UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55A-A
01st April 2011
{200/H – 161/H}

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: **Mr. Adama Dieng**

Judgement of: **1 April 2011**

THARCISSE MUVUNYI

v.

THE PROSECUTOR

Case No. ICTR-2000-55A-A

JUDGEMENT

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Ms. Deborah Wilkinson
Mr. Alphonse Van
Mr. Alfred Orono Orono
Mr. Thembile Segoete
Ms. Jane Mukangira
Mr. Leo Nwoye

ICTR Appeals Chamber
Date: 01st April 2011
Action: R. Dumas
Copied To: Judges, SLOO, LOJ, ALO, Parties, CMS/JRAU, ASS.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: KAFEL KUMELIO A. AFANDE
SIGNATURE: DATE: 01 APRIL 2011

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of appeals by Tharcisse Muvunyi ("Muvunyi") and the Prosecution against the Judgement rendered on 11 February 2010 by Trial Chamber III of the Tribunal ("Trial Chamber") in the case of *The Prosecutor v. Tharcisse Muvunyi* ("Trial Judgement").[1]

I. INTRODUCTION

A. Background

2. Muvunyi was born on 19 August 1953 in Mukarange Commune, Byumba Prefecture.[2] In 1994, he held the rank of Lieutenant Colonel in the Rwandan army and was stationed at the *École des Sous-Officiers* in Butare Prefecture.[3]

3. In his first trial before the Tribunal, Muvunyi was convicted on 12 September 2006 of genocide, direct and public incitement to commit genocide, and other inhumane acts as crimes against humanity, and was sentenced to 25 years of imprisonment.[4] The Appeals Chamber reversed these convictions on 29 August 2008, and ordered a retrial limited to the allegation under Count 3 of the Indictment that Muvunyi was responsible for direct and public incitement to commit genocide based on a speech he purportedly gave at the Gikore Trade Center in Nyaruhengeri Commune, Butare Prefecture.[5]

4. Following Muvunyi's retrial on this allegation, the Trial Chamber convicted him of direct and public incitement to commit genocide based on his statements in mid to late May 1994 at a public meeting at the Gikore Trade Center and sentenced him to 15 years of imprisonment.[6]

B. The Appeals

5. Muvunyi advances two grounds of appeal and requests the Appeals Chamber to overturn his conviction.[7] The Prosecution responds that Muvunyi's appeal should be dismissed in its entirety.[8]

---

[1] For ease of reference, two annexes are appended: Annex A – Procedural History; Annex B – Cited Materials and Defined Terms.
[2] Trial Judgement, para. 31.
[3] Trial Judgement, para. 32.
[4] *Muvunyi I* Trial Judgement, paras. 531, 545.
[5] *Muvunyi I* Appeal Judgement, paras. 148, 171.
[6] Trial Judgement, paras. 132, 133, 153.

The Prosecution presents one ground of appeal challenging Muvunyi's sentence.[9] It requests that the Appeals Chamber increase Muvunyi's sentence to 25 years of imprisonment.[10] Muvunyi responds that the Prosecution's appeal should be dismissed and that his sentence should be reduced.[11]

6. The Appeals Chamber heard oral submissions regarding these appeals on 21 October 2010.[12]

[7] Muvunyi Notice of Appeal, paras. 4-12; Muvunyi Appeal Brief, paras. 5, 17, 82. In paragraphs 11 and 12 of his Notice of Appeal, Muvunyi alleges that his sentence was not in accordance with established practice and further requests the Appeals Chamber to reduce his sentence in light of any findings which are set aside as not supported by facts or law. Muvunyi does not develop this argument in his Appeal Brief. Instead, he addresses this point in his Respondent's brief. There, Muvunyi submits that his crime is less egregious than several cases in which the Tribunal has imposed a sentence at or below 15 years of imprisonment and that a sentence of time served adequately serves the ends of justice. *See* Muvunyi Response Brief, paras. 13-40. Generally, arguments made in support of the Notice of Appeal should be developed in the Appeal Brief. That said, this does not prevent the Appeals Chamber from considering arguments of substantial importance to the appeal developed elsewhere if their exclusion would lead to a miscarriage of justice. *See, e.g., Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments Made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007, 5 March 2007, para. 15. In this case, however, Muvunyi's submissions do not demonstrate any error in his sentence for the same reasons given in relation to the Prosecution's challenge to the Trial Chamber's comparative sentencing approach. *See infra* para. 72.
[8] Prosecution Response Brief, paras. 1, 116.
[9] Prosecution Notice of Appeal, paras. 1-5; Prosecution Appeal Brief, para. 4.
[10] Prosecution Notice of Appeal, para. 5; Prosecution Appeal Brief, paras. 4, 70.
[11] Muvunyi Response Brief, paras. 39, 40.
[12] T. 21 October 2010 pp. 1-41.

II. STANDARDS OF APPELLATE REVIEW

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

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

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

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.[15] 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.[16]

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

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[17]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[18] Arguments which do not have the potential to cause the

---

[13] *Kalimanzira* Appeal Judgement, para. 6; *Rukundo* Appeal Judgement, para. 7. *See also Haradinaj et al.* Appeal Judgement, para. 9.
[14] *Ntakirutimana* Appeal Judgement, para. 11 (internal citation omitted). *See also Kalimanzira* Appeal Judgement, para. 7; *Rukundo* Appeal Judgement, para. 8; *Haradinaj et al.* Appeal Judgement, para. 10.
[15] *Kalimanzira* Appeal Judgement, para. 8; *Rukundo* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[16] *Kalimanzira* Appeal Judgement, para. 8; *Rukundo* Appeal Judgement, para. 9. *See also Haradinaj et al.* Appeal Judgement, para. 11.
[17] *Krstić* Appeal Judgement, para. 40 (internal citations omitted). *See also Kalimanzira* Appeal Judgement, para. 9; *Rukundo* Appeal Judgement, para. 10; *Haradinaj et al.* Appeal Judgement, para. 12.
[18] *Kalimanzira* Appeal Judgement, para. 10; *Rukundo* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.

impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[19]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[20] Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[21] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[22]

[19] *Kalimanzira* Appeal Judgement, para. 10; *Rukundo* Appeal Judgement, para. 11. *See also Boškoski and Tarčulovski* Appeal Judgement, para. 16.
[20] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[21] *Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.
[22] *Kalimanzira* Appeal Judgement, para. 11; *Rukundo* Appeal Judgement, para. 12; *Boškoski and Tarčulovski* Appeal Judgement, para. 17.

III. APPEAL OF THARCISSE MUVUNYI

A. Alleged Defect in the Indictment (Ground 1)

13. Paragraph 3.24 of the Indictment reads:

> During the events referred to in this indictment, Lieutenant Colonel MUVUNYI, in the company of the chairman of the civil défense program for Butare who later became the *Prefet* [*sic*] of Butare *préfecture*, and other local authority figures, went to various communes all over Butare *prefecture* [*sic*] purportedly to sensitize the local population to defend the country, but actually to incite them to perpetrate massacres against the Tutsis. These sensitization meetings took place in diverse locations throughout Butare *préfecture*, such as:
>
> [...]
>
> *- at the Gikore Center sometime in early May 1994;*
>
> [...]

14. Further, paragraph 3.25 of the Indictment reads:

> At the meetings referred to in paragraph 3.24 above, which were attended almost exclusively by Hutus, Lieutenant Colonel MUVUNYI, in conjunction with these local authority figures, publicly expressed virulent anti-Tutsi sentiments, which they communicated to the local population and militiamen in traditional proverbs. The people understood these proverbs to mean exterminating the Tutsis and the meetings nearly always resulted in the massacre of Tutsis who were living in the commune or who had taken refuge in the commune.

15. Based on the evidence presented in support of these Indictment paragraphs, the Trial Chamber convicted Muvunyi of direct and public incitement to commit genocide during a meeting held at the Gikore Trade Center in mid to late May 1994.[23] The Trial Chamber noted that it was undisputed that paragraph 3.24 of the Indictment incorrectly pleaded the relevant date range for the meeting at issue in this case.[24] Consequently, it proceeded to assess whether the variance between the date pleaded in the Indictment for the meeting as "early May 1994" and the evidence that the event occurred in mid to late May 1994 was sufficiently material to prevent Muvunyi from being informed of the charges.[25] After reviewing the evidence, the Trial Chamber determined that there was only one public meeting in Gikore in May 1994.[26] Therefore, it concluded that, despite the variance in the date in the Indictment and the evidence, Muvunyi was clearly informed of the meeting in Gikore which was alleged in the Indictment.[27]

16. Muvunyi submits that the Trial Chamber erred in law in convicting him of participating in a meeting which was not pleaded in the Indictment.[28] He argues that the Indictment specifically

[23] Trial Judgement, paras. 132, 133.
[24] Trial Judgement, para. 21.
[25] Trial Judgement, paras. 22, 45-62.
[26] Trial Judgement, paras. 61, 62.
[27] Trial Judgement, para. 62.
[28] Muvunyi Notice of Appeal, paras. 4, 5; Muvunyi Appeal Brief, paras. 5-16. In connection with this ground of appeal, the Appeals Chamber also considers related arguments raised in Muvunyi's Second Ground of Appeal challenging the

pleads a meeting at the beginning of May 1994 whereas the evidence presented at trial concerned a different event that took place no sooner than mid-June 1994.[29] To illustrate this, Muvunyi recalls that Prosecution evidence identifying Alphonse Nteziryayo ("Nteziryayo") as the prefect of Butare Prefecture at the time of the meeting shows that the Prosecution witnesses testified about a meeting that occurred no sooner than mid-June 1994, following Nteziryayo's appointment as prefect.[30] He also notes the allegation in the Indictment that he was in the company of the Chairman of Civil Defence in Butare Prefecture, whom he identifies as Aloys Simba, when he spoke at the Gikore meeting.[31] Muvunyi highlights that the evidence did not show that the Chairman of Civil Defence was present.[32] Consequently, he argues, the meeting which was charged in the Indictment was a different meeting from that which the Prosecution sought to establish on the evidence.[33]

17. Muvunyi argues that, in view of his alleged personal participation in the crime, the Indictment should have correctly set forth the date of the meeting.[34] Further, to the extent that the Prosecution sought to convict him for an event that took place in June 1994, it was required to amend the Indictment.[35]

18. Finally, Muvunyi argues that the Trial Chamber's conclusion that only one meeting took place at the Gikore Trade Center in May 1994 does not eliminate the defect in the Indictment.[36] He notes that this conclusion is speculative and that it is not supported by the evidence which shows that there were at least two meetings.[37] He also claims that this error was compounded when the Trial Chamber impermissibly shifted the burden of proof by requiring him to demonstrate that there was more than one meeting.[38]

19. The Appeals Chamber recalls that charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.[39] In reaching its judgement, a Trial Chamber can only convict the accused of

---

Trial Chamber's findings on whether the Prosecution witnesses identified Alphonse Nteziryayo as the prefect of Butare Prefecture. *See* Muvunyi Appeal Brief, paras. 46-56.

