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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1790/H

ICTR-02-78-A
8th May 2012
{1790/H – 1692/H}

IN THE APPEALS CHAMBER

Before:	**Judge Patrick Robinson, Presiding** **Judge Mehmet Güney** **Judge Fausto Pocar** **Judge Arlette Ramaroson** **Judge Andrésia Vaz**
Registrar:	**Mr. Adama Dieng**
Judgement of:	**8 May 2012**

ICTR Appeals Chamber
Date: 8th May 2012
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GASPARD KANYARUKIGA

v.

THE PROSECUTOR

Case No. ICTR-02-78-A

JUDGEMENT

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Mr. David Jacobs
Mr. Peter Zaduk

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Mr. Hassan Bubacar Jallow
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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of appeals by Gaspard Kanyarukiga ("Kanyarukiga") and the Prosecution against the Judgement and Sentence rendered by Trial Chamber II of the Tribunal ("Trial Chamber") on 1 November 2010 and issued in writing on 9 November 2010 in the case of *The Prosecutor v. Gaspard Kanyarukiga* ("Trial Judgement").[1]

I. INTRODUCTION

A. BACKGROUND

2. Kanyarukiga was born in Kivumu *commune*, Kibuye *préfecture*, Rwanda.[2] At the time of the relevant events in April 1994, he was a businessman who owned a pharmacy in the Nyange Trading Centre, located in Nyange *secteur*, Kivumu *commune*, Kibuye *préfecture*.[3]

3. The Trial Chamber found that Kanyarukiga participated in planning the destruction of the Nyange church on 16 April 1994, which resulted in the killing of approximately 2,000 Tutsi civilians.[4] It convicted Kanyarukiga pursuant to Article 6(1) of the Statute of the Tribunal ("Statute") for planning genocide and extermination as a crime against humanity.[5] The Trial Chamber sentenced Kanyarukiga to a single sentence of 30 years' imprisonment.[6]

B. THE APPEALS

4. Kanyarukiga presents 72 grounds of appeal challenging his convictions and sentence.[7] He requests the Appeals Chamber to vacate his convictions and acquit him on all counts or order a new trial.[8] Alternatively, he requests a substantial reduction of the sentence imposed by the Trial

[1] For ease of reference, two annexes are appended: Annex A – Procedural History and Annex B – Cited Materials and Defined Terms.
[2] Trial Judgement, para. 1. The Trial Chamber noted that Kanyarukiga appeared to be between 63 and 72 years old. *See* Trial Judgement, para. 681.
[3] Trial Judgement, para. 1.
[4] Trial Judgement, paras. 25, 652, 654, 661, 666.
[5] Trial Judgement, paras. 25, 654, 666.
[6] Trial Judgement, para. 688.
[7] Kanyarukiga Notice of Appeal, paras. 4-79; Kanyarukiga Appeal Brief, paras. 5-206.
[8] Kanyarukiga Notice of Appeal, para. 80; Kanyarukiga Appeal Brief, para. 207.

Chamber.[9] The Prosecution responds that Kanyarukiga's appeal should be dismissed in its entirety.[10]

5. The Prosecution advances two grounds of appeal, submitting that the Trial Chamber erred in finding that planning cannot be a contribution to a joint criminal enterprise[11] and that the Trial Chamber committed a discernible error in exercising its sentencing discretion.[12] It requests the Appeals Chamber to increase Kanyarukiga's sentence to life imprisonment or return the case to the Trial Chamber with directions for properly assessing the gravity of his crimes.[13] Kanyarukiga responds that the Prosecution's appeal should be dismissed.[14]

6. The Appeals Chamber heard oral submissions regarding these appeals on 14 December 2011.

[9] Kanyarukiga Notice of Appeal, para. 81; Kanyarukiga Appeal Brief, para. 208.
[10] Prosecution Response Brief, paras. 7, 293.
[11] Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 6-12.
[12] Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 2, 13-30.
[13] Prosecution Appeal Brief, paras. 31-32.
[14] Kanyarukiga Response Brief, paras. 1, 32, 57.

II. STANDARDS OF APPELLATE REVIEW

7. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.[15]

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

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[16]

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the trial chamber accordingly.[17] 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]

10. 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]

11. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the trial chamber's rejection of those arguments constituted an error warranting the

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[15] *Bagosora and Nsengiyumva* Appeal Judgement, para. 15; *Ntawukulilyayo* Appeal Judgement, para. 7; *Haradinaj et al.* Appeal Judgement, para. 9.

[16] *Bagosora and Nsengiyumva* Appeal Judgement, para. 16 (internal citations omitted); *Ntawukulilyayo* Appeal Judgement, para. 8 (internal citations omitted). *See also Furundžija* Appeal Judgement, para. 35, *Akayesu* Appeal Judgement, para. 179.

[17] *Blaškić* Appeal Judgement, para. 15. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 17; *Ntawukulilyayo* Appeal Judgement, para. 9; *Haradinaj et al.* Appeal Judgement, para. 11.

[18] *Blaškić* Appeal Judgement, para. 15. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 17; *Ntawukulilyayo* Appeal Judgement, para. 9; *Haradinaj et al.* Appeal Judgement, para. 11.

