UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-72-A
18th March 2010
{900/H – 823/H}

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: DATE: 18/03/10

Registrar: **Mr. Adama Dieng**

Judgement of: **18 March 2010**

SIMON BIKINDI

v.

THE PROSECUTOR

Case No. ICTR-01-72-A

ICTR Appeals Chamber
Date: 18th March 2010
Action: L. Juma
Copied To: All Judges, Parties, Judicial Archives, WDs, LSS

JUDGEMENT

Counsel for Simon Bikindi

Mr. Andreas O'Shea

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Dior Fall

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I. INTRODUCTION

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of appeals by Simon Bikindi ("Appellant") and the Prosecution against the Judgement rendered on 2 December 2008 in the case of *The Prosecutor v. Simon Bikindi* ("Trial Judgement") by Trial Chamber III of the Tribunal ("Trial Chamber").[1]

A. Background

2. The Appellant, Simon Bikindi, was born on 28 September 1954 in Rwerere commune, Gisenyi prefecture, Rwanda.[2] In 1994, he was a composer and singer and worked at the Ministry of Youth and Association Movements of the Government of Rwanda.[3]

3. The Appellant was tried on the basis of an amended indictment dated 15 June 2005 ("Amended Indictment"). The Trial Chamber convicted him pursuant to Articles 2(3)(c) and 6(1) of the Statute of the Tribunal ("Statute") for direct and public incitement to commit genocide (Count 4), based on public exhortations to kill Tutsis which he made on the Kivumu-Kayove road towards the end of June 1994.[4] The Trial Chamber acquitted the Appellant of all other charges.[5] It imposed a sentence of 15 years' imprisonment, with credit being given for time already served following his arrest in The Netherlands, on 12 June 2001.[6]

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[1] *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008 ("Trial Judgement"). For ease of reference, two annexes are appended to this Judgement: Annex A: Procedural Background; Annex B: Cited Materials/Defined Terms.
[2] Trial Judgement, para. 4.
[3] Trial Judgement, para. 4.
[4] Trial Judgement, paras. 426, 441.
[5] Trial Judgement, paras. 407, 414, 416, 432, 440, 441.
[6] Trial Judgement, paras. 459-461. The Appeals Chamber notes, *proprio motu*, that there is a discrepency in the Trial Judgement as to the date of Bikindi's arrest in The Netherlands. The Trial Judgement refers to both 12 July 2001 and 12 June 2001. *See* Trial Judgement, paragraphs 6 and 459 respectively. *See also* paragraph 3 of Annex A. The Appeals Chamber notes that the Registry has confirmed that Bikindi was in fact arrested on 12 July 2001. *See* Interoffice Memorandum from K. Afande to K. Moghalu dated 12 July 2001, Ref. ICTR/JUD-11-6-2-178. The Appeals Chamber will address this matter further in Section IV.D of this Judgement (Credit for Time Served in Detention), *infra*.

B. The Appeals

4. The Appellant appeals his conviction and his sentence.[7] He requests as relief that his conviction be overturned, or, should it be upheld, that the Appeals Chamber order a reduction in his sentence.[8]

5. The Prosecution responds that all grounds of appeal raised by the Appellant should be dismissed.[9] It submits that the Appellant has failed to demonstrate that the Trial Chamber committed any error of law or fact under Article 24 of the Statute which would warrant the intervention of the Appeals Chamber with regard to either his conviction or his sentence.[10]

6. The Prosecution appeals against the sentence imposed by the Trial Chamber. The Prosecution contends that the Trial Chamber erred in law and in fact, and abused its discretionary power, by arbitrarily imposing a "manifestly inadequate and disproportionate" sentence.[11] It requests that the Appeals Chamber revise the sentence and impose a sentence of imprisonment for the remainder of the Appellant's life.[12]

7. The Appellant objects to the ground of appeal raised by the Prosecution.[13] He contends that the Prosecution has not demonstrated either that the Trial Chamber abused its discretion in sentencing him, or that the offence for which he was convicted merits a sentence of life imprisonment.[14] He further submits that there is no error on the part of the Trial Chamber which would fairly lead to the imposition of such a sentence, and that any other increase in his sentence by the Appeals Chamber acting *proprio motu* would not be justified.[15]

8. The Appeals Chamber heard oral arguments regarding these appeals on 30 September 2009. Having considered the written and oral submissions of the parties, the Appeals Chamber hereby renders its Judgement.

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[7] *See* Bikindi's Notice of Appeal, filed on 31 December 2008 ("Bikindi's Notice of Appeal"), pp. 1, 9. *See also* Defence Appellant's Brief, 16 March 2009; [Re-filed] Defence Appellant's Brief, 19 March 2009, attached to Corrigendum to Defence Appellant's Brief, 19 March 2009. The term "Bikindi's Appellant's Brief" herein refers to the re-filed version of the Appellant's Brief, which the Appeals Chamber considers to be the corrected version. *See also* AT. 30 September 2009 pp. 9, 20-24, 27.

[8] Bikindi's Notice of Appeal, pp. 8, 9, 11, 13.

[9] *See* Prosecutor's Respondent's Brief, filed on 27 April 2009 ("Prosecution's Respondent's Brief"), paras. 4, 9, 10, 17, 166, 167.

[10] Prosecution's Respondent's Brief, para. 166.

[11] Prosecutor's Notice of Appeal, filed on 31 December 2008, paras. 1, 2 ("Prosecution's Notice of Appeal"); Prosecutor's Appellant's Brief, filed on 28 January 2009, paras. 4, 18, 53 ("Prosecution's Appellant's Brief").

[12] Prosecution's Appellant's Brief, paras. 5, 36, 54. *See also id.*, paras. 34, 41. In its Notice of Appeal, the Prosecution requested, as a relief, "the reversal of the decision of the Trial Chamber [on sentencing] and the imposition upon [the Appellant] of an appropriate sentence in the range of 30 years and imprisonment for the remainder of his life." *See* Prosecution's Notice of Appeal, para. 3.

[13] Defence Respondent's Brief, filed 20 February 2009 ("Bikindi's Respondent's Brief"), para. 3.

II. STANDARDS OF APPELLATE REVIEW

9. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[16]

10. 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.[17]

11. 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 interpretation and review the relevant factual findings of the Trial Chamber accordingly. In so doing, the Appeals Chamber not only corrects the legal error, but, when necessary, 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.[18]

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

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[19]

13. 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.[20] Arguments which do not have the potential to cause the

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[14] Bikindi's Respondent's Brief, para. 3.
[15] Bikindi's Respondent's Brief, para. 3.
[16] *Zigiranyirazo* Appeal Judgement, para. 8. *See also Karera* Appeal Judgement, para. 7; *Muvunyi* Appeal Judgement, para. 8; *Milošević* Appeal Judgement, para. 12.
[17] *Zigiranyirazo* Appeal Judgement, para. 9. *See also Karera* Appeal Judgement, para. 8; *Muvunyi* Appeal Judgement, para. 9, *citing Ntakirutimana* Appeal Judgement, para. 11 (citations omitted).
[18] *Zigiranyirazo* Appeal Judgement, para. 10. *See also Karera* Appeal Judgement, para. 9; *Milošević* Appeal Judgement, para. 14.
[19] *Zigiranyirazo* Appeal Judgement, para. 11. *See also Karera* Appeal Judgement, para. 10; *Muvunyi* Appeal Judgement, para. 10, *citing Krstić* Appeal Judgement, para. 40 (citations omitted).
[20] *Zigiranyirazo* Appeal Judgement, para. 12. *See also Karera* Appeal Judgement, para. 11; *Muvunyi* Appeal Judgement, para. 11 *Milošević* Appeal Judgement, para. 17.

impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[21]

14. 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.[22] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[23] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[24]

[21] *Zigiranyirazo* Appeal Judgement, para. 12. *See also Karera* Appeal Judgement, para. 11; *Muvunyi* Appeal Judgement, para. 11; *Orić* Appeal Judgement, para. 13.
[22] Practice Direction on Formal Requirements for Appeals from Judgement, para. 4(b). *See Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12.
[23] *Zigiranyirazo* Appeal Judgement, para. 13. *See also Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12; *Milošević* Appeal Judgement, para. 16.
[24] *Zigiranyirazo* Appeal Judgement, para. 13. *See also Karera* Appeal Judgement, para. 12; *Muvunyi* Appeal Judgement, para. 12; *Milošević* Appeal Judgement, para. 16.

III. BIKINDI'S APPEAL AGAINST CONVICTION

15. The Appeals Chamber first addresses the Appellant's Fifth Ground of Appeal which alleges that he did not receive effective assistance of his Co-Counsel.

A. Alleged Ineffective Assistance of Co-Counsel (Ground of Appeal 5)

16. On 21 September 2006, Co-Counsel Jean de Dieu Momo cross-examined Prosecution Witness AKJ.[25] Lead Counsel Wilfred Nderitu and the Appellant were both present during this cross-examination.[26] The Trial Chamber relied on the evidence of Witness AKJ, along with that of Witness AKK, to find that sometime towards the end of June 1994, the Appellant was "in a vehicle with loudspeakers making anti-Tutsi utterances in a convoy of buses filled with *Interahamwe* on the road between Kivumu and Kayove" and his songs were played through loudspeakers.[27] Based on this finding, the Trial Chamber found that the Appellant was guilty on Count 4 of the Indictment for direct and public incitement to commit genocide.[28]

17. The Appeals Chamber notes that in a separate finding, the Trial Chamber relied on the evidence of Witnesses AKJ and AKK to find that the Appellant participated in an MRND rally in Kivumu in 1993.[29] The Appeals Chamber further notes that in assessing the credibility of Witness AKJ's testimony with regard to the MRND rally in Kivumu in 1993, the Trial Chamber stated:

> [D]uring the cross-examination much confusion was created regarding the date of the rally. However, the Chamber attributes this solely to the method of questioning used by Defence Counsel, and accordingly does not consider that this witness's credibility was harmed by this. The Chamber found no reason to doubt the reliability of this eye witness, or his credibility which was consistent throughout his testimony.[30]

18. Later, in assessing the reliability of Witness AKJ's testimony in relation to the Kayove-Kivumu road incident, the Trial Chamber noted "a slight confusion as to the date the incident

[25] T. 21 September 2006 p. 1. Mr. Jean de Dieu Momo was assigned as Co-Counsel ("Co-Counsel") on 5 July 2006 and continued to act as such until the end of the trial. Mr. Wilfred Nderitu was assigned as Lead Counsel ("Lead Counsel Nderitu") on 25 November 2002 and continued to act as such until 29 March 2007, when the Registrar withdrew him at the Appellant's request. Mr. Andreas O'Shea was appointed as Lead Counsel on 9 May 2007 and has continued to represent the Appellant through the present appeal ("Lead Counsel O'Shea"). *See* Trial Judgement, Annex A – Procedural History, paras. 3, 20; Bikindi's «*Demande de retrait de la commission d'office du Conseil principal*», 10 February 2007; Registrar's Decision Withdrawing the Assignment of Mr. Wilfred N. Nderitu as Lead Counsel for the Accused Simon Bikindi, 29 March 2007, filed on 30 March 2007; T. 15 May 2007 p. 1 (Status Conference).
[26] T. 21 September 2006 p. 1.
[27] Trial Judgement, paras. 267-281, sp. 276 (wherein the Trial Chamber also relies on the evidence of Witness AKK to make this finding), 285.
[28] Trial Judgement, paras. 423, 424, 426.
[29] *See* Trial Judgement, para. 141.
[30] Trial Judgement, para. 136 and fn. 278 (footnote omitted).

occurred" and again attributed this "to the manner and style of questioning by [Co-Counsel]."[31] It then concluded that this confusion did not harm Witness AKJ's credibility.[32]

19. The Appellant submits that his case suffered as a result of the "ineffective assistance"[33] and "gross incompetence and/or gross negligence"[34] of his Co-Counsel during the cross-examination of Witness AKJ.[35] He argues that this incompetence occasioned a miscarriage of justice because the Trial Chamber convicted him on the basis of Witness AKJ's untested evidence.[36] He submits that his conviction is therefore unsafe and should be reversed.[37]

20. The Prosecution responds that the Appellant's submissions under this ground should not be considered because he failed to raise the issue of competence or negligence at trial.[38] It argues that should the Appeals Chamber consider the merits of this ground of appeal, it should be dismissed on the basis that the Appellant has failed to rebut the presumption of competence on appeal.[39]

1. Applicable Law

21. Pursuant to Article 20(4)(d) of the Statute, an accused has the right to be represented by competent counsel.[40] Counsel is "considered qualified to represent a suspect or accused, provided that he is admitted to the practice of law in a State, or is a University professor of law."[41] The Appeals Chamber recalls that Articles 13 and 14 of the Directive on the Assignment of Defence Counsel set out the qualifications and formal requirements that the Registrar must verify prior to the assignment of any counsel. The presumption of competence enjoyed by all counsel working with the Tribunal is predicated upon these guarantees.[42] Therefore, for an appeal alleging incompetence of counsel to succeed, an appellant must rebut the presumption of competence by demonstrating gross professional misconduct or negligence on the part of the counsel which occasioned a miscarriage of justice.[43]

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[31] Trial Judgement, para. 274 and fn. 596, *referring to* fn. 278 (footnote omitted).
[32] Trial Judgement, para. 274.
[33] Bikindi's Notice of Appeal, p. 6; Bikindi's Appellant's Brief, para. 71.
[34] Bikindi's Appellant's Brief, para. 71, *citing Nahimana et al.* Appeal Judgement, para. 130; *Akayesu* Appeal Judgement, para. 77.
[35] Bikindi's Appellant's Brief, para. 71.
[36] Bikindi's Notice of Appeal, p. 6; Bikindi's Appellant's Brief, para. 71; AT. 30 September 2009 pp. 9, 21-24.
[37] Bikindi's Notice of Appeal, p. 6.
[38] Prosecution's Respondent's Brief, paras. 92, 103, 110, 116, 167. *See also* AT. 30 September 2009 pp. 37-39.
[39] Prosecution's Respondent's Brief, para. 103.
[40] *See Nahimana et al.* Appeal Judgement, para. 130, *citing Akayesu* Appeal Judgement, paras. 76, 78; *Kambanda* Appeal Judgement, para. 34 and fn. 49.
[41] Rule 44(A) of the Rules.
[42] *Nahimana et al.* Appeal Judgement, para. 130.
[43] *See Nahimana et al.* Appeal Judgement, para. 130; *Akayesu* Appeal Judgement, para. 77. *See also Krajišnik* Appeal Judgement, para. 42, *quoting Blagojević and Jokić* Appeal Judgement, para. 23 (footnotes omitted).

22. Pursuant to Article 19(1) of the Statute, the Trial Chamber is required to guarantee a fair and expeditious trial with full respect for the rights of the accused.[44] However, it is not for the Trial Chamber to dictate to a party how to conduct its case.[45] Thus, where an accused claims that his right to competent assistance from counsel is violated, the onus is on the accused to bring this violation to the attention of the Trial Chamber.[46] If the accused does not do so at trial, he must establish on appeal that his counsel's incompetence was so manifest as to oblige the Trial Chamber to act.[47] He must further demonstrate that the Trial Chamber's failure to intervene occasioned a miscarriage of justice.[48]

2. Whether the Appellant is Precluded from Challenging Co-Counsel's Competence on Appeal

23. The Prosecution argues that it was the Appellant's responsibility to raise this issue during the trial[49] and that the very fact that he first raised it after the Trial Judgement was rendered should be fatal to his submissions.[50]

24. The Appellant concedes that the onus rests on an accused to raise issues of incompetence of counsel with the Trial Chamber where the prejudice is apparent to him.[51] However, he argues that his failure to do so does not preclude review of the matter by the Appeals Chamber.[52] He further submits that as he has no legal background[53] it would be "grossly unfair" and unreasonable to oblige him to bring the issue of his counsel's incompetence to the attention of the Trial Chamber, particularly if not doing so would deprive him of an effective remedy to the violation of his right to legal assistance.[54] He submits that as a non-lawyer, he was reluctant to raise the issue himself during trial,[55] and that he reasonably assumed that the Trial Chamber would address the issue, since it had criticised his Co-Counsel's conduct of the cross-examination.[56]

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[44] *Nahimana et al.* Appeal Judgement, para. 131, *citing Simić* Appeal Judgement, para. 71; *Akayesu* Appeal Judgement, para. 76, *citing Kambanda* Appeal Judgment, para. 34, including fn. 49.
[45] *Krajišnik* Appeal Judgement, para. 42.
[46] *Nahimana et al.* Appeal Judgement, para. 131 (*referring to* Article 45(H) of the Rules, pursuant to which the Trial Chamber may, under exceptional circumstances, intervene at the request of the accused or his counsel, by "[instructing] the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings"). Articles 19 and 20 of the Directive on the Assignment of Defence Counsel set out the conditions for, respectively, withdrawal and replacement of Counsel.
[47] *Nahimana et al.* Appeal Judgement, para. 131. *See also Krajišnik* Appeal Judgement, para. 42.
[48] *Nahimana et al.* Appeal Judgement, para. 131. *See also Krajišnik* Appeal Judgement, para. 42.
[49] Prosecution's Respondent's Brief, paras. 90, 91 (*quoting Nahimana et al.* Appeal Judgement, para. 131), 92-103.
[50] Prosecution's Respondent's Brief, para. 103, *citing* Bikindi's Notice of Appeal, paras. 22-25. *See also* AT. 30 September 2009 p. 39.
[51] Defence Appellant's Reply Brief, 11 May 2009, para. 44 ("Bikindi's Reply Brief").
[52] Bikindi's Reply Brief, para. 44, *citing Nahimana et al.* Appeal Judgement, para. 131.
[53] Bikindi's Reply Brief, para. 46.
[54] Bikindi's Reply Brief, paras. 45-47.
[55] Bikindi's Reply Brief, para. 48.
[56] Bikindi's Reply Brief, para. 49.

25. The Appellant attaches an unsigned statement to his Reply Brief which, he claims, shows that he may not have realised the full extent of the deficiencies in the performance of his Co-Counsel, particularly with regard to cross-examination.[57] According to the Appellant, this statement demonstrates that he initially complained to Lead Counsel Nderitu about various matters[58] and that Lead Counsel Nderitu's failure to intervene is illustrative of the ineffective and dysfunctional nature of his entire Defence team.[59] He further argues that he was concerned that seeking the removal of his entire team might lead to serious prejudice to his case, particularly since the Trial Chamber had previously indicated that it would not adjourn or reschedule the case based on any issue which the Appellant might be facing with his counsel.[60] He points out that Lead Counsel O'Shea was granted a short adjournment of "just a few months", despite assuming his position one month before the expected commencement of the Defence case.[61]

26. The Appellant argues that the case file shows the degree of hostility between Lead Counsel Nderitu and his Co-Counsel during the Prosecution case, which ultimately prejudiced the conduct of his defence, including the quality of Co-Counsel's cross-examination of Witness AKJ.[62] He submits that Lead Counsel Nderitu had attempted unsuccessfully to remove his Co-Counsel from the case and lost the Appellant's confidence in the process.[63] According to the Appellant, upon assuming his position, Lead Counsel O'Shea decided that it was not in the best interests of the Appellant to seek the removal of his Co-Counsel[64] as this would have caused tension within the team and difficulties in meeting the scheduled court date for commencement of the Defence case.[65] Lead Counsel O'Shea instead chose to curtail the role of the Co-Counsel in the proceedings.[66] The Appellant argues that the issue was raised in the Final Trial Brief, albeit in a more general manner.[67] He submits that this was reasonable, given the limited time and resources at his disposal;[68] his desire to avoid exacerbating tensions within his team;[69] and that the Final Trial Brief had to address numerous serious allegations against him.[70]

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[57] Bikindi's Reply Brief, para. 53, *citing* Annexure A to his Reply Brief. *See also* Bikindi's Reply Brief, para. 55.
[58] Bikindi's Reply Brief, para. 62, *referring to* Annexures B, C, and D thereto.
[59] Bikindi's Reply Brief, para. 63.
[60] Bikindi's Reply Brief, para. 54, *quoting* extracts from T. 23 February 2007 pp. 1, 2, 4, 5.
[61] Bikindi's Reply Brief, para. 56, *quoting* an extract from the Status Conference, T. 15 May 2007 p. 2 (quotation omitted).
[62] Bikindi's Reply Brief, para. 57.
[63] Bikindi's Reply Brief, para. 57.
[64] Bikindi's Reply Brief, para. 58.
[65] Bikindi's Reply Brief, para. 58.
[66] Bikindi's Reply Brief, para. 59.
[67] Bikindi's Reply Brief, para. 60, *citing* Bikindi's Final Trial Brief (Confidential), paras. 497, 498. *See also* Bikindi's Reply Brief, para. 61, *citing* Prosecution's Respondent's Brief, para. 92.
[68] Bikindi's Reply Brief, para. 60.
[69] Bikindi's Reply Brief, para. 60.
[70] Bikindi's Reply Brief, para. 60.

27. The Appeals Chamber notes that Lead Counsel Nderitu was withdrawn from the case, at the Appellant's request, on 29 March 2007, after the close of the Prosecution case and before the opening of the Defence case.[71] Lead Counsel O'Shea was assigned on 9 May 2007, six days before the opening of the Defence case.[72] The Defence case was heard from 24 September 2007 to 7 November 2007, and the closing arguments were made on 26 May 2008.[73] Co-Counsel remained on the case until the end of trial proceedings. At no point during the trial proceedings or before the delivery of the Trial Judgement did the Appellant or his Lead Counsel raise the issue of the incompetence or negligence of the Co-Counsel or request the Trial Chamber to provide a remedy for the allegedly ineffective cross-examination of Witness AKJ.

28. The Appeals Chamber recognizes that Lead Counsel O'Shea, who took responsibility for the case only after the close of the Prosecution case and shortly before the start of the Defence case, was perhaps not in a position to assess immediately whether the cross-examination of Witness AKJ was competently carried out. However, Lead Counsel O'Shea was in charge of the case for more than one year until the conclusion of the trial and therefore had ample time to assess the situation. The Appeals Chamber emphasises that as the Lead Counsel in the case, Mr. O'Shea was responsible for the overall conduct of the Appellant's defence. Thus, if he or the Appellant considered that the cross-examination of Witness AKJ was flawed, at least two options were open to him: moving the Trial Chamber to recall the witness, or requesting the exclusion of the witness's evidence based on a lack of effective assistance of counsel.