[29] Muvunyi Appeal Brief, paras. 5-7, 9, 11; Muvunyi Reply Brief, para. 7.

[30] Muvunyi Appeal Brief, paras. 9, 46-48; Muvunyi Reply Brief, para. 7.

[31] Muvunyi Appeal Brief, para. 8.

[32] Muvunyi Appeal Brief, para. 8.

[33] Muvunyi Appeal Brief, paras. 8, 54-56.

[34] Muvunyi Appeal Brief, para. 10.

[35] Muvunyi Appeal Brief, paras. 11-13.

[36] Muvunyi Appeal Brief, para. 14.

[37] Muvunyi Appeal Brief, paras. 14, 15; Muvunyi Reply Brief, paras. 9, 10.

[38] Muvunyi Appeal Brief, para. 14.

[39] *Muvunyi I* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100; *Simba* Appeal Judgement, para. 63; *Muhimana* Appeal Judgement, paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement, para. 49; *Ndindabahizi* Appeal Judgement, para. 16.

crimes that are charged in the indictment.[40] The Appeals Chamber has already confirmed in its previous judgement in this case, as well as in an interlocutory appeal decision during the course of the retrial, that the Indictment was not defective.[41] The question, however, remains whether Muvunyi was convicted of the specific crime which was charged in the Indictment.

20. It is not disputed that Muvunyi participated in a meeting at the Gikore Trade Center in May 1994.[42] Prosecution Witnesses FBX, CCS, CCP, and AMJ testified about Muvunyi's participation in a meeting which occurred in mid to late May 1994.[43] Muvunyi also presented evidence through his Defence witnesses that he participated in a meeting in mid to late May 1994, albeit a meeting that did not involve or result in criminal conduct.[44] After considering numerous similarities between the Defence evidence and the accounts given by the Prosecution witnesses, the Trial Chamber found that they were referring to the same meeting.[45]

21. This finding raises three main questions in relation to whether Muvunyi was convicted of the crime charged in the Indictment: (i) whether the Trial Chamber was correct in finding that the Prosecution witnesses testified about a meeting in mid to late May 1994; (ii) whether there was evidence of only one meeting which occurred at the Gikore Trade Center in May 1994; and (iii) whether the variance between the date pleaded in the Indictment for the meeting ("early May") and the Trial Chamber's finding that it occurred in mid to late May raises notice concerns.

1. The Date of the Meeting

22. In determining that the Prosecution and Defence witnesses were referring to the same event, the Trial Chamber found a number of points of agreement between the witnesses about the meeting, beyond its approximate date, its location, and Muvunyi's presence.[46] In particular, the Trial Chamber noted that the meeting was convened by a conseiller and that it was held outside in the afternoon at a junction in the road.[47] Other similarities included the number of people attending, the arrival of dignitaries by vehicle, the identity of the authorities present, and the order in which they

[40] *Muvunyi I* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 28; *Kvočka et al.* Appeal Judgement, para. 33.
[41] *Muvunyi I* Appeal Judgement, para. 140; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-AR98*bis*, Decision on Appeal of Decision Denying the Motion for Judgement of Acquittal, 11 November 2009, para. 13.
[42] Trial Judgement, para. 40.
[43] Trial Judgement, para. 46. The fifth Prosecution factual witnesses (Witness YAI) was not asked about the date of the meeting. *See* Trial Judgement, para. 46.
[44] Trial Judgement, paras. 47, 78-82.
[45] Trial Judgement, paras. 48, 49, 59.
[46] Trial Judgement, paras. 48, 49.
[47] Trial Judgement, paras. 48, 49.

spoke.[48] The Appeals Chamber notes, however, that there are two core differences between the accounts.

23. First, the Prosecution and Defence witnesses differed as to the message of the meeting. The Prosecution witnesses described the meeting as inciting violence,[49] whereas the Defence witnesses described it as a routine security meeting.[50] The Trial Chamber reconciled this, however, by identifying fundamental problems with the credibility of the Defence witnesses on this point, including finding that their testimonies were vague and contradictory.[51] The Appeals Chamber recalls that "the trial Judges are in the best position to assess the credibility of a witness and the reliability of the evidence adduced"[52] and, consequently, that "a Trial Chamber has full discretion to assess the appropriate weight and credibility to be accorded to the testimony of a witness."[53] As discussed in connection with Muvunyi's Second Ground of Appeal, the Appeals Chamber, Judges Liu and Meron dissenting, cannot identify any error in this credibility assessment.[54]

24. Second, the Prosecution and Defence witnesses differed as to the identification of the prefect who addressed the meeting; Prosecution Witnesses FBX, CCS, CCP, and AMJ asserted that it was Nteziryayo and the Defence witnesses stated that it was Sylvain Nsabimana ("Nsabimana").[55] This difference goes to the core of whether the meeting occurred in May 1994, when Nsabimana was prefect, or after 17 June 1994, when Nteziryayo replaced Nsabimana as prefect.[56]

25. The Trial Chamber expressly considered and rejected Muvunyi's arguments that Prosecution Witnesses FBX, CCS, CCP, and AMJ appeared to place the meeting after mid-June 1994 because they described Nteziryayo as the prefect of Butare Prefecture at the time of the meeting, while his appointment to this post occurred only on 17 June 1994.[57] The Trial Chamber considered it reasonable that these witnesses may have been mistaken about whether Nteziryayo was prefect at the time of the meeting given that 15 years had passed since the event and that Nteziryayo became prefect only a few weeks later.[58]

---

[48] Trial Judgement, para. 49.
[49] Trial Judgement, paras. 94-100, 120.
[50] Trial Judgement, paras. 77, 116, 117.
[51] Trial Judgement, paras. 107-119.
[52] *Nahimana et al.* Appeal Judgement, para. 949. *See also Rutaganda* Appeal Judgement, para. 188; *Akayesu* Appeal Judgement, para. 132; *Furundžija* Appeal Judgement, para. 37; *Aleksovski* Appeal Judgement, para. 63; *Tadić* Appeal Judgement, para. 64.
[53] *Nchamihigo* Appeal Judgement, para. 47. *See also Nahimana et al.* Appeal Judgement, para. 194.
[54] *See infra* Section III.B.2 (Alleged Errors in the Assessment of the Defence Evidence).
[55] Trial Judgement, paras. 50-52, 54, 57, n. 103.
[56] Trial Judgement, para. 51.
[57] Trial Judgement, paras. 53-58. The Prosecution's fifth factual witness concerning this event (Witness YAI) was not questioned about the presence of Nteziryayo. *See* T. 19 June 2009 pp. 20-31.
[58] Trial Judgement, para. 56.

26. The Trial Chamber also noted the demeanour of the witnesses when confronted with the suggestion that Nteziryayo was not in fact the prefect in May 1994, which, in the Trial Chamber's view, indicated that "they were confronted with an incorrect recollection rather than a lie."[59] The assessment of the demeanour of witnesses in considering their credibility is one of the fundamental functions of a Trial Chamber to which the Appeals Chamber must accord considerable deference.[60] The Appeals Chamber has previously noted that it "is loathe to disturb such credibility assessments on review".[61] The Appeals Chamber further recalls that it is not unreasonable for a trier of fact to accept some, but reject other parts of a witness's testimony.[62] The Appeals Chamber, Judges Liu and Meron dissenting, is not convinced that it was unreasonable for the Trial Chamber, in the circumstances noted above, to have rejected the portion of the witnesses' accounts relating to Nteziryayo's position during the meeting as prefect. Consequently, Muvunyi has not shown that the Trial Chamber's findings are wholly erroneous or that no reasonable trier of fact could have concluded that the meeting described by the Prosecution witnesses occurred in May 1994.[63]

2. The Number of Meetings in May 1994

27. With respect to whether there was only one meeting at the Gikore Trade Center in May 1994, the Appeals Chamber observes that Witness CCS mentioned Muvunyi's participation in an earlier meeting at the Gikore Trade Center at the end of April or in early May 1994.[64] The Trial Chamber did not expressly take this evidence into account when it concluded that the Prosecution witnesses only mentioned the occurrence of one meeting in May 1994. However, given Witness CCS's initial uncertainty as to whether the meeting occurred at the end of April or in early May 1994, and his subsequent confirmation of his prior statement which placed the earlier meeting at the end of April 1994,[65] the Appeals Chamber considers, Judges Liu and Meron dissenting, that this evidence does not undermine the reasonableness of the Trial Chamber's conclusion that only one meeting took place in May 1994.