[19] *Krstić* Appeal Judgement, para. 40 (internal citations omitted). *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 18; *Ntawukulilyayo* Appeal Judgement, para. 10; *Haradinaj et al.* Appeal Judgement, para. 12.

intervention of the Appeals Chamber.[20] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[21]

12. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[22] Moreover, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[23] Finally, the Appeals Chamber has the inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.[24]

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[20] *Kupreškić et al.* Appeal Judgement, para. 27. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 19; *Ntawukulilyayo* Appeal Judgement, para. 11; *Haradinaj et al.* Appeal Judgement, para. 13.

[21] *Bagosora and Nsengiyumva* Appeal Judgement, para. 19; *Ntawukulilyayo* Appeal Judgement, para. 11; *Haradinaj et al.* Appeal Judgement, para. 13.

[22] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 20; *Ntawukulilyayo* Appeal Judgement, para. 12.

[23] *Kunarac et al.* Appeal Judgement, para. 43; *Kayishema and Ruzindana* Appeal Judgement, para. 137. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 20; *Ntawukulilyayo* Appeal Judgement, para. 12.

[24] *Krnojelac* Appeal Judgement, para. 16. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 20; *Ntawukulilyayo* Appeal Judgement, para. 12.

III. APPEAL OF GASPARD KANYARUKIGA

A. ALLEGED VIOLATIONS OF FAIR TRIAL RIGHTS

13. Kanyarukiga submits that the Trial Chamber violated his right to a fair trial because it: (i) denied his request for a stay of proceedings in light of the disappearance of three *laissez-passers* seised from him upon his arrest;[25] (ii) failed to adjourn the proceedings on various occasions;[26] (iii) imposed arbitrary time-limits on Defence cross-examination;[27] and (iv) failed to timely rule on the admissibility of Prosecution evidence.[28] The Appeals Chamber will consider these challenges in turn.[29]

1. Alleged Error in Denying a Stay of Proceedings (Ground 32)

14. On 25 August 2009, Kanyarukiga filed a motion seeking a stay of proceedings on the basis that his right to a fair trial had been irreparably damaged by the disappearance of three *laissez-passers* seised from him during his arrest and upon which he had intended to rely in support of his alibi.[30] Kanyarukiga argued that to proceed in such circumstances would bring the administration of justice into disrepute.[31] He submitted, *inter alia*, that the Prosecution had violated Rule 41 of the Rules of Procedure and Evidence of the Tribunal ("Rules") which requires the Prosecution to preserve and store information and evidence obtained in the course of its investigations.[32]

15. In its Decision Denying a Stay of Proceedings, the Trial Chamber stated that it "appreciates the seriousness of the issues raised in the Defence Motion" but noted that "the existence of the laissez-passers among the items seised from the Accused has not been established."[33] It further considered that "even assuming that the laissez-passers exist, the Chamber is not convinced that their absence would warrant a stay of proceedings or the dismissal of all charges against the Accused."[34] In this regard, it considered that "those documents would only be part of a defence of

[25] Kanyarukiga Notice of Appeal, para. 37; Kanyarukiga Appeal Brief, paras. 83-88.
[26] Kanyarukiga Notice of Appeal, para. 77; Kanyarukiga Appeal Brief, paras. 200, 201.
[27] Kanyarukiga Notice of Appeal, para. 78; Kanyarukiga Appeal Brief, paras. 202, 203.
[28] Kanyarukiga Notice of Appeal, para. 38; Kanyarukiga Appeal Brief, para. 89.
[29] The Appeals Chamber notes that Kanyarukiga has withdrawn ground 69 of his appeal. *See* Kanyarukiga Appeal Brief, para. 3.
[30] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Extremely Urgent Defence Motion for a Stay of Proceedings Due to the Impossibility of Having a Fair Trial Following the Disappearance of Exculpatory Evidence in the Hands of the Prosecutor, 25 August 2009 ("Motion for a Stay of Proceedings"), paras. 1, 3, 30-34, 46-48.
[31] Motion for a Stay of Proceedings, paras. 29, 34, 45, 48.
[32] Motion for a Stay of Proceedings, para. 17.
[33] Decision Denying a Stay of Proceedings, para. 17.
[34] Decision Denying a Stay of Proceedings, para. 19.

alibi which could still be effectively presented through other means, including witness testimony."[35] Accordingly, although the Trial Chamber reminded the Prosecution of its obligations under Rules 41 and 68(A) of the Rules and requested it to report back with any information regarding the items allegedly missing, it denied the motion.[36]

16. Kanyarukiga submits that the Trial Chamber erred in law by denying his Motion for a Stay of Proceedings, notwithstanding the patent violation of Rule 41(A) of the Rules by the Prosecution.[37] He submits that, while the Trial Chamber addressed his argument that the loss of the evidence undermined his right to a fair trial, it never ruled on his argument that proceeding in the face of such egregious prosecutorial misconduct would bring the administration of justice into disrepute.[38] He asserts that the Prosecution's failure to look into the matter for five years prevented him from proving that the *laissez-passers* existed.[39] He submits that the Trial Chamber's error invalidates his convictions.[40]

17. The Prosecution responds that Kanyarukiga's arguments should fail because the Trial Chamber correctly denied Kanyarukiga's Motion for a Stay of Proceedings.[41]