29. Accordingly, the Appeals Chamber finds that the Appellant should have raised the issue of the Co-Counsel's competence at trial. However, as noted above, the Appellant is not precluded from raising the issue for the first time on appeal.[74] As such, he must establish on appeal that his counsel's incompetence was so manifest as to oblige the Trial Chamber to intervene and he must further demonstrate that the Trial Chamber's failure to act occasioned a miscarriage of justice.[75]

3. Whether the Appellant Has Rebutted the Presumption of Competence of Co-Counsel

30. The Appellant submits that when read in its entirety, it is clear that the cross-examination of Witness AKJ by his Co-Counsel did not meet the minimum level of competence necessary to ensure that justice was done in his case.[76] He argues that as a result, his rights to legal assistance

[71] *See* Trial Judgement, Annex A – Procedural History, paras. 19-21.
[72] *See* Trial Judgement, Annex A – Procedural History, para. 20.
[73] *See* Trial Judgement, Annex A – Procedural History, paras. 20-33.
[74] *See supra* para. 22.
[75] *See supra* para. 22.
[76] Bikindi's Appellant's Brief, para. 72.

and to have the witnesses against him examined were violated.[77] The Appellant argues that his Co-Counsel had the professional obligation to request an adjournment in order to remedy any of the difficulties he was facing or to seek assistance from or replacement by Lead Counsel Nderitu.[78] He further avers that Lead Counsel Nderitu failed in his duty to supervise and assist in the work of his team.[79] Specifically, he argues that his Co-Counsel: (1) had inadequate knowledge of the Rules and the methods of cross-examination; (2) had inadequate knowledge of the case; (3) conducted the cross-examination of Witness AKJ in a "thoroughly disorganized and illogical" manner;[80] and (4) failed to follow his instructions.[81]

31. The Prosecution responds that the Appellant has failed to rebut the Co-Counsel's presumption of competence or establish that the alleged incompetence of Co-Counsel was so manifest as to oblige the Trial Chamber to act.[82] The Appeals Chamber will consider the Appellant's arguments in turn.

(a) Alleged Inadequate Knowledge of the Rules and Method of Cross-Examination

32. The Appellant submits that at various times during the cross-examination of Witness AKJ, his Co-Counsel made statements to the Judges which demonstrated that he was not familiar with the relevant basic documents and jurisprudence of the Tribunal,[83] including Rule 90 of the Rules[84] or the purpose of cross-examination.[85] The Prosecution does not respond to this submission. The Appellant maintains that, on several occasions, his Co-Counsel made statements to the effect that he was a "novice" to the procedural environment of the Tribunal,[86] that he was "perhaps not up to the task",[87] and incorrectly described the Tribunal as operating under common law.[88] He also submits

[77] Bikindi's Notice of Appeal, para. 22, *referring to* Articles 20(4)(d) and (e) of the Statute, respectively.
[78] Bikindi's Appellant's Brief, para. 73, *citing* Article 5(a) of the Code of Professional Conduct for Defence Counsel.
[79] Bikindi's Appellant's Brief, para. 79; Bikindi's Appellant's Reply, paras. 48, 50, 61, 63.
[80] Bikindi's Appellant's Brief, para. 72.
[81] *See* Bikindi's Appellant's Brief, paras. 71-89.
[82] Prosecution's Respondent's Brief, paras. 90, 104-110.
[83] Bikindi's Appellant's Brief, para. 80.
[84] Bikindi's Appellant's Brief, para. 80, *citing* Witness AKJ, T. 21 September 2006 p. 3. Rule 90(G) of the Rules provides that: "(i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of the case; (ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness; and (iii) The Trial Chamber may, in the exercise of its discretion, permit enquiry into additional matters."
[85] Bikindi's Appellant's Brief, para. 80, *citing* Witness AKJ, T. 21 September 2006 p. 14; T. 30 September 2009 p. 21.
[86] Bikindi's Appellant's Brief, para. 80, *citing* Witness AKJ, T. 21 September 2006 pp. 3, 4, 11, 14.
[87] Bikindi's Appellant's Brief, para. 73, *citing* Witness AKJ, T. 21 September 2006 pp. 3, 4, 11, 14.
[88] Bikindi's Appellant's Brief, para. 80, *citing* Witness AKJ, T. 21 September 2006 p. 4.

that his Co-Counsel "claimed ignorance of the principle that cross-examination was not a fishing expedition."[89]

33. The Appeals Chamber notes that it was Lead Counsel Nderitu, not the Co-Counsel, who originally requested clarification from the Trial Chamber as to whether the Appellant would be allowed to cross-examine the witness under Rule 90(G) of the Rules on matters not raised in the examination-in-chief with a view to impeaching the witness.[90] The Co-Counsel's submissions were made in addition to those of Lead Counsel Nderitu on this issue.[91] The Appellant does not explain how the Co-Counsel's additional submissions show that he did not understand Rule 90 of the Rules or its effect.

34. The Appeals Chamber is not persuaded by the Appellant's contention that Co-Counsel's description of himself as a "novice", ignorant of the procedural environment of the Tribunal amounts to an admission of incompetence. The Appeals Chamber considers that these utterances could equally be interpreted as an attempt on the part of the Co-Counsel to show deference to the experience of the Trial Chamber in his first appearance before it. Indeed, the Co-Counsel's comment that he sought the "indulgence" of the court during his first appearance supports such an interpretation.[92] The Appeals Chamber further finds the Appellant's submission that his Co-Counsel's alleged ignorance of the "principle" that cross-examination was not a "fishing expedition" to be unconvincing. It is evident from the relevant section of the trial transcript that the Presiding Judge indicated that Judge Arrey was of the view that Co-Counsel's cross-examination was a "fishing expedition" and suggested that Co-Counsel was using cross-examination as an investigation. In response, the Co-Counsel stated that it was common in his jurisdiction to "fish out" information, but that he would proceed with the next question.[93] The Appeals Chamber is not persuaded on the basis of this exchange that Co-Counsel has been shown to be incompetent.

(b) Alleged Inadequate Knowledge of the Case

35. The Appellant submits that on several occasions his Co-Counsel demonstrated that he failed to master a basic knowledge of the case before embarking on his cross-examination, including topics related to the examination-in-chief.[94]

[89] Bikindi's Appellant's Brief, para. 80, *citing* Witness AKJ, T. 21 September 2006 p. 14.
[90] *See* Witness AKJ, T. 21 September 2006 p. 3.
[91] *See* Witness AKJ, T. 21 September 2006 p. 3.
[92] *See* Witness AKJ, T. 21 September 2006 pp. 3, 4.
[93] *See* Witness AKJ, T. 21 September 2006 p. 14.
[94] Bikindi's Appellant's Brief, para. 82, *citing* Witness AKJ, T. 21 September 2006 pp. 4, 5.

36. The Appellant argues that this is illustrated by his Co-Counsel's erroneous reference to ONATRACOM "minibuses" during his cross-examination of Witness AKJ[95] since this witness never mentioned "minibuses" during his examination-in-chief.[96] He argues that had his Co-Counsel visited Rwanda or consulted with him, he would have known that ONATRACOM buses were "large coaches".[97] The Appeals Chamber notes that Co-Counsel referred generally to "buses or minibuses belonging to ONATRACOM" and not just to "minibuses" as the Appellant avers.[98]

37. The Appellant further cites his Co-Counsel's statement that he did not understand the words "*ingoma ya cyami*" and could not pronounce them,[99] even though these words were a repetitive line in the Appellant's song "*Twasezereye*"[100] and appeared in various documents in the Appellant's case file and in Prosecution documents.[101] The Appeals Chamber notes that although the Co-Counsel said to the witness that he (Co-Counsel) did not understand Kinyarwanda and therefore could not comprehend or pronounce the words "*ingoma ya cyami*", the Co-Counsel also stated: "that song *Twasezereye* - and you continued with more words of the title which I do not understand, *but it speaks of the past.* Now, what did you understand that song to mean?"[102] Thus, the Co-Counsel was in fact familiar with the basic subject matter of the song, and proceeded to ask further questions to the witness as to what he understood the song to mean.[103]

38. The Appeals Chamber finds that the foregoing statements of Co-Counsel do not demonstrate inadequate knowledge of the case.

(c) Alleged Poorly Prepared and "Disorganized" Cross-Examination of Witness AKJ

39. The Appellant submits that Co-Counsel's questions demonstrate that he was neither familiar with the examination-in-chief of Witness AKJ, nor with the materials relating to this witness.[104] He points out that Co-Counsel failed to ask a series of important questions related to the incident for which he was convicted, such as the number of vehicles accompanying the Appellant on the Kivumu-Kayove road, the exact location, and what else the witness saw and heard apart from the Appellant.[105]

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[95] Bikindi's Appellant's Brief, para. 82, *citing* Witness AKJ, T. 21 September 2006 p. 16.
[96] Bikindi's Appellant's Brief, para. 82.
[97] Bikindi's Appellant's Brief, para. 82, *citing* Witness AKJ, T. 20 September 2006 p. 50 (transcript date corrected).
[98] *See* Witness AKJ, T. 21 September 2006 p. 16.
[99] Bikindi's Appellant's Brief, para. 82, *citing* Witness AKJ, T. 21 September 2006 p. 6.
[100] Bikindi's Appellant's Brief, para. 82, *citing* Exhibit P73(E), Joint Expert Report, Annex I, title and line of the song under "refrain", disclosed to the Defence on 20 July 2006 ("Exhibit P73(E)"); Exhibit D33(K).
[101] Bikindi's Appellant's Brief, para. 82, *citing* Exhibit P73(E); Exhibit P74.
[102] *See* Witness AKJ, T. 21 September 2006 p. 6 (emphasis added).
[103] *See* Witness AKJ, T. 21 September 2006 pp. 6, 7.
[104] Bikindi's Appellant's Brief, para. 76, *citing* Witness AKJ, T. 21 September 2006 p. 5.
[105] Bikindi's Appellant's Brief, para. 84.

40. The Appellant submits that the cross-examination of Witness AKJ was "thoroughly disorganized and illogical" and that this was acknowledged by the Trial Chamber's interventions[106] and can clearly be inferred from the trial record.[107] He submits that his Co-Counsel's failure to investigate Witness AKJ led to: (1) confusion concerning the dates, which invited the Judges to erroneously consider that the contradictions in the dates were due to the manner of questioning;[108] and (2) Co-Counsel's reference to June 1994 in relation to the public address system incident, despite the fact that the Presiding Judge had already elicited a clear response from the witness to the effect that this incident occurred in 1993.[109] As a result, the Trial Chamber found that the Appellant had not raised reasonable doubt as to the credibility or reliability of this evidence.[110]

41. The Prosecution responds that an ineffective cross-examination is not sufficient to rebut the presumption of competence.[111] It submits that in the absence of any inconsistencies in the evidence of Witness AKJ, it was open to the Trial Chamber to rely on this evidence.[112]

42. The Appeals Chamber notes that towards the end of the cross-examination of Witness AKJ, the Trial Chamber expressed its frustration with the way in which the Appellant's Co-Counsel conducted his questioning.[113] The Appeals Chamber accepts that Co-Counsel's cross-examination of Witness AKJ was poorly structured. However, it is clear from the transcripts that his Co-Counsel nonetheless did question the witness, *inter alia*, as to what he saw at the Kivumu rally and on the Kivumu-Kayove road, the time when these incidents occurred, and the circumstances in which he saw the Appellant.[114]

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[106] Bikindi's Appellant's Brief, para. 72, *citing* Witness AKJ, T. 21 September 2006 pp. 8, 10-17, 19, 21; Bikindi's Reply Brief, para. 66, *citing* Bikindi's Appellant's Brief, paras. 72-78, 81-87.
[107] Bikindi's Reply Brief, paras. 65, 66.
[108] Bikindi's Appellant's Brief, para. 85, *citing* Trial Judgement, paras. 136, 274; AT. 30 September 2009 pp. 21-24. The Appeals Chamber will address this issue further in its discussion of Grounds 1 and 2 of the Appellant's appeal. *See infra* paras. 75-77.
[109] Bikindi's Appellant's Brief, para. 85, *citing* Witness AKJ, T. 21 September 2006 p. 25.
[110] Bikindi's Appellant's Brief, para. 87.
[111] Prosecution's Respondent's Brief, para. 106, *citing* Bikindi's Appellant's Brief, para. 89.
[112] Prosecution's Respondent's Brief, para. 114, *citing* Witness Statement of AKJ, 29 June 2001 p. 3 and Witness AKJ, T. 20 September 2006 p. 50; T. 21 September 2006 p. 25.
[113] Witness AKJ, T. 21 September 2006 p. 18 ("Q. MADAM PRESIDENT: [...] You have achieved, Mr. Momo, to have us all confused. We don't know whether you are speaking about '93, or '94; whether it was May '93 or May '94, or June '93 or June '94. We are lost; Prosecution's lost; the witness is lost, so with this line of cross-examination you are not discrediting the witness, but confusing all of us. So wind up in a way that we can all understand. Because, first, you had a few minutes having the witness explain that it was May and not June '93. Now, you have been jumping so much back and forth that we don't know which is the location, which the month, which the year and which the place."); p. 19 ("Q. MADAM PRESIDENT: Counsel, this has been a very misleading cross-examination. The witness statement and yesterday's testimony have been coincident, and this afternoon when you started with your cross-examination the witness confirmed the date of May 1993 -- said it was in June. He could not specify which day of May. Then you have been jumping back and forth. When Judge Arrey asked you, you said it was your tactic. But your strategy cannot be to confuse the witness, confuse us and then lead us to discredit the witness because you have been confusing all of us. That doesn't help. We are aware that your client is accused of a very serious crime, but the way of cross-examining is not confusing, but trying to find out the truth.").
[114] Witness AKJ, T. 21 September 2006 pp. 15-17.

43. The Appellant further submits that Co-Counsel failed to establish a basis for challenging the credibility or reliability of the evidence which is fundamental to his conviction.[115] He argues that the Co-Counsel failed to elicit inconsistencies between the testimony of Witness AKJ and his prior statements, between what the witness stated during his evidence-in-chief and cross-examination, or between his testimony and the anticipated evidence of Witness AKK.[116]

44. The Appeals Chamber finds these submissions to be generalised and unconvincing. The Appeals Chamber considers that the manner in which counsel structures a cross-examination is a matter of defence strategy which rests squarely within the discretion of the defence. This is consistent with the general principle that it is is not for the Trial Chamber to dictate to a party how to conduct its case.[117] Furthermore, the Appeals Chamber cannot analyse defence strategy in a vacuum after the completion of trial, nor would it be appropriate for the Appeals Chamber to do so. It follows that it is not sufficient for the Appellant merely to assert after the completion of trial that his Co-Counsel was incompetent because he did not adopt a different approach during the cross-examination of a given witness. At a minimum, the Appellant should demonstrate how a different approach would have had a positive impact on the verdict.

45. In light of the foregoing, the Appeals Chamber is not persuaded that key elements of Witness AKJ's evidence were untested, as the Appellant avers, and concludes that the Appellant has failed to demonstrate that the alleged inadequate preparation and a lack of organisation on the part of Co-Counsel with respect to the cross-examination of this witness is sufficient to make a finding of incompetence.

(d) Alleged Failure to Follow the Appellant's Instructions

46. The Appellant further argues that it was incumbent on both of his Counsel to consult with him and to "take into account his reasonable instructions on evidential leads and avenues for confronting [Witness AKJ]".[118] He submits a statement detailing his basis for claiming that this was not done.[119] He argues that there was nothing in the cross-examination of Witness AKJ which would demonstrate any level of investigation of the witness prior to the cross-examination, which was contrary to his instructions.[120]

[115] Bikindi's Appellant's Brief, paras. 84-86.
[116] Bikindi's Appellant's Brief, paras. 77,78.
[117] *Krajišnik* Appeal Judgement, para. 42.
[118] Bikindi's Appellant's Brief, para. 79.
[119] *See* Bikindi's Appellant's Brief, paras. 79 *citing* his statement dated 12 March 2009, attached as Annexure G ("Bikindi's Statement").
[120] Bikindi's Appellant's Brief, para. 81, *citing* Bikindi's Statement.

47. The Appeals Chamber has already found that the Appellant has not demonstrated that Co-Counsel's alleged inadequate preparation and lack of organisation with respect to the cross-examination of Witness AKJ was sufficient to make a finding of incompetence.[121] The Appellant does not explain what information he anticipated would be revealed by an investigation prior to cross-examination, nor does he explain why he did not raise these issues during the course of the trial. The Appellant fails to point to any information on the Trial Record to support this submission. Furthermore, the Appeals Chamber recalls that it declined to admit this statement as additional evidence under Rule 115 of the Rules.[122] Accordingly, the Appeals Chamber is unable to rely on this statement as evidence of the Appellant's instructions to his counsel during trial. The Appellant's submissions in this regard are accordingly dismissed.

(e) Conclusion on the Competence of the Co-Counsel

48. The Appeals Chamber has already found that each of the Appellant's submissions as to the alleged gross incompetence and negligence or ineffective assistance of his Co-Counsel has failed. Accordingly, the Appellant has not rebutted the presumption of competence of his Co-Counsel in the present case. It follows, that the Appellant has not demonstrated incompetence which was so manifest as to oblige the Trial Chamber to intervene.[123] It is therefore not necessary for the Appeals Chamber to consider the Appellant's remaining submissions in this regard.

4. Conclusion

49. Accordingly, the Appellant's Fifth Ground of Appeal is dismissed.

[121] *See supra* para. 45.
[122] *See* Decision on Simon Bikindi's Motions to Admit Additional Evidence Pursuant to Rule 115 of the Rules, 16 September 2009 ("Rule 115 Decision"), paras. 25, 29, 30.
[123] *See Nahamina et al.* Appeal Judgement, para. 131.

B. Alleged Error in Finding that the Appellant Incited the Killing of Tutsis on Kivumu-Kayove Road (Grounds of Appeal 1 and 2)

50. The Trial Chamber found, based on the testimonies of Witnesses AKK and AKJ, that the Appellant made exhortations to kill Tutsis on the Kivumu-Kayove road.[124] Having considered their evidence, the Trial Chamber found that:

> [T]owards the end of June 1994, in Gisenyi *préfecture*, Bikindi travelled on the main road between Kivumu and Kayove in a convoy of *Interahamwe* and broadcast songs, including his own, using a vehicle outfitted with a public address system. When heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, Bikindi used the same system to ask if people had been killing Tutsi, who were referred to as snakes.[125]

The Trial Chamber found that the Appellant's words and the manner in which he disseminated his message demonstrated that he "deliberately, directly and publicly incited the commission of genocide with the specific intent to destroy the Tutsi ethnic group".[126] The Trial Chamber concluded that the Appellant was criminally responsible as a principal perpetrator for direct and public incitement to commit genocide under Articles 2(3)(c) and 6(1) of the Statute, as charged in Count 4 of the Indictment.[127]

51. Under his First and Second Grounds of Appeal, the Appellant challenges these findings and submits that the Trial Chamber committed numerous errors of fact and law in reaching them[128] and seeks the reversal of his conviction.[129] He argues that the Trial Chamber erred: (1) in its assessment of the testimonies of Witnesses AKK and AKJ;[130] (2) in stating that they corroborated each other;[131] (3) in finding that the incident occurred in late June 1994;[132] and (4) in concluding beyond reasonable doubt that he participated in the incident.[133]

52. The Appeals Chamber notes that the Trial Chamber made two interrelated but different findings of facts that relate to the killings of Tutsis at Kivumu in late June 1994. Specifically, it found that "[w]hen heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way

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[124] Trial Judgement, paras. 267-281, 285.
[125] Trial Judgement, para. 281. *See also* Trial Judgement, para. 285.
[126] Trial Judgement, para. 424.
[127] Trial Judgement, paras. 423, 426.
[128] Bikindi's Notice of Appeal, pp. 3, 4. *See also* AT. 30 September 2009 pp. 4-13.
[129] Bikindi's Notice of Appeal, pp. 9, 13; Bikindi's Appellant's Brief, paras. 31, 40.
[130] Bikindi's Appellant's Brief, para. 39.
[131] Bikindi's Notice of Appeal, para. 8; Bikindi's Appellant's Brief, para. 16.
[132] Bikindi's Appellant's Brief, paras. 20, 38.
[133] Bikindi's Notice of Appeal, para. 8.

back, Bikindi used the same system to ask if people had been killing Tutsi, who were referred to as snakes".[134]

1. Alleged Error Related to the Finding that the Appellant Incited Killings of Tutsis on his Way Towards Kayove, Based on Witness AKK's Evidence

53. At trial, Witness AKK testified that he saw the Appellant address a rally organised by the MRND and the CDR in Kivumu, Nyamyumba commune, in 1993;[135] that he saw the Appellant again, in June 1994, in a vehicle outfitted with a loudspeaker, as part of a convoy heading towards Kayove, playing songs and broadcasting statements by the Appellant; that the Appellant said "[y]ou sons of *Sebahinzi*, who are the majority, I am speaking to you, you know that the Tutsi are minority. Rise up and look everywhere possible and do not spare anybody"; that on the way back from Kayove, the Appellant stopped at a roadblock and met with leaders of the local *Interahamwe* where he insisted, "you see, when you hide a snake in your house, you can expect to face the consequences"; that after the Appellant left the roadblock, members of the surrounding population and the *Interahamwe* intensified their search for Tutsis, using dogs and going into homes to flush out those still hiding, and that a number of people were subsequently killed;[136] and that in June 1994, the day after these incidents on the Kayove-Kivumu road, Father Gatore was killed by members of the population.[137]

54. The Trial Chamber found Witness AKK's evidence "credible and convincing" and relied on it to make its findings that the Appellant made exhortations to kill Tutsis on the Kivumu-Kayove road in late June 1994.[138] However, the Trial Chamber did not find the Appellant responsible for the killing of Father Gatore, which, according to Witness AKK, had occurred one day after this incident. This was because the Defence raised doubt "as to when Father Gatore was killed",[139] such that the Trial Chamber could not be satisfied that he was killed as a result of the actions of the Appellant.[140]

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[134] Trial Judgement, para. 281. *See also* Trial Judgement, paras. 268, 269, 285.
[135] Trial Judgement, paras. 137, 267.
[136] Trial Judgement, para. 268.
[137] Trial Judgement, para. 327. The Appeals Chamber notes that Witness AKK testified that he was not an eye-witness to the killing, but that he heard about it from the killers who were boasting about it. *See* Witness AKK, T. 22 September 2006 p. 9.
[138] Trial Judgement, para. 285. *See also* Trial Judgement, paras. 267, 270-273. The Trial Chamber also found that Witness AKJ was credible with respect to his account of the presence of the Appellant on the Kivumu-Kayove road in late June 1994. *See* Trial Judgement, para. 285. The Trial Chamber's findings with respect to the evidence of Witnesses AKJ and AKK concerning the Kivumu rally is addressed elsewhere in this Judgement. *See infra* Section III.D.2 (Alleged Error Related to the Appellant's Activities at a Rally in Kivumu in 1993).
[139] Trial Judgement, para. 334.
[140] Trial Judgement, paras. 321-323, 333-336.