---

[59] Trial Judgement, para. 57.
[60] *See Nchamihigo* Appeal Judgement, para. 47; *Bikindi* Appeal Judgement, para. 114; *Simba* Appeal Judgement, para. 9; *Nahimana et al.* Appeal Judgement, paras. 14, 194; *Ndindabahizi* Appeal Judgement, para. 34; *Ntagerura et al.* Appeal Judgement, paras. 12, 213; *Semanza* Appeal Judgement, para. 8; *Ntakirutimana* Appeal Judgement, paras. 12, 204, 244; *Kamuhanda* Appeal Judgement, para. 138; *Kayishema and Ruzindana* Appeal Judgement, para. 222. *See also Edouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR15*bis*.2, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 22 October 2004, para. 60.
[61] *Ntakirutimana* Appeal Judgement, para. 244.
[62] *Muvunyi I* Appeal Judgement, para. 128.
[63] The Appeals Chamber finds no merit to Muvunyi's contention that the allegation in the Indictment refers to a meeting involving Aloys Simba. The Indictment does not identify Simba as the Chairman of Civil Defence in Butare Prefecture. *See* Indictment, para. 3.24.
[64] T. 22 June 2009 pp. 16, 24-28.
[65] *Compare* T. 22 June 2009 p. 16, *with* T. 22 June 2009 pp. 24-28.

28. The Appeals Chamber holds that the Trial Chamber's observation that Muvunyi did not present evidence of other meetings in May does not represent a shift in the burden of proof.[66] Instead, this comment reflects nothing more than the Trial Chamber's conclusion, in exercising its duty to weigh the evidence adduced by both parties, that no credible evidence was presented showing that multiple meetings occurred in May 1994. Accordingly, the Appeals Chamber finds, Judges Liu and Meron dissenting, that Muvunyi has not demonstrated that no reasonable trier of fact could have concluded that only one meeting involving Muvunyi took place at the Gikore Trade Center in May 1994, and, as noted above, that this meeting took place in mid to late May.

3. Notice of the Mid to Late May 1994 Meeting

29. The final question therefore is whether Muvunyi lacked notice of the meeting for which he was convicted given the variance between the Indictment date range of early May 1994 and the finding that the meeting occurred in mid to late May 1994. The Appeals Chamber is not convinced that the difference between the language of the Indictment and the evidence is material since the variance is not significant,[67] and, as the Trial Chamber noted, there was only one meeting at the Gikore Trade Center in May 1994. Furthermore, Muvunyi in fact defended against the allegation that he incited the local population during a meeting at the Gikore Trade Center in mid to late May 1994 in both his first trial and the retrial, which shows that he had notice of the charge in the Indictment with respect to the May 1994 meeting.[68]

4. Conclusion

30. Accordingly, the Appeals Chamber, Judges Liu and Meron dissenting, dismisses Muvunyi's First Ground of Appeal.

---

[66] *See* Trial Judgement, para. 60.
[67] *See, e.g., Rutaganda* Appeal Judgement, para. 302; *Kunarac et al.* Appeal Judgement, para. 217.
[68] Trial Judgement, para. 47 ("Moreover, each of the Defence's factual witnesses testified that Muvunyi attended a meeting in Gikore in mid to late May 1994 where he spoke to an audience."). *See also Muvunyi I* Trial Judgement, paras. 202-205.

B. Alleged Errors in the Assessment of the Evidence (Ground 2)

31. In convicting Muvunyi of direct and public incitement to commit genocide, the Trial Chamber found that he encouraged the crowd gathered at the Gikore Trade Center "to seek out Tutsis in hiding and kill them"[69] and that Tutsis were attacked and killed the following morning.[70] The Trial Chamber also found that in light of the content of his speech and the context in which it was given, Muvunyi acted with genocidal intent.[71]

32. Muvunyi argues that the Trial Chamber committed numerous errors in its assessment of the Prosecution and Defence evidence.[72]

1. Alleged Errors in the Assessment of the Prosecution Evidence

33. In its factual findings, the Trial Chamber relied primarily on Prosecution Witnesses FBX, AMJ, CCP, CCS, and YAI.[73] It considered that Witnesses FBX, AMJ, and CCS were alleged accomplices of Muvunyi in view of their participation in the killings following the meeting.[74] The Trial Chamber also noted that Witnesses YAI and CCP were imprisoned for their role in the genocide for killings of a similar nature, but unrelated to the meeting at the Gikore Trade Center.[75] The Trial Chamber viewed the testimonies of each of these witnesses with caution.[76] Nonetheless, it found that these five Prosecution witnesses provided "convincing, credible, and reliable first-hand testimony concerning the content of Muvunyi's speech at the Gikore meeting", which was both consistent and corroborated.[77]

34. Muvunyi submits that the Trial Chamber made a number of errors, principally related to its assessment of accomplice evidence and inconsistencies in the Prosecution evidence.[78]

(a) Reliance on Accomplice Evidence

35. Muvunyi challenges the Prosecution's exclusive reliance on witnesses who actively participated in the genocide.[79] Muvunyi contrasts this situation with his factual witnesses who did

[69] Trial Judgement, para. 127.
[70] Trial Judgement, paras. 114, 127.
[71] Trial Judgement, paras. 128, 131.
[72] Muvunyi Notice of Appeal, paras. 6-10; Muvunyi Appeal Brief, paras. 17-79; Muvunyi Reply Brief, paras. 21-45. The Appeals Chamber addresses Muvunyi's argument that the Trial Chamber erred in finding that Alphonse Nteziryayo was not the prefect of Butare at the time of the meeting (Muvunyi Appeal Brief, paras. 46-56) in connection with similar arguments raised in his First Ground of Appeal. *See supra* Section III.A (Ground 1: Alleged Defect in the Indictment).
[73] Trial Judgement, paras. 41, 83-104.
[74] Trial Judgement, paras. 41, 83.
[75] Trial Judgement, paras. 42, 83.
[76] Trial Judgement, paras. 41, 42, 83.
[77] Trial Judgement, para. 93.

not have criminal records.[80] According to Muvunyi, the "Prosecution[']s failure to offer one witness of unimpeachable character is telling",[81] in particular bearing in mind the hundreds of participants at the alleged meeting.[82]

36. Muvunyi further argues that the Trial Chamber failed to apply appropriate caution in the assessment of Witnesses FBX, AMJ, and CCS, who were accomplices, or to consider whether their evidence was corroborated.[83] In this respect, he points to the Trial Chamber's conclusion that their prior participation in the genocide in fact "enhanc[ed] their credibility regarding the content of Muvunyi's speech at [the Gikore] meeting."[84] Muvunyi claims that this conclusion runs counter to the requirement that accomplice evidence must be viewed with caution since "accomplice witnesses may have motives or incentive[s] to implicate the accused person before the Tribunal."[85]

37. The Appeals Chamber has previously held that a Trial Chamber has the discretion to rely upon evidence of accomplice witnesses.[86] However, considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, the Appeals Chamber has stated that a Trial Chamber is duty bound to approach accomplice evidence with appropriate caution and to consider the totality of circumstances in which such evidence is tendered.[87] In the present case, the Trial Chamber recalled these applicable principles.[88] It also applied them by noting the criminal histories of each of the Prosecution witnesses, expressly viewing their evidence with caution, assessing whether any of them had motive to falsely implicate Muvunyi, and considering various discrepancies within and among their evidence prior to finding them credible.[89] Consequently, the Appeals Chamber finds no merit in Muvunyi's contention that the Trial Chamber erred in relying primarily on the evidence of accomplices or active participants in the genocide. The Appeals Chamber is also not convinced that the Trial Chamber failed to apply appropriate caution to this category of evidence.

38. There is equally no basis for Muvunyi's claim that the Trial Chamber erred in relying on accomplice evidence without considering whether it was corroborated, which he had already

---

[78] Muvunyi Appeal Brief, paras. 29-45, 57-59.
[79] Muvunyi Appeal Brief, paras. 30-32. *See also* Muvunyi Reply Brief, paras. 26-30.
[80] Muvunyi Appeal Brief, para. 33.
[81] Muvunyi Appeal Brief, para. 34. *See also* Muvunyi Appeal Brief, para. 33.
[82] Muvunyi Appeal Brief, paras. 29, 34.
[83] Muvunyi Appeal Brief, paras. 35, 36, 57-59.
[84] Muvunyi Appeal Brief, para. 36, *quoting* Trial Judgement, para. 106.
[85] Muvunyi Appeal Brief, para. 35, *quoting Muvunyi I* Appeal Judgement, para. 128. *See also* Muvunyi Appeal Brief, para. 36.
[86] *See Nchamihigo* Appeal Judgement, paras. 47, 48; *Muvunyi I* Appeal Judgement, para. 128.
[87] *Nchamihigo* Appeal Judgement, paras. 47, 48; *Muvunyi I* Appeal Judgement, para. 128.
[88] Trial Judgement, paras. 14-16
[89] Trial Judgement, paras. 41, 42, 83-93.

advanced at trial and which the Trial Chamber correctly rejected.[90] There is no *per se* requirement that accomplice evidence be corroborated, let alone by some other category of evidence.[91]

39. Furthermore, the Trial Chamber's reliance on the witnesses' prior role in the genocide as enhancing their credibility applied only to a specific aspect of their accounts, namely their interest in following the content of Muvunyi's speech as compared to that of the Defence witnesses.[92] The question of whether the Defence witnesses lacked a similar interest in following the speech is discussed below.[93] However, as a general matter, such consideration with respect to the Prosecution witnesses does not evince a lack of caution on the part of the Trial Chamber, but rather the type of fact-specific assessment required in the circumstances. Indeed, the Trial Chamber expressly viewed the Prosecution witnesses' evidence with caution and considered various discrepancies among their accounts.[94]

40. Accordingly, Muvunyi has not demonstrated any error on the part of the Trial Chamber in its general approach to assessing and relying on accomplice evidence.