18. The Appeals Chamber is not convinced that the Trial Chamber failed to consider Kanyarukiga's argument that to proceed with the case without the *laissez-passers* would bring the administration of justice into disrepute. It notes that the Trial Chamber specifically recalled this argument in the Decision Denying a Stay of Proceedings.[42] The Trial Chamber also correctly recalled the jurisprudence on the granting of a stay of proceedings, including the fact that an abuse of process may be relied upon where proceeding with the trial would contravene the court's sense of justice, due to pre-trial impropriety or misconduct.[43] While the Trial Chamber did not explicitly address Kanyarukiga's argument in its discussion, the Appeals Chamber understands that by finding that Kanyarukiga could still present his alibi through other means and that the absence of the *laissez-passers* would not warrant a dismissal of all charges against him,[44] the Trial Chamber

[35] Decision Denying a Stay of Proceedings, para. 19. The Appeals Chamber notes that an alibi does not constitute a defence in its proper sense.
[36] Decision Denying a Stay of Proceedings, p. 5.
[37] Kanyarukiga Notice of Appeal, para. 37; Kanyarukiga Appeal Brief, paras. 83-88. *See also* Kanyarukiga Reply Brief, para. 43.
[38] Kanyarukiga Appeal Brief, para. 86.
[39] Kanyarukiga Appeal Brief, para. 87.
[40] Kanyarukiga Appeal Brief, para. 88.
[41] Prosecution Response Brief, paras. 97-109, 115.
[42] Decision Denying a Stay of Proceedings, para. 15, *quoting* Motion for a Stay of Proceedings, para. 3.
[43] Decision Denying a Stay of Proceedings, paras. 12, 13, *referring to Barayagwiza* Decision of 3 November 1999, paras. 74, 77.
[44] Decision Denying a Stay of Proceedings, para. 19.

implied that it did not consider that the administration of justice would be brought into disrepute by continuing the proceedings.

19. Furthermore, the Appeals Chamber is not convinced that the Trial Chamber erred in the exercise of its discretion by not ordering a stay of proceedings. In this regard, the Appeals Chamber recalls that the burden of showing that there has been an abuse of process rests with the accused.[45] However, as both the Trial Chamber and the Appeals Chamber have noted, the existence of the *laissez-passers* among the items seised from Kanyarukiga has not been established.[46] As such, it was not demonstrated that the Prosecution failed to preserve evidence as required by Rule 41 of the Rules. Kanyarukiga has therefore failed to show that there was an abuse of process that undermined his right to a fair trial.

20. The Trial Chamber also correctly considered whether it had been shown that Kanyarukiga had suffered prejudice.[47] The Trial Chamber reasonably considered that, even if the *laissez-passers* existed, Kanyarukiga's alibi "could still be effectively presented through other means, including witness testimony placing the Accused at the locations where he allegedly was during the events in question."[48] The Appeals Chamber notes that Kanyarukiga did in fact call 14 witnesses who testified in support of his alibi and therefore he was not prevented from advancing his alibi.

21. In these circumstances, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in the exercise of its discretion in denying the stay of proceedings.

2. Alleged Errors in Denying Adjournments (Ground 70)

22. Kanyarukiga submits that the Trial Chamber violated his right to have adequate time to prepare and conduct his defence case by refusing to adjourn the proceedings on various occasions.[49] The Prosecution responds that decisions on trial scheduling are discretionary and that Kanyarukiga fails to demonstrate that the Trial Chamber abused its discretion or caused him any prejudice.[50]

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[45] *Akayesu* Appeal Judgement, para. 340.
[46] Decision Denying a Stay of Proceedings, para. 17; Decision on Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents, para. 18.
[47] *Cf. Akayesu* Appeal Judgement, para. 340 ("The Appeals Chamber finds that it is, however, more important that the accused show that he had suffered prejudice.").
[48] Decision Denying a Stay of Proceedings, para. 19.
[49] Kanyarukiga Notice of Appeal, para. 77; Kanyarukiga Appeal Brief, paras. 200, 201.
[50] Prosecution Response Brief, paras. 251, 253, 254, 268.

(a) Alleged Error in Declining to Adjourn the Start of the Trial

23. Kanyarukiga submits that the Trial Chamber erred in declining to adjourn the start of the trial even though the Prosecution was still looking for the missing *laissez-passers* and had just provided him with "thousands of pages of *Seromba* disclosure" which required analysis.[51] According to Kanyarukiga, the Trial Chamber erroneously applied the standard for staying proceedings rather than adjournments in this context.[52]

24. The Prosecution responds that the Trial Chamber properly denied Kanyarukiga's request because the mere possibility that exculpatory material may be discovered does not require an adjournment.[53] The Prosecution further submits that the material from the *Seromba* case only concerned sealed exhibits, many of which were personal identification sheets of Prosecution witnesses.[54]

25. In reply, Kanyarukiga admits that his reference to "thousands of pages" from the *Seromba* case was incorrect but insists that he did not receive the sealed exhibits from that case until the last minute.[55]

26. It is well established that trial chambers exercise discretion in relation to trial management, which includes decisions on adjournments.[56] The Appeals Chamber's examination is therefore limited to establishing whether the Trial Chamber abused its discretionary power by committing a discernible error when it refused Kanyarukiga's request to adjourn the start of the trial.[57] With respect to the *laissez-passers*, Kanyarukiga submitted to the Trial Chamber that the trial would move forward in a different manner if these documents were to be retrieved and that he was willing to "wait a few more weeks" until the Prosecution presented the results of its inquiry.[58] These arguments did not show that Kanyarukiga needed a postponement of the trial to prepare his defence.