55. The Appellant submits that the Trial Chamber erred in assessing the evidence of Witness AKK.[141] He argues that no reasonable trier of fact could have been satisfied that his testimony was reliable.[142] He notes that the Trial Chamber acknowledged that Witness AKK consistently testified that the killing of Father Gatore followed the incident in which he saw the Appellant exhorting the killing of Tutsis on the Kivumu-Kayove road.[143] He submits that in light of this finding, the Trial Chamber erred in concluding that the doubt raised as to when Father Gatore was killed did not discredit Witness AKK's first-hand and articulate evidence on the Appellant's exhortations to kill Tutsis on his way to Kayove in late June 1994.[144]

56. Specifically, the Appellant contends that the Trial Chamber committed an error of law in focusing on the question of credibility of Witness AKK without properly addressing the question of whether his testimony as to June 1994 being the date of the incident was reliable.[145] He asserts that for a Trial Chamber to convict on the basis of a witness's testimony, it cannot merely assess whether a witness is credible; it must be satisfied that the witness is both credible and reliable in relation to each aspect of his evidence going to an essential element of the crime.[146]

57. The Appellant further submits that the evidence of Defence Witness Bizimana[147] and Exhibit D111[148] were both credible and showed that Father Gatore died in April 1994.[149] He claims that this evidence creates an uncertainty as to when the Kivumu-Kayove road incident occurred, leaving open the possibility that it happened at a time when he was not in Rwanda.[150] He submits that the Trial Chamber erred in characterizing this evidence as hearsay[151] and undervalued Witness Bizimana's evidence by stating that he testified "[as] to what he was told".[152] The Appellant argues that in fact, this witness testified that he learned of the killing of Father Gatore and of two other persons in April 1994, and saw the body of one of the three victims.[153] He argues that, for this reason, Witness Bizimana's testimony is highly probative evidence that the victims could not have died in June 1994.[154] He points out that Witness Bizimana provided direct eye-witness testimony of

[141] Bikindi's Appellant's Brief, para. 15.
[142] Bikindi's Appellant's Brief, para. 11.
[143] Bikindi's Appellant's Brief, para. 33, *citing* Trial Judgement, para. 272.
[144] Bikindi's Appellant's Brief, para. 33, *citing* Trial Judgement, para. 272.
[145] Bikindi's Appellant's Brief, paras. 34, 35.
[146] Bikindi's Appellant's Brief, para. 34.
[147] Witness Shadrack Bizimana testified that, while he could not remember the exact date, he was sure that Father Gatore, Father Nsengiyumva, and Kabayiza were killed in April 1994. *See* Trial Judgement, para. 333.
[148] Report of Massacres at Nyundo in Period April 94, UNAMIR, dated 14 October 1994. The Trial Chamber noted that the report mentions April 1994 as the date of Father Gatore's death. *See* Trial Judgement, para. 333 and fn. 765.
[149] Bikindi's Appellant's Brief, para. 12; Bikindi's Reply Brief, paras. 7, 8.
[150] Bikindi's Appellant's Brief, para. 11.
[151] Bikindi's Reply Brief, para. 8.
[152] Bikindi's Appellant's Brief, para. 12.
[153] Bikindi's Appellant's Brief, para. 12.
[154] Bikindi's Appellant's Brief, para. 12.

seeing and reburying Father Gatore's body.[155] The Appellant points out that the Trial Chamber did not reject the evidence of Witness Bizimana that Father Gatore died in April 1994, but rejected the credibility of Prosecution witnesses who claimed that he died in June 1994.[156]

58. The Appellant also claims that the Trial Chamber's doubt as to the timing of the events should have been reinforced by the fact that Witness AKK testified that a person named Kalisa died at the same time as Father Gatore, whereas all the other witnesses who testified about this event stated that the persons who died were named Gatore, Nsengiyumva, and Kabayiza.[157]

59. In sum, the Appellant submits that "it is unreasonable for the Trial Chamber to find reasonable doubt that [Father] Gatore was killed in the month of June based upon defence evidence that he was killed in April" without questioning the credibility or reliability of Witness AKK's entire testimony in relation to the Kivumu-Kayove road incident, given that Witness AKK centered his "story" around the death of Father Gatore in June 1994.[158]

60. The Prosecution responds that the Trial Chamber correctly found that the Prosecution had proved beyond reasonable doubt that the Appellant committed the crime of direct and public incitement to commit genocide when he made anti-Tutsi statements from a vehicle travelling on the main road between Kivumu and Kayove towards the end of June 1994.[159] It argues that the Appellant's submissions under Grounds 1 and 2 are unconvincing and insufficient to call into question the reasonableness of the impugned findings.[160]

61. The Appeals Chamber notes that in assessing the evidence of Witness AKK, the Trial Chamber addressed a number of challenges made by the Defence based on alleged discrepancies between Witness AKK's testimony and a prior statement he made.[161] With regard to the date of the incitement on Kivumu-Kayove road and the killing of Father Gatore, the Trial Chamber considered the inconsistency between Witness AKK's testimony in court, summarized above,[162] and his prior

[155] Bikindi's Reply Brief, para. 8.
[156] Bikindi's Reply Brief, para. 12, *citing* Trial Judgement, para. 334.
[157] Bikindi's Appellant's Brief, para. 19.
[158] Bikindi's Reply Brief, para. 11.
[159] Prosecution's Respondent's Brief, para. 25, *citing* Trial Judgement, paras. 281, 422. *See also* Prosecution's Respondent's Brief, para. 24, *citing* Trial Judgement, para. 423; AT. 30 September 2009 pp. 31-33.
[160] Prosecution's Respondent's Brief, paras. 22, 38.
[161] Trial Judgement, paras. 270-273, wherein the Trial Chamber considered and rejected the Appellant's challenges in relation to: the circumstances in which Witness AKK saw the Appellant perform at Umuganda Stadium in 1992; the lack of reference in Witness AKK's previous statement to the Appellant's speech about snakes at the roadblock on the Appellant's way back from Kayove; a discrepancy between Witness AKK's testimony and his prior statement as to the respective dates of the Kivumu-Kayove road incident and the killing of Father Gatore; and the lack of reference in Witness AKK's prior statement to the death of Kalisa, notwithstanding that Witness AKK mentioned this victim during his testimony.
[162] *See supra* para. 53.

statement, made on 5 and 8 May 2001,[163] according to which Witness AKK saw the Appellant on the Kivumu-Kayove road in early June 1994, while the killing of Father Gatore occurred at the end of June 1994.[164]

62. Reading the 5 and 8 May 2001 Statement "as a whole", the Trial Chamber concluded that:

> [T]he reference to 'early June 1994' may have been a translation mistake from Kinyarwanda to English during the interview since the witness recounted having heard of Father Gatore's death 'after [the Kivumu-Kayove road] incident' in a way which clearly implied that Father Gatore's death occurred consequently. Read as such, Witness AKK's statement is consistent with Witness AKJ's testimony which places Bikindi's anti-Tutsi utterances towards the end of June 1994.[165]

The Trial Chamber observed that Witness AKK "remained consistent as to the chronology of both incidents throughout his testimony" and found that "the doubt raised by the Defence as to when Father Gatore was actually killed does not discredit Witness AKK's first-hand and articulate evidence on Bikindi's exhortation to kill Tutsi on his way to Kayove."[166] In the section dealing with the alleged incident at Rugerero roadblock and the alleged involvement of the Appellant in killings that occurred in Nyamyumba, including the killing of Father Gatore, the Trial Chamber stated that, while it had "no reason to question the credibility of Witness AKK that Gatore died in June 1994, [...] the doubt raised by the Defence as to when Father Gatore was killed must weigh in favour of the Accused".[167]

63. The Trial Chamber reached its conclusion that there was a doubt as to the date of the killing of Father Gatore based on the "evidence in its totality",[168] which included:[169] Witness AKK's testimony, as recalled above; Witness AJY's testimony that, in late June 1994, a group composed of the Appellant and *Interahamwe* carried out the mission to kill Tutsis in Nyamyumba "notably by killing Father Gatore and Kabayiza", that, later, the Appellant and the *Interahamwe* informed people that they had killed Father Gatore, and that the Appellant had the identity cards of Father Gatore and Kabayiza;[170] Witness BKW's testimony that, around 26 June 1994, he heard the Appellant stating that he was going to kill Tutsi priests in Kivumu, that he heard the Appellant say "that priests had been killed", and that he later learned that Fathers Gatore and Vianney had been

[163] Trial Judgement, para. 272, *citing* Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), pp. 3, 4 ("5 and 8 May 2001 Statement").
[164] Trial Judgement, para. 272, *citing* 5 and 8 May 2001 Statement, pp. 3, 4.
[165] Trial Judgement, para. 272.
[166] Trial Judgement, para. 272.
[167] Trial Judgement, para. 334.
[168] Trial Judgement, para. 334. *See also* Trial Judgement, paras. 323, 333. The Trial Chamber considered the testimonies of Prosecution Witnesses AKK and AJY and the evidence of Defence Witnesses Bizimana and XUV as well as Exhibit D111.
[169] The Trial Chamber also considered the evidence of Prosecution Witness AJZ on a distinct but related event. *See* Trial Judgement, para. 324.
[170] Trial Judgement, para. 325.

killed;[171] Witness Shadrack Bizimana's testimony summarised above;[172] Witness XUV's testimony that he witnessed the killing of Father Gatore on 13 April 1994;[173] and a Report of massacres in Nyundo mentioning that Father Gatore died in April 1994.[174]

64. In assessing this evidence, the Trial Chamber recalled its reservations about the credibility of Prosecution Witnesses AJZ, AJY, and BKW.[175] It also noted that in his prior statements Witness AJY had not mentioned the identity cards of Gatore and Kabayiza.[176] Further, the Trial Chamber considered that inconsistencies remained among the Prosecution witnesses' testimonies in relation to certain incidents which were distinct, but related, to the killing of Father Gatore.[177]

65. The Appeals Chamber recalls that, as noted by the Trial Chamber, the fact that the Appellant was outside Rwanda from 4 April to "around 12 June 1994" was not in dispute at trial.[178]

66. In view of this, the date on which Witness AKK saw the Appellant on the Kivumu-Kayove road is important. At trial, Witness AKK did not provide a specific date for this incident. He first testified, during his examination-in-chief, that it occurred in 1994, after the beginning of the genocide.[179] Later, responding to a question from the Bench, he said that he "believe[d] it was in the month of June 1994".[180] In doing so, he stated: "[y]ou see, these things happened a long time ago. But I think that it must have been around June 1994."[181]

67. During re-examination, Witness AKK was asked whether he had heard of the death of Father Gatore in June 1994; he replied that "[i]t was in the course of that month that you have referred to in 1994."[182] In cross-examination, confronted by Lead Counsel with documentary evidence, Witness AKK disagreed that Father Gatore would have been killed in April 1994.[183] The Appeals Chamber notes that while Witness AKK was uncertain as to the date he saw the Appellant on the Kivumu-Kayove road, he was adamant that it occurred the day before the death of Father

[171] Trial Judgement, para. 326.
[172] *See supra* fn. 147.
[173] Trial Judgement, para. 333. The Trial Chamber noted that Witness XUV also corroborated the testimony of Witness Bizimana that Kabayiza was killed in April 1994.
[174] Trial Judgement, para. 333, *citing* Exhibit D111. The Trial Chamber considered this report of limited probative value "because of the reservations it [had] about its authenticity and chain of custody".
[175] Trial Judgement, para. 328. *See also* Trial Judgement, paras. 329, 330 and fn. 742 (referring to other sections of the Trial Judgement).
[176] Trial Judgement, para. 330.
[177] Trial Judgement, paras. 331, 335.
[178] Trial Judgement, para. 25. *See also* Trial Judgement, paras. 22-24.
[179] Witness AKK, T. 22 September 2006 p. 4.
[180] Witness AKK, T. 22 September 2006 p. 6. Responding to the following question from Judge Arrey: "Yes, Witness, could you tell us when you saw Bikindi going towards Kayove commune, when you said you saw the convey [*sic*], can you give us the dates, or the month or the year?"
[181] Witness AKK, T. 22 September 2006 p. 6.
[182] Witness AKK, T. 22 September 2006 p. 24.

Gatore and that this latter event occurred in June 1994. The Appeals Chamber further notes that Witness AKK observed first-hand the Appellant inciting the killing of Tutsis on the Kivumu-Kayove road:[184] whereas, by contrast, he only learned of Father Gatore's death from the killers who were boasting about it.[185]

68. The Appeals Chamber recalls that, in general, it is not unreasonable for a Trial Chamber to accept certain parts of a witness's testimony and reject others[186] and that a Trial Chamber does not need to set out in detail why it accepted or rejected particular parts of a witness's testimony.[187] Here, the Trial Chamber accepted the portion of Witness AKK's eye-witness testimony as to the Appellant's acts on the Kivumu-Kayove road sometime in June 1994, while disregarding the hearsay part of his testimony as to the time of Father Gatore's death. The Trial Chamber reached its conclusion on the evidence of this witness after having considered the credibility challenges made by the Defence, including those relating to the chronology of the events. It did not find that this witness lacked credibility as to the chronology, but rather refrained from entering a conviction for the killing of Father Gatore because it was not persuaded beyond reasonable doubt with respect to this part of the evidence.

69. Furthermore, the Appeals Chamber notes that the Trial Chamber did not disbelieve Witness AKK's account of the murder of Father Gatore, but that it was cautious regarding the date of the murder and consequently declined to enter a conviction for that crime. The Appeals Chamber sees no error in this approach. The Trial Chamber was entitled to rely on a portion of Witness AKK's testimony, particularly that which was based on his personal observation, while not relying on another part of his evidence, which was based on hearsay. The Trial Chamber did not make contradictory findings. Accordingly, the Appellant's arguments under this head are dismissed.

2. Alleged Error Related to the Finding that the Appellant Incited Killings of Tutsis on his Way Back from Kayove, Based on Witness AKJ's Evidence

70. At trial, Witness AKJ testified that the Appellant addressed an MRND rally in Kivumu, Nyamyumba commune, around 15 May 1993, and exhorted the crowd to kill the "serpents";[188] that he saw the Appellant again towards the end of June 1994, around 1:30 p.m. or 2:00 p.m., in a

[183] Witness AKK, T. 22 September 2006 pp. 15-23.
[184] Witness AKK, T. 22 September 2006 pp. 4-6, 8, 9.
[185] Witness AKK, T. 22 September 2006 pp. 15, 24.
[186] *Karera* Appeal Judgement, para. 88; *Seromba* Appeal Judgement, para. 110; *Simba* Appeal Judgement, para. 212; *Blagojević and Jokić* Appeal Judgement, para. 82; *Kupreškić et al.* Appeal Judgement, para. 333. *See also Ntagerura et al.* Appeal Judgement, para. 214; *Kamuhanda* Appeal Judgement, para. 248.
[187] *Karera* Appeal Judgement, para. 90; *Muhimana* Appeal Judgement, para. 99; *Simba* Appeal Judgement, para. 152; *Musema* Appeal Judgement, paras. 18-20.
[188] Trial Judgement, paras. 134-142, 267.

vehicle fitted with loudspeakers, as part of a convoy returning from Kayove and that, at that time, the Appellant said, "Have you killed the Tutsis here?" and asked whether they had killed the "snakes".[189]

71. The Appellant submits that the Trial Chamber erred in assessing Witness AKJ's contradictory testimony.[190] He contends that Witness AKJ was led as to the year of the Kayove-Kivumu road incident by Prosecution Counsel's suggestion that it happened in 1994.[191] He submits that the Trial Chamber should have been more cautious in making its assessment, in view of the doubt cast on Witness AKJ's evidence and considering the caution required when convicting an accused on the basis of a single witness's testimony.[192]

72. The Appellant further contends that the Trial Chamber mischaracterized the evidence of Witness AKJ when it stated that there was "slight confusion" as to the year in which he saw the Appellant in a vehicle. The Appellant claims that this mischaracterization constituted an error of law, amounting to a violation of his right to a fair trial.[193] He claims that the contradiction in the evidence of this witness went beyond "slight confusion" since it amounted to a contradiction on a fundamental factual element of his case, namely, the circumstances and the year of the event in which the witness saw the Appellant.[194] He argues that the Trial Chamber's finding regarding the public address incident was "necessarily influenced" by this mischaracterization.[195]

73. The Prosecution responds that the Appellant's submissions that the Trial Chamber erred in assessing the evidence of Witness AKJ is "erroneous and misleading".[196] According to the Prosecution, the Trial Chamber's findings in this respect were based on its assessment of the witness's overall testimony, which it heard and observed.[197] The Prosecution submits that the record shows that Witness AKJ was neither confused about the dates nor the events and that, during his examination-in-chief, he testified that the incident occurred in June 1994.[198] It contends that it was the Defence Co-Counsel who introduced the confusion between the Kivumu Rally in May 1993 and

[189] Trial Judgement, para. 269.
[190] Bikindi's Notice of Appeal, para. 12; Bikindi's Appellant's Brief, paras. 13, 16-18, 21-26, 28-30, 37-40.
[191] Bikindi's Appellant's Brief, para. 24.
[192] Bikindi's Appellant's Brief, para. 17.
[193] Bikindi's Appellant's Brief, para. 30, *citing* Trial Judgement, paras. 136, 274.
[194] Bikindi's Appellant's Brief, para. 30.
[195] Bikindi's Appellant's Brief, para. 30.
[196] Prosecution's Respondent's Brief, para. 44.
[197] Prosecution's Respondent's Brief, para. 45.
[198] Prosecution's Respondent's Brief, paras. 33-36, sp. 34, *referring to* Witness AKJ, T. 20 September 2006 p. 50.

the incident on the Kayove-Kivumu road in June 1994 during his cross-examination of Witness AKJ.[199]

74. The Appellant replies that the Prosecution conflates "[Co-Counsel]'s confusion on the month with the witness's confusion on the year".[200] He avers that the fact that Witness AKJ was "badly cross-examined [...] should not automatically excuse [the] problems in his evidence."[201] The Appellant points out that when Witness AKJ had an opportunity to clarify the year when the convoy incident took place, he mentioned "1993".[202] He further submits that this confusion raised a problem with the reliability and credibility of Witness AKJ's evidence.[203]

75. The Appeals Chamber recalls its earlier description in this Judgement of the Trial Chamber's assessment of Witness AKJ's credibility with regard to his testimony on the MRND rally in Kivumu in 1993 and the Kayove-Kivumu road incident.[204] The Appeals Chamber notes that during the examination-in-chief, Witness AKJ testified that he saw the Appellant for the first time at an MRND rally in Kivumu in 1993 and the second time in 1994, towards the end of June, at about 1:30 p.m. or 2:00 p.m., in a convoy, in Kivumu.[205] He provided a detailed account of both events.[206]

76. During cross-examination, Witness AKJ first stated that the MRND rally in Kivumu was held around May 1993 and that he could not remember the exact date, but later, reacting to Defence Co-Counsel's suggestion that it was on 6 June 1993, he stated "[w]ell, what I have said is that the rally took place in 1993 in the month of June, but I do not remember the exact date."[207] Then, responding to a question from the Presiding Judge as to whether this event took place on 15 May or 6 June, Witness AKJ stated that he did "not remember the date, the only thing [he could] remember is the month".[208] It is clear from these exchanges between the Co-Counsel and Witness AKJ during the cross-examination[209] that the confusion as to the date of each event arose as a result of the Co-Counsel's failure to distinguish his questions relating to the first and the second occasion on which the witness had seen the Appellant. Witness AKJ himself specified that the two events should be

[199] Prosecution's Respondent's Brief, paras. 34, 35, *referring to* Witness AKJ, T. 21 September 2006 pp. 18, 19 and *citing* Trial Judgement, para. 136. *See also* Prosecution's Respondent's Brief, paras. 46, 47.
[200] Bikindi's Reply's Brief, para. 18.
[201] Bikindi's Reply's Brief, para. 18.
[202] Bikindi's Reply's Brief, para. 18, *citing* Witness AKJ, T. 21 September 2006 lines 24-28 [sic].
[203] Bikindi's Reply's Brief, paras. 21, 22.
[204] *See supra* paras. 17, 18.
[205] Witness AKJ, T. 20 September 2006 pp. 47-50.
[206] Witness AKJ, T. 20 September 2006 pp. 47-50.
[207] Witness AKJ, T. 21 September 2006 p. 15.
[208] Witness AKJ, T. 21 September 2006 p. 15.
[209] Witness AKJ, T. 21 September 2006 pp. 15-19.

differentiated,[210] and it appears from his last statements that he associated seeing the Appellant at the MRND rally with the June 1993 date.[211]

77. In these circumstances, the Appeals Chamber finds no error in the Trial Chamber's assessment of the testimony of Witness AKJ. The Appellant has not demonstrated that no reasonable trier of fact could have relied on Witness AKJ's testimony in relation to the Kivumu-Kayove road incident in June 1994. The Appellant's contention that the Trial Chamber erred in the assessment of Witness AKJ's evidence is therefore dismissed.

3. Alleged Error in Finding that the Testimonies of Witnesses AKK and AKJ Corroborated Each Other

78. The Trial Chamber found that the testimonies of Witnesses AKK and AKJ corroborated each other on key points with regard to the Kivumu-Kayove road incident, despite the fact that the two witnesses saw the Appellant at different times.[212]

79. The Appellant contends that Witness AKK could not corroborate Witness AKJ as to the date of the incident[213] but rather that Witness AKK's testimony undermined the evidence of Witness AKJ in relation to the date of this event.[214] Indeed, the Appellant asserts, Witness AKK is only credible if it is accepted that he was confused about the date of the event and mistaken as to the identity of the Appellant.[215] He argues that the Trial Chamber found that Witnesses AKK and AKJ testified about the same journey, and that the reference by Witness AKJ to June 1994 was "already shaky".[216] According to the Appellant, no reasonable tribunal could fail to have been left with a reasonable doubt as to the time in which the alleged incitement took place.[217] The Appellant further submits that as he was not in the country, but in Europe, at the time of the death of Father Gatore, Witnesses AKK and AKJ must have misidentified him in relation to the Kivumu-Kayove road incident.[218]

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[210] Witness AKJ, T. 21 September 2006 p. 17.
[211] Witness AKJ, T. 21 September 2006 p. 17. Witness AKJ responded to a question from Co-Counsel: "Your question was one to which I provided an answer when I said that the incident at the football field occurred in 1993. They came from Kayove, and that is when they drove by in a vehicle. They did not stop. This is what I explained yesterday, so please do not mix up the events that occurred in Kivumu and the Kayove event. We need to distinguish between the two incidents."
[212] Trial Judgement, para. 276. *See also* Trial Judgement, para. 272, stating that "Witness AKK's statement [that Father Gatore was killed the day after he saw Bikindi on the Kivumu-Kayove road in June 1994] is consistent with Witness AKJ's testimony which places Bikindi's anti-Tutsi utterances towards the end of June 1994."
[213] Bikindi's Appellant's Brief, paras. 16-20. *See also* Bikindi's Notice of Appeal, paras. 10-13.
[214] Bikindi's Appellant's Brief, para. 17.
[215] Bikindi's Appellant's Brief, para. 17.
[216] Bikindi's Appellant's Brief, para. 17.
[217] Bikindi's Appellant's Brief, para. 17.
[218] Bikindi's Appellant's Brief, para. 18.