(b) Inconsistencies in Prosecution Evidence

41. Muvunyi points to a number of alleged errors in the Trial Chamber's assessment of Prosecution Witnesses FBX, AMJ, CCP, CCS, and YAI in view of inconsistencies among their accounts as well as between their respective testimonies and prior statements to Tribunal investigators and in Rwandan judicial proceedings.[95] Specifically, he notes that these Prosecution witnesses provided different details with respect to the time of the meeting, number of persons present, and the identity of the attending authorities.[96] In particular, he points to evidence that Witnesses FBX, AMJ, CCP, and YAI placed the meeting in the afternoon, while Witness CCS stated that it occurred in the morning.[97] In addition, he submits that the description of the number of persons present varied between "about 300" (Witness FBX), "more than 80" (Witness AMJ), and

[90] Trial Judgement, para. 105.
[91] *See Nchamihigo* Appeal Judgement, paras. 47, 48; *Muvunyi I* Appeal Judgement, para. 128.
[92] Trial Judgement, para. 106.
[93] *See infra* Section III.B.2 (Alleged Errors in the Assessment of the Defence Evidence).
[94] Trial Judgement, paras. 83-93.
[95] Muvunyi Appeal Brief, paras. 37-45, 57-59.
[96] Muvunyi Appeal Brief, para. 43; Muvunyi Reply Brief, paras. 37-39.
[97] Muvunyi Appeal Brief, n. 80.

"between 250 and 300" (Witness CCS).[98] Muvunyi also notes that, in prior statements, Witnesses FBX and CCS did not list certain authorities as being present at the meeting.[99]

42. Muvunyi further submits that, when pleading guilty in Rwanda, Witnesses FBX and AMJ did not mention the Gikore meeting or their participation in the killings that followed the meeting and that Witnesses FBX, AMJ, and CCS did not mention having been incited by local officials to commit other crimes.[100] Muvunyi contends that these omissions can be explained because the fact finders in Rwandan proceedings, who are members of the local community, would have recognized such assertions as untruthful.[101]

43. Muvunyi also highlights a number of discrepancies related to his alleged use of a Rwandan proverb concerning the killing of snakes to incite the crowd, as attested to by Witnesses FBX, AMJ, CCP, and CCS.[102] In particular, he notes that Witnesses FBX and AMJ did not mention this detail in their prior statements to Tribunal investigators or Rwandan officials.[103] Muvunyi further observes that, in the first trial, Witness CCP attributed the use of the snake proverb to Alphonse Nteziryayo and that Witness CCS did the same in a prior statement to Tribunal investigators.[104] Muvunyi also contrasts this evidence with that of Witness YAI, as well as all Defence witnesses, who confirmed that Muvunyi made no references to snakes in his speech.[105] Muvunyi argues that the Trial Chamber erroneously excused the above inconsistencies and minimized the conflicting evidence.[106]

44. The Appeals Chamber recalls that Trial Chambers enjoy broad discretion in choosing which witness testimony to prefer, and in assessing the impact on witness credibility of inconsistencies within or between witnesses' testimonies and prior statements.[107] The Appeals Chamber further recalls that minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable, and that it is within the discretion of the Trial Chamber to evaluate such

---

[98] Muvunyi Appeal Brief, n. 79. Furthermore, Muvunyi points to evidence from the first trial from Witness YAI who placed the number at over 1,000 and from Witness CCS who stated it was around 900. *See* Muvunyi Appeal Brief, n. 79.

[99] Muvunyi Appeal Brief, n. 81 (referring to Witness FBX's omission of Charles Kalimanzira and Witness CCS's omission of Muvunyi and Ruzindaza, the president of the local court of first instance).

[100] Muvunyi Appeal Brief, paras. 38, 41, 42, 57-59; Muvunyi Reply Brief, para. 32. Muvunyi acknowledges that Witness AMJ pleaded guilty to participating in killings in May 1994, but notes that Witness AMJ's prior discussion of these crimes was not tied to the Gikore meeting. *See* Muvunyi Reply Brief, para. 32.

[101] Muvunyi Appeal Brief, paras. 42, 58. *See also* Muvunyi Reply Brief, para. 33.

[102] Muvunyi Appeal Brief, paras. 39, 44.

[103] Muvunyi Appeal Brief, paras. 39, 44; Muvunyi Reply Brief, paras. 35, 36. Specifically, with respect to Witness FBX, Muvunyi notes that the Trial Chamber found "incredible" the witness's assertion that Muvunyi told those assembled to "start" the killings. *See* Muvunyi Appeal Brief, para. 39, *quoting* Trial Judgement, para. 87, T. 17 June 2009 p. 2.

[104] Muvunyi Appeal Brief, para. 44.

[105] Muvunyi Appeal Brief, para. 45; Muvunyi Reply Brief, para. 40.

[106] Muvunyi Appeal Brief, paras. 39, 45; Muvunyi Reply Brief, paras. 35-37, 40.

[107] *See Muvunyi I* Appeal Judgement, para. 144; *Seromba* Appeal Judgement, para. 116; *Simba* Appeal Judgement, para. 211; *Muhimana* Appeal Judgement, para. 58; *Ntakirutimana* Appeal Judgement, para. 258.

inconsistencies and to consider whether the evidence as a whole is credible.[108] It is also not unreasonable for a trier of fact to accept some, but reject other parts of a witness's testimony.[109]

45. A review of the Trial Judgement reflects that the Trial Chamber considered matters related to the timing of the meeting, the number of attendees, as well as the authorities present, and found that many of the witnesses were in general agreement on these points.[110] The Appeals Chamber is not convinced that these purported discrepancies call into question the Trial Chamber's reliance on the fundamental features of the evidence.

46. In particular, contrary to Muvunyi's suggestion, there is no inconsistency among the Prosecution witnesses as to the time of day of the meeting. The testimony of Witness CCS, cited by Muvunyi to show that the meeting occurred in the morning, does not relate to the meeting at issue in this case but concerns an earlier meeting which occurred at the end of April 1994.[111] Moreover, the various accounts of the number of attendees are not necessarily inconsistent, and any differences appear minor, in particular bearing in mind the passage of time and that they are only estimates. Similarly, the fact that some witnesses did not mention certain authorities as participating in the meeting in prior statements is also minor and understandable given the passage of time.[112]

47. In addition, the Trial Chamber discussed the omissions by Witnesses FBX, CCS, and AMJ of details related to the Gikore meeting in Rwandan judicial proceedings.[113] The Trial Chamber specifically considered their failure to mention the incitement by authorities at the meeting in the Rwandan proceedings as one of the reasons for viewing their evidence with caution.[114] Although the Trial Chamber did not expressly address the issue of whether Witnesses FBX and AMJ pleaded guilty to participating in killings following the meeting, a Trial Chamber does not need to individually address all alleged inconsistencies and contradictions and does not need to set out in detail why it accepted or rejected a particular testimony.[115] The Trial Chamber was clearly aware of related discrepancies between their accounts in their own proceedings and those before the Tribunal, which it took into account in assessing their evidence. The Trial Chamber therefore acted within its discretion in nonetheless accepting their accounts after applying appropriate caution.

---

[108] *Karera* Appeal Judgement, para. 174.
[109] *Ntagerura et al.* Appeal Judgement, para. 214.
[110] Trial Judgement, paras. 48-52.
[111] *See* T. 22 June 2009 pp. 24, 25. *See also supra* para. 27.
[112] Witness FBX's omission of Muvunyi's role in the meeting in prior statements concerning the incident is more significant and is discussed below.
[113] Trial Judgement, paras. 83, 85.
[114] Trial Judgement, para. 83.
[115] *Muhimana* Appeal Judgement, para. 99; *Niyitegeka* Appeal Judgement, para. 124; *Musema* Appeal Judgement, para. 20.

48. In a similar vein, the Appeals Chamber is not convinced that Muvunyi has identified any error in the Trial Chamber's assessment of the Prosecution evidence related to his use of a proverb concerning the killing of snakes to incite the crowd. The Trial Chamber specifically addressed the omission of this detail in Witness FBX's statement to Tribunal investigators and accepted his explanation that it had been erroneously transcribed.[116] Furthermore, it also expressly noted the apparent contradiction between the mention of proverbs by Witnesses FBX, CCS, and CCP and Witness YAI's assertion that Muvunyi did not make any reference to snakes.[117] The Appeals Chamber considers that it was within the Trial Chamber's discretion to accept the fundamental features of the witnesses' evidence notwithstanding this discrepancy. The Trial Chamber did not address the discrepancies related to the use of the proverb highlighted by Muvunyi with respect to Witnesses CCP and CCS. However, the Appeals Chamber recalls that, while a Trial Chamber is required to consider inconsistencies and any explanations offered in respect of them when weighing the probative value of evidence,[118] it does not need to individually address them in the Trial Judgement.[119] Thus, Muvunyi has not shown that the Trial Chamber acted outside the scope of its discretion in accepting their accounts.

49. Accordingly, Muvunyi has not demonstrated any error on the part of the Trial Chamber in assessing inconsistencies in the Prosecution evidence.