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[51] Kanyarukiga Appeal Brief, para. 200(a).
[52] Kanyarukiga Appeal Brief, para. 200(a); Kanyarukiga Reply Brief, para. 95.
[53] Prosecution Response Brief, para. 258.
[54] Prosecution Response Brief, paras. 259, 260.
[55] Kanyarukiga Reply Brief, para. 94, fn. 226.
[56] *See, e.g., Šešelj* Decision of 16 September 2008, para. 3; *Prlić et al.* Decision of 1 July 2008, para. 15. *See also Ngirabatware* Decision of 12 May 2009, para. 22; *Karemera et al.* Decision of 28 April 2006, paras. 7, 8.
[57] *See Šešelj* Decision of 16 September 2008, para. 3.
[58] T. 31 August 2009 pp. 4, 5, 7. In his motion for certification to appeal the Trial Chamber's dismissal of his adjournment request, Kanyarukiga further explained that he was willing to accept a temporary infringement of his right to a speedy trial in order to ensure that the Prosecution provided the necessary answers to his queries before proceeding to trial. *See The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Motion for Certification to Appeal the Trial Chamber's Decision on the Defence Motion to Adjourn Proceedings, 7 September 2009 ("Motion for Certification of 7 September 2009"), para. 7. He also stated that "it would be unfair to proceed before having given the Prosecution every chance to find the documents and/or to provide an adequate explanation for their absence." *See* Motion for Certification of 7 September 2009, para. 6.

He has thus failed to demonstrate that the Trial Chamber abused its discretion in declining his adjournment request.

27. Regarding the material from the *Seromba* case, the Appeals Chamber notes that the Trial Chamber decided to consider Kanyarukiga's request for adjournment on a case-by-case basis as relevant documents were to be presented during trial.[59] The Appeals Chamber finds that this was a reasonable approach to the issue. Furthermore, on appeal, Kanyarukiga does not point to any specific incident in which the proceedings should have been adjourned. He has thus failed to show that the Trial Chamber committed a discernible error in this respect.

(b) Alleged Error in Declining to Further Adjourn the Cross-Examination of Witness CBY

28. Kanyarukiga submits that the Trial Chamber erroneously denied his request to further adjourn the cross-examination of Prosecution Witness CBY even though the Prosecution had failed to disclose in a timely manner *Gacaca* documents relevant to this witness and ultimately provided him with "incomplete, indecipherable, and largely unidentifiable documents".[60]

29. The Prosecution responds that it did not disclose Witness CBY's *Gacaca* documents too late.[61] It also points out that Witness CBY's cross-examination was postponed once to allow for the disclosure of the material and that the material was legible and disclosed as obtained from Rwanda.[62]

30. The Appeals Chamber observes that the Defence learned from the Prosecution for the first time on 8 September 2009 that Witness CBY had been involved in *Gacaca* proceedings.[63] The Defence reacted by requesting the disclosure of relevant documents, arguing that they were of crucial importance to the cross-examination of Witness CBY.[64] The Prosecution claimed that it was not in the possession of the material but had contacted the Rwandan authorities about the issue.[65] At the end of the session, the Trial Chamber decided to postpone the further cross-examination of Witness CBY until the Prosecution obtained and disclosed the material.[66]

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[59] T. 31 August 2009 p. 22.
[60] Kanyarukiga Notice of Appeal, para. 77; Kanyarukiga Appeal Brief, para. 200(b). *See also* AT. 14 December 2011 p. 10.
[61] Prosecution Response Brief, para. 263.
[62] Prosecution Response Brief, para. 264; AT. 14 December 2011 pp. 27, 28.
[63] Witness CBY, T. 8 September 2009 pp. 49-51. Witness CBY testified that he was convicted by the court of first instance to eight years of imprisonment for having participated in the attacks at the Nyange parish but acquitted on appeal. *See* T. 8 September 2009 p. 50. *See also* T. 8 September 2009 pp. 57-68.
[64] T. 8 September 2009 pp. 51, 55, 56. Nevertheless, the Trial Chamber ordered the Defence to start cross-examination. *See* Witness CBY, T. 8 September 2009 p. 56. *See also* Witness CBY, T. 8 September 2009 pp. 57-68.
[65] T. 8 September 2009 pp. 51, 69.
[66] T. 8 September 2009 p. 70.