80. The Prosecution responds that the Trial Chamber found that the testimonies of Witnesses AKK and AKJ corroborated each other on key points, including the incident on the Kivumu-Kayove road in June 1994.[219] It points out that: (1) both witnesses placed the Appellant "in a vehicle with loudspeakers making anti-Tutsi utterances in a convoy of buses filled with *Interahamwe* on the Kivumu-Kayove road in June 1994";[220] (2) Witness AKK saw the convoy on the road *going* to Kayove, and Witness AKJ saw it on the road coming back *from* Kayove;[221] (3) the Appellant's vehicle was fitted with a loudspeaker and his songs were being played;[222] and (4) the Appellant referred to the Tutsi as "snakes".[223]

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

> two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.[224]

82. The Trial Chamber found that the testimonies of Witnesses AKK and AKJ were corroborative on key points.[225] In reaching this conclusion, it considered similarities and discrepancies between each witness's recollection of the events.[226] Based on the evidence before it, the Trial Chamber found that the witnesses described a sequence of linked events and that the testimonies were compatible.[227]

83. The Appeals Chamber disagrees with the Appellant's contention that Witness AKK's testimony undermines the evidence of Witness AKJ in relation to the date of these events. On the contrary, both witnesses place the events in June 1994. Witness AKJ is more specific, by stating that it occurred at the end of June, but does not contradict Witness AKK's account. The description of the events by both witnesses, while not identical, is strikingly similar and allowed for the conclusion that the testimonies were corroborative on key points.

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[219] Prosecution's Respondent's Brief, paras. 29, 30, 40.
[220] Prosecution's Respondent's Brief, para. 29, *citing* Trial Judgement para. 276.
[221] Prosecution's Respondent's Brief, para. 30, *citing* Trial Judgement para. 269.
[222] Prosecution's Respondent's Brief, para. 30, *citing* Trial Judgement paras. 268, 269.
[223] Prosecution's Respondent's Brief, para. 30, *citing* Trial Judgement paras. 268, 269.
[224] *Nahimana et al.* Appeal Judgement, para. 428. *See also Karera* Appeal Judgement, para. 173.
[225] Trial Judgement, para. 276.
[226] Trial Judgement, paras. 272, 275, 276.
[227] Trial Judgement, para. 276. *See also* Trial Judgement, paras. 281, 285.

84. The Appeals Chamber also recalls that the Appellant has failed to demonstrate that no reasonable trier of fact could have relied on Witnesses AKK's and AKJ's testimonies in relation to the Appellant's conduct on the Kivumu-Kayove road.

85. Accordingly, the Appeals Chamber dismisses the Appellant's argument that the Trial Chamber erred in finding that the testimonies of Witnesses AKK and AKJ corroborated each other.

4. Conclusion

86. The Appeals Chamber dismisses the Appellant's First and Second Grounds of Appeal.

C. Alleged Failure to Take Into Account Evidence Related to Operation Turquoise (Ground of Appeal 3)

87. In its Decision of 27 May 2008, the Trial Chamber dismissed the Appellant's motion for judicial notice of five facts related to Operation Turquoise, a UN humanitarian operation mandated under UN Security Council Resolution 929 (1994).[228] In rejecting the request, the Trial Chamber found that the facts for which the Appellant requested judicial notice were "contained in United Nations documents which have been available to the public for more than thirteen years" and in a document that had been available to the Defence for nearly seven years.[229]

88. The Appellant argues that the finding in the Trial Judgement related to the Kivumu-Kayove road incident[230] should be reversed[231] as the Trial Chamber erred in law by failing "to take judicial notice of or to take into account Operation Turquoise in its assessment of the likelihood of [the Appellant] making statements over a loudspeaker in Gisenyi Prefecture in June 1994."[232] In the alternative, the Appellant argues that the Trial Chamber erred in rejecting his request to take judicial notice of this fact in its Decision of 27 May 2008.[233] The Appellant submits that he incurred prejudice from this decision as he would have benefited from the Trial Chamber's consideration of these facts in its assessment of the evidence adduced by the Prosecution to establish its allegation that he incited genocide on the Kivumu-Kayove road.[234]

89. The Appellant submits that it is a fact of common knowledge that Operation Turquoise began its mission on 22 June 1994, landing in Goma (DRC, then Zaire), and that a contingent of troops made their way to Kibuye, Rwanda.[235] According to the Appellant, this fact is relevant to the Kivumu-Kayove road incident because, on their way to Kibuye prefecture, the Operation Turquoise troops would have taken the same road as the Prosecution alleged the Appellant took.[236] The Appellant notes that the Trial Chamber travelled along this road during its site visit, and that during

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[228] *See* Motion for Judicial Notice Pursuant Rule 94 of the Rules, 9 April 2008 ("Defence Motion for Judicial Notice"); Security Council Resolution 929 (1994), on establishment of a temporary multinational operation for humanitarian purposes in Rwanda until the deployment of the expanded UN Assistance Mission for Rwanda, 22 June 1995 (U.N. Doc S/Res/929) ("Security Council Resolution 929 (1994)").
[229] Decision on Request for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008 ("Decision of 27 May 2008"), para. 7.
[230] *See* Trial Judgement, para. 281.
[231] Bikindi's Notice of Appeal, para. 15; Bikindi's Appellant's Brief, para. 48.
[232] Bikindi's Notice of Appeal, para. 14; Bikindi's Appellant's Brief, paras. 41-48. *See also* AT. 30 September 2009 pp. 13-18.
[233] Bikindi's Notice of Appeal, para. 14; Bikindi's Appellant's Brief, para. 43.
[234] Bikindi's Notice of Appeal, para. 14; Bikindi's Appellant's Brief, paras. 41-44. *See also* Bikindi's Reply Brief, para. 30.
[235] Bikindi's Appellant's Brief, para. 42; Bikindi's Reply Brief, para. 30.
[236] Bikindi's Appellant's Brief, para. 42. *See also* Bikindi's Reply Brief, para. 30.

the site visit the Judges' attention was drawn to "the direction of Kibuye and the route from Goma (via *La Corniche*) up to and through Nyamyumba towards Kivumu".[237]

90. The Appellant avers that it is evident that the Trial Chamber did not take the fact of the presence of Operation Turquoise troops into account, as: (1) it is not referred to in the Trial Judgement; and (2) the Trial Chamber held in its Decision of 27 May 2008 that it would not consider it due to the untimely nature of the Appellant's application.[238] The Appellant argues that in so doing, the Trial Chamber erred as there is no time limit for an application under Rule 94(A) of the Rules[239] and the only relevant question for the Trial Chamber was whether the fact at issue fell within the category of facts of common knowledge.[240]

91. In the alternative, the Appellant claims that any reasonable trier of fact would have considered "the geography in the case [and] would have taken judicial notice of this fact *proprio motu* in its deliberations."[241] He argues that the failure of the Trial Chamber to make any reference to this issue in the Trial Judgement makes it impossible to determine whether the Trial Chamber had any understanding of the relevant geography or why it failed to consider the evidence of the movement of the contingent from Operation Turquoise when evaluating the evidence.[242] He claims that he suffered prejudice from the Trial Chamber's failure to take judicial notice of this fact. In his view, this is because no reasonable trier of fact, having considered this fact together with the other evidence calling into question the commission of this offence in June and the Appellant's absence from Rwanda from 4 April until 12 June 1994, would have been satisfied beyond reasonable doubt that the Appellant could have committed in June 1994 the offence for which he was convicted.[243]

92. The Appellant further submits that the Trial Chamber erred in law in failing to keep a record of its site visit[244] and argues that videotaping the site visit was insufficient, as the footage does not confirm that the Trial Chamber observed the geography relevant to his case.[245]

93. The Prosecution responds that this ground of appeal should be dismissed.[246] It submits that the Appellant has not shown how taking judicial notice of the existence of Operation Turquoise could have affected the verdict.[247] It submits that the Trial Chamber correctly rejected the

[237] Bikindi's Appellant's Brief, para. 42.
[238] Bikindi's Appellant's Brief, para. 43.
[239] Bikindi's Appellant's Brief, para. 43. *See also* Bikindi's Reply Brief, para. 27.
[240] Bikindi's Appellant's Brief, para. 43.
[241] Bikindi's Appellant's Brief, para. 44; Bikindi's Reply Brief, para. 27.
[242] Bikindi's Appellant's Brief, para. 44.
[243] Bikindi's Reply Brief, para. 30.
[244] Bikindi's Appellant's Brief, para. 45, *citing Karera* Appeal Judgement, para. 50; AT. 30 September 2009 pp. 13-19.
[245] Bikindi's Reply Brief, para. 31.
[246] Prosecution's Respondent's Brief, paras. 55, 67, 70. *See also* AT. 30 September 2009 pp. 35, 36.
[247] Prosecution's Respondent's Brief, paras. 55, 64.

Appellant's motion for judicial notice in its Decision of 27 May 2008.[248] Specifically, it argues that this motion should have been filed and debated during trial and not five months after the close of the Defence case.[249] It notes that the Appellant did not seek to appeal this decision.[250]

94. The Prosecution argues that the Appellant's claim that the Trial Chamber erred in failing to record the site visit properly should be disregarded because, *inter alia*, the Appellant has not shown how the Trial Chamber's video recording of the site visit - as opposed to mapping - caused him prejudice.[251] Nor does he show how the existence of such mapping would have affected the Trial Chamber's findings.[252] Nor has he established that the video recording was an inadequate way of recording the site visit.[253]

95. The Appellant replies that the Prosecution has not explained why his decision not to appeal the Decision of 27 May 2008 should prevent him from raising the issue on appeal from judgement.[254] He points out that it is within his counsel's discretion to decide whether to appeal immediately or at the end of a case.[255]

96. As a preliminary matter, the Appeals Chamber notes that the alleged error in failing to keep a proper record of the site visit was not properly pleaded in the Appellant's Notice of Appeal, which only refers to the alleged error in failing to take judicial notice of Operation Turquoise.[256] The Notice of Appeal thus fails to indicate the substance of the alleged errors and the relief sought, as required by Rule 108 of the Rules.[257] However, because the Prosecution did not object to this failure, the Appeals Chamber, exercising its discretion,[258] will consider whether the Trial Chamber erred in law by failing to include the video recording and any observations from the site visit in the official record of this case.

97. The Appeals Chamber has not considered the video recording of the site visit, as it is not part of the record. The Appeals Chamber strongly emphasises that a detailed record of a Trial

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[248] Prosecution's Respondent's Brief, para. 59; AT. 30 September 2009 p. 36.
[249] Prosecution's Respondent's Brief, para. 59.
[250] Prosecution's Respondent's Brief, para. 57.
[251] Prosecution's Respondent's Brief, paras. 55, 65-67.
[252] Prosecution's Respondent's Brief, para. 65.
[253] Prosecution's Respondent's Brief, para. 65.
[254] Bikindi's Reply Brief, paras. 28, 29. The Appellant suggests that the Trial Chamber's choice to address both his motion for judicial notice and the Prosecution's request to take judicial notice of Rwandan legislation in its Decision of 28 May 2008 discouraged him from appealing the impugned decision at that time. *See* Bikindi's Reply Brief, para. 29.
[255] Bikindi's Reply Brief, paras. 28, 29.
[256] Bikindi's Notice of Appeal, paras. 14, 15.
[257] *See also* Practice Direction on Formal Requirements for Appeals from Judgement of 4 July 2005, para. 1(c)(i), which provides that a Notice of Appeal shall contain "the grounds of appeal, clearly specifying in respect of each ground of appeal [...] any alleged error on a question of law invalidating the decision [...]".
[258] *Simba* Appeal Judgement, para. 12.

Chamber's site visit should normally be maintained[259] and form part of the trial record. The purpose of a site visit is to assist a Trial Chamber in its determination of the issues, and therefore it is incumbent upon the Trial Chamber to ensure that the parties are able to review effectively any findings made by the Trial Chamber in reliance on observations made during the site visit.[260]

98. The Appellant does not claim that any of the findings underlying his conviction are based on erroneous observations made by the Trial Chamber at the site visit. The Appellant's general contention is that the parties and the Appeals Chamber were deprived "of the means to be satisfied that the site visit had served its function, i.e. to provide the [Trial] Chamber with sufficient knowledge of the geography relevant to the case".[261] The Appellant fails to identify any prejudice suffered as a result of the Trial Chamber's failure to include the video recordings or any observations made during the site visit in the record. The Appeals Chamber therefore finds that the Appellant has not demonstrated that he was prejudiced by his inability to challenge the Trial Chamber's observations on the site visit.

99. The Appeals Chamber now turns to the Appellant's contention that the Trial Chamber erred in failing to take judicial notice of facts relating to Operation Turquoise. Rule 94(A) of the Rules states: "[a] Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof." This standard is not discretionary; if a Trial Chamber determines that a fact is "common knowledge", it must take judicial notice of it.[262] The term "common knowledge" encompasses facts that are widely known and not reasonably subject to dispute: in other words, commonly accepted or universally known facts, such as general facts of history or geography, or the laws of nature.[263]

100. The Trial Chamber rejected the Defence Motion for Judicial Notice on the ground that: (1) the submitted facts were "contained in United Nations documents which have been available to the public for more than thirteen years as well as the admission of a document available to the Defence for nearly seven years"; (2) this "issue should have been debated during the trial proceedings and not introduced five months after the closing of the Defence case"; and (3) the Defence should have proceeded with due diligence with respect to the documents that were available to it at the time of the presentation of its case.[264]

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[259] *See Zigiranyirazo* Appeal Judgement, para. 36; *Karera* Appeal Judgement, para. 50.
[260] *Karera* Appeal Judgement, para. 50.
[261] Bikindi's Appellant's Brief, para. 45.
[262] *Karemera et al.*, Decision on Judicial Notice, para. 22.
[263] *See Semanza* Appeal Judgement, para. 194; *Karemera et al.*, Decision on Judicial Notice, paras. 22, 23.
[264] Decision of 27 May 2008, para. 7.

101. The Appeals Chamber considers that the Trial Chamber could have taken into account the fact that the request was made late in the proceedings in assessing, for example, whether the facts sought to be judicially noticed were relevant to the Appellant's case. However, the Trial Chamber erred in rejecting the Defence Motion for Judicial Notice solely on the basis of its late filing. The Trial Chamber should have considered whether the facts at issue were facts of common knowledge and, if so, whether they were relevant to the Appellant's case. While the Trial Chamber erred in dismissing the application on the grounds that it was untimely, the Appeals Chamber is not satisfied that the facts submitted by the Appellant were capable of being judicially noticed by the Trial Chamber. The information contained in these documents regarding the movements of the troops of Operation Turquoise would certainly not qualify as facts that are commonly accepted or universally known or beyond reasonable dispute. As a consequence, the Appeals Chamber finds that the Trial Chamber erred in rejecting the Defence Motion for Judicial Notice for lateness but considers that this error did not invalidate the decision.

102. For the foregoing reasons, the Appellant's Third Ground of Appeal is dismissed.

D. Alleged Errors in the Assessment of Defence Evidence (Ground of Appeal 4)

103. In assessing the evidence of Defence witnesses called to rebut the Prosecution's evidence that the Appellant incited killings on the Kivumu-Kayove road, the Trial Chamber found that their evidence failed to raise a reasonable doubt as to the Prosecution evidence on this point.[265]

104. Under the Fourth Ground of Appeal, the Appellant argues that the Trial Chamber committed a number of errors of fact and law in assessing the Defence evidence.[266] Specifically, he argues that the Trial Chamber erred by failing to give weight or sufficient weight to: (1) the evidence of Defence witnesses regarding the Appellant's movements in June 1994;[267] (2) Defence evidence relating to the Appellant's participation in a meeting in Kivumu in 1993;[268] and (3) the evidence of Charles Zilimwabagabo ("Witness Zilimwabagabo") that in 1994 the witness and Wellars Banzi spoke out against the killings.[269] The Appellant requests the reversal of the Trial Chamber's findings that: (1) the Defence witnesses did not succeed in raising reasonable doubt regarding the Prosecution evidence; and (2) that the Prosecution proved beyond reasonable doubt that he incited the killing of Tutsis in Kivumu in June 1994. On this basis, the Appellant requests the reversal of his conviction.[270]

1. Alleged Error in Assessing Defence Evidence Relating to the Appellant's Movements

105. The Appellant claims that the Trial Chamber erred in failing to take into account or accord sufficient weight to Defence evidence in assessing his activities in June 1994, and the likelihood that he incited killings in Kivumu at that time.[271]

106. The Appellant argues that the Trial Chamber erred in law by placing too much emphasis on the Defence witnesses' association with the Appellant.[272] Specifically, the Trial Chamber erred in assessing their evidence from the premise that they had a close relationship with him, and in finding, as a consequence, that they may have had a motive to give evidence favourable to him, notwithstanding the absence of any other evidence which undermined their credibility and

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[265] Trial Judgement, para. 277.
[266] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, paras. 49, 50, 56. *See also* Bikindi's Reply Brief, para. 33; AT. 30 September 2009 pp. 2, 18-20.
[267] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, paras. 49-57.
[268] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, paras. 60-66.
[269] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, para. 67.
[270] Bikindi's Notice of Appeal, pp. 5, 8, 9.
[271] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, paras. 49, 56-59.
[272] Bikindi's Notice of Appeal, p. 5; Bikindi's Appellant's Brief, paras. 50-55.

reliability.[273] He argues that in adopting this approach, the Trial Chamber violated both his right to have his witnesses examined under the same conditions as Prosecution witnesses, pursuant to Article 20 of the Statute, and his right to the presumption of innocence.[274]

107. The Appellant further claims that the Trial Chamber's statement regarding the impact of a close relationship between Defence witnesses and the Appellant in the assessment of their evidence is "meaningless".[275] He avers that the possibility that a motive exists could only be taken into account if relevant factors "indicate that false evidence is in fact being proffered".[276]

108. The Appellant further asserts that the Trial Chamber made an "unequal choice of factors" in assessing Defence evidence by taking into consideration the close relationship between him and Defence witnesses whilst failing to take into account the fact that "a good proportion of these witnesses were Tutsi victims themselves"[277] and that these witnesses may equally have had a motive to give evidence which was unfavourable to the Appellant.[278]

109. The Appellant also claims that the Trial Chamber erred in fact and in law by failing to take into account his own evidence on the allegation for which he was convicted.[279] He asserts that this error is evidenced by the Trial Chamber's assumption that he, along with other Defence witnesses, may have had a motive to lie.[280] He claims that the Trial Chamber's statement to the effect that he and other Defence witnesses who were members of the *Irindiro* ballet "had reasons to deny that members of the ballet may have belonged to [the *Interahamwe,* a] movement accused of having played a significant role in the genocide" offended the presumption of innocence.[281]

110. The Appellant claims that the Trial Chamber erred in fact and law in stating that, because Defence evidence could not account for all of his movements, it could not undermine the Prosecution evidence regarding the incidents on the Kivumu-Kayove road.[282] He argues specifically that the Trial Chamber failed to take into account the impact of the Defence evidence on the "likelihood" that the Appellant would have taken "several hours of his day to move over the hills of Nyamyumba to incite killings".[283] He argues that no-one "can account for a man's every

[273] Bikindi's Appellant's Brief, para. 50, *citing* Trial Judgement, para. 279.
[274] Bikindi's Appellant's Brief, paras. 51, 53.
[275] Bikindi's Appellant's Brief, para. 53.
[276] Bikindi's Appellant's Brief, para. 53.
[277] Bikindi's Appellant's Brief, paras. 54, 58, *citing* Bikindi's Final Trial Brief (Confidential), pp. 16-25.
[278] Bikindi's Appellant's Brief, para. 54.
[279] Bikindi's Appellant's Brief, paras. 61 (*citing* Trial Judgement, paras. 277-281), 64. The Appellant asserts that his testimony was "incredibly coherent and devoid of any inconsistencies, despite rigorous cross-examination" and notes that the Trial Chamber omitted to conclude on the credibility of his testimony. *See* Bikindi's Appellant's Brief, para. 62.
[280] Bikindi's Appellant's Brief, para. 63, *citing* Trial Judgement, para. 45.
[281] Bikindi's Appellant's Brief, para. 63, *citing* Trial Judgement, para. 45.
[282] Bikindi's Appellant's Brief, para. 56.
[283] Bikindi's Appellant's Brief, para. 56.

movement" and that the key point is that reliable Defence evidence establishes that he had extremely limited opportunities to carry out the acts of incitement.[284] He also notes the evidence of Witness AKJ that the distance between Kivumu and Kayove was 20 kilometers and that the ONATRACOM buses moved at a slow pace, and argues that the round trip from Nyundo or from Gisenyi town would have taken five to six hours, a duration which "does not sit comfortably" with the evidence of Defence witnesses and of the Appellant himself regarding his movements.[285]

111. The Prosecution responds that the Appellant's arguments do not correctly reflect the Trial Chamber's finding at paragraph 279 of the Trial Judgement.[286] It claims that the Trial Chamber's reference to the relationship of Defence witnesses to the Appellant was a mere observation, and that the Trial Chamber specifically stated that their prior relationships with the Appellant did not invalidate their testimony.[287] According to the Prosecution, the Trial Chamber's conclusion that the Defence evidence did not cast a reasonable doubt on the Prosecution's evidence was correctly based on its finding that the evidence of the Defence witnesses did not account for the Appellant's every movement during the period in question[288] and that their evidence did not raise any reasonable doubt on the Prosecution's case.[289]

112. The Prosecution further argues that the Appellant's claim regarding the duration of a round trip from Nyundo or Gisenyi to Kayove or Kivumu is speculative and was not accepted as an established fact by the Trial Chamber.[290] Similarly, his contention that the journey from Kayove to Kivumu would have involved a "highly elaborate exercise" was never made at trial and is baseless.[291] According to the Prosecution, the Appellant's claim that the time required for such a journey renders the Prosecution case impossible is pure conjecture.[292] It argues that the Appellant has not shown any error in the Trial Chamber's conclusion, based on the evidence before it.[293]

113. The Appeals Chamber notes that, in assessing the Prosecution evidence that the Appellant incited the killing of Tutsis on the Kivumu-Kayove road in June 1994, the Trial Chamber considered the testimonies of Defence Witnesses DVR, QUTI, KMS, TIER, and Apolline Uwimana.[294] These witnesses testified "that from when he returned to Rwanda in mid-late-June

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[284] Bikindi's Appellant's Brief, para. 57.
[285] Bikindi's Appellant's Brief, para. 57, fn. 82, *citing* Bikindi's Final Trial Brief (Confidential), pp. 192-196 (summary of the evidence of Witnesses QUTI, KMS, DVR, DZS, and the Appellant).
[286] Prosecution's Respondent's Brief, para. 74.
[287] Prosecution's Respondent's Brief, para. 74.
[288] Prosecution's Respondent's Brief, para. 75.
[289] Prosecution's Respondent's Brief, para. 77.
[290] Prosecution's Respondent's Brief, para. 78.
[291] Prosecution's Respondent's Brief, para. 78.
[292] Prosecution's Respondent's Brief, para. 79.
[293] Prosecution's Respondent's Brief, para. 79.
[294] Trial Judgement, para. 278.