2. Alleged Errors in the Assessment of the Defence Evidence

50. In concluding that Muvunyi's speech at the Gikore meeting called for the killing of Tutsis, the Trial Chamber identified a number of credibility issues that caused it to discount the contrary evidence of Defence Witnesses Sixbert Iryivuze, MO78, and MO99.[120] In particular, the Trial Chamber noted that they were not "active participants in the genocide at the time of the meeting" or residents of Gikore when the meeting took place, and therefore questioned their incentive to pay attention to the content of Muvunyi's speech given that it "concerned the specific situation in Gikore".[121] The Trial Chamber also found that Witness Iryivuze would have been further distracted due to his father's illness[122] and that Witness MO99 failed to appreciate the "particular security situation at that time".[123] Finally, the Trial Chamber pointed to several parts of the Defence witnesses' testimonies that it deemed vague or contradictory, finding that, unlike the Prosecution

[116] Trial Judgement, paras. 86, 87.
[117] Trial Judgement, para. 90.
[118] *Muhimana* Appeal Judgement, para. 58; *Niyitegeka* Appeal Judgement, para. 96.
[119] *Muhimana* Appeal Judgement, para. 58; *Niyitegeka* Appeal Judgement, para. 124; *Musema* Appeal Judgement, para. 20.
[120] Trial Judgement, paras. 107-113, 115-119.
[121] Trial Judgement, para. 110. *See also* Trial Judgement, paras. 107, 109.
[122] Trial Judgement, para. 109.
[123] Trial Judgement, para. 118.

witnesses, they "did not present multiple ways in which their testimony was consistent", but instead "differed in several material respects" with regard to Muvunyi's speech.[124]

51. In assessing whether Muvunyi intended to incite the audience to commit genocide, the Trial Chamber expressly considered as generally credible the evidence of Defence Witnesses Juvénal Bimenyimana, MO69, MO31, and MO103 of Muvunyi's good character and of the assistance he provided to Tutsis during the relevant events.[125] However, the Trial Chamber considered that, in view of the content of Muvunyi's speech at Gikore, the large audience that he addressed, and the broader context of genocide in the area, there was no doubt that Muvunyi intended by his speech to incite the crowd to commit genocide and acted with genocidal intent.[126]

52. Muvunyi submits that the Trial Chamber erred in its consideration of the Defence evidence.[127] In particular, he contends that the Trial Chamber committed several errors in its assessment of the accounts of the Gikore meeting offered by Witnesses Iryivuze, MO99, and MO78, which, when properly considered, demonstrate that he did not incite the crowd at the Gikore meeting to commit genocide.[128] Muvunyi recalls a number of aspects of their evidence related to their personal backgrounds, reasons for attending the meeting, as well as their recollections of what transpired at the meeting.[129] According to Muvunyi, the Trial Chamber unreasonably discounted their accounts of the meeting.[130] He further emphasizes that, in contrast to the Prosecution witnesses, the character of these Defence witnesses was "unimpeachable".[131]

53. Muvunyi further argues that "[t]here is no evidence that the witnesses were not paying close attention, or any less attention than the Prosecution witnesses."[132] He also asserts that the Trial Chamber's reasoning with regard to the motivations of the Defence witnesses for not paying attention is speculative and tenuous and that the Trial Chamber held Witness MO78 to a higher standard than the Prosecution witnesses.[133]

54. Furthermore, Muvunyi challenges the Trial Chamber's conclusion that he possessed genocidal intent by arguing that it improperly minimized as character evidence the testimonies of Defence Witnesses Bimenyimana and MO69 regarding his efforts to protect Tutsis during the

[124] Trial Judgement, para. 116. *See also* Trial Judgement, para. 117.
[125] Trial Judgement, paras. 33-39, 129, 130.
[126] Trial Judgement, paras. 128, 131.
[127] Muvunyi Appeal Brief, paras. 23-28, 60-79.
[128] Muvunyi Appeal Brief, paras. 60-79.
[129] Muvunyi Appeal Brief, paras. 60-79.
[130] Muvunyi Appeal Brief, paras. 63, 64, 71-74, 78, 79.
[131] Muvunyi Appeal Brief, para. 60.
[132] Muvunyi Reply Brief, para. 44.
[133] Muvunyi Appeal Brief, paras. 63, 64, 71-74, 79; Muvunyi Reply Brief, paras. 44, 45.

relevant period.[134] Muvunyi asserts that this evidence shows that his mental state was "completely inconsistent with the version of the Gikore speech presented by the Prosecution", raising a reasonable doubt as to whether he possessed the requisite *mens rea*.[135] While he acknowledges that the Trial Chamber dismissed these arguments because it found his assistance to Tutsis was "limited and selective, or offered to Tutsis who were close to either his friends or family",[136] Muvunyi points out that Witness Bimenyimana's testimony cannot be explained by friendship or a familial relationship.[137] Thus, Muvunyi asserts, the Trial Chamber failed to adequately consider the evidence.[138]

55. The Appeals Chamber finds speculative the Trial Chamber's conclusion that Witnesses Iryivuze, MO78, and MO99 had less incentive to pay close attention to the content of the speeches at the Gikore meeting than the Prosecution witnesses. In this respect, the Trial Chamber noted that the Defence witnesses were not residents of Gikore at the time of the meetings or actively involved in the genocide,[139] Witness Iryivuze "was likely thinking of his malaria-stricken father during the meeting",[140] and Witness MO99 "was not sensitive to [the] particular security situation at that time", as he felt himself to be in equal danger as his Tutsi fiancée when traveling to Butare Prefecture.[141]

56. Nevertheless, the Appeals Chamber notes that these statements did not form the totality of the Trial Chamber's credibility analysis with regard to Defence Witnesses Iryivuze, MO78, and MO99. The Trial Chamber also considered the overall consistency of the Defence witnesses' testimonies and noted that, in contrast to the Prosecution witnesses, the testimonies of the Defence factual witnesses were not consistent in multiple ways.[142] In particular, it found that the Defence witnesses provided a less consistent account of the content of Muvunyi's address than the Prosecution witnesses, undermining the truthfulness of their evidence.[143] Corroboration is one of many potential factors relevant to the Trial Chamber's assessment of a witness's credibility,[144] and the Appeals Chamber considers, Judges Liu and Meron dissenting, that it was not unreasonable, in light of the totality of the evidence, for the Trial Chamber to conclude that the Defence witnesses offered less credible evidence on this issue overall.

---

[134] Muvunyi Appeal Brief, paras. 23-28; Muvunyi Reply Brief, paras. 21-25.
[135] Muvunyi Appeal Brief, paras. 27, 28; Muvunyi Reply Brief, paras. 21, 23.
[136] Trial Judgement, para. 130.
[137] Muvunyi Appeal Brief, para. 27.
[138] Muvunyi Appeal Brief, para. 27.
[139] Trial Judgement, paras. 107-110.
[140] Trial Judgement, para. 109.
[141] Trial Judgement, para. 118.
[142] Trial Judgement, para. 116.
[143] Trial Judgement, para. 117.
[144] *Nchamihigo* Appeal Judgement, para. 47, *citing Simba* Appeal Judgement, para. 24.

57. The Appeals Chamber recalls that when faced with competing versions of events, it is the duty of the Trial Chamber which heard the witnesses to determine which evidence it considers more probative.[145] A review of the Trial Judgement reflects that the Trial Chamber did so when it extensively considered the evidence of the Defence witnesses concerning what transpired at the Gikore meeting and found that evidence unconvincing when weighed against the corroborated and credible testimonies of the Prosecution witnesses.[146]

58. Finally, the Trial Chamber discussed Muvunyi's evidence concerning his good character and assistance to Tutsis during the relevant events.[147] However, the Trial Chamber also extensively discussed the content and context of his speech at the Gikore meeting and on that basis found that he intended to incite the audience to commit genocide and that he acted with genocidal intent.[148] In view of such evidence, the mere fact of having good character or providing selective assistance to Tutsis did not preclude the Trial Chamber from finding that Muvunyi had genocidal intent.

59. Furthermore, contrary to Muvunyi's assertions, the Trial Chamber did not dismiss the probative value of his assistance to Tutsis based solely on the fact that they were motivated by personal relationships.[149] The Trial Chamber also found that his assistance was "limited and selective".[150] The fact that Muvunyi assisted a group of individuals with whom he had no relationship, as testified to by Witness Bimenyimana,[151] does not impugn that finding.

60. Accordingly, Muvunyi has not demonstrated any error in the Trial Chamber's assessment of the Defence evidence.

3. Conclusion

61. For the foregoing reasons, the Appeals Chamber, Judges Liu and Meron dissenting, dismisses Muvunyi's Second Ground of Appeal.

---

[145] *Muhimana* Appeal Judgement, para. 103; *Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29.
[146] Trial Judgement, paras. 83-119.
[147] Trial Judgement, paras. 129, 130.
[148] Trial Judgement, paras. 120-128, 131.
[149] Trial Judgement, paras. 129, 130.
[150] Trial Judgement, para. 130.
[151] *See* T. 24 August 2009 p. 40.

IV. APPEAL OF THE PROSECUTION

62. The Trial Chamber sentenced Muvunyi to 15 years of imprisonment for his conviction for direct and public incitement to commit genocide.[152]

63. The Appeals Chamber recalls that Trial Chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualize penalties to fit the circumstances of the accused and the gravity of the crime.[153] As a rule, the Appeals Chamber will revise a sentence only if the appealing party demonstrates that the Trial Chamber committed a discernible error in exercising its sentencing discretion or that it failed to follow the applicable law.[154]

64. The Prosecution submits that the Trial Chamber erred in law and fact in assessing Muvunyi's sentence.[155] It requests that the Appeals Chamber increase his sentence to 25 years of imprisonment.[156] In this section the Appeals Chamber considers whether the Trial Chamber erred in assessing: (i) the gravity of Muvunyi's crimes; (ii) the aggravating factors; (iii) the mitigating factors; and (iv) the Tribunal's sentencing practice in similar cases.