31. On 14 September 2009, Witness CBY was recalled for further cross-examination. By that time, the Prosecution had disclosed a *Gacaca* document which, according to the Defence, was "practically illegible in several areas" and had not allowed it to conduct meaningful investigations.[67] The Defence therefore requested the Trial Chamber to adjourn the cross-examination of Witness CBY, order the Prosecution to provide legible documents, and allow the Defence time to carry out investigations.[68] The Prosecution opposed the Defence request, submitting that the document had been disclosed as received from Rwanda and that the Prosecution itself was able to read it with the help of Rwandan colleagues.[69] The Presiding Judge then dismissed the request for adjournment.[70]

32. The Appeals Chamber recalls that trial chambers are best placed to determine both the modalities for disclosure of material intended for use in cross-examination and the amount of time that is sufficient for an accused to prepare his defence based on such disclosure.[71] However, in the present case, the Trial Chamber provided no reasoning as to why it dismissed the Defence adjournment request.[72] It is therefore not possible to determine whether the Judges considered the Defence assertion that the *Gacaca* document in question was not legible and that further time was needed to investigate. Accordingly, the Appeals Chamber finds that the Trial Chamber failed to provide a reasoned opinion for its decision to dismiss the request for a further postponement of Witness CBY's cross-examination.

33. However, Kanyarukiga does not demonstrate on appeal how he was prejudiced by having to proceed with the cross-examination of Witness CBY. He also did not follow up on the issue at trial. After the Trial Chamber dismissed his adjournment request, the Defence continued the cross-examination without further inquiry into Witness CBY's involvement in *Gacaca* proceedings.[73] While the Defence argued that it had not yet finished when the Trial Chamber decided that cross-examination should come to an end, it did not indicate that its problems were specifically related to this matter.[74] It also did not address this point in its closing brief or arguments.[75]

34. For these reasons, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber committed an error which infringed his fair trial rights by dismissing his request for a further postponement of Witness CBY's cross-examination.

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[67] T. 14 September 2009 pp. 1, 2.
[68] T. 14 September 2009 p. 2.
[69] T. 14 September 2009 p. 2.
[70] T. 14 September 2009 p. 2.
[71] *Kalimanzira* Appeal Judgement, para. 40.
[72] *See* T. 14 September 2009 p. 2.
[73] *See* Witness CBY, T. 14 September 2009 pp. 3-35.

(c) Alleged Error in Declining to Adjourn the Start of the Defence Case

35. Kanyarukiga finally submits that the Trial Chamber improperly refused to adjourn the start of the Defence case in light of the Prosecution's late disclosure of material relating to Defence witnesses.[76] He argues that he was forced to proceed with incomplete material and did not have adequate time to select and prepare his witnesses.[77]

36. The Prosecution responds that Kanyarukiga was sufficiently prepared to defend himself and does not show how his defence would have differed had he been given more time.[78]

37. The Appeals Chamber notes that, on 18 January 2010, Kanyarukiga requested the Trial Chamber to adjourn the Defence case or order a stay of proceedings, arguing that the Prosecution had yet to disclose material falling under Rules 66(B) and 68 of the Rules in relation to Defence Witnesses KG37 and Ndahimana.[79] While the Trial Chamber denied this request, it instructed the Prosecution to search for and disclose all relevant material in its custody or control and to contact the Rwandan authorities about *Gacaca* documents relating to Witness KG37.[80] At the same time, the Trial Chamber noted that it would remain seised of the matter and issue further orders if necessary.[81]

38. Kanyarukiga fails to show that this approach was erroneous. Moreover, as the trial transcripts show, the Trial Chamber followed up on the issue diligently and tried to accommodate the Defence needs for witness selection and preparation by granting several short adjournments.[82] On 10 February 2010, the Defence ultimately decided not to call Witnesses KG37 and Ndahimana to the stand because "our time is running down, and also we're trying to avoid unnecessarily repetitive testimonies."[83] This decision was thus not owed to disclosure violations by the Prosecution or inadequate time to prepare the witnesses.[84]

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[74] *See* Witness CBY, T. 14 September 2009 p. 34.
[75] *See* Kanyarukiga Closing Brief, paras. 375-388; T. 24 May 2010 pp. 30-97.
[76] Kanyarukiga Notice of Appeal, para. 77, *referring to* T. 18 January 2010, pp. 2-14, and T. 19 January 2010, pp. 50-53.
[77] Kanyarukiga Notice of Appeal, para. 77; Kanyarukiga Appeal Brief, para. 200(c), *referring to* ground of appeal 9.
[78] Prosecution Response Brief, paras. 266, 267.
[79] T. 18 January 2010 pp. 2-6, 12.
[80] T. 18 January 2010 p. 14.
[81] T. 18 January 2010 p. 14.
[82] *See* T. 19 January 2010 pp. 46-53; T. 21 January 2010 pp. 83, 84; T. 25 January 2010 pp. 1-5; T. 27 January 2010 pp. 63-66; T. 2 February 2010 pp. 1, 2; T. 8 February 2010 pp. 25-27.
[83] T. 10 February 2010 p. 2.
[84] The Appeals Chamber observes that the Prosecution provided the Defence with the requested material for Witness Ndahimana (an interview with the Prosecution in October 2009) on 19 and 25 January 2010. *See* T. 19 January 2010 pp. 48, 49; T. 25 January 2010 p. 4. The Defence did not indicate to the Trial Chamber afterwards that it was unable to work with this material. Furthermore, on 26 January 2010, the Prosecution provided the Defence with material concerning Witness KG37. *See* T. 27 January 2010 pp. 63-65. The Defence initially stated that it needed time to inspect

39. For these reasons, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber committed a discernible error in refusing to adjourn the start of the Defence case.