1994 until he left in exile in mid-July, [the Appellant] stayed with members of his family at the home of an individual called Marc in Nyundo, Gisenyi."[295] The Trial Chamber also took into account the evidence of Defence Witness CQK that, until he left Rwanda, the Appellant stayed in Nyundo and "that once [he arrived there, he] no longer moved about due to the prevailing atmosphere of insecurity".[296] It further considered the Appellant's testimony "that while he did move around in June and July 1994, he did not have a great liberty of movement".[297]

114. The Trial Chamber has full discretionary power in assessing the credibility of a witness and in determining the weight to be accorded to testimony.[298] This assessment is based on a number of factors, including the witness's demeanour in court, his or her role in the events in question, the plausibility and clarity of the witness's testimony, whether there are contradictions or inconsistencies in his or her successive statements or between his or her testimony and other evidence, any prior examples of false testimony, any motivation to lie, and the witness's responses during cross-examination.[299]

115. As for the Appellant's claim that the Prosecution bears the burden of establishing that a Defence witness is giving false evidence, the Appeals Chamber recalls that a credibility determination may be based, but does not necessarily depend, on a judicial finding that a witness has given false testimony.[300] The fact that the Prosecution did not prove or even allege that Defence witnesses were giving false testimony did not prevent the Trial Chamber from exercising its discretion in assessing the weight to be attached to their evidence. The Appellant's argument that unless the Prosecution established that Defence witnesses gave false testimony the Trial Chamber was compelled to believe their evidence is misguided.

116. With respect to the Appellant's assertion that the Trial Chamber erred in considering the evidence of Defence witnesses with caution due to their "close relationship" with him, whereas the same criterion was not applicable to Prosecution evidence, the Appeals Chamber disagrees. In determining the weight to attach to the evidence of any witness, the Trial Chamber has a broad discretion to consider all relevant factors, as noted above.[301] The fact that a criterion for assessing the credibility of the Defence witnesses was not equally applicable to the Prosecution witnesses did not invalidate the application of this factor. The right to have Defence witnesses examined under the same conditions as Prosecution witnesses relates to the right to call witnesses, and the right to

[295] Trial Judgement, para. 278.
[296] Trial Judgement, para. 278.
[297] Trial Judgement, para. 278.
[298] *Nahimana et al.* Appeal Judgement, para. 194; *Ntagerura et al.* Appeal Judgement, para. 388.
[299] *Nahimana et al.* Appeal Judgement, para. 194.
[300] *Simba* Appeal Judgement, para. 31.
[301] *Nahimana et al.* Appeal Judgement, para. 194.

cross-examine witnesses called by the Prosecution under the same conditions as the Prosecution.[302] It does not encompass the factors that a Trial Chamber may consider relevant in assessing the credibility of those witnesses.

117. Regarding the Appellant's complaint that the Trial Chamber erred in law by observing that "each of these Defence witnesses had a close personal relationship with Bikindi"[303] and that "[w]hile these relationships do not invalidate their testimonies, it does suggest that they may have a motive to testify in a manner favourable to the Accused",[304] the Appeals Chamber is satisfied that the consideration of such factors in the assessment of the weight to be attached to this evidence were factors open to the Trial Chamber's consideration.

118. As for the submission that the Trial Chamber erred "by placing too much emphasis on the association of Defence witnesses with the Appellant" and in finding that they "had a motive to give evidence in a manner favourable to the Appellant, while their credibility and reliability was not undermined in any other respect", the Appeals Chamber recalls that it is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness testimony to prefer.[305] The Appeals Chamber notes that the purported relationship between the Appellant and certain Defence witnesses was simply one of several factors which the Trial Chamber took into account in determining the credibility of Defence witnesses regarding the Appellant's movements in June 1994. The Trial Chamber's conclusion that "Defence witnesses did not succeed in raising a reasonable doubt regarding Prosecution evidence [in relation to the events on the Kivumu-Kayove road]" was primarily based on the Trial Chamber's finding that "none of [these Defence witnesses] were in a position to be able to account for [the Appellant's] every move during the time he was allegedly staying in Marc's house [in Nyundo]" and that "none of these witnesses was in a position to confirm authoritatively what [the Appellant] did when he went out".[306]

119. The Trial Chamber took into consideration the fact that according to Defence evidence, the Appellant did not stay permanently at Marc's house, was able to move around, and did in fact do so. The Trial Chamber noted specifically the following elements: that Witness DVR "acknowledged that she could not account for Bikindi's activities while [she was] at work [every morning]"; that the Appellant's first wife, Apolline Uwimana, testified that he "went out alone, albeit infrequently"; that Witness QUTI testified that "she did not accompany [the Appellant] at all times when he left the house"; that Witnesses KMS, TIER, and CQK were not living at Marc's house; and that

[302] *Nahimana et al.* Appeal Judgement, para. 181.
[303] Trial Judgement, para. 279.
[304] Trial Judgement, para. 279.
[305] *Simba* Appeal Judgement, para. 211; *Kupreškić et al.* Appeal Judgement, para. 32.
[306] Trial Judgement, paras. 277, 279.

Witness KMS did not see the Appellant on a daily basis and only visited him "in the evenings when he was free".[307] The Trial Chamber also noted that the Appellant himself testified that he could move around in June and July 1994, although "he did not have a great liberty of movement".[308]

120. Finally, the Appeals Chamber observes that the Appellant has not pointed to a sufficient evidentiary basis for his contention that a round trip from Nyundo or Gisenyi, through Kivumu and Kayove, would have taken five to six hours, which in his view "does not sit comfortably" with Defence evidence on the Appellant's movements. He merely refers to Witness AKJ's testimony that the distance between Kivumu and Kayove was 20 km and that a round trip from Nyundo or Gisenyi would take five to six hours.[309] The Appeals Chamber therefore finds that the Appellant has not shown that the Trial Chamber failed to consider relevant evidence. Further, the Appellant has not demonstrated that no reasonable trier of fact could have reached the conclusion that none of the evidence raised a reasonable doubt as to the possibility of making the return journey between Kivumu and Kayove on the same day.

121. In these circumstances, the Appeals Chamber sees no error in the Trial Chamber's assessment of the evidence of these Defence witnesses with regard to the Appellant's movements in June 1994.

2. Alleged Error Related to the Appellant's Activities at a Rally in Kivumu in 1993

122. The Trial Chamber found that, based on Witnesses AKK's and AKJ's accounts, the Prosecution proved "beyond reasonable doubt that [the Appellant], along with dignitaries, attended an MRND political rally at a football field in Kivumu in 1993 [... and that the Appellant] addressed the audience advocating that they must kill the Tutsi, who[m] he referred to as serpents, and that his music was played on [a] cassette."[310]

123. The Appellant submits that the Trial Chamber erred in assessing Witnesses AKK's and AKJ's testimonies in relation to his participation in this rally.[311] He claims that the Trial Chamber erred in fact by failing to sufficiently take into account "significant and overwhelming defence evidence that [the Appellant] attended numerous political meetings in his capacity as an artist, but

[307] Trial Judgement, para. 279.
[308] Trial Judgement, para. 278.
[309] The Appellant refers only to Witness AKJ's testimony: "It was stated by [W]itness AKJ that the distance between Kivumu and Kayove was 20 km, that there was a convoy of ONATRACOM buses and that they were travelling slowly to the extent that dust was not emitted on a non-tarmac road. This implies a round trip from Nyundo where Bikindi was staying or from Gisenyi town of some 5 to 6 hours." *See* Bikindi's Appellant's Brief, para. 57, *citing* T. 21 September 2006 p. 25.
[310] Trial Judgement, para. 141.
[311] Bikindi's Notice of Appeal, pp. 5, 6.

was never observed or known to have given political speeches".[312] The Appellant submits that this evidence raised a reasonable doubt regarding the conclusion that he spoke at the rally in Kivumu in 1993.[313] He claims that the Trial Chamber failed to consider that it was unlikely that he would speak at such a meeting as the evidence of the Defence established that he did not have the same stature as the other speakers.[314] The Appellant points out that, in his testimony, he denied "having made any political speeches" during the period in 1993 in which Witnesses AKJ and AKK claimed he was at a meeting in Kivumu.[315]

124. The Appellant finally contends that the Trial Chamber should have taken into account Defence evidence to the effect that: (1) his activities, discussions, and concerns were unrelated to the killing of Tutsis; (2) he was never involved in any activities of a political nature nor has ever worn political attire; and (3) he did not interact "with *interahamwe*, politicians or anyone who one might expect him to be associated with if he was involved in organized convoys of *interahamwe*" designed to incite the population to kill Tutsis.[316]

125. The Appeals Chamber notes that in reaching the impugned finding, the Trial Chamber took into account, *inter alia*, the Appellant's "denial of ever having delivered a political speech to the population" and his testimony "that at the rallies he attended he only sang songs".[317] The Trial Chamber decided not "to accord much weight to his denial" in view of the Appellant's "self interest to distance himself from the Prosecution's accusations and in light of the Prosecution evidence".[318] The Trial Chamber further considered the evidence of ballet troupe members called by the Defence, Witnesses KMS, DUC, and JCH, that the Appellant did not give any political speeches at the political rallies they attended and concluded that because it was "not alleged that the *Irindiro* troupe was present at the meeting in Kivumu, their testimonies do not assist the Chamber in its assessment".[319] The Trial Chamber also found that "Witness JCH's testimony that he never heard [the Appellant] deliver a speech [was] not a sufficient basis of knowledge for the [Trial] Chamber to make any finding regarding [the Appellant's] activity at the meeting".[320]

126. The Appellant has not demonstrated that the Trial Chamber failed to consider any relevant factor in reaching its conclusion that he "addressed the audience advocating that they must kill the

[312] Bikindi's Appellant's Brief, para. 60.
[313] Bikindi's Appellant's Brief, para. 60.
[314] Bikindi's Appellant's Brief, para. 60.
[315] Bikindi's Appellant's Brief, para. 61.
[316] Bikindi's Appellant's Brief, para. 59. *See also* Prosecution's Respondent's Brief, para. 82.
[317] Trial Judgement, para. 140.
[318] Trial Judgement, para. 140.
[319] Trial Judgement, para. 140.
[320] Trial Judgement, para. 140.

Tutsi, who[m] he referred to as serpents".[321] As noted above, the Trial Chamber did consider the Appellant's evidence to the effect that he did not give speeches at the political rallies he attended[322] and found it insufficient to call into question the credible evidence provided by Witnesses AKK and AKJ that the Appellant spoke at a rally in Kivumu in June 1993.[323] The Appeals Chamber finds that the Appellant has not demonstrated that no reasonable trier of fact could have reached this conclusion. The suggestion that the Appellant had not previously spoken at political rallies only made it less likely that he would address the audience at the MRND Rally in 1993, but it does not render unreliable the evidence of Witnesses AKK and AKJ that he did so. The Appellant's assertion that his "activities, discussions and concerns" were unrelated to the killing of Tutsis and that he did not interact "with *Interahamwe*, politicians or anyone" does not suffice to show that the Trial Chamber erred in finding the contrary based on the evidence presented at trial, which it found to be reliable. Accordingly, the Appellant's appeal on this point is dismissed.

3. Alleged Failure to Take Into Account the Evidence of Witness Charles Zilimwabagabo

127. The Appellant claims that the Trial Chamber erred in fact in its evaluation of the Defence evidence relevant to the credibility of Witness AKJ[324] by failing to take into account the evidence of Charles Zilimwabagabo who testified that in 1994, at Umuganda Stadium, Zilimwabagabo and Wellars Banzi spoke out against the killings.[325] The Appellant contends that this testimony raised a reasonable doubt "as to the allegation that Wellars Banzi would have shared a platform with [the Appellant] in [...] Kivumu in a campaign to incite killings."[326]

128. The Appellant's submissions on this sub-ground are vague. They fall short of demonstrating any error on the part of the Trial Chamber in the assessment of the evidence of Witnesses AKK and AKJ. The Appellant does not show how the Trial Chamber was obliged to address in its reasoning the testimony of Witness Zilimwabagabo to the effect that Zilimwabagabo and Wellars Banzi spoke out against the killings in 1994. Accordingly, this argument is dismissed.

4. Conclusion

129. In conclusion, the Appeals Chamber dismisses the Appellant's Fourth Ground of Appeal.

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[321] Trial Judgement, para. 141.
[322] Trial Judgement, para. 140.
[323] Trial Judgement, para. 141.
[324] Bikindi's Appellant's Brief, para. 67.
[325] Bikindi's Appellant's Brief, para. 67.
[326] Bikindi's Appellant's Brief, para. 67. *See also* Prosecution's Respondent's Brief, paras. 85, 86; Bikindi's Reply Brief, paras. 41, 42.

E. Alleged Error Regarding the Stature and Influence of the Appellant within the MRND and *Interahamwe* (Ground of Appeal 6, in part)

130. The Trial Chamber found that "Bikindi was perceived to be an influential member of the MRND and was familiar with important MRND figures."[327] It further found that "in 1994, Bikindi was held in very high esteem by the *Interahamwe* and considered to be an important figure and a man of authority in the movement."[328] Based in part on these findings,[329] the Trial Chamber concluded that the Appellant could not have been unaware of the impact of the statements he made on the Kivumu-Kayove road.[330] The Trial Chamber also referred to these findings in the sentencing section when addressing the abuse of his stature as an aggravating circumstance.[331]

131. The Appellant challenges these findings.[332] He specifically claims that the Trial Chamber erred in fact in its evaluation of the evidence relating to his association with the MRND and the *Interahamwe*.[333] He argues that these errors led to a miscarriage of justice because they "would have influenced" the Trial Chamber's findings with respect to his conviction for direct and public incitement to commit genocide and the sentence imposed on him.[334] Specifically, he argues that this finding incorrectly influenced the Trial Chamber's conclusion that the testimony of Witnesses AKJ and AKK was reliable.[335] He seeks the reversal of the Trial Judgement's related findings and the quashing of his conviction or, if the conviction is not overturned, an adjustment of his sentence.[336]

132. The Prosecution responds that the Trial Chamber did not err in its evaluation of the evidence on this issue.[337] It argues that the Appellant's submissions should be summarily dismissed.[338]

133. The Appeals Chamber will confine the present discussion to the Appellant's submissions under his Sixth Ground of Appeal which concern his conviction. The Appeals Chamber will discuss

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[327] Trial Judgement, para. 72. *See also* Trial Judgement, paras. 425, 451. It is noted however that in this regard, the Trial Chamber also held that it was "unable to conclude that Bikindi had any official role in the party". *See* Trial Judgement, para. 72.
[328] Trial Judgement, para. 107. *See also* Trial Judgement, paras. 425, 451.
[329] The Trial Chamber also referred to his quality of "well-known and popular artist". Trial Judgement, para. 425.
[330] *See* Trial Judgement, para. 425 (wherein the Trial Chamber stated that the Appellant "[...] could not have been unaware of the impact that his words would have on the audience, the words of a well-known and popular artist, an authoritative figure for the *Interahamwe* and a man perceived as an influential member of the MRND.").
[331] Trial Judgement, para. 451.
[332] Bikindi's Notice of Appeal, p. 8; Bikindi's Appellant's Brief, paras. 90, 91, 99.
[333] Bikindi's Notice of Appeal, pp. 7, 8. *See also* Bikindi's Reply Brief, paras. 69-75.
[334] Bikindi's Notice of Appeal, pp. 7, 8; Bikindi's Appellant's Brief, paras. 90, 104, 105; Bikindi's Reply Brief, para. 69.
[335] Bikindi's Reply Brief, paras. 69-70, *citing* Trial Judgement, paras. 268, 269.
[336] Bikindi's Notice of Appeal, pp. 7, 8, *citing* Trial Judgement, paras. 72, 107; Bikindi's Appellant's Brief, paras. 104, 107
[337] Prosecution's Respondent's Brief, paras. 122, 133, 146.
[338] Prosecution's Respondent's Brief, para. 146.

the Appellant's remaining submissions made under this ground with respect to the sentence imposed on him in Section IV of this Judgement.[339]

134. The Appellant submits that if he had been an influential member of the MRND, as the Trial Chamber found, then this would render the accounts of Witnesses AKJ and AKK more likely, and if he had not, it would make their accounts less likely.[340] The Appeals Chamber notes that the Trial Chamber's findings with respect to the Appellant's relationship with the MRND and the *Interahamwe* were confined to the particular allegations pleaded by the Prosecution[341] and did not extend to the assessment of Witnesses AKJ and AKK and their evidence. The Appeals Chamber considers that it was within the Trial Chamber's discretion to take this approach, and is therefore not persuaded that no reasonable trier of fact could have reached this conclusion.

135. The Appeals Chamber now turns to the Appellant's general contention that the Trial Chamber's findings as to his perceived influence in the MRND and *Interahamwe* "would have" influenced its findings with respect to direct and public incitement.[342] The Appeals Chamber recalls that a person may be found guilty of direct and public incitement to commit genocide, pursuant to Article 2(3)(c) of the Statute, if he or she directly and publicly incited the commission of genocide (*actus reus*) and had the intent to directly and publicly incite others to commit genocide (*mens rea*).[343] Such intent in itself presupposes a genocidal intent.[344]

136. The Trial Chamber stated that its findings as to the Appellant's culpability under this count were "based on the words he proffered and the manner [in which] he disseminated his message."[345] In addressing the *actus reus* of the offence, the Trial Chamber found that in late June 1994 the Appellant travelled on the main road between Kivumu and Kayove as part of a convoy of *Interahamwe*, in a vehicle outfitted with a public address system broadcasting songs (including his own) and made inciteful statements.[346] With regard to the *mens rea*, the Trial Chamber first noted that in the absence of direct evidence, genocidal intent may be inferred from the relevant facts and circumstances of the case.[347] It then found that "that Bikindi's direct and public address on the Kivumu Kayove road leaves no doubt as to his genocidal intent at the time."[348] The Trial Chamber

[339] *See infra* Section IV.B.4 (Alleged Error in the Evaluation of the Evidence of Bikindi's Association with the MRND and *Interahamwe* (Ground of Appeal 6, in part)).
[340] Bikindi's Reply Brief, para. 69, *citing* Trial Judgement, paras. 268, 269.
[341] *See* Trial Judgement, paras. 73, 80, 88 (alleged collaboration with MRND), 93, 103, 108 (alleged collaboration with the *Interahamwe*), 402, 418, 425.
[342] *See* Bikindi's Appellant's Brief, para. 90.
[343] *See Nahimana et al.* Appeal Judgement, para. 677, *citing Akayesu* Trial Judgement, para. 560.
[344] *Nahimana et al.* Appeal Judgement, para. 677, *citing Akayesu* Trial Judgement, para. 560.
[345] *See* Trial Judgement, para. 424.
[346] *See* Trial Judgement, para. 422.
[347] *See* Trial Judgement, para. 420, *citing Seromba* Appeal Judgement, para. 176.
[348] *See* Trial Judgement, para. 425.

also found that the Appellant "could not have been unaware of the impact that his words would have on the audience, the words of a well-known and popular artist, an authoritative figure for the *Interahamwe* and a man perceived as an influential member of the MRND".[349]

137. The Appeals Chamber finds no error in the reasoning of the Trial Chamber. As the Appeals Chamber will explain further below, it was properly within the Trial Chamber's discretion, as the primary trier of fact, to make findings as to the perceived influence or authority of the Appellant within the MRND and *Interahamwe*, based on the totality of the evidence before it.[350] The Appeals Chamber further considers that it was within the Trial Chamber's discretion to take these findings into account in order to conclude that the *mens rea* of the offence of direct and public incitement to commit genocide could be inferred from the Appellant's conduct and the facts of the present case. It follows that the Appellant has not demonstrated that no reasonable trier of fact could have reached this conclusion.

138. Accordingly, the Appeals Chamber dismisses this part of the Appellant's Sixth Ground of Appeal.

[349] *See* Trial Judgement, para. 425.
[350] *See infra* para. 186.

IV. APPEALS ON SENTENCE

139. The Trial Chamber found the Appellant guilty of direct and public incitement to commit genocide (Count 4) and imposed a sentence of 15 years' imprisonment.[351] The Appellant and the Prosecution appeal this sentence.

A. Standard for Appellate Review on Sentencing

140. Article 24 of the Statute allows the Appeals Chamber to "affirm, reverse or revise" a sentence imposed by a Trial Chamber. The Appeals Chamber recalls that the factors that a Trial Chamber is obliged to take into account in sentencing are set out in Article 23 of the Statute and in Rule 101 of the Rules, but are by no means exhaustive.[352] They include: (1) the gravity of the offence; (2) the individual circumstances of the convicted person, including any aggravating and mitigating circumstances; (3) the general practice regarding prison sentences in the courts of Rwanda; and (4) the extent to which any sentence imposed on the defendant by a court of any State for the same act has already been served.[353]

141. Due to their obligation to individualize the penalties to fit the circumstances of an accused and the gravity of the crime, Trial Chambers are vested with a broad discretion in determining the appropriate sentence.[354] As a general rule, the Appeals Chamber will not substitute its own sentence for that imposed by a Trial Chamber unless it has been shown that the latter committed a discernible error in exercising its discretion, or failed to follow the applicable law.[355] It is for the appellant to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.[356]

[351] Trial Judgement, paras. 426, 441, 459-461.
[352] *Nahimana et al.* Appeal Judgement, para. 1038.
[353] *See Nahimana et al.* Appeal Judgement, para. 1038.
[354] *Karera* Appeal Judgement, para. 385. *See also Milošević* Appeal Judgement, para. 297.
[355] *Karera* Appeal Judgement, para. 385. *See also Milošević* Appeal Judgement, para. 297.
[356] *Milošević* Appeal Judgement, para. 297.