A. Gravity of the Crimes

65. The Prosecution argues that the Trial Chamber erred in its assessment of the overall gravity of Muvunyi's crimes by failing to give proper weight to: the severity of direct and public incitement to commit genocide; the individual circumstances of the case; the form and degree of Muvunyi's participation; and the timing of his offence.[157] The Prosecution highlights that the Trial Chamber found that "directly and publicly inciting others to commit genocide is of similar gravity as the crime of genocide" and that "genocide is a crime of the most serious gravity".[158] The Prosecution also emphasizes that, in the absence of mitigating circumstances, the Tribunal has sentenced persons convicted for genocide to life imprisonment.[159]

---

[152] Trial Judgement, para. 153.
[153] *Nchamihigo* Appeal Judgement, para. 384; *Bikindi* Appeal Judgement, para. 141; *Karera* Appeal Judgement, para. 385.
[154] *Nchamihigo* Appeal Judgement, para. 384; *Bikindi* Appeal Judgement, para. 141; *Karera* Appeal Judgement, para. 385.
[155] Prosecution Notice of Appeal, paras. 1-4; Prosecution Appeal Brief, para. 4.
[156] Prosecution Notice of Appeal, para. 5; Prosecution Appeal Brief, paras. 4, 70.
[157] Prosecution Notice of Appeal, paras. 1, 2; Prosecution Appeal Brief, paras. 21-43; Prosecution Reply Brief, para. 6.
[158] Prosecution Appeal Brief, para. 10, *citing* Trial Judgement, para. 140.
[159] Prosecution Appeal Brief, para. 21.

66. In assessing the gravity of the offence at issue, the Trial Chamber briefly recalled the factual and legal basis of Muvunyi's crime.[160] The Trial Chamber expressly considered that genocide "shocks the conscience of humanity" and that direct and public incitement to commit genocide was "of similar gravity" to genocide.[161] Therefore, the Trial Chamber was aware of all the factual and legal circumstances surrounding the offences referred to by the Prosecution. Accordingly, the Appeals Chamber is not convinced that the Prosecution has demonstrated that the Trial Chamber erred in its assessment of the gravity of Muvunyi's offence.

B. Aggravating Factors

67. The Prosecution asserts that the Trial Chamber failed to give sufficient weight to aggravating circumstances, including the context in which Muvunyi's crime was committed and his stature and authority in Rwanda, particularly in light of the degree and form of his participation.[162]

68. In challenging the Trial Chamber's consideration of aggravating factors, the Prosecution simply recounts the facts of the case, the form of Muvunyi's criminal responsibility, and his abuse of authority at the time of the events.[163] It concludes by noting that, in view of the 15 year sentence, the Trial Chamber must have failed to give sufficient weight to aggravating factors.[164] The Prosecution, however, does not identify any specific factors that the Trial Chamber failed to consider. Indeed, the Trial Chamber considered the relevant circumstances and ultimately concluded that Muvunyi's abuse of his influence, derived from his status as a military officer, constituted an aggravating factor.[165] Simply disagreeing with the Trial Chamber's assessment of the aggravating factors is insufficient to demonstrate a discernible error in its sentencing discretion. In this context, the Prosecution has not demonstrated that the Trial Chamber erred in its assessment of the aggravating factors.

C. Mitigating Factors

69. The Prosecution argues that, in light of the gravity of the offence, the Trial Chamber did not properly consider the absence of mitigating factors.[166] The Prosecution contends that the Trial Chamber therefore abused its discretion by failing to justify its leniency.[167] The Prosecution further

---

[160] Trial Judgement, para. 139, *referring* to Trial Judgement, paras. 128, 132.
[161] Trial Judgement, para. 140.
[162] Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 44-53; Prosecution Reply Brief, para. 6.
[163] Prosecution Appeal Brief, paras. 44-53.
[164] Prosecution Appeal Brief, paras. 52, 53.
[165] Trial Judgement, paras. 144-146.
[166] Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 54, 55.
[167] Prosecution Appeal Brief, para. 54

argues that, in any case, any possible mitigating circumstances in Muvunyi's favour highlighted in the Response Brief are outweighed by the gravity of his offence.[168]

70. Pursuant to Rule 101(B)(ii) of the Rules, a Trial Chamber is required to take into account any mitigating circumstances in determining a sentence.[169] In this case, the Trial Chamber expressly noted and considered Muvunyi's submissions and evidence concerning his good character and acts of assisting Tutsis.[170] It did not, however, find that mitigation was warranted.[171] The Trial Chamber, therefore, clearly took this into account in reaching its sentence of 15 years of imprisonment. Contrary to the Prosecution's argument, the absence of mitigating factors does not require a Trial Chamber to impose a maximum sentence or to provide additional justification for the sentence it ultimately imposes.[172] Consequently, the Prosecution has not demonstrated that the Trial Chamber erred in its consideration of mitigating factors.

D. Consistency with the Tribunal's Sentencing Practice

71. The Prosecution submits that the Trial Chamber erred in law by making flawed comparative assessments with the *Bikindi*, *Kajelijeli*, and *Ruggiu* cases.[173] It further contends that Muvunyi's case is not qualitatively similar to other convictions before the Tribunal resulting in 15 years of imprisonment or less.[174] The Prosecution argues that the Trial Chamber failed to take into account the more analogous situation in the *Akayesu* case, where a life sentence was imposed.[175]

72. The Appeals Chamber recalls that Trial Chambers have broad discretion to tailor the penalties to fit the individual circumstances of the accused and the gravity of the crime.[176] The comparison of cases is generally of limited assistance.[177] Thus, the fact that the Trial Chamber did not expressly address the circumstances in the *Akayesu* case does not amount to an error. The Appeals Chamber is also not convinced that the Trial Chamber relied upon the *Bikindi*, *Kajelijeli*, and *Ruggiu* cases beyond noting their similar outcomes. Indeed, the Trial Chamber expressly

[168] Prosecution Reply Brief, para. 7.
[169] *Muhimana* Appeal Judgement, para. 231; *Kamuhanda* Appeal Judgement, para. 354; *Kajelijeli* Appeal Judgement, para. 294.
[170] Trial Judgement, paras. 39, 147, 150.
[171] Trial Judgement, paras. 150, 151.
[172] *Bikindi* Appeal Judgement, paras. 193, 194.
[173] Prosecution Notice of Appeal, para. 4; Prosecution Appeal Brief, paras. 28-31, 56-68; Prosecution Reply Brief, paras. 13, 14.
[174] Prosecution Reply Brief, paras. 19, 20.
[175] Prosecution Appeal Brief, paras. 31, 63-68.
[176] *Semanza* Appeal Judgement, paras. 312, 394; *Krstić* Appeal Judgement, para. 248; *Kayishema and Ruzindana* Appeal Judgement, para. 352; *Delalić et al.* Appeal Judgement, para. 731.
[177] *Limaj et al.* Appeal Judgement, para. 135; *Blagojević and Jokić* Appeal Judgement, para. 333; *Momir Nikolić* Appeal Judgement, para. 38; *Semanza* Appeal Judgement, para. 394; *D. Nikolić* Appeal Judgement, para. 19; *Musema* Appeal Judgement, para. 387; *Delalić et al.* Appeal Judgement, para. 719.

acknowledged the "inherent limits" on a comparative sentencing approach and cited the above cases simply as evidence of the Tribunal's "general sentencing practice".[178] Further, the Trial Chamber undertook an individualized assessment of the circumstances of the case, including both aggravating and mitigating factors.[179] Given this analysis and the substantial discretion retained by a Trial Chamber in sentencing a convicted person based on the particular circumstances of a case,[180] the Appeals Chamber finds that the Prosecution has identified no error on the part of the Trial Chamber in this regard.

E. Conclusion

73. Accordingly, the Appeals Chamber dismisses the Prosecution's Appeal.

[178] Trial Judgement, paras. 136, 142.
[179] *See* Trial Judgement, paras. 143-151.
[180] *See Nchamihigo* Appeal Judgement, para. 384; *Bikindi* Appeal Judgement, para. 141; *Karera* Appeal Judgement, para. 385.

V. DISPOSITION

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

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

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 21 October 2010;

SITTING in open session;

DISMISSES, Judges Liu and Meron dissenting, Muvunyi's Appeal in all respects;

DISMISSES the Prosecution's Appeal in all respects;

AFFIRMS, Judges Liu and Meron dissenting, Muvunyi's conviction for direct and public incitement to commit genocide;

AFFIRMS, Judges Liu and Meron dissenting, the sentence of 15 years of imprisonment imposed on Muvunyi by the Trial Chamber to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 5 February 2000;

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

ORDERS that, in accordance with Rule 103(B) and Rule 107 of the Rules, Muvunyi is to remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where his sentence will be served.

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

Patrick Robinson	Fausto Pocar	Liu Daqun
Presiding Judge	Judge	Judge

Theodor Meron	Carmel Agius
Judge	Judge

Judges Liu and Meron append a dissenting opinion.

Done this 1st day of April 2011 at Arusha, Tanzania.