3. Alleged Error in Imposing Arbitrary Time-Limits for Defence Cross-Examination (Ground 71)

40. Kanyarukiga submits that the Trial Chamber erred by arbitrarily imposing time-limits for cross-examination and enforcing them more strictly against the Defence than the Prosecution.[85] In particular, he submits that the Trial Chamber first promised that the Defence would have all the time needed for cross-examination,[86] but then restricted it to the same amount of time as the Prosecution examination-in-chief.[87] Kanyarukiga further contends that the Trial Chamber granted the Prosecution more time to cross-examine his alibi witnesses and thus violated the equality of arms principle.[88]

41. The Prosecution responds that Kanyarukiga merely repeats arguments which already failed at trial.[89] In its view, the Trial Chamber did not impose arbitrary time-limits on the Defence.[90]

42. The Appeals Chamber recalls that under Rule 90(F) of the Rules, the trial chamber "shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to: (i) [m]ake the interrogation and presentation effective for the ascertainment of the truth; and (ii) [a]void needless consumption of time." Trial chambers therefore enjoy discretion in setting the parameters of cross-examination.[91] When addressing a submission concerning the modalities of cross-examination, the Appeals Chamber must ascertain whether the Trial Chamber properly exercised its discretion and, if not, whether the accused's defence was substantially affected.[92]

43. Kanyarukiga refers to a statement by Judge Masanche during examination-in-chief of Prosecution Witness Rémy Sahiri that the Defence would be at its liberty to cross-examine the

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these documents and conduct further investigations and then complained that additional material should be disclosed. *See* T. 27 January 2010 p. 64; T. 8 February 2010 pp. 3, 4. The Prosecution thereupon suggested calling Witness KG37 to the stand so that he could assist the Prosecution in the identification of the missing material. *See* T. 8 February 2010 p. 4. As stated above, the Defence refrained from doing so. On 12 February 2010 (one day after the close of the Defence case), the Defence referred once more to the missing material in relation to Witness KG37 without, however, indicating the purpose for which the material was sought. *See* T. 12 February 2010 p. 2.

[85] Kanyarukiga Notice of Appeal, para. 78; Kanyarukiga Appeal Brief, paras. 202, 203.

[86] Kanyarukiga Appeal Brief, para. 202, *referring to* T. 31 August 2009 pp. 26, 29; T. 1 September 2009 p. 21.

[87] Kanyarukiga Appeal Brief, para. 202, *referring to* T. 2 September 2009 p. 23; T. 7 September 2009 p. 36.

[88] Kanyarukiga Appeal Brief, para. 203, *referring to* T. 25 January 2010 pp. 46, 47; T. 2 February 2010 pp. 35-37.

[89] Prosecution Response Brief, para. 269, *referring to* T. 7 September 2009 pp. 37, 38; T. 2 February 2010 pp. 35, 36.

[90] Prosecution Response Brief, paras. 269, 273-276.

[91] *Rukundo* Appeal Judgement, para. 133; *Nahimana et al.* Appeal Judgement, para. 182. *See also Prlić et al.* Decision of 4 July 2006, p. 3.

[92] *Nahimana et al.* Appeal Judgement, para. 182, *referring to Rutaganda* Appeal Judgement, paras. 99, 102.

witness and could take an "hour, a day or two days on anything you think is not proper."[93] However, Kanyarukiga takes this statement out of context. It clearly was a specific reaction to repeated Defence objections during Witness Sahiri's examination which interrupted his testimony.[94] The statement thus does not in any way indicate that the Defence was granted unlimited time for its entire cross-examination.

44. The Appeals Chamber is also not convinced by Kanyarukiga's argument that the Trial Chamber adopted a strict "equal time" rule for examination-in-chief and cross-examination and arbitrarily enforced this rule against the Defence. While the Trial Chamber reminded both parties that cross-examination should "generally" last no longer than examination-in-chief,[95] on several occasions it allowed the Defence to use significantly more time to finish its cross-examination.[96] Likewise, Kanyarukiga's references to the Prosecution cross-examination of alibi witnesses do not show that the Trial Chamber provided any favourable treatment to the Prosecution.[97]

45. Kanyarukiga provides only one example of when the Defence protested that it was not finished with its cross-examination, namely in relation to Witness CBY.[98] However, at the time of this protest, the Trial Chamber had already granted the Defence 30 additional minutes past the envisaged two hours.[99] The Defence was thus alerted to the need to concentrate on issues central to Kanyarukiga's case within this time-limit. Moreover, upon the Trial Chamber's decision that the allotted time had passed, the Defence did not indicate any specific issue relevant to Kanyarukiga's case which had not yet been put to Witness CBY.[100] It also did not point to any such issue in its closing brief and arguments at trial[101] or on appeal. The Appeals Chamber therefore cannot discern