B. The Appeal of Bikindi

142. The Appellant contends that the Trial Chamber erred in law and in fact in sentencing him to 15 years' imprisonment and raises a number of arguments in support of this claim.[357] He requests that his sentence be revised and reduced.[358] The Prosecution opposes the Appellant's arguments.[359]

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

1. Alleged Error in Imposing a Sentence That is Disproportionate to the Gravity of the Offence (Ground of Appeal B/1)

144. The Appellant submits that the Trial Chamber erred by imposing a sentence of 15 years of imprisonment that is disproportionate to the gravity of the offence,[360] is manifestly excessive, and is unduly harsh.[361] In so doing, he submits that the Trial Chamber erred in law by taking into account factors which it ought not to have, namely, that the offence of direct and public incitement is an offence of similar gravity to the crime of genocide and that, as such, it is of the most serious gravity.[362] The Appellant also submits that the Trial Chamber erred in law by failing to take into account the need to reflect a gradation in the gravity of offences.[363]

145. The Appellant contends that the crime of direct and public incitement to commit genocide, whilst a "serious offence", cannot be considered as a crime of similar gravity to genocide, since, unlike the crime of genocide, it is an inchoate offence.[364] The Appeals Chamber disagrees. There is no hierarchy of crimes within the jurisdiction of the Tribunal.[365] In determining a sentence, the deciding factor is the gravity of the offence committed, bearing in mind the particular circumstances surrounding the case and the form and degree of the accused's participation in the crime.[366]

146. In support of his contention, the Appellant refers to a paragraph of the *Nahimana et al.* Appeal Judgement, which sets out: (1) the distinction between instigation as a mode of

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[357] *See* Bikindi's Notice of Appeal, pp. 9-13; Bikindi's Appellant's Brief, paras. 108-147; Bikindi's Appellant's Reply, paras. 76-79. The Appeals Chamber will also consider the Appellant's submission, raised under Ground 6 of his appeal against conviction, to the effect that the Trial Chamber's evaluation of the evidence relating to his association with the MRND and *Interahamwe* "would have" influenced its findings on sentencing. *See* Bikindi's Notice of Appeal, pp. 7, 8. Bikindi's Appellant's Brief, paras. 90, 104, 105; Bikindi's Reply Brief, para. 69; AT. 30 September 2009 pp. 25, 68, 69.
[358] Bikindi's Appellant's Brief, paras. 115, 145-147.
[359] Prosecution's Respondent's Brief, paras. 147-165.
[360] Bikindi's Notice of Appeal, para. 26; Bikindi's Appellant's Brief, paras. 108, 146; AT. 30 September 2009 p. 73.
[361] Bikindi's Appellant's Brief, paras. 108, 115, 146.
[362] Bikindi's Notice of Appeal, para. 27; Bikindi's Appellant's Brief, paras. 108-110.
[363] Bikindi's Notice of Appeal, para. 27.
[364] Bikindi's Appellant's Brief, para. 109, *citing Nahimana et al.* Appeal Judgement, para. 678. *See also* AT. 30 September 2009 pp. 72, 73.
[365] *Mrkšić and Šljivančanin* Appeal Judgement, para. 375, *quoting D. Nikolić* Sentencing Appeal Judgement, para. 46; *Stakić* Appeal Judgement, para. 375. *See also Nahimana et al.* Appeal Judgement, para. 1060.
[366] *Nahimana et al.* Appeal Judgement, paras. 1038, 1060.

responsibility as opposed to direct and public incitement to commit genocide, which is itself a crime under Article 2(3)(c) of the Statute;[367] and (2) the difference between the offences of genocide and direct and public incitement to commit genocide, namely that the crime of direct and public incitement to commit genocide is an inchoate offence, punishable even if no act of genocide has resulted therefrom.[368] Contrary to the Appellant's submission, the analysis in the *Nahimana et al.* Appeal Judgement in fact supports the proposition that the offence of direct and public incitement to commit genocide is, in and of itself, a serious offence warranting serious punishment, notwithstanding that no physical act of genocide may have been committed. It does not indicate any hierarchy between the two offences. This argument is accordingly dismissed.

147. The Appellant submits that the Trial Chamber committed a further error by taking into account the possible sentences for the crime of genocide under Rwandan law.[369] He argues that as the offence of direct and public incitement to commit genocide does not exist under Rwandan law, it is impossible to precisely assess how it would be treated.[370] The Appellant refers to two Rwandan cases which, in his view, illustrate that the offence of incitement, which does exist under Rwandan law, is closer to direct and public incitement than to genocide and that it is sometimes treated more leniently.[371]

148. The Appeals Chamber reiterates that whilst a Trial Chamber is obliged to take into account the general sentencing practice in Rwanda, it is not obliged to follow it.[372] The Appeals Chamber notes that although it would appear that Rwandan law does not make direct and public incitement to commit genocide a separate offence, it nevertheless criminalizes genocide[373] and provides that the act of, *inter alia,* "incitement, by way of speech, image or writing, to commits [sic] such a crime, even where not followed by an execution" shall be punishable by penalties provided for under that

[367] *Nahimana et al.* Appeal Judgement, para. 678, *citing* the Statute, Articles 6(1) with regard to instigation, and Article 2(3)(c) with respect to direct and public incitement to commit genocide, respectively.
[368] *Nahimana et al.* Appeal Judgement, para. 678.
[369] Bikindi's Appellant's Brief, para. 111, *citing* Trial Judgement, para. 447.
[370] Bikindi's Appellant's Brief, para. 111.
[371] Bikindi's Appellant's Brief, para. 111, fn. 140 *referring to* Bikindi's Respondent's Brief, para. 54 wherein the Appellant cites the following cases: *Prosecutor v. Karamira*, RP 006/KIG/CS, Affaire Procureur c./ Karamira, pp. 2, 11 ("*Karamira* Judgement"); *Prosecutor v. Gataza,* RPAA 0010/GEN/06/CS, Affaire Procureur c./ Gataza Noel [sic] ("*Gataza* Judgement").
[372] *See supra* para. 141.
[373] *See, e.g.,* Organic Law No. 33*bis*/2003 Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes, of 6 September 2003 ("Organic Law No. 33*bis*/2003"), Article 2.
[374] *See* Organic Law No. 33*bis*/2003, Article 17(3). The Appeals Chamber observes that whilst it would have been preferable for the Trial Chamber to also refer to Organic Law No. 33*bis*/2003 in its discussion on the Rwandan law relating to the offence of genocide, its failure to do so does not impact the validity of the Trial Chamber's overall assessment of Rwanda's sentencing practice.

149. The Appeals Chamber has considered the two Rwandan judgements proffered by the Appellant[375] and is not persuaded that these cases are sufficient to demonstrate that direct and public incitement to commit genocide is treated more leniently by Rwandan courts. The Appeals Chamber notes that Karamira was ultimately convicted for genocide based on various acts, including the giving of a "Hutu Power" speech to which the Appellant refers, and that he was sentenced to death.[376] With respect to Gataza, the Appeals Chamber notes that the Supreme Court of Rwanda confirmed Gataza's sentence of 30 years of imprisonment for murder, attempted murder and "*association de malfaiteurs*" pursuant to Article 51 of Rwanda's Organic Law No. 16/2004 of 19 June 2004.[377] The *Gataza* Judgement is therefore of little assistance in detemining what sentence would apply in Rwanda with respect to the crime for which the Appellant was convicted.

150. The Appellant also submits that the Trial Chamber erred by failing to take into account factors which it ought to have considered for purposes of sentencing, namely, that the Trial Chamber was concerned with an inchoate offence where it had not been demonstrated on the evidence that the commission of this offence resulted in death or physical harm.[378] He submits that this failure is evidenced by the fact that the Trial Chamber recounted the testimony of Witness AKK concerning the deaths of a number of individuals, without recognizing that it was not proven that these deaths resulted from the conduct for which the Appellant was convicted.[379]

151. The Appeals Chamber is not persuaded by these submissions. There is no indication in the Trial Chamber's reasoning on sentencing that it took into account the testimony of Witness AKK with respect to deaths which allegedly occurred as a result of the Appellant's conduct. Indeed, the paragraphs of the Trial Judgement cited by the Appellant were contained in the factual findings section (Chapter II) and not in the section on sentencing.[380] Furthermore, the Appeals Chamber does not agree that the Trial Chamber ought to have considered the alleged absence of deaths in determining the gravity of the offence for the purposes of sentencing. The Appeals Chamber reiterates that the Trial Chamber is only obliged to have regard to the gravity of the crimes for which an accused has been convicted, and the form or degree of responsibility for these crimes. As

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[375] The Appeals Chamber recalls its earlier finding that it would consider the merits of the Appellant's submissions with respect to these judgements when determining the merits of the Appellant's case. *See* Rule 115 Decision, para. 19.
[376] *See Karamira* Judgement, p. 50/A.
[377] *See Gataza* Judgement, para. 42. The Supreme Court of Rwanda confirmed the judgement of the High Military Court delivered on 5 October 2005 with respect to Gataza's appeal against the first instance judgement of the Military Tribunal dated 24 May 2002. *See Gataza* Judgement, paras. 2, 5, 38.
[378] Bikindi's Appellant's Brief, para. 112, *citing Semanza* Appeal Judgement, para. 374 and *Serushago* Appeal Judgement, para. 23.
[379] *See* Bikindi's Appellant's Brief, para. 112, *citing* Trial Judgement, paras. 268, 272, 273, 325. The Appellant's submissions at paragraphs 113 and 114 of his Appellant's Brief are addressed under the second sub-ground of the Appellant's appeal on sentence, to which they relate. *See infra* Section IV.B.2 (Alleged Failure to Have Regard to Global Trends in Sentencing (Ground B/2)).
[380] *See* Bikindi's Appellant's Brief, para. 112, *citing* Trial Judgement, paras. 268, 272, 273, 325.

noted above, the Trial Chamber properly referred to the gravity of the crime of direct and public incitement to commit genocide and the Appellant's responsibility as a principle perpetrator of this crime. The Appeals Chamber accordingly finds that the Appellant has not demonstrated any discernible error in the exercise of the Trial Chamber's sentencing discretion on this issue.

152. The Appellant has failed to demonstrate any discernible error in the Trial Chamber's assessment of the gravity of the offence. This sub-ground of appeal is accordingly dismissed.

2. Alleged Failure to Have Regard to Global Trends in Sentencing (Ground B/2)

153. The Appellant submits that the Trial Chamber erred in failing to consider comparative national court practice in determining the effect of the gravity of the offence on sentencing.[381] He argues that in the absence of established Tribunal sentencing practice, that of other international tribunals or national courts should be considered.[382] He contends that there is an emerging trend within various national jurisdictions to treat the crime of direct and public incitement to commit genocide as an offence of significantly less gravity than the crime of genocide, with sentences ranging from five to ten years of imprisonment.[383] He posits that he was prejudiced by the Trial Chamber's failure to take this national practice into account because, had it done so, he might have benefited from less severe treatment.[384]

154. The Appeals Chamber considers that, pursuant to Article 23 of the Statute and Rule 101 of the Rules, the Trial Chamber was not obliged to take into account the sentencing practice of national jurisdictions other than Rwanda. Accordingly, the Appeals Chamber is not satisfied that the Appellant has demonstrated that the Trial Chamber committed a discernible error in this respect. It follows that the Appellant's submissions as to prejudice are also without foundation.

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

3. Alleged Errors in Assessing the Appellant's Individual Circumstances and Mitigating Factors (Ground B/3)

156. The Appellant submits that the Trial Chamber erred in its analysis of his individual circumstances and the mitigating factors applicable under Article 23(2) of the Statute and Rule

[381] Bikindi's Notice of Appeal, para. 28.
[382] Bikindi's Appellant's Brief, paras. 117, 120. *See also* paras. 113, 114. The Appeals Chamber notes that the Appellant further submits "in the alternative" that national sentencing practice ought to have been taken into account "in the Trial Chamber's evaluation of the gravity of the offence" as discussed under the Appellant's first ground of Appeal. *See* Bikindi's Appellant's Brief, para. 118, *referring to* Ground B/1, and para. 147 *supra*. *See also* Bikindi's Appellant's Reply Brief, paras. 78, 79.
[383] Bikindi's Appellant's Brief, para. 119, fn. 143 (*referring to* the domestic criminal law of several countries, annexed to the Appellant's Brief).

101(B) of the Rules.[385] In particular, he contends that the Trial Chamber erred by not considering various facts on the basis that they did not amount to mitigating factors while simultaneously conflating the issues of individual circumstances and mitigating factors.[386] He submits that these issues are separately provided for under Article 23(2) of the Statute and Rule 101(B) of the Rules.[387]

157. According to the Appellant, the Trial Chamber was only prepared to consider the favourable aspects of his case, which were not part of the general description of facts relating to his acts of incitement, if it found them to be mitigating factors.[388] Consequently, the Trial Chamber failed to take into account the fact that no deaths resulted from his statements.[389] In addition, he submits that the Trial Chamber erred in law and in fact when it found that there were no mitigating factors without explaining why the mitigating factors he proposed were rejected, and that he was prejudiced as a result.[390]

158. The Appeals Chamber reiterates that in assessing the individual circumstances of the accused, the Trial Chamber shall consider aggravating and mitigating circumstances.[391] The Appeals Chamber recalls that neither the Statute nor the Rules exhaustively define the factors which may be considered in mitigation. Rather, what constitutes a mitigating circumstance is a matter for the Trial Chamber to determine in the exercise of its discretion.[392] The Trial Chamber is endowed with a considerable degree of discretion in making this determination,[393] as well as in deciding how much weight, if any, to be accorded to the mitigating circumstances identified.[394]

159. In the present case, the Trial Chamber correctly recognised that it was to take into account the individual circumstances of the Appellant,[395] and noted that it had "a wide discretion in determining what constitutes mitigating [...] circumstances and the weight to be accorded

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[384] Bikindi's Notice of Appeal, para. 28; Bikindi's Appellant's Brief, para. 120.
[385] Bikindi's Notice of Appeal, para. 29.
[386] Bikindi's Notice of Appeal, para. 29; Bikindi's Appellant's Brief, para. 122, *citing* Trial Judgement, paras. 449, 453-458.
[387] Bikindi's Appellant's Brief, para. 122. The Appeals Chamber notes that the Appellant's submission with respect to the wording of Article 23(2) repeats those made under paragraph 117 (Ground B/2) of his Appellant's Brief. *See also supra* para. 153.
[388] Bikindi's Appellant's Brief, para. 123.
[389] Bikindi's Notice of Appeal, para. 33 (g), (h) and (m); Bikindi's Appellant's Brief, para. 124.
[390] Bikindi's Notice of Appeal, paras. 29-32; Bikindi's Appellant's Brief, paras. 125-127, *citing* Trial Judgement, paras. 453-458.
[391] *See supra* para. 140.
[392] *See Milošević* Appeal Judgement, para. 316, *citing Simba* Appeal Judgement, para. 328; *Musema* Appeal Judgement, para. 395.
[393] *Milošević* Appeal Judgement, para. 316, *citing Hadžihasanović and Kubura* Appeal Judgement, para. 325; *Simić* Appeal Judgement, para. 245; *Čelebići* Appeal Judgement, para. 780.
[394] *Milošević* Appeal Judgement, para. 316, *citing Simić* Appeal Judgement, para. 258; *Kvočka et al.* Appeal Judgement, para. 675; *Simba* Appeal Judgement, para. 328.
[395] *See* Trial Judgement, para. 443.

thereto."[396] The Trial Chamber then engaged in a more detailed assessment of the particular mitigating circumstances proposed at trial by the Appellant.[397] The Appellant's arguments on this point are accordingly dismissed.

160. The Appeals Chamber further considers that the Appellant's claim that the Trial Chamber erred by failing to consider the absence of deaths resulting from his statements as a mitigating factor is without merit.[398] The Appeals Chamber considers that, in essence, the Appellant is advancing the proposition that the absence of a possible aggravating factor must in and of itself constitute a mitigating factor, which, in turn, amounts to an "individual circumstance" of the Appellant. The Appeals Chamber is not convinced by this submission, nor does the Appellant cite any authorities to support this argument. This submission is dismissed.

161. The Appellant further submits that the Trial Chamber erred in finding that there were no mitigating circumstances that should be taken into account in the determination of his sentence and in failing to take into account (or give any credence as relevant to mitigation or the individual circumstances of the Appellant) certain factors, namely: (1) the assistance provided by the Appellant to Tutsis before, during, and after the genocide; (2) the Appellant's composition of songs asking for peace; and (3) the Appellant's contribution to Rwandan society.[399]

162. With respect to the first point, the Appellant essentially argues that the Trial Chamber's characterization of his assistance to Tutsis as "selective" is not a sufficient basis for denying that his assistance amounts to a mitigating factor.[400] He submits that he has suffered prejudice as a result of this error, since "there was room [for the Trial Chamber] to give effect to such credit,"[401] particularly in light of the "inchoate and isolated" nature of the offence for which he was convicted.[402] He argues that this finding is, in fact, inconsistent with the findings of the Appeals Chamber in the *Kajelijeli* case, which held that no reasonable trier of fact could have concluded that Kajelijeli did not deserve credit for the refuge he provided to four Tutsis during the genocide.[403]

163. The Appeals Chamber notes that the Trial Chamber expressly acknowledged the assistance provided by the Appellant to certain Tutsis during the genocide,[404] but considered that it was not decisive since the Appellant "only provided selective assistance to Tutsi during the genocide,

[396] *See* Trial Judgement, para. 449.
[397] *See* Trial Judgement, paras. 453-458.
[398] Bikindi's Appellant's Brief, para. 124.
[399] Bikindi's Notice of Appeal, para. 33; Bikindi's Appellant's Brief, paras. 129-145. The Appeals Chamber notes that in his Appellant's Brief, the Appellant does not pursue submissions 33(e), (f) and (i) to (l) of his Notice of Appeal.
[400] Bikindi's Appellant's Brief, para. 129.
[401] Bikindi's Appellant's Brief, para. 132.
[402] Bikindi's Appellant's Brief, para. 132.
[403] Bikindi's Appellant's Brief, para. 131, *citing Kajelijeli* Appeal Judgement, para. 310.

namely Tutsi in his circle, such as the members of his troupe" and that while he "took care of a young Tutsi orphan during his exile in Zaire, by the individual's own admission, Bikindi was not aware of her ethnicity."[405] The Appeals Chamber finds no discernible error in the Trial Chamber's approach.

164. The Appellant further argues that the Trial Chamber did not consider the full extent or significance of the assistance he provided to Tutsis after the genocide but, rather, referred only to the assistance he provided to Tutsis before and during the genocide.[406] This was despite the substantial and uncontested evidence that he sheltered and assisted several Tutsis in a camp in Mugunga after the genocide,[407] and that several of these survivors now work in various ballets in Kigali.[408]

165. The Appeals Chamber agrees that it is evident from the Trial Chamber's reasoning that it did not expressly refer to these instances of assistance. However, whilst a Trial Chamber is required to take into account any mitigating circumstances in determining a sentence, it is the accused who bears the burden of establishing mitigating factors by a preponderance of the evidence.[409] It was the Appellant's prerogative to address sentencing submissions during closing arguments and to identify any mitigating circumstances in the trial record.[410] Having failed to specifically refer, in his Final Trial Brief or Closing Arguments, to the Defence evidence adduced during trial that he assisted several Tutsis in a camp in Mugunga after the genocide as a mitigating circumstance, the Appellant cannot raise it for the first time on appeal.[411] The Trial Chamber was not under an obligation to seek out information that Counsel did not put before it at the appropriate time.[412] The Appellant's arguments in this respect are dismissed.

166. The Appeals Chamber turns to the Appellant's second submission that the Trial Chamber erred in finding that his "composition of songs asking for peace" was not a mitigating factor because he "also composed songs with the opposite intention and effect."[413] He avers that, having accepted that it was possible for two experts to hold different interpretations of the text of these

[404] Trial Judgement, para. 457.
[405] Trial Judgement, para. 457.
[406] Bikindi's Appellant's Brief, para. 133, *citing* Trial Judgement, para. 457.
[407] Bikindi's Appellant's Brief, para. 133. *See* Bikindi's Appellant's Brief, fn. 157, *citing* Witness KMS, T. 1 October 2007 pp. 30, 31; Witness DZS, T. 25 September 2007 p. 20; Witness HZTX, T. 25 September 2007 p. 80; Witness QUTI, T. 27 September 2007 p. 27, Witness JCH, T. 9 October 2007 pp. 36, 37; Witness CQR, T. 9 October 2007 pp. 62, 64-66.
[408] Bikindi's Appellant's Brief, para. 133, *citing* Witness KMS, T. 1 October 2007 p. 32.
[409] *Muhimana* Appeal Judgement, para. 231.
[410] *Karera* Appeal Judgement, para. 388, *referring to* Rule 86(C) of the Rules.
[411] *Nahimana et al.* Appeal Judgement, para. 1049, *citing Muhimana* Appeal Judgement, para. 231; *Bralo* Appeal Judgement, para. 29; *Kamuhanda* Appeal Judgement, para. 354; *Deronjić* Appeal Judgement, para. 150; *Babić* Appeal Judgement, para. 62.
[412] *Karera* Appeal Judgement, para. 388; *Kupreškić et al.* Appeal Judgement, para. 414.

songs,[414] it was unreasonable for the Trial Chamber to then find that the only reasonable inference was that he composed these songs with the specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda.[415]

167. The Appeals Chamber notes that while the Trial Chamber made a general statement that "two qualified experts could analyse the same text and arrive at different interpretations", the Trial Chamber concluded that, after having considered all of the evidence, "in 1994 in Rwanda, Bikindi's three songs were indisputably used to fan the flames of ethnic hatred, resentment and fear of the Tutsi" and "had an amplifying effect on the genocide".[416] The Appeals Chamber considers that it was properly within the Trial Chamber's discretion to arrive at this finding. Likewise, it was reasonably within the Trial Chamber's discretion to conclude that it did "not consider that Bikindi's composition of songs asking for peace are mitigating factors given that he also composed songs with the opposite intention and effect."[417] The Appellant has therefore failed to demonstrate that the Trial Chamber committed a discernible error in this regard.

168. The Appellant further submits that it was not reasonable for the Trial Chamber to make findings based on evidence as to his stature within Rwanda and his abuse of that stature, without also taking into account his prior contributions to Rwandan society in mitigation.[418] He contends that it was open to the Trial Chamber to do so since he was given a fixed term of imprisonment.[419] The Appeals Chamber considers that, contrary to the Appellant's contention, the Trial Chamber did address the Appellant's submissions as to his prior contributions to Rwandan society, but determined that "Bikindi's talent and his contribution to Rwandan culture do not mitigate his guilt."[420] As noted above,[421] the Trial Chamber enjoys a considerable degree of discretion in determining what weight, if any, will be accorded to the mitigating circumstances identified. The Appeals Chamber accordingly considers that it was properly within the discretion of the Trial Chamber, having considered this factor, to accord no weight to it.

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[413] Bikindi's Notice of Appeal, para. 33(a); Bikindi's Appellant's Brief, para. 138, *citing* Trial Judgement, para. 456.
[414] Bikindi's Appellant's Brief, para. 140, *citing* Trial Judgement, para. 249.
[415] Bikindi's Appellant's Brief, paras. 139, 140 (*citing* Trial Judgement, para. 254), 141. *See also* AT. 30 September 2009 p. 71.
[416] Trial Judgement, para. 264.
[417] Trial Judgement, para. 456.
[418] Bikindi's Notice of Appeal, para. 33(c)-(d); Bikindi's Appellant's Brief, paras. 143 (*citing* T. 31 October 2007 pp. 10, 11; T. 1 November 2007 pp. 7, 33), 144.
[419] Bikindi's Appellant's Brief, para. 144.
[420] *See* Trial Judgement, paras. 455 ("[e]xercising its discretion, the [Trial] Chamber considers that Bikindi's talent and his contribution to Rwandan culture do not mitigate his guilt. To the contrary, they evidence Bikindi's stature in Rwanda in 1994, which he abused by adding his voice to the anti-Tutsi campaign."), 456 ("[...] Bikindi's proposal to create a junior ballet to help street children in Rwanda is insufficient in the [Trial] Chamber's view to demonstrate Bikindi's good character and will not be accorded any weight in relation to sentencing.").
[421] *See supra* para. 158.

169. The Appeals Chamber therefore finds that the Appellant has failed to demonstrate that the Trial Chamber committed a discernible error in its assessment of the Appellant's individual mitigating circumstances, and having done so, its decision to accord no weight to these circumstances. This sub-ground of appeal is dismissed.

4. Alleged Error in the Evaluation of the Evidence of Bikindi's Association with the MRND and *Interahamwe* (Ground of Appeal 6, in part)

170. The Trial Chamber found that the Appellant was perceived to be an influential member of the MRND and was familiar with important MRND figures[422] and that in 1994 he was "held in very high esteem by the *Interahamwe* and considered to be an important figure and a man of authority in the movement."[423] The Trial Chamber referred to these findings in the sentencing section when addressing the abuse of his stature as an aggravating circumstance: "[t]he Chamber notes Bikindi's stature in Rwandan society as a well-known and popular artist perceived to be an influential member of the MRND and an important figure in the *Interahamwe* as discussed in Chapter II of the Judgement."[424] The Trial Chamber also considered that "the influence he derived from his status made it likely that others would follow his exhortations."[425] It concluded that the Appellant had "abused his stature by using his influence to incite genocide" and found this to be an aggravating

171. The Appellant claims that the Trial Chamber erred in fact in its evaluation of the evidence relating to his association with the MRND and *Interahamwe*.[427] He argues that these errors led to a miscarriage of justice because they "would have influenced" the Trial Chamber's findings with respect to sentencing.[428] He submits that in relying on evidence that he was perceived to be an influential member of the MRND and an important figure within the *Interahamwe*, as part of the individual circumstances relevant to the determination of his sentence, the Trial Chamber in effect "upgraded" the seriousness of his abuse of stature from "someone relying on his musical fame to someone who relied on political influence, arguably a higher grade of stature in the context of the question of abuse of that stature."[429]

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[422] Trial Judgement, para. 72. *See also* Trial Judgement, paras. 425, 451. It is noted however that in this regard, the Trial Chamber also held that it was "unable to conclude that Bikindi had any official role in the party". *See* Trial Judgement, para. 72.
[423] Trial Judgement, para. 107. *See also* Trial Judgement, paras. 425, 451.
[424] Trial Judgement, para. 451.
[425] Trial Judgement, para. 451.
[426] Trial Judgement, para. 451.
[427] Bikindi's Notice of Appeal, pp. 7, 8. *See also* Bikindi's Reply Brief, paras. 69-75.
[428] Bikindi's Notice of Appeal, pp. 7, 8. Bikindi's Appellant's Brief, paras. 90, 104, 105; Bikindi's Reply Brief, para. 69.
[429] Bikindi's Appellant's Brief, para. 103.

(a) Alleged Error in Relying on Exhibit P30

172. In reaching the conclusion that the Appellant "was held in very high esteem by the *Interahamwe*" the Trial Chamber relied on the transcript of the video of the MRND rally at Nyamirambo Stadium, Kigali, in 1993, as evidence that: (1) the Appellant was present at this rally and was accompanied by important MRND figures;[430] and (2) that after President Habyarimana spoke to the crowd, the Appellant made a short speech punctuated with a song praising the MRND and the *Interahamwe*:[431] "*We*, the *Interahamwe*, have won! *We* have won!"[432]

173. The Appellant challenges the Trial Chamber's reliance on the two items contained in Exhibit P30, namely, the video which allegedly depicts the MRND rally and the transcript of the video.[433] According to the Appellant, Exhibit P30 does not support the Trial Chamber's specific finding that he spoke at the rally.[434] He argues that there is nothing in the transcript which demonstrates the delivery of a speech, as opposed to the singing of a song.[435] He further submits that this exhibit does not support the Trial Chamber's general finding that he was perceived to be an influential member of the MRND.[436] He submits that the Trial Chamber's reliance on this exhibit amounts to a serious factual error and raises the question of whether the Trial Chamber properly reviewed the evidence.[437]

174. The Appeals Chamber notes that the Prosecution presented the transcript of the video to Witness Musonda, a Prosecution investigator, during the examination-in-chief of this witness. Witness Musonda read out the portion of the video transcript in which the Appellant allegedly addressed the crowd and praised the *Interahamwe* and MRND, and the Appellant did not object.[438]

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[430] *See* Trial Judgement, paras. 64, 70. The Appeals Chamber notes that in fn. 112 of the Trial Judgement, the Trial Chamber refers to "Exhibit P30(E), Transcript (undated) [...] admitted with Exhibit P30, a video of the same meeting in Nyamirambo stadium, dated 7 November 1993 in script at the beginning of the video". The Appeals Chamber notes that this citation is somewhat confusing. It appears from the trial record that Exhibit P30 consists of both: (1) the video of the rally, in which a "script" or text is overlayed on the video footage; and (2) the (undated) transcript to the video of the rally (Kinyarwanda, French and English versions) which was prepared by the Prosecution. The transcript to the video will be referred to as Exhibit P30 (K), (F), and (E).

[431] *See* Trial Judgement, para. 64, *citing* Exhibit P30(E) pp. 1, 2. *See also* Trial Judgement, paras. 105, 157, 158.

[432] *See* Trial Judgement, paras. 64, 105. *See also* Trial Judgement, paras. 157, 158. The Appeals Chamber notes that the Trial Chamber also relied on Exhibit P30 to conclude that immediately after Bikindi's "animation", Joseph Nzirorera spoke, followed by Bonaventure Habimana, Édouard Karemera, and Robert Kajuga. *See* Trial Judgement, para. 157, *citing* Exhibit P30(E), pp. 2, 5, 7, 11. The Trial Chamber also relied on Exhibit P30 to find that following the Appellant's speech, Robert Kajuga addressed the crowd, which shows, according to the Trial Chamber, that the Appellant knew Kajuga, but not that he was closely associated with him. *See* Trial Judgement, para. 91, *citing* Exhibit P30(E), pp. 1, 2.

[433] Bikindi's Appellant's Brief, para. 96, *citing* Exhibit P30; AT. 30 September 2009 pp. 24-29.

[434] Bikindi's Appellant's Brief, para. 96.

[435] Bikindi's Appellant's Brief, para. 96, *citing* Trial Judgement, para. 90, T. 3 October 2006 pp. 24-39 (French version); Bikindi's Reply Brief, para. 72; AT. 30 September 2009 p. 25.

[436] Bikindi's Notice of Appeal, p. 7; Bikindi's Appellant's Brief, paras. 96-98; Bikindi's Appellant's Reply, paras. 72, 73.

[437] Bikindi's Appellant's Brief, para. 96.

[438] Witness Musonda, T. 25 September 2006 pp. 2-4.

In the trial session of 3 October 2006, the Trial Chamber viewed the video, including the portion of the video that the Prosecution claimed depicted the Appellant.[439]

175. The Appeals Chamber finds the Trial Chamber's reliance on Exhibit P30 to be troubling.[440] The Trial Chamber failed to explain in its reasoning whether it was satisfied that the transcript of the video—which is undated and which was prepared by the Prosecutor's Office[441]—accurately reflected the contents of the video recording, such that it could be relied on as evidence of the content of the video itself, for the purposes of the Trial Chamber's findings. As the Appeals Chamber will explain below,[442] this omission was significant, in view of the fact that the Trial Chamber relied upon the transcript of this video as evidence of the content of the video itself.

176. The Appellant submits that his Lead Counsel pointed out at trial that there was a question mark after his name in the *Kinyarwanda* version of the transcript to the video.[443] The Appeals Chamber observes that this question mark is absent from the English and French versions of the transcript.[444] The Appeals Chamber notes that the Appellant raised this discrepancy when the Prosecution presented the *Kinyarwanda* version of the transcript of the video to Witness BGH during the examination-in-chief of this witness.[445] However, there is no indication on the trial record that the Prosecution subsequently explained the meaning of this question mark, nor did the Trial Chamber in its reasoning indicate whether it was satisfied as to the meaning or significance of this question mark. The Appeals Chamber finds this discrepancy to be significant, considering the poor quality of the video footage itself, which, as explained below, does not allow for any visual identification of the Appellant.

177. The Appellant further submits that at no point in the video was he visible and that as a result, the Trial Chamber erred in relying on it as evidence that he spoke on this occasion.[446] The Appeals Chamber notes that it is not apparent from the trial record that any witness identified the Appellant on the video. Witness Musonda's evidence was limited to explaining the source of the video but not its content.[447] It is not clear from the reasoning of the Trial Chamber, nor was any

[439] *See* T. 3 October 2006 p. 34.
[440] The Appeals Chamber notes that the Trial Chamber appears to erroneously consider that President Habyarimana spoke at the rally just before the Appellant allegedly addressed the crowd, whereas in fact it is Jean Habyarimana, leader of the MRND in Kigali, who appears in this footage. *See* Trial Judgement, paras. 64, 157.
[441] *See* T. 18 September 2006 p. 24 (admission of undated "Transcript of 7 November 1993 MRND Meeting in Nyamirambo" as "Exhibit P30(E)" which was admitted together with Exhibit P30, a video of the same meeting in Nyamirambo Stadium, dated 7 November 1993 (*see* Trial Judgement, fn. 112 stating that that date appears in the script at the beginning of the video)). *See also* T. 25 September 2006 pp. 2, 6; T. 3 October 2006 p. 21.
[442] *See infra* para. 178.
[443] Bikindi's Reply Brief, para. 73, *citing* T. 3 October 2006 p. 23; AT. 30 September 2009 pp. 26-29.
[444] *See* Exhibit P30 Transcript of video: (K) p. 2; (E), p. 1; (F), p. 2.
[445] *See* T. 3 October 2006 p. 23.
[446] Bikindi's Reply Brief, para. 73; AT. 30 September 2009 pp. 24-26, 28, 29.
[447] *See* T. 25 September 2006 pp. 2, 6.

information put before the Appeals Chamber, that any other witness testified as to the content of the video footage or, more specifically, identified the Appellant on it. It is also apparent from the transcript of the trial proceedings on 3 October 2006 that the Prosecution acknowledged that the image and sound quality of the video were very poor, and that the part in which the Appellant purportedly appeared was in fact "unintelligible."[448] Nonetheless, the Trial Chamber viewed the video during the proceedings later that day. In showing the video, the Prosecution noted the poor quality of the footage; and, when playing the relevant section in court, the Prosecution described the scene being depicted by stating: "[u]p to the mark, 30 minutes: that chaos was the area in which Bikindi and his troupe were said to be on the video."[449]

178. It is evident that the Trial Chamber was aware of the poor quality of the video of this rally, particularly the footage in which the Appellant was alleged to have appeared.[450] Nonetheless, the Trial Chamber proceeded to rely on the video, as well as the transcript of the video prepared by the Prosecution, to find that the Appellant was present at the rally and addressed the crowd. The Trial Chamber did so without explaining why it was satisfied that the Appellant was in fact identified in the video. The Appeals Chamber accordingly finds that the Trial Chamber abused its discretion by relying on Exhibit P30 to support its finding that the Appellant spoke at the MRND rally in Nyamirambo Stadium on 7 November 1993, and in relying on this exhibit to find that the Appellant was perceived to be an influential member of the MRND.

179. The potential impact of this error will be discussed below.

(b) Alleged Error in Relying on the Evidence of Witness BGH

180. The Appellant submits that the Trial Chamber erred in relying on the evidence of, *inter alia,* Witness BGH to find that the Appellant was familiar with MRND leaders.[451] He notes that the Trial Chamber referred specifically to the evidence of Witness BGH and in a "very subsidiary fashion" to the evidence of other witnesses.[452] The Appellant points out that Witness BGH only stated that she saw the Appellant talking to MRND leaders but that she was unable to confirm the content of these conversations.[453] The Appellant argues that his familiarity with the MRND leaders cannot be said to be proved solely on the basis of the perception of Witness BGH.[454] He submits that Karemera's

[448] *See* T. 3 October 2006 p. 24.
[449] *See* T. 3 October 2006 pp. 33, 34.
[450] *See* T. 3 October 2006 pp. 24, 25, 33, 34.
[451] Bikindi's Appellant's Brief, para. 99, *citing* Trial Judgement, para. 70 and fn. 124.
[452] Bikindi's Appellant's Brief, para. 99, *citing* Trial Judgement, para. 70 and fn. 124. The Appellant cites the evidence of a number of other witnesses. *See* Bikindi's Appellant's Brief, para. 99, fn. 129.
[453] Bikindi's Appellant's Brief, para. 100, *citing* Witness BGH, T. 4 October 2006 p. 25, Trial Judgement, para. 61.
[454] Bikindi's Appellant's Brief, para. 100.

statement that the Appellant was held in high esteem within the MRND, and references to his "numerous and rational advice", were on their face merely references to his talent as a singer.[455]

181. The Appeals Chamber considers that the Trial Chamber considered Witness BGH's testimony in light of other supporting evidence.[456] In particular, the Trial Chamber quoted a passage from a RTLM Report which had been tendered by the Prosecution and which the Trial Chamber was satisfied was a transcript of the RTLM Broadcast of 16 January 1994.[457] The Trial Chamber relied on the RTLM Report to conclude that during this address Karemera stated that all MRND "militants" liked the Appellant and went on to praise him.[458] It concluded that "Witness BGH's testimony, together with Karemera's praising, clearly suggests that Bikindi was perceived as an important and influential member of the MRND and was familiar with MRND leaders."[459] It reasoned that this conclusion "is supported by Bikindi speaking at an MRND rally in Kivumu in 1993, an MRND rally at Nyamirambo Stadium in 1993 where he was accompanied by important MRND figures, and [is] confirmed by the perception of many witnesses."[460] Except as concerns the Trial Chamber's reliance on the Appellant's participation in the MRND rally at Nyamirambo Stadium discussed above, the Appeals Chamber sees no error in this reasoning, which reflects the Trial Chamber's examination of the totality of the evidence.

182. The Appeals Chamber has found that the Trial Chamber erred in relying on Exhibit P30 to find that the Appellant was present at the rally in Nyamirambo Stadium.[461] It follows that the Trial Chamber erred in relying on this piece of evidence to support its finding that the Appellant was perceived as an important and influential member of the MRND. However, the Appeals Chamber is satisfied that the Trial Chamber based its finding regarding the Appellant's influence on sufficient other evidence before it, and not just on the evidence of the Nyamirambo Stadium rally.

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[455] Bikindi's Reply Brief, para. 71, *quoting* Exhibit P47 (Transcript of RTLM Broadcast of 16 January 1994 pp. 5, 6) quoted in the Trial Judgement, para. 63. The Appeals Chamber notes that the Trial Chamber refers to the English translation of this exhibit, the original being in Kinyarwanda. Reference herein to P47 is to the English version of this exhibit, unless otherwise indicated.

[456] *See* Trial Judgement, paras. 61-63, 68, 70.

[457] *See* Trial Judgement, para. 63.

[458] Trial Judgement, para. 63, *quoting* Exhibit P47 pp. 5, 6 ("*Bikindi whom you know. Haa! Even the Inkontanyi (sic) know him, even all the soldiers know him. Hmmm... Bikindi is well known [...] All the MRND militants like him. [...] Dear militants, the Irindiro troupe has just reminded me of Bikindi's talent. It has enabled me to remember this song which praises the heroic deeds of the Rwandan Armed Forces [...] Dear militants, brothers and sisters, I would like to request you to help thank Simon Bikindi for the significant contribution he has made to Rwandans but especially in a particular way to the members of the MRND through the numerous and rational advice which he has been giving. Assist me therefore to thank him (Applause).*").

[459] *See* Trial Judgement, para. 70.

[460] *See* Trial Judgement, para. 70 and fn. 124 (wherein the Trial Chamber cites "the reliable testimony of Witness AJS corroborated by Witnesses AJY, ALQ, AHP, BUY, and BKW: Witness AJS, T. 29 September 2006 p. 9; Witness AJY, T. 27 September 2006 p. 30 and T. 28 September 2006 pp. 37, 38; Witness ALQ, T. 13 October 2006 p. 38 and T. 16 October 2006 pp. 2, 3; Witness AHP, T. 19 October 2006 p. 17; Witness BUY, T. 19 February 2007 p. 44; Witness BKW, T. 17 October 2006 p. 37.").

[461] *See supra* para. 178.

Accordingly, the Appeals Chamber does not consider that the Trial Chamber's error impacted on the validity of its overall finding that the Appellant was perceived as an important and influential member of the MRND.

183. The Appellant further argues that he could not have spoken at the rally in Kivumu, because according to his own testimony at trial and additional evidence which he proffered on appeal, he was in Germany at the time.[462] The Appeals Chamber recalls that the Trial Chamber relied on the evidence of the Appellant's participation in a rally in Kivumu in 1993, among other evidence, to find that the Appellant was perceived as an important and influential figure within the MRND.[463] The Appeals Chamber recalls that it has rejected the Appellant's request for the admission of additional evidence as to his presence in Germany in June 1993.[464] As the Appeals Chamber noted in its Rule 115 Decision, while the Trial Chamber found generally that the event happened in 1993, it made no findings as to a specific date.[465] The Appeals Chamber considers that the Appellant has not demonstrated that the Trial Chamber erred in its assessment of the evidence on this issue.

184. In view of the foregoing, the Appeals Chamber considers that it was within the Trial Chamber's discretion to rely on Witness BGH's evidence, among other evidence, to conclude that the Appellant was an influential member of the MRND.

185. This ground of appeal is therefore dismissed.

5. Conclusion

186. The Appeals Chamber accordingly finds that it was properly within the Trial Chamber's discretion to take the totality of the above-mentioned evidence into account, except the evidence as to the Appellant's participation in the MRND rally at Nyamirambo Stadium discussed above,[466] in order to conclude that the Appellant: (1) was perceived to be an influential member of the MRND and an important figure within the *Interahamwe*; (2) that he abused his stature; and (3) that this was an aggravating circumstance for the purposes of sentencing in the present case.[467] The Appeals Chamber therefore considers that the Trial Chamber's error with respect to the evidence as to the Appellant's participation in the MRND rally at Nyamirambo Stadium does not impact on the validity of the Trial Chamber's ultimate findings with respect to the Appellant's sentence. The Appellant's appeal on sentencing is accordingly dismissed.

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[462] Bikindi's Reply Brief, para. 71.
[463] *See* Trial Judgement, para. 70.
[464] *See* Rule 115 Decision, paras. 13, 14, disposition; Decision on Motion for Partial Reconsideration of Decision on Request for Admission of Additional Evidence Pursuant to Rule 115 of the Rules, 27 October 2009.
[465] *See* Rule 115 Decision, para. 12, *citing* Trial Judgement, paras. 33, 141, 183.
[466] *See supra* para. 178.
[467] Trial Judgement, para. 451.

C. The Appeal of the Prosecution

187. The Prosecution submits that the Trial Chamber erred in law and in fact by imposing a sentence of 15 years' imprisonment. It seeks the reversal of this decision and the imposition of an appropriate sentence, in the range of 30 years' to life imprisonment.[468] The Appellant opposes the Prosecution's appeal and the relief sought.[469]

1. Alleged Failure to Give Sufficient Weight to Aggravating Factors

188. The Prosecution contends that the Trial Chamber failed to consider or give sufficient weight to several aggravating factors when determining the sentence, namely: (1) the manner by, and the context within which, the Appellant committed the crime; and (2) the Appellant's stature and authority in Rwanda.[470] The Appellant opposes the Prosecution's submissions on this issue.[471]

189. The Prosecution submits that the fact that the Appellant was part of a convoy of *Interahamwe* when he exhorted the killing of Tutsis via a public address system and that he played some of his own songs "demonstrates his cynical character" which should have been considered as an aggravating factor.[472] It further argues that the Appellant composed certain songs with a message that was clearly understood and used to encourage *Interahamwe* to kill Tutsis during the genocide.[473] The Appeals Chamber notes that the Prosecution failed to "indicate the substance of the alleged errors" in its Notice of Appeal,[474] and instead raised these arguments for the first time in the Appeal Brief.[475] Consequently, the Appeals Chamber declines to consider these submissions.

190. The Prosecution further submits that the Trial Chamber failed to accord sufficient weight to the Appellant's stature when determining the sentence.[476] The Appeals Chamber recalls that the abuse of a position of influence and authority in society can be taken into account as an aggravating

[468] Prosecution's Notice of Appeal, paras. 1-3; Prosecution's Appellant's Brief, para. 36; AT. 30 September 2009 pp. 59, 60, 63, 65-67. *See also* Bikindi's Respondent's Brief, paras. 4-83.
[469] Bikindi's Respondent's Brief, paras. 3, 4, 26, 28, 35, 37, 46, 52, 68; AT. 30 September 2009 pp. 67-74.
[470] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 29-34.
[471] Bikindi's Respondent's Brief, paras. 26-36.
[472] Prosecution's Appellant's Brief, paras. 29, 30. *See also* AT. 30 September 2009 pp. 61, 62.
[473] Prosecution's Appellant's Brief, para. 31.
[474] *See* Rule 108 of the Rules.
[475] The Prosecution's Notice of Appeal merely contains a general statement that the Trial Chamber erred in failing to give sufficient weight to, *inter alia*, "the manner in which Bikindi perpetrated the crime." *See* Prosecution's Notice of Appeal, para. 2, *citing* Trial Judgement, paras. 422-425.
[476] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 32, 33; AT. 30 September 2009 pp. 62, 63, 67.

factor in sentencing.[477] The Appeals Chamber notes that the Trial Chamber, in the section on aggravating circumstances, acknowledged the Appellant's "stature in Rwandan society as a well-known and popular artist perceived to be an influential member of the MRND and an important figure in the *Interahamwe*" and went on to consider that the influence he derived from his status made it likely that others would follow his exhortations.[478] It concluded that the Appellant abused his stature by using his influence to incite genocide and that this was an aggravating factor.[479] The Trial Chamber also referred to the factual findings section of the Trial Judgement, in which it discussed the particular aspects of the Appellant's authority in more detail.[480] As the Trial Chamber clearly considered the Appellant's stature as an aggravating factor in some detail, the Appeals Chamber is not satisfied that the Prosecution has established that the Trial Chamber gave insufficient weight to the fact as an aggravating factor. The Appeals Chamber therefore finds that the Prosecution has failed to demonstrate that the Trial Chamber erred in its assessment of the Appellant's abuse of his authority as an aggravating factor.

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

2. Alleged Failure to Properly Consider the Absence of Mitigating Factors

192. The Prosecution submits that the Trial Chamber abused its discretion by imposing a sentence of 15 years of imprisonment without any explanation justifying its leniency,[481] and having failed to "give sufficient account to the absence of any mitigating factors."[482]

193. The Appeals Chamber is not persuaded by the argument advanced by the Prosecution that in the absence of mitigating circumstances the Trial Chamber should necessarily have imposed the maximum sentence of imprisonment for the remainder of the Appellant's life.[483] The Appeals Chamber reiterates that Trial Chambers have the discretion to individualize sentences.[484] The Appeals Chamber also reiterates that it will not substitute its own sentence for that imposed by a Trial Chamber unless it has been shown that in determining the sentence the Trial Chamber committed a discernible error, or failed to follow the applicable law.[485]

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[477] *Seromba* Appeal Judgement, para. 230; *Simba* Appeal Judgement, para. 285; *Ndindabahizi* Appeal Judgement, para. 136; *Kamuhanda* Appeal Judgement, paras. 347, 348; *Ntakirutimana* Appeal Judgement, para. 563; *Akayesu* Appeal Judgement, paras. 414, 415.
[478] Trial Judgement, para. 451.
[479] Trial Judgement, para. 451.
[480] Trial Judgement, para. 451, *citing* Trial Judgement, Chapter II.
[481] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 35, 37; AT. 30 September 2009 pp. 64, 65.
[482] Prosecution's Notice of Appeal, para. 2.
[483] Prosecution's Appellant's Brief, para. 36.
[484] *See supra* para. 141.
[485] *See supra* para. 141.

194. The Appeals Chamber further considers that, contrary to the Prosecution's assertion,[486] the Trial Chamber was not obliged to accord "sufficient weight" to the absence of mitigating factors in this case, nor does the Prosecution cite any jurisprudence in support of this proposition. The Appeals Chamber considers that the Trial Chamber properly exercised its discretion when it examined the various mitigating factors advanced by the Appellant, and the submissions advanced by the Prosecution[487] and concluded that "there [were] no mitigating factors that should be taken into account in the determination of the sentence."[488] The Appeals Chamber finds no discernible error in this approach. In light of the foregoing, the Appeals Chamber finds that the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion by failing to accord sufficient weight to the absence of any mitigating factors in this case.

195. This sub-ground of appeal is dismissed.

3. Alleged Failure to Give Sufficient Weight to Rwanda's Sentencing Practice

196. The Prosecution submits that the Trial Chamber committed a discernible error by not taking into account the general sentencing practice in Rwanda.[489] The Appeals Chamber is not persuaded by this argument. As the Prosecution itself concedes,[490] while the Trial Chamber must take account of the general practice regarding sentences in the Rwandan courts,[491] it is not bound by that practice.[492] Accordingly, and contrary to the Prosecution's contention,[493] the Trial Chamber was not "expected" to explain why it departed from this practice in imposing a lower sentence.

197. The Prosecution further submits that in determining the appropriate sentence, the Trial Chamber should have followed the approach adopted by the Trial Chamber in *Semanza* which was upheld by the Appeals Chamber,[494] rather than merely noting the general penalty for genocide under Rwandan law.[495] It argues that the crimes for which the Appellant was convicted would have placed him within the first or second category of Rwanda's Organic Law.[496] The Appeals Chamber

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[486] Prosecution's Appellant's Brief, paras. 4, 18.
[487] Trial Judgement, paras. 453-457.
[488] Trial Judgement, para. 458.
[489] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, para. 37.
[490] Prosecution's Appellant's Brief, paras. 39, 40.
[491] Statute, Article 23(1); Rule 101(B)(iii) of the Rules.
[492] *Nahimana et al.* Appeal Judgement, para. 1063; *Semanza* Appeal Judgement, paras. 377, 393; *Akayesu* Appeal Judgement, para. 420; *Serushago* Appeal Judgement, para. 30. *See also Stakić* Appeal Judgement, para. 398; *D. Nikolić* Sentencing Appeal Judgement, para. 69; *Čelebići* Appeal Judgement, para. 813.
[493] Prosecution's Appellant's Brief, paras. 39, 40; AT. 30 September 2009 p. 65.
[494] Prosecution's Appellant's Brief, para. 39, *citing Semanza* Appeal Judgement, paras. 377, 378, 380, 388; AT. 30 September 2009 p. 65.
[495] Prosecution's Appellant's Brief, para. 40.
[496] Prosecution's Appellant's Brief, para. 41, *citing* Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1 1990 ("Organic Law 08/96"). *See also* AT. 30 September 2009 p. 65.

recalls that in *Semanza* the Trial Chamber had considered the relevant provisions of Organic Law 08/96 with respect to, *inter alia*, the offence of genocide and the applicable penalties.[497] Similarly, in the present case, the Trial Chamber made it clear that it "considered that under Rwandan law, genocide carries a possible penalty of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused's participation."[498] The Appeals Chamber repeats that, as it found in the *Semanza* case, "all [that] the Tribunal's Statute requires [is] recourse to the general practice regarding prison sentences in the courts of Rwanda."[499]

198. The Prosecution submits that the sentence imposed by the Trial Chamber "does not serve the objective of reconciliation as recognised by the Tribunal"[500] and that this "low sentence of 15 years in this case, which does not give sufficient weight to Rwanda's sentencing practice, sends the wrong message and serves to further aggravate the suffering of victims".[501] The Appeals Chamber considers that these submissions fail to demonstrate that the sentence imposed does not further the two main purposes of sentencing: retribution and deterrence.[502]

199. The Appeals Chamber observes that the Trial Chamber took into account the maximum sentence available under Rwandan law in the context of all other relevant factors, general as well as individualized, in determining the appropriate sentence in this case. The Appeals Chamber therefore finds no discernible error in the reasoning of the Trial Chamber on this point.

200. This sub-ground of appeal is dismissed.

4. Alleged Inconsistency of the Sentence with the Tribunal's Sentencing Practice

201. The Prosecution contends that the Trial Chamber erred in relying upon the *Kajelijeli* and *Ruggiu* judgements as examples of relevant Tribunal sentencing practice, because they are significantly different from the present case.[503] It submits that the Trial Chamber failed to take into account the similar case of *Akayesu*, and that the Appellant deserves a higher sentence than was imposed in that case.[504]

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[497] *Semanza* Appeal Judgement, para. 378, *quoting Semanza* Trial Judgement, paras. 560, 561.
[498] Trial Judgement, para. 447, *citing* Organic Law No. 8/96, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.
[499] *Semanza* Appeal Judgement, paras. 345 (*citing* Statute, Article 23(1)), 347.
[500] Prosecution's Appellant's Brief, para. 43, *citing Akayesu* Sentencing Judgement, para. 19.
[501] Prosecution's Appellant's Brief, para. 43.
[502] *See Nahimana et al.* Appeal Judgement, para. 1057.
[503] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 45-52.
[504] Prosecution's Notice of Appeal, para. 2; Prosecution's Appellant's Brief, paras. 44, 48-53. In the Appeals Hearing, the Prosecution cited a number of other judgements which in its view were relevant to determining the general sentencing practice of this Tribunal. *See* AT. 30 September 2009 p. 65.

202. The Appeals Chamber notes that contrary to the Prosecution's submission, the Trial Chamber did not rely on the *Kajelijeli* and *Ruggiu* judgements, as it concluded that "the comparison with those two cases [is] of very limited assistance given the different circumstances of this case."[505] The Trial Chamber stated that it also "considered the general sentencing practice at the Tribunal", along with other factors relevant to determining the gravity of the offence.[506] The Appeals Chamber considers that this approach is consistent with the jurisprudence on this issue.[507] Accordingly, the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error in this regard.

203. The Appeals Chamber is not persuaded by the Prosecution's argument that the Trial Chamber ought to have taken into account the sentence imposed in the *Akayesu* case, since the present case was "worse".[508] The Appeals Chamber has already recalled that Trial Chambers have broad discretion to tailor the penalties to fit the individual circumstances of the accused and the gravity of the crime;[509] comparison between cases is thus generally of limited assistance.[510] Indeed, the very fact that Trial Chambers are entitled to a margin of discretion in sentencing matters implies that some disparity is possible, even between cases that may involve similar facts.[511] The Prosecution's submission in this regard is therefore dismissed.

204. Finally, the Appeals Chamber declines to consider the Prosecution's argument that the Appellant's decision to return to Rwanda in June 1994 ought to be viewed as an aggravating factor in sentencing[512] as it goes beyond the Prosecution's Notice of Appeal.

205. The Appeals Chamber accordingly finds that the Prosecution has not demonstrated that the Trial Chamber erred in the exercise of its discretion with respect to sentencing.

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

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[505] Trial Judgement, para. 447.
[506] Trial Judgement, para. 447.
[507] *See Nahimana et al.* Appeal Judgement, para. 1046; *Semanza* Appeal Judgement, para. 394; *Musema* Appeal Judgement, para. 387. *See also Milošević* Appeal Judgement, para. 326; *Krajišnik* Appeal Judgement, para. 783; *Limaj et al.* Appeal Judgement, para. 135; *Blagojević and Jokić* Appeal Judgement, para. 333; *M. Nikolić* Appeal Judgement, para. 38; *D. Nikolić* Appeal Judgement, para. 19; *Čelebići* Appeal Judgement, para. 719.
[508] Prosecution's Appellant's Brief, para. 48.
[509] *See supra* para. 141.
[510] *Nahimana et al.* Appeal Judgement, para. 1046; *Semanza* Appeal Judgement, para. 394; *Musema* Appeal Judgement, para. 387. *See also Limaj et al.* Appeal Judgement, para. 135; *Blagojević and Jokić* Appeal Judgement, para. 333; *M. Nikolić* Appeal Judgement, para. 38; *D. Nikolić* Appeal Judgement, para. 19; *Čelebići* Appeal Judgement, para. 719.
[511] *Krajišnik* Appeal Judgement, para. 783.
[512] Prosecution's Appellant's Brief, paras. 45, 46. *See also* AT. 30 September 2009 p. 67.

5. Alleged Failure to Impose a Sentence Proportionate to the Gravity of the Crime and the Appellant's Role

207. The Prosecution contends that the sentence of 15 years of imprisonment is inappropriate for the crime of direct and public incitement to commit genocide, given that genocide is a crime of the "most serious gravity".[513] It argues that it was open to the Trial Chamber to impose a life sentence in light of the gravity of the crimes committed[514] and in light of its findings on the form and degree of the Appellant's participation in the offence.[515]

208. The Trial Chamber properly noted that it was obliged to determine the appropriate sentence in light of the Appellant's conviction.[516] It also noted the requirement that it individualize the sentence to fit the circumstances of the convicted person and to reflect the gravity of the crime.[517] The Trial Chamber appropriately recognized the gravity of the crime for which the Appellant was responsible[518] and his role as a principal perpetrator.[519] It then explicitly considered the Appellant's stature in Rwandan society and its own findings in this regard.[520] It concluded that the Appellant had "abused his stature by using his influence to incite genocide" and that this was an aggravating factor.[521] This approach accords with the Appeals Chamber's jurisprudence on this issue.[522] Further, as noted above,[523] the Trial Chamber properly observed the applicable penalties under Rwandan law as well as the jurisprudence of the Tribunal. The Trial Chamber, having undertaken this assessment, properly concluded that while genocide is, by definition, a crime of the "most serious gravity", the crime for which the Appellant was convicted was "of similar gravity" and that it had taken this into account in determining the sentence.[524]

209. The Appeals Chamber finds that the Prosecution has not demonstrated that the sentence of 15 years' imprisonment is manifestly inadequate considering the gravity of the crime and the Appellant's role.

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[513] Prosecution's Notice of Appeal, paras. 1, 2; Prosecution's Appellant's Brief, paras. 4, 18, 19, 21, 22; AT. 30 September 2009 pp. 59, 60, 63, 65, 66.
[514] Prosecution's Appellant's Brief, paras. 22, 23, 26 (*citing Akayesu* Appeal Judgement, para. 414; *Galić* Appeal Judgement, para. 443; *Krstić* Appeal Judgement, para. 241).
[515] Prosecution's Appellant's Brief, paras. 24-27, 28 (*citing* Trial Judgement, para. 423); AT. 30 September 2009 pp. 60-64.
[516] Trial Judgement, para. 442.
[517] Trial Judgement, para. 445, *citing Seromba* Appeal Judgement, para. 228.
[518] Trial Judgement, paras. 446, 448.
[519] Trial Judgement, para. 446.
[520] Trial Judgement, para. 451, *referring to* its factual findings under Chapter II of the Judgement.
[521] Trial Judgement, para. 451.
[522] *See, e.g., Karera* Appeal Judgement, para. 385; *Nahimana et al.* Appeal Judgement, para. 1046; *Semanza* Appeal Judgement, paras. 312, 394; *Kayishema and Ruzindana* Appeal Judgement, para. 352. *See also Krstić* Appeal Judgement, para. 248; *Čelebići* Appeal Judgement, para. 731.
[523] *See also supra* paras. 196-199, 202, 203, 205; Trial Judgement, para. 447.
[524] Trial Judgement, para. 448.

6. Conclusion

210. For the foregoing reasons, the Appeals Chamber dismisses the Prosecution's appeal on sentencing in its entirety.

D. Credit for Time Served in Detention

211. The Appeals Chamber has already noted that the Trial Chamber erroneously considered that the Appellant was arrested on 12 June 2001 and granted him credit for time served as of that date, whereas the Appellant was arrested on 12 July 2001.[525] Although the Appeals Chamber has an inherent power to correct *proprio motu* a material error committed by the Trial Chamber, it considers that, in the circumstances of this case, it will not disturb the Trial Chamber's ruling.

[525] *See supra* fn. 6.

V. DISPOSITION

212. 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 30 September 2009;

SITTING in open session;

DISMISSES Simon Bikindi's appeal in its entirety;

DISMISSES the Prosecution's appeal in its entirety;

AFFIRMS the Appellant's conviction for direct and public incitement to commit genocide under Count 4 of the Indictment;

AFFIRMS the Appellant's sentence of fifteen (15) years' imprisonment entered for this conviction, subject to credit being given under Rule 101(D) and Rule 107 of the Rules since 12 June 2001;

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

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

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

Patrick Robinson	Mehmet Güney	Fausto Pocar
Presiding Judge	Judge	Judge

Liu Daqun	Theodor Meron
Judge	Judge

Done this eighteenth day of March 2010 at Arusha, Tanzania.

[Seal of the Tribunal]

VI. 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 Trial Judgement in this case on 2 December 2008.[1]

3. The Appellant filed a Notice of Appeal on 31 December 2008 challenging his conviction and sentence.[2] He filed an appeal on 16 March 2009 and an amended Appellant's Brief on 19 March 2009.[3] The Prosecution responded on 27 April 2004,[4] and the Appellant replied on 11 May 2009.[5]

4. The Prosecution filed its Notice of Appeal on 31 December 2008 challenging the sentence.[6] It filed its Appellant's Brief on 28 January 2009.[7] Simon Bikindi filed his Respondent's Brief on 20 February 2009, and the Prosecution did not file a reply.[8]

B. Assignment of Judges

5. On 13 January 2009, the following Judges were assigned to hear the appeal: Judge Mohamed Shahabuddeen; Judge Mehmet Güney; Judge Fausto Pocar; Judge Liu Daqun; and Judge Theodor Meron.[9] Judge Mohamed Shahabuddeen was elected Presiding Judge of the case by the bench. On 6 May 2009, the Presiding Judge of the Appeals Chamber, Judge Patrick Robinson, assigned himself to replace Judge Mohamed Shahabuddeen as the Presiding Judge in this case with immediate effect.[10] Judge Liu Daqun was assigned as the Pre-Appeal Judge on 30 June 2009.[11]

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[1] *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008.
[2] Bikindi's Notice of Appeal, 31 December 2008.
[3] Defence Appellant's Brief, 16 March 2009; Bikindi's Appellant's Brief, 19 March 2009. *See also supra* Section I.A (Introduction, Background) fn. 7.
[4] Prosecution's Respondent's Brief, filed on 27 April 2004.
[5] Bikindi's Reply Brief, filed on 11 May 2009.
[6] Prosecution's Notice of Appeal, 31 December 2008.
[7] Prosecution's Appellant's Brief, 28 January 2009.
[8] Bikindi's Respondent's Brief, 20 February 2009.
[9] Order Assigning Judges to a Case before the Appeals Chamber, 13 January 2009.
[10] Order Replacing a Judge in a Case before the Appeals Chamber, 6 May 2009.
[11] Order Assigning a Pre-Appeal Judge, 30 June 2009.

C. Motions Related to the Admission of Additional Evidence

6. On 9 June 2009, the Appellant filed three motions to admit additional evidence.[12] The Prosecution responded to each of these motions on 9 July 2009,[13] and the Appellant replied on 23 July 2009.[14]

7. On 9 and 10 June 2009, respectively, the Appellant requested the admission of additional evidence relating to events in Kivumu.[15] On 30 June 2009, the Appeals Chamber rejected both of these motions as invalid, and ordered the Appellant to file a consolidated confidential motion.[16] In accordance with this order, the Appellant filed a fourth motion to admit additional evidence on 9 July 2009.[17] The Prosecution responded on 29 July 2009,[18] and the Appellant replied on 12 August 2009.[19]

8. On 16 September 2009, the Appeals Chamber dismissed the Appellant's request to admit additional evidence on appeal.[20] On 27 October 2009, the Appeals Chamber denied the Appellant's request[21] for partial reconsideration of this decision.[22]

D. Hearing of the Appeal

9. Pursuant to the Scheduling Order of 20 July 2009,[23] the Appeals Chamber heard the parties' oral arguments on 30 September 2009 in Arusha, Tanzania.

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[12] Defence Motion to Admit Additional Evidence on Bikindi's Presence in Germany, 9 June 2009; Defence Motion to Take Judicial Notice and/or Admit Additional Evidence, 9 June 2009; Defence Motion to Admit Additional Evidence on Sentencing, 9 June 2009.
[13] Prosecutor's Response to "Defence Motion to Admit Additional Evidence on Bikindi's Presence in Germany", 9 July 2009; Prosecutor's Response to "Defence Motion to Take Judicial Notice and/or Admit Additional Evidence", 9 July 2009; Prosecutor's Response to "Defence Motion to Admit Additional Evidence on Sentencing", 9 July 2009.
[14] Defence Reply Re the Admission of Additional Evidence on Bikindi's Presence in Germany, 22 July 2009; Defence Reply Re the Taking of Judicial Notice and/or Admission of Additional Evidence, 22 July 2009; Defence Reply Re the Admission of Additional Evidence on Bikindi's Sentence, 22 July 2009.
[15] Defence Motion to Admit Additional Evidence on Events in Kivumu, 9 June 2009; Confidential *Corrigendum* to Defence Motion to Admit Additional Evidence on Events in Kivumu, 10 June 2009.
[16] Order on the Appellant's Motions to Admit Additional Evidence on Events in Kivumu, 30 June 2009, p. 4.
[17] Confidential Defence Motion to Admit Additional Evidence on Events in Kivumu, 9 July 2009. *See also Corrigendum* to Confidential Defence Motion to Admit Additional Evidence on Events in Kivumu, 10 July 2009.
[18] Prosecutor's Response to "Confidential Defense [sic] Motion to Admit Additional Evidence on Events in Kivumu", 29 July 2009.
[19] Defence Appellant's Reply Re Confidential Defence Motion to Admit Additional Evidence on Events in Kivumu, 12 August 2009.
[20] Decision on Bikindi's Motion to Admit Additional Evidence Pursuant to Rule 115 of the Rules, 16 September 2009.
[21] The motion was made orally by the Appellant during the Appeals Hearing. *See* AT. 30 September 2009 p. 20. The Appeals Chamber heard arguments from the parties during the Appeals Hearing. *See* AT. 30 September 2009 pp. 55-58.
[22] Decision on Motion for Partial Reconsideration of Decision on Request for Admission of Additional Evidence Pursuant to Rule 115 of the Rules, 27 October 2009.
[23] Scheduling Order, 20 July 2009.

VII. ANNEX B: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement")

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

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Sentence, 2 October 2001 ("Akayesu Sentencing Judgement")

Kajelijeli

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

Kambanda

Jean Kambanda v. The Prosecutor, Case No. ICTR-97-23-A, Judgement, 19 October 2000 ("*Kambanda* Appeal Judgement")

Kamuhanda

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

Karemera *et al.*

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("*Karemera et al.*, Decision on Judicial Notice")

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")

Muhimana

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

Musema

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

Muvunyi

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

Nahimana *et al.*

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

Ndindabahizi

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

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")

Semanza

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ("*Semanza* Trial Judgement")

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

Seromba

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

Serushago

Omar Serushago v. The Prosecutor, Case No. ICTR-98-39-A, Reasons for Judgment, 6 April 2000 ("*Serushago* 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

Babić

Prosecutor v. Milan Babić, Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2008 ("*Babić* Sentencing Appeal Judgement")

Blagojević and Jokić

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

Bralo

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007 ("*Bralo* Sentencing Appeal Judgement")

Čelebići Case

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

Deronjić

Prosecutor v. Miroslav Deronjić, Case No. 02-61-A, Judgement on Sentencing Appeal, 20 July 2005 ("*Deronjić* Sentencing Appeal Judgement")

Galić

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

Krajišnik

Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement, 17 March 2009 ("*Krajišnik* Appeal Judgement")

Krstić

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

Kupreškić *et al.*

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

Limaj *et al.*

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

Martić

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

D. Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement, 12 November 2009 ("*Milošević* Appeal Judgement")

Mrkšić and Šljivančanin

Prosecutor v. Mile Mrkšić and Veselin Šljivančanin, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement")

D. Nikolić

Prosecutor v. Dragan Nikolić, Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005 ("*D. Nikolić* Sentencing Appeal Judgement")

M. Nikolić

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

Orić

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

Simić

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

Stakić

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

Tadić

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

B. Defined Terms and Abbreviations

Amended Indictment	*The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-I, Amended Indictment, dated 15 June 2005
Appellant	Simon Bikindi
AT.	Transcript page from Appeal hearings held on 30 September 2009 in *Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A. All references are to the official English transcript, unless otherwise indicated
Bikindi's Notice of Appeal	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Notice of Appeal, filed on 31 December 2008
Bikindi's Appellant's Brief	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Corrigendum to Defence Appellant's Brief, filed on 19 March 2009
Bikindi's Brief in Reply	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Defence Appellant's Reply Brief, filed on 11 May 2009
Bikindi's Respondent's Brief	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Defence Respondent's Brief, filed 20 February 2009
Bikindi's Statement	Bikindi's statement dated 12 March 2009, attached as Annexure G to Bikindi's Appellant's Brief.
cf.	[Latin: *confer*] (Compare)
Co-Counsel	Mr. Jean de Dieu Momo, former Co-Counsel for the Appellant. *See also supra* fn. 25
Defence	The Appellant, and/or the Appellant's counsel
Exhibit D / Exhibit P	Defence Exhibit / Prosecution Exhibit
FAR	Rwandan Armed Forces
fn.	footnote
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Lead Counsel Nderitu	Mr. Wilfred Nderitu, former Lead Counsel for the Appellant. *See also supra* fn. 25
Lead Counsel O'Shea	Mr. Andreas O'Shea, current Lead Counsel for the Appellant. *See*

	also supra fn. 25
MRND	*Mouvement républicain national pour la démocratie et le développement* [after July 1991]
para. (paras.)	paragraph (paragraphs)
Prosecution	Office of the Prosecutor
Prosecution's Notice of Appeal	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Prosecutor's Notice of Appeal, filed on 31 December 2008
Prosecution's Appellant's Brief	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Prosecutor's Appellant's Brief, filed on 28 January 2009
Prosecution's Respondent's Brief	*Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Prosecutor's Respondent's Brief, filed on 27 April 2009
Rules	Rules of Procedure and Evidence of the ICTR
RPF	Rwandan Patriotic Front
sp.	Specifically
Statute	Statute of the International Tribunal for Rwanda established by Security Council Resolution 955 (1994)
T.	Trial Transcript page from hearings in the trial of *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T. All references are to the official English transcript, unless otherwise indicated
Trial Judgement	*The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008
Tribunal or ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
UN	United Nations