[Seal of the Tribunal]

VI. DISSENTING OPINION OF JUDGES LIU AND MERON

1. In this Judgement, the Appeals Chamber affirms Muvunyi's conviction for direct and public incitement to commit genocide based on statements he purportedly made in mid to late May 1994 at a public meeting at the Gikore Trade Center in Nyaruhengeri Commune, Butare Prefecture.[1] In our view, the consistent evidence of all Prosecution witnesses and the Trial Chamber's own findings strongly suggest that Muvunyi's act of incitement took place not in early May, as charged in the Indictment, but in the latter half of June 1994, which is well outside the temporal scope of the Indictment. In these circumstances, no reasonable trier of fact could have found that the crime charged in the Indictment had been proved beyond reasonable doubt. Accordingly, we respectfully disagree with the Majority's reasoning and conclusions on this question, and with its decision to affirm Muvunyi's conviction.[2]

2. At trial, both Prosecution and Defence witnesses gave evidence concerning a public meeting at the Gikore Trade Center attended by Muvunyi. Prosecution witnesses consistently agreed with each other on two issues with respect to the meeting: (1) the identity of the prefect addressing the meeting; and (2) whether Muvunyi made statements inciting genocide. In particular, all four Prosecution witnesses who testified regarding the identity of the prefect at the meeting stated that *Alphonse Nteziryayo* addressed the meeting in his capacity as prefect of Butare, and that the meeting included statements by Muvunyi inciting genocide.[3] However, all the Defence witnesses who testified regarding the meeting consistently stated that it was *Sylvain Nsabimana* who addressed them there in his capacity as prefect of Butare, and that the meeting included no statements by Muvunyi inciting genocide.[4] Notably, the Trial Chamber found that Nsabimana was prefect of Butare until 17 June 1994, and that Nteziryayo was prefect of Butare after 17 June 1994.[5]

3. In context, the stark contrast between the evidence of relevant Prosecution and Defence witnesses and the consistency of their respective descriptions readily point to the existence of not one, but two meetings: the first, held before 17 June 1994, while Nsabimana was prefect, and in which Muvunyi did not incite genocide; and the second, held after 17 June 1994, when Nteziryayo

[1] Appeal Judgement, para. 4, p. 24.
[2] As a result, we consider that the Prosecution's Appeal is moot.
[3] *See* Appeal Judgement, paras. 23, 24. The fifth Prosecution witness, Witness YAI, was not questioned as to the presence of Nteziryayo at the meeting. *See* Appeal Judgement, n. 57.
[4] *See* Appeal Judgement, paras. 23, 24.
[5] *See* Appeal Judgement, para. 24, *referring to* Trial Judgement, para. 51.

was prefect, and in which Muvunyi directly and publicly incited genocide.[6] This deduction is reinforced by the Trial Chamber's conclusion that the Prosecution witnesses' testimony on these points was credible. Specifically, in assessing Prosecution witnesses' testimony as to the identity of the prefect addressing the meeting, the Trial Chamber confirmed that their "demeanour [...] suggest[ed] that they actually believed that Nteziryayo was [prefect] of Butare during the meeting at Gikore".[7] In addition, we note that three of the four relevant Prosecution witnesses not only stated a belief that Nteziryayo was prefect at the relevant time, but had detailed recollections about the specific manner in which Nteziryayo was introduced as prefect or referred to himself as such during the meeting.[8]

4. Despite the clear and consistent evidence that two meetings occurred, and the equally clear and consistent evidence that Muvunyi's statements inciting genocide were made at the latter of these two meetings, the Trial Chamber dismissed Defence counsel's attempts to show that two meetings took place.[9] Notably, the Trial Judgement fails to consider the possibility of a June 1994

TM
lin

[6] In our discussion of the implications of Prosecution witnesses' testimony we reach no final conclusions as to Muvunyi's guilt or innocence with regard to any statements he may have made at the Gikore Trade Center after 17 June 1994. Our focus is on whether a reasonable trier of fact could have concluded that the Prosecution met its burden of proof with respect to the crimes for which Muvunyi was charged in the Indictment.

[7] Trial Judgement, para. 57.

[8] *See* Witness FBX, T. 17 June 2009 p. 19 ("Q. Are you saying [...] that by Nteziryayo standing up when he was introduced as the *préfet*, you came to know that he was the prefect at that time? A. Yes. Q. And did he acknowledge that he was the *préfet* during his talk? A. Yes."); *see also* Witness FBX, T. 18 June 2009 pp. 4-6; *see* Witness AMJ, T. 18 June 2009 p. 41 ("A. All I knew was that [Nteziryayo] was [a] senior officer, and on the day of the meeting, he informed us that he was the *préfet* of Butare *préfecture*."); *see also* Witness AMJ, T. 18 June 2009, p. 54; *see* Witness CCS, T. 22 June 2009 p. 41 (discussing the witness's prior statement naming Nteziryayo as prefect and describing him being introduced as such at the relevant meeting).

[9] *See, e.g.*, Trial Judgement, para. 59. *See also* Witness FBX, T. 18 June 2009 p. 6 ("Q. Therefore, if it was true or a fact that Nteziryayo was made *préfet* of Butare June 17th, the meeting that you allude to happening in your community must have taken place sometime after [...] June 17th; isn't that the case?"); Witness AMJ, T. 18 June 2009 p. 55 ("Q. And if there's – it has been established as a historical fact or otherwise that Alphonse Nteziryayo was made the *préfet* of Butare June 17th, 1994, wouldn't it be a fact that if you did, in fact, attend a meeting where he was the prefect, it would have been in – after June 17th, 1994 and not in May, as you've testified?); Witness CCP, T. 19 June 2009 pp. 9, 10 ("Q. [...] And when I asked you whether or not you agree with me, I am asking you whether or not you agree that, if, in fact, Nteziryayo was the prefect – and that the investiture of his office took place on the 17th of June, then the meeting you two are talking about necessarily had to take place after that. That is logical; is it not?"); Witness CCS, T. 22 June 2009 p. 38 ("Q. [...] Would it not be true that, if Alphonse Nteziryayo was appointed as *préfet* on 17 June 1994, he could not have appeared as *préfet* in the middle of May 1994 at Gikore as – and make statements that you described?"). *See also* *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, Decision on Motion for Judgement of Acquittal, 18 August 2009, para. 8 ("Counsel for the Defence suggested that since the appointment as *préfet* occurred in mid-June the witnesses could not be believed or they were testifying about a different meeting to that plead[ed] in the Indictment."); Closing Arguments, T. 2 October 2009 p. 5 ("Far from technical, the Defence brings to bear, in the first instance, the fact that the Prosecutor alleged and said he was going to prove that the events that he had pled in his indictment occurred in early May. [...] That being the parameters of the lawsuit, the indictment, the Prosecutor proceeded to offer proof of another event that took place in time, substantially different time than what he alleged in early May. And, further than that, the speakers at the podium, quote, unquote, were in fact the *préfet* of Butare. That is more than just a variance that can be cured by notice. That is clearly, clearly another event.").

meeting; instead, it analyses and rejects the possibility that multiple meetings occurred in May 1994.[10] This, in our view, is a serious failing.

5. Although the Trial Chamber found Prosecution witnesses to be honest, it dismissed them as being "collectively mistaken" in their testimony about the prefect due to the passage of time.[11] Underlying this conclusion is the Trial Chamber's identification of certain similarities between some of the Prosecution and Defence witnesses' accounts of the meetings[12] and its analysis reconciling the testimony of Prosecution witnesses with respect to the date of the meeting.[13] With respect to the first point, the similarities identified by the Trial Chamber are too generic to undermine the plain evidence that two meetings took place. Indeed, it would be surprising if public meetings in the same locale in the same year differed significantly in terms of location, the number of people attending, the manner in which dignitaries arrived (by car), or the order in which authorities spoke. Divergences that a fact-finder could reasonably expect to be reflected in descriptions of different meetings include the issues addressed, and any changes with respect to which individuals occupied specific official posts within local and national authorities. These are precisely the differences that consistently distinguish the testimony of the relevant Prosecution witnesses from that of the Defence witnesses.[14]

6. With respect to the second point, we acknowledge that three Prosecution witnesses who were asked about the date of the meeting placed it sometime in May. However, we note that a fourth Prosecution witness stated that the meeting could have taken place in June.[15] In light of the Prosecution witnesses' expressed certitude regarding the identity of the prefect who addressed them,[16] we do not find that the Prosecution witnesses' varying testimony regarding the date of the

TH
hn

[10] *See* Trial Judgement, paras. 58-62. Even the Trial Chamber's analysis regarding the possibility of two meetings in May 1994 is based on flawed factual assumptions: the Trial Chamber erroneously stated that the Prosecution had only adduced evidence of one meeting in May 1994, when in fact Prosecution Witness CCS did suggest that multiple meetings took place (*compare* Trial Judgement, para. 60, *with* Appeal Judgement, para. 27). The Trial Chamber also incorrectly observed that the Defence did not raise the possibility of more than one meeting in May 1994 in its cross-examination of Prosecution witnesses (*compare* Trial Judgement, para. 60, *with* Witness CCS, T. 22 June 2009 pp. 16, 24-28 (referring during cross-examination to an earlier meeting at the Gikore Trade Center which occurred at the end of April or the beginning of May 1994)).

[11] Trial Judgement, para. 58. *See also* Trial Judgement, paras. 53-57.

[12] Trial Judgement, paras. 48, 49.

[13] Trial Judgement, para. 46.

[14] We note that both Defence and Prosecution witnesses testified that Nteziryayo addressed the meetings they attended, although the Defence witnesses specified that Nsabimana held the title of prefect of Butare at the time (Trial Judgement, paras. 50, 51). The Prosecution witnesses, however, did not recall Nsabimana's presence at the meeting they attended (Trial Judgement, para. 52). This is consistent with Nsabimana losing his position as prefect on 17 June 1994, and not attending the second meeting.

[15] Trial Judgement, n. 88.

[16] *See* Trial Judgement, paras. 53, 54.

meeting could convince a reasonable trier of fact that the Prosecution had proved beyond a reasonable doubt that Muvunyi's statements inciting genocide were made in May 1994.[17]

7. The Majority claims to defer to the Trial Chamber's discretion over facts, observing that Nteziryayo became prefect soon after the May time-period identified by the Trial Judgement; noting the Trial Chamber's analysis of witness demeanour; and concluding that the Trial Chamber permissibly accepted some but rejected other parts of witnesses' testimony in reaching its conclusion.[18] We do not dispute the Trial Chamber's credibility determinations regarding the relevant Prosecution witnesses or the date on which Nteziryayo became prefect. We find, however, that the Majority ignores clear gaps in the Trial Chamber's analysis of the evidence before it. Most tellingly, the Trial Judgement devotes several paragraphs to explaining how all relevant Prosecution witnesses could be both truthful and wrong regarding the identity of the prefect,[19] without even considering the obvious possibility that they were both truthful and right.[20] This is not a case where the Trial Chamber chose to believe one witness over another. Instead, it chose to discount without convincing explanation the clear implications of the evidence of every single relevant Prosecution witness regarding the critical issue of the identity of the prefect at the meeting.

8. Trial Chambers enjoy considerable and appropriate discretion in their assessment of evidence and their findings of fact may not be lightly overturned on appeal.[21] But a Trial Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict can be entered against him or her, and can only convict if the Prosecution has proved the crime charged.[22] In this case, the Prosecution witnesses' testimony, when viewed in light of the Trial Chamber's own findings, raises reasonable doubt that no trier of fact could ignore. It also raises the distinct

[17] We note that the Trial Chamber relied on the testimony of Defence witnesses with respect to the date of the meeting (*see* Trial Judgement, paras. 59, 61). However, it was unpersuasive in its analysis which dismissed much of their evidence concerning other aspects of the meeting. In their testimony, Defence witnesses consistently maintained that Muvunyi spoke about the civil war and did not incite the crowd to kill Tutsis (*see* Trial Judgement, para. 116). The Trial Chamber discounted this evidence on the dubious basis that the Defence witnesses lacked the "incentive to pay close attention to the content of Muvunyi's speech" because they were "not locals of Gikore" and, in the instance of Defence Witness Iryivuze, because he "was likely thinking of his malaria-stricken father during the meeting" (*see* Trial Judgement, paras. 109, 110; *see also* Trial Judgement, para. 118 in which the Trial Chamber speculates that Witness MO99, who was engaged to a Tutsi, "would not have paid close attention to any comments made by Muvunyi at the Gikore meeting that related to Tutsis because he was not sensitive to their particular security situation at that time"). In our view, such speculative explanations are unwarranted. The evidence of Defence witnesses is consistent with the supposition that there were at least two meetings in the Gikore Trade Center: the first, devoid of statements inciting genocide, in late May 1994 and the second in the latter half of June 1994 which was possibly followed by violence (*cf.* Trial Judgement, paras. 101-104).

[18] *See* Appeal Judgement, paras. 25, 26.

[19] *See* Trial Judgement, paras. 53-58.

[20] *Cf. Haradinaj* Appeal Judgement, para. 129, *quoting Kvočka et al.* Appeal Judgement, para. 23 ("It is to be presumed that the Trial Chamber evaluated all of the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence. There may be an indication of disregard when evidence which is clearly relevant to the finding is not addressed by the Trial Chamber's reasoning".).

[21] *See* Appeal Judgement, para. 10.

[22] *See* Trial Judgement, paras. 6, 7.

possibility that Muvunyi was convicted for statements seemingly made well outside the temporal scope of the Indictment, and thus was convicted for a crime with which he was not charged. Accordingly, we respectfully dissent.

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

Liu Daqun
Judge

Theodor Meron
Judge

Done this 1st day of April 2011 at Arusha, Tanzania

[Seal of the Tribunal]

VII. ANNEX A– PROCEDURAL HISTORY

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

A. Notices of Appeal and Briefs

2. Trial Chamber III rendered the judgement in this case on 11 February 2010.

1. Muvunyi's Appeal

3. Muvunyi filed his Notice of Appeal on 15 March 2010[1] and his Appellant's brief on 31 May 2010.[2] The Prosecution responded on 12 July 2010,[3] and Muvunyi replied on 27 July 2010.[4]

2. Prosecution's Appeal

4. The Prosecution filed its Notice of Appeal on 15 March 2010[5] and its Appellant's brief on 14 April 2010.[6] On 14 May 2010, Muvunyi filed his Respondent's brief.[7] The Prosecution replied on 24 May 2010.[8]

B. Assignment of Judges

5. On 16 March 2010, the Presiding Judge of the Appeals Chamber assigned the following Judges to hear the appeal: Judge Patrick Robinson, presiding, Judge Fausto Pocar, Judge Liu Daqun, Judge Theodor Meron, and Judge Carmel Agius.[9]

C. Hearing of the Appeals

6. On 21 October 2010, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 21 September 2010.[10]

---

[1] Accused Tharcisse Muvunyi's Notice of Appeal, 15 March 2010.
[2] Accused Tharcisse Muvunyi's Brief on Appeal, 31 May 2010.
[3] Prosecutor's Respondent's Brief, 12 July 2010.
[4] Accused Tharcisse Muvunyi's Reply to Prosecutor's Respondent's Brief, 27 July 2010.
[5] Prosecutor's Notice of Appeal, 15 March 2010.
[6] Prosecutor's Appellant's Brief, 14 April 2010.
[7] Accused Tharcisse Muvunyi's Response to Prosecutor's Appellant's Brief, 14 May 2010.
[8] Prosecutor's Brief in Reply, 24 May 2010.
[9] Order Assigning Judges to a Case Before the Appeals Chamber, 16 March 2010.
[10] Scheduling Order, 21 September 2010.

VIII. ANNEX B: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. ICTR

AKAYESU

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

BIKINDI

Simon Bikindi v. The Prosecutor, Case No. ICTR-01-72-A, Judgement, 18 March 2010 ("*Bikindi* Appeal Judgement").

GACUMBITSI

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

KALIMANZIRA

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement, 20 October 2010 ("*Kalimanzira* Appeal Judgement").

KAMUHANDA

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-99-54A-A, Judgement, 19 September 2005 ("*Kamuhanda* Appeal Judgement").

KAJELIJELI

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

KARERA

François Karera v. The Prosecutor, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("*Karera* Appeal Judgement").

KAYISHEMA and RUZINDANA

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

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Sentence, 21 May 1999 ("*Kayishema and Ruzindana* Sentencing Judgement").

MUHIMANA

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

MUSEMA

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

MUVUNYI

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-2000-55A-T, Judgement and Sentence, rendered orally on 12 September 2006, written judgement filed in English on 18 September 2006 ("*Muvunyi I* Trial Judgement").

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

NAHIMANA et al.

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

NCHAMIHIGO

Siméon Nchamihigo v. The Prosecutor, Case No. ICTR-2001-63-A, Judgement, 18 March 2010 ("*Nchamihigo* Appeal Judgement").

NDINDABAHIZI

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

NIYITEGEKA

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

NTAGERURA et al.

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

NTAKIRUTIMANA

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

RUKUNDO

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement").

RUTAGANDA

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

SEMANZA

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

SEROMBA

The Prosecutor v. Athanase Seromba, Case No. ICTR-01-66-A, Judgement, 12 March 2008 ("*Seromba* Appeal Judgement").

SIMBA

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

ZIGIRANYIRAZO

Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement, 16 November 2009 ("*Zigiranyirazo* Appeal Judgement").

2. ICTY

ALEKSOVSKI

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("*Aleksovski* Appeal Judgement").

BLAGOJEVIĆ and JOKIĆ

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-06-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement").

BOSKOŠKI and TARČULOVSKI

Prosecutor v. Ljube Boškoški and Johan Tarčulovski, Case No. IT-04-82-A, Judgement, 19 May 2010 ("*Boškoški and Tarčulovski* Appeal Judgement").

DELALIĆ et al.

Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga"), Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Delalić et al.* Appeal Judgement").

FURUNDŽIJA

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

HARADINAJ et al.

Prosecutor v. Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj, Case No. IT-04-84-A, 19 July 2010 ("*Haradinaj et al.* Appeal Judgement").

KRSTIĆ

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

KVOČKA et al.

Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgement").

LIMAJ et al.

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

MOMIR NIKOLIĆ

Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006 ("*Momir Nikolić* Appeal Judgement").

SIMIĆ

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement, 28 November 2006 ("*Blagoje Simić* Appeal Judgement").

TADIĆ

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement").

B. Defined Terms and Abbreviations

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

Indictment

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-2000-55A-I, Indictment, 23 December 2003

The Indictment is annexed to the *Muvunyi I* Trial Judgement (Annex III).

Muvunyi Appeal Brief

Accused Tharcisse Muvunyi's Brief on Appeal, 31 May 2010

Muvunyi Final Trial Brief

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, Accused Tharcisse Muvunyi's Final Trial Brief, 23 September 2009

Muvunyi Notice of Appeal

Accused Tharcisse Muvunyi's Notice of Appeal, 15 March 2010

Muvunyi Reply Brief

Accused Tharcisse Muvunyi's Reply to Prosecutor's Respondent's Brief, 27 July 2010

Muvunyi Response Brief

Accused Tharcisse Muvunyi's Response to Prosecutor's Appellant's Brief, 14 May 2010

n. (nn.)

footnote (footnotes)

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

Prosecution Appeal Brief

Prosecutor's Appellant's Brief, 14 April 2010

Prosecution Final Trial Brief

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, The Prosecutor's Closing Brief, 23 September 2009

Prosecution Notice of Appeal

Prosecutor's Notice of Appeal, 15 March 2010

Prosecution Pre-Trial Brief

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, The Prosecutor's Pre-Trial Brief, 4 May 2009

Prosecution Reply Brief

Prosecutor's Brief in Reply, 24 May 2010

Prosecution Response Brief

Prosecutor's Respondent's Brief, 12 July 2010

RPF

Rwandan Patriotic Front

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Statute

Statute of the International Criminal Tribunal for Rwanda established by Security Council Resolution 955

T.

Transcript

Trial Judgement

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-T, Judgement, 11 February 2010