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[93] Rémy Sahiri, T. 31 August 2009 p. 29. *See also* Kanyarukiga Appeal Brief, para. 202, fn. 340.
[94] Rémy Sahiri, T. 31 August 2009 p. 29.
[95] T. 7 September 2009 p. 36; T. 14 September 2009 p. 63. *See also* T. 2 September 2009 p. 23.
[96] Kanyarukiga himself refers to two incidences in which the Trial Chamber allowed the Defence to fully finish its cross-examination even though it used significantly more time than the Prosecution. Kanyarukiga Appeal Brief, fn. 343, *referring to* the cross-examination of Witness CBN (T. 2 September 2009 pp. 34, 39) and Witness CBT (T. 14 September 2009 pp. 63, 74). The Appeals Chamber notes that Kanyarukiga points to these references as examples of where the Defence was prevented from finishing its cross-examination. However, the transcripts show that the Trial Chamber permitted the Defence to proceed until Counsel acknowledged himself that he was finished. *See* T. 2 September 2009 pp. 34, 39, 42; T. 15 September 2009 p. 7.
[97] Kanyarukiga points to the court session of 25 January 2010 (*see* Kanyarukiga Appeal Brief, fn. 344, *referring to* T. 25 January 2010 pp. 46, 47), where the Defence complained that the Prosecution was allowed to continue its cross-examination of a Defence alibi witness even though it had already used more than 55 minutes (in comparison to 30 minutes used by the Defence for examination-in-chief). He further points to the court session of 2 February 2010 (Kanyarukiga Appeal Brief, fn. 345, *referring to* T. 2 February 2010 pp. 35-37), where the Defence raised complaints after 17 minutes of cross-examination by the Prosecution, which equalled approximately half the time used by the Defence for examination-in-chief.
[98] Kanyarukiga Appeal Brief, para. 202. *See* Witness CBY, T. 14 September 2009 p. 34.
[99] Witness CBY, T. 14 September 2009 pp. 1, 24. This did not include the time used by the Defence to start cross-examination of Witness CBY on 8 September 2009. *See* Witness CBY, T. 8 September 2009 pp. 57-67.
[100] *See* Witness CBY, T. 14 September 2009 p. 34.
[101] *See* Kanyarukiga Closing Brief, paras. 375-388; T. 24 May 2010 pp. 30-97.

how the Trial Chamber abused its discretion with respect to the management of Witness CBY's cross-examination.

46. Kanyarukiga's arguments that cross-examination is generally more complex than examination-in-chief, that all Prosecution witnesses had testified in related proceedings, and that the Defence was continuously confronted with new claims and ongoing disclosure,[102] are unsubstantiated and therefore do not show that the Trial Chamber abused its discretion.

47. For these reasons, the Appeals Chamber dismisses Kanyarukiga's ground of appeal 71.

4. Alleged Error in Failing to Timely Rule on the Admissibility of Prosecution Evidence (Ground 33)

48. On several occasions during the Prosecution case, the Defence raised objections to the presentation of evidence about Kanyarukiga's participation in certain meetings and other issues, arguing that the allegations were outside the scope of the Amended Indictment.[103] On 18 December 2009, after the close of the Prosecution case, the Defence filed a motion for a stay of proceedings and exclusion of the evidence in question.[104] In its 15 January 2010 Decision, the Trial Chamber granted the request for exclusion of two pieces of evidence, reserved its ruling with respect to evidence on Kanyarukiga's participation in meetings, and denied the remainder of the motion.[105] The Trial Chamber reasoned that "a close analysis of the evidence on the meetings allegedly attended by the Accused would draw it into a substantive evaluation of the quality of much of the Prosecution evidence, which, at this stage of the proceedings, is neither warranted nor appropriate".[106] Findings on the admissibility of the evidence in question are included in various parts of the Trial Judgement.[107]

49. Kanyarukiga submits that the Trial Chamber erred in law because it did not decide on his objections to the admissibility of Prosecution evidence until after the Prosecution case and, with regard to the evidence on meetings, until it rendered the Trial Judgement.[108] Kanyarukiga contends that, as a result of the delay, he was confronted with a "raft of prejudicial testimony" which was

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[102] *See* Kanyarukiga Appeal Brief, para. 202, fn. 342, *referring to* Kanyarukiga's grounds of appeal 33, 70, "and generally above".
[103] *See* 15 January 2010 Decision, paras. 15, 16, 18, 20, 21, 23, 25, 27, 29, 31, 33, 39.
[104] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Motion for a Stay of Proceedings, or Exclusion of Evidence Outside the Indictment, 18 December 2009.
[105] 15 January 2010 Decision, paras. 9, 17, 22, 30, p. 12. *See also* Decision on Defence Motion for Certification to Appeal, para. 16, p. 6, clarifying the disposition of the 15 January 2010 Decision.
[106] 15 January 2010 Decision, para. 17.
[107] *See* Trial Judgement, paras. 236-253, 450, 568-571.
[108] Kanyarukiga Notice of Appeal, para. 38.

ultimately found inadmissible.[109] He asserts that the needless reception of this evidence led to material prejudice and undermined the fairness of the proceedings since he was required to cross-examine witnesses without adequate notice and dedicate time and resources to address immaterial information.[110]

50. The Prosecution responds that the Trial Chamber properly exercised its discretion in relation to the admission of evidence and that Kanyarukiga suffered no prejudice.[111]

51. Kanyarukiga replies that whether the Trial Chamber had discretion to admit evidence is irrelevant because his challenges concern the failure to make a timely decision.[112]

52. The Appeals Chamber recalls that when a party alleges on appeal that its right to a fair trial has been infringed, it must prove that the trial chamber violated a provision of the Statute and/or the Rules and that this violation caused prejudice which amounts to an error of law invalidating the trial judgement.[113] Furthermore, the Appeals Chamber notes that the timing of the Trial Chamber's rulings on the admissibility of Prosecution evidence related to the general conduct of trial proceedings and was thus a matter within the discretion of the Trial Chamber. The Appeals Chamber would only reverse such a decision where it was demonstrated that the Trial Chamber committed a discernible error in rendering the decision, based on an incorrect interpretation of the governing law or a patently incorrect conclusion of fact, or where the decision was so unfair or unreasonable so as to constitute an abuse of the Trial Chamber's discretion.[114]

53. Kanyarukiga fails to demonstrate that the Trial Chamber abused its discretion with regard to the timing of its rulings and that he suffered prejudice as a result. In particular, he does not show that his ability to defend himself against the allegations underpinning his conviction was impaired due to the Trial Chamber's conduct. His general claim that he had to address immaterial information during trial is insufficient to show that he suffered prejudice and that the fairness of the proceedings was undermined.

54. The Appeals Chamber therefore dismisses Kanyarukiga's ground of appeal 33.

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[109] Kanyarukiga Notice of Appeal, para. 38; Kanyarukiga Appeal Brief, para. 89.
[110] Kanyarukiga Notice of Appeal, para. 38; Kanyarukiga Appeal Brief, para. 89; AT. 14 December 2011 pp. 10, 11. Kanyarukiga further asserts that the Prosecution has the burden of showing that the Defence was not materially impaired by the presentation of evidence which was ultimately found inadmissible. *See* Kanyarukiga Appeal Brief, para. 90, *referring to Ntakirutimana* Appeal Judgement, para. 58. *See also* Kanyarukiga Reply Brief, paras. 45-47.
[111] Prosecution Response Brief, paras. 118, 120-124.
[112] Kanyarukiga Reply Brief, para. 44.
[113] *Haradinaj et al.* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 28.
[114] *See, e.g., Kalimanzira* Appeal Judgement, para. 14; *Rukundo* Appeal Judgement, para. 147.

5. Conclusion

55. Kanyarukiga has failed to demonstrate that the Trial Chamber violated his fair trial rights. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 32, 33, 70, and 71.

B. ALLEGED ERRORS RELATING TO THE INDICTMENT

56. The Original Indictment against Kanyarukiga was confirmed on 4 March 2002.[115] On 14 November 2007, the Pre-Trial Chamber granted the Prosecution request to amend the Original Indictment.[116] On the same day, the Prosecution filed the Amended Indictment, which charged Kanyarukiga with genocide or complicity in genocide, and extermination as a crime against humanity for crimes committed in Kivumu *commune* between 6 and 30 April 1994.[117] The Trial Chamber convicted Kanyarukiga of genocide and extermination as a crime against humanity for planning the killing of Tutsis by destroying the Nyange church on 16 April 1994.[118]

57. Kanyarukiga submits that, in light of the allegations in the Amended Indictment, the Trial Chamber erred in relation to the events on 14,[119] 15,[120] and 16 April 1994.[121] The Appeals Chamber will address these contentions in turn.[122]

1. Alleged Error in Relying on a Meeting on 14 April 1994 (Grounds 35 through 39)

58. Paragraph 12 of the Amended Indictment alleges that:

> [o]n or about 12 April 1994, **Gaspard KANYARUKIGA**, Father Athanase SEROMBA, Fulgence KAYISHEMA, Grégoire NDAHIMANA, Télesphore NDUNGUTSE and others attended another meeting on Seromba's balcony at Nyange Parish.

59. The Trial Chamber noted that the Prosecution had not adduced any evidence of a meeting on Seromba's balcony on 12 April 1994.[123] However, the Trial Chamber found that the expression "on or about 12 April 1994" in paragraph 12 of the Amended Indictment provided an "approximate timeframe, which encompasses dates on either side of 12 April 1994".[124] The Trial Chamber concluded that the testimony of Prosecution Witnesses CBN and CBS, according to which

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[115] Decision on the Prosecutor's *Ex Parte* Motion for Review and Confirmation of the Indictment. *See also The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Indictment, 21 February 2002 ("Original Indictment").
[116] Decision on Prosecution Request to Amend the Indictment.
[117] *See* Amended Indictment, Counts 1 to 3.
[118] Trial Judgement, paras. 654, 666, 667.
[119] Kanyarukiga Notice of Appeal, paras. 41-45, 69; Kanyarukiga Appeal Brief, paras. 98, 102-114, 182; Kanyarukiga Reply Brief, paras. 48-51.
[120] Kanyarukiga Notice of Appeal, paras. 46-48; Kanyarukiga Appeal Brief, paras. 115-122; Kanyarukiga Reply Brief, paras. 52-55; AT. 14 December 2011 pp. 3-10.
[121] Kanyarukiga Notice of Appeal, paras. 48, 50; Kanyarukiga Appeal Brief, paras. 99, 120-125; Kanyarukiga Reply Brief, paras. 56, 57.
[122] The Appeals Chamber notes that Kanyarukiga has withdrawn grounds 34 and 43 of his appeal. *See* Kanyarukiga Appeal Brief, para. 3.
[123] Trial Judgement, para. 243.
[124] Trial Judgement, