Prosecutor, Case No. ICTR-00-61-A, Judgement, 9 October 2012 (“*Gatete Appeal Judgement*”)

HATEGEKIMANA, Ildephonse

Ildephonse Hategekimana v. The Prosecutor, Case No. ICTR-00-55B-A, Judgement, 8 May 2012 (“*Hategekimana Appeal Judgement*”)

KAREMERA, Édouard and NGIRUMPATSE, Matthieu

Édouard Karemera and Matthieu Ndirumapatse v. The Prosecutor, Case No. ICTR-98-44-A, Judgement, 29 September 2014 (“*Karemera and Ndirumapatse Appeal Judgement*”)

NAHIMANA, Ferdinand, *et al.*

Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (originally filed in French, English translation filed on 16 May 2008 (“*Nahimana et al. Appeal Judgement*”))

NGIRABATWARE, Augustin

The Prosecutor v. Augustin Ndirabatware, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012, filed in writing on 21 February 2013 (“*Ndirabatware Trial Judgement*”)

The Prosecutor v. Augustin Ndirabatware, Case No. ICTR-99-54-T, Decision on Prosecution Motion for Leave to Vary Its Witness List, 28 January 2010 (“*Ndirabatware Decision of 28 January 2010*”)

The Prosecutor v. Augustin Ndirabatware, Case No. ICTR-99-54-T, Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009 (“*Ndirabatware Decision of 7 May 2009*”)

NIZEYIMANA, Ildéphonse

Ildéphonse Nizeyimana v. The Prosecutor, Case No. ICTR-00-55C-A, Judgement, 29 September 2014 (“*Nizeyimana Appeal Judgement*”)

NSENGIMANA, Hormisdas

The Prosecutor v. Hormisdas Nsengimana, Case Nos. ICTR-01-69-A & ICTR-10-92, Decision on Prosecution Appeal of Decision Concerning Improper Contact with Prosecution Witnesses, 16 December 2010

NSHOGOZA, Léonidas

Léonidas Nshogoza v. The Prosecutor, Case No. ICTR-07-91-AR77, Decision on Nshogoza's Appeal of Decision on Allegations of Contempt by Members of the Prosecution, 7 July 2011

Léonidas Nshogoza v. The Prosecutor, Case No. ICTR-07-91-A, Judgement, 15 March 2010 ("Nshogoza Contempt Appeal Judgement")

The Prosecutor v. Léonidas Nshogoza, Case No. ICTR-07-91-T, Judgement, 7 July 2009 ("Nshogoza Contempt Trial Judgement")

NTAKIRUTIMANA, Elizaphan and Gérard

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

NYIRAMASUHUKE, Pauline, et al.

The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Élie Ndayambaje, Case No. ICTR-98-42-A, Judgement, 14 December 2015 ("Nyiramasuhuko et al. Appeal Judgement")

3. ICTY**BOŠKOSKI, Ljube and TARČULOVSKI, Johan**

Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Case No. IT-04-82-Misc.1, Decision Regarding Contempt Investigation, 14 September 2011 (confidential)

BULATOVIĆ, Kosta

Prosecutor v. Slobodan Milošević – Contempt Proceedings Against Kosta Bulatović, Case No. IT-02-54-R77.4, Decision on Contempt of the Tribunal, 13 May 2005 ("Bulatović Contempt Trial Judgement")

HARTMANN, Florence

In the Case Against Florence Hartmann, Case No. IT-02-54-R77.5-A, Judgement, 19 July 2011 ("Hartmann Contempt Appeal Judgement")

In the Case Against Florence Hartmann, Case No. IT-02-54-R77.5 Judgement on Allegations of Contempt, 14 September 2009 ("Hartmann Contempt Trial Judgement")

JOKIĆ, Dragan

Contempt Proceedings Against Dragan Jokić, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 3 July 2009 (public redacted version) (“*Jokić Contempt Appeal Judgement*”)

Contempt Proceedings Against Dragan Jokić, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 March 2009 (public redacted version) (“*Jokić Contempt Trial Judgement*”)

JOVIĆ, Josip

Prosecutor v. Josip Jović, Case Nos. IT-95-14 & IT-95-14/2-R77-A, Judgement, 15 March 2007 (“*Jović Contempt Appeal Judgement*”)

Prosecutor v. Josip Jović, Case Nos. IT-95-14 & IT-95-14/2-R77, Judgement, 30 August 2006 (“*Jović Contempt Trial Judgement*”)

KORDIĆ, Dario and ČERKEZ, Mario

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-AR73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One Formal Statement, 18 September 2000

MARGETIĆ, Domagoj

Prosecutor v. Domagoj Margetić, Case No. IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007 (“*Margetić Contempt Trial Judgement*”)

MARIJAČIĆ, Ivica and REBIĆ, Markica

Prosecutor v. Ivica Marijačić and Markica Rebić, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006 (“*Marijačić and Rebić Contempt Appeal Judgement*”)

NOBILO, ANTO

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-AR77, Judgement on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001 (“*Nobile Contempt Appeal Judgement*”)

POPOVIĆ, Vujadin, et al.

Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević, Case No. IT-05-88-A, Judgement, 30 January 2015 (“*Popović et al. Appeal Judgement*”)

PRLIĆ, Jadranko, et al.

Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-A, Judgement, 29 November 2017 (public with confidential Annex C) (“*Prlić et al. Appeal Judgement*”)

Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić, Case No. IT-04-74-A, Decision on the Prosecution's Urgent Motion to Reclassify Public Briefs and Modify the Public Redacted Briefing Schedule, 8 July 2015

RAŠIĆ, Jelena

Prosecutor v. Jelena Rašić, Case No. IT-98-32/1-R77.2-A, Judgement, 16 November 2012 (“*Rašić Contempt Appeal Judgement*”)

ŠEŠELJ, Vojislav

Contempt Proceedings Against Vojislav Šešelj, Case No. IT-03-67-R77.4-A, Public Redacted Version of “Judgement” Issued on 30 May 2013, 30 May 2013 (“*Šešelj Contempt Appeal Judgement of 30 May 2013*”)

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-R77.3-A, Judgment, 28 November 2012 (“*Šešelj Contempt Appeal Judgement of 28 November 2012*”)

In the Case Against Vojislav Šešelj, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010 (public redacted version) (“*Šešelj Contempt Appeal Judgement of 19 May 2010*”)

STAKIĆ, Milomir

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

STANIŠIĆ, Mićo and ŽUPLJANIN, Stojan

Prosecutor v. Mićo Stanišić and Stojan Župljanin, Case No. IT-08-91-A, Judgement, 30 June 2016 (public with confidential Annex C) (“*Stanišić and Župljanin Appeal Judgement*”)

STRUGAR, Pavle

Prosecutor v. Pavle Strugar, Case No. IT-01-42-A, Judgement, 17 July 2008 (“*Strugar Appeal Judgement*”)

VUJIN, Milan

Prosecutor v. Duško Tadić, Case No. IT-94-1-A-R77, Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000 (“*Vujin Contempt Appeal Judgement*”)

4. Other jurisprudence

Independent Counsel v. Hassan Papa Bangura, Samuel Kargbo, Santigie Borbor Kanu, and Brima Bazzy Kamara, Case No. SCSL-2011-02-T, Sentencing Judgement in Contempt Proceedings, 11 October 2012 (filed 16 October 2012)

In The Case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu, and Narcisse Arido, Case No. ICC-01/05-01/13 A6 A7 A8 A9, Judgement on the Appeals of the Prosecutor, Mr. Jean-Pierre Bemba Gombo, Mr. Fidèle Babala Wandu and Mr. Narcisse Arido Against the Decision of Trial Chamber VII Entitled “Decision on Sentence Pursuant to Article 76 of the Statute”, 8 March 2018

B. Selected Cited Filings

Prosecutor v. Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-A, Joint Motion for an Oral Appeal Hearing, 12 January 2022 (“Joint Motion”)

Prosecutor v. Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-A, Munyeshuli’s Response to the Prosecution’s Appeal Brief, 8 December 2021

Prosecutor v. Dick Prudence Munyeshuli and Augustin Ngirabatware, Case No. MICT-18-116-A, Munyeshuli’s Motion to Strike Prosecution’s Notice of Appeal, 26 October 2021

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Augustin Ngirabatware, Case No. MICT-18-116-A, Joint Defence Request for Expedited Ruling Pursuant to Rule 154, 23 September 2021 (“Joint Request”)

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Order Scheduling Pronouncement of Judgement, 23 June 2021

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Munyeshuli’s Final Trial Brief, 31 May 2021 (confidential) (“Munyeshuli Final Trial Brief”)

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, *Mémoire final de la défense de Marie Rose Fatuma*, 31 May 2021 (confidential with confidential Annex A)

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Marie Rose Fatuma Defence Final Trial Brief, 31 May 2021 (confidential with confidential Annex A) (originally filed in French, English translation filed on 6 September 2021) (“Fatuma Final Trial Brief”)

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, *Requête tendant à obtenir l’autorisation de permettre au témoin de la défense Augustin Kanyabitano de témoigner par voie de vidéoconférence depuis Kigali*, 19 March 2021

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Marie Rose Fatuma’s Joinder to “Ndagijimana Defense Bar Table Motion: Duration of Prosecution Proofing Sessions”, 1 February 2021 (originally filed in French, English translation filed on 3 February 2021) (confidential)

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Ndagijimana Defence Bar Table Motion: Duration of Prosecution Proofing Sessions, 18 January 2021 (confidential)

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-PT, *Requête conjointe des défenses de Marie Rose Fatuma et Maximilien Turinabo en divulgation des premiers contacts de l’Accusation avec le témoin ANAL/TNN6*, 28 September 2020 (confidential)

with confidential Annexes A and B) (English translation of French original filed on 2 November 2020)

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-PT, *Requête de la défense de Marie Rose Fatuma aux fins d'exclusion de parties du mémoire préalable au procès de l'Accusation*, 26 December 2019 (confidential) (English translation of French original filed on 11 February 2020)

Prosecutor v. Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli, Case No. MICT-18-116, Indictment, 5 June 2018 (confidential; public redacted version filed on 5 September 2018)

Prosecutor v. Augustin Ngirabatware, Case No. MICT-12-29-R, Motion for Review of Judgement, 8 July 2016 (confidential)

C. Other Materials

Practice Direction on Requirements and Procedures for Appeals, MICT/10/Rev.1, 20 February 2019

UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010 ("Security Council Resolution 1966")

UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010, Annex 2, Transitional Arrangements ("Transitional Arrangements")

D. Defined Terms and Abbreviations

Appeals Chamber

Appeals Chamber of the Mechanism

August 2017 Intercept

Intercepted telephone conversation between Fatuma and Turinabo on 20 August 2017 (confidential Exhibit P776)

Defence

Ngirabatware's Defence during the review proceedings

Fatuma Appeal Brief

Fatuma Defence Appeal Brief, 17 November 2021 (confidential)

Fatuma Final Trial Brief

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Marie Rose Fatuma Defence Final Trial Brief, 31 May 2021 (confidential with confidential Annex A) (originally filed in French, English translation filed on 6 September 2021)

Fatuma Notice of Appeal

Fatuma Defence Notice of Appeal, 18 October 2021

Fatuma Reply Brief

Fatuma Defence Reply to Prosecution Response to Appeal Brief, 16 December 2021 (confidential)

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

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

ICTY Rules

Rules of Procedure and Evidence of the ICTY

Mechanism

International Residual Mechanism for Criminal Tribunals

Munyeshuli Final Trial Brief

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Munyeshuli's Final Trial Brief, 31 May 2021 (confidential)

Munyeshuli Response Brief

Munyeshuli's Notice of Compliance with President's Order of 16 December 2021, 17 December 2021, RP. 456-429

n. (nn.)

footnote (footnotes)

***Ngirabatware* Indictment**

Prosecutor v. Augustin Ngirabatware, Case No. MICT-19-121-I, Notice of Filing Indictment, 10 October 2019

Ngirabatware Response Brief

Ngirabatware's Response to "Prosecution Appeal Brief", 8 December 2021

Ngirabatware trial testimony

Witness ANAL/TNN6's testimony given during *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T

***Nzabonimpa et al.* Indictment**

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Prosecution's Notice of Compliance with Order to Amend the Indictment Due to Termination of Proceedings Against Maximilien Turinabo, 12 May 2021, Annex A: Revised Third Amended Indictment

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

Prosecution

Office of the Prosecutor of the Mechanism

Prosecution Appeal Brief

Prosecution Appeal Brief, 17 November 2021

Prosecution Notice of Appeal

Prosecution Notice of Appeal, 18 October 2021

Prosecution Reply Brief (Munyeshuli)

Prosecution's Reply to Munyeshuli's Response, 16 December 2021

Prosecution Reply Brief (Ngirabatware)

Prosecution's Reply to Ngirabatware's Response, 16 December 2021 (public with confidential Annex)

Prosecution Response Brief

Prosecution's Response to Fatuma's Appeal, 8 December 2021 (confidential)

Protective Measures Decisions

Ngirabatware Decision of 7 May 2009, *Ngirabatware* Decision of 28 January 2010, and *Ngirabatware* Decision of 5 August 2016, collectively

Recanting Witnesses

Witnesses ANAN, ANAT, ANAE, and ANAM, collectively

RP.

Registry Pagination

Rules

Rules of Procedure and Evidence of the Mechanism

Security Council Resolution

UN Security Council Resolution 1966, U.N. Doc. S/RES/1966, 22 December 2010

Single Judge

Single Judge of the Mechanism seized of the case of *Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware*, Case No. MICT-18-116-T

Statute

Statute of the Mechanism

Stella Maris Church Meeting

Meeting near the Stella Maris Church between Witness ANAL/TNN6, the witness's sister, and Fatuma

T.

Transcript from proceedings before the Mechanism

Transitional Arrangements

UN Security Council Resolution 1966, Annex 2

Trial Judgement

Prosecutor v. Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, Dick Prudence Munyeshuli, and Augustin Ngirabatware, Case No. MICT-18-116-T, Judgement, pronounced on 25 June 2021 and filed in writing on 20 September 2021

UN

United Nations

USD

United States Dollars

WISP

Witness Support and Protection Unit of the Mechanism

2016 WISP Statement

Statement of Witness ANAL/TNN6 dated 7 November 2016 (confidential Exhibits 4D1 and 4D2, collectively)



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

| | | | | |
|---|---|---|--|---|
| To/ À : | IRMCT Registry/ <i>Greffe du MIFRTP</i> | | <input checked="" type="checkbox"/> Arusha/ <i>Arusha</i> | <input type="checkbox"/> The Hague/ <i>La Haye</i> |
| From/ De : | <input type="checkbox"/> President / <i>Président</i> | <input checked="" type="checkbox"/> Chambers / <i>Chambre</i> | <input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i> | <input type="checkbox"/> Defence / <i>Défense</i> |
| | <input type="checkbox"/> Registrar / <i>Greffier</i> | <input type="checkbox"/> Other/ <i>Autre</i> | | |
| Case Name/ Affaire : | PROSECUTOR V. MARIE ROSE FATUMA ET AL. | | Case Number/ Affaire n° : | MICT-18-116-A |
| Date Created/ Daté du : | 29 June 2022 | Date transmitted/ Transmis le : | 29 June 2022 | No. of Pages/ Nombre de pages : 64 |
| Original Language / Langue de l'original : | <input checked="" type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S | <input type="checkbox"/> Other/Autre (specify/préciser) : |
| Title of Document/ Titre du document : | JUDGEMENT | | | |
| Classification Level/ Catégories de classification : | <input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i> | <input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i> | | |
| | <input type="checkbox"/> Confidential/ <i>Confidentiel</i> | <input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i> | | |
| | <input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i> | <input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i> | | |
| | | <input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i> | | |
| | | <input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) : | | |
| Document type/ Type de document : | | | | |
| <input type="checkbox"/> Motion/ <i>Requête</i> | <input checked="" type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i> | <input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i> | <input type="checkbox"/> Warrant/ <i>Mandat</i> | |
| <input type="checkbox"/> Decision/ <i>Décision</i> | <input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i> | <input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i> | <input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i> | |
| <input type="checkbox"/> Order/ <i>Ordonnance</i> | <input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i> | <input type="checkbox"/> Indictment/ <i>Acte d'accusation</i> | | |

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

| | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i> | | | | |
| <input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction : (Word version of the document is attached/ La version Word est jointe)</i> | | | | |
| <input type="checkbox"/> English/ <i>Anglais</i> | <input checked="" type="checkbox"/> French/ <i>Français</i> | <input checked="" type="checkbox"/> Kinyarwanda | <input type="checkbox"/> B/C/S | <input type="checkbox"/> Other/Autre (specify/préciser) : |
| <input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i> | | | | |
| Original/ Original en | <input type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S | <input type="checkbox"/> Other/Autre (specify/préciser) : |
| Translation/ Traduction en | <input type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S | <input type="checkbox"/> Other/Autre (specify/préciser) : |
| <input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i> | | | | |
| <input type="checkbox"/> English/ <i>Anglais</i> | <input type="checkbox"/> French/ <i>Français</i> | <input type="checkbox"/> Kinyarwanda | <input type="checkbox"/> B/C/S | <input type="checkbox"/> Other/Autre (specify/préciser) : |

Send completed transmission sheet to/ *Veuillez soumettre cette fiche dûment remplie à :*

JudicialFilingsArusha@un.org OR/ OU JudicialFilingsHague@un.org

Rev: August 2019/ *Rév. : Août 2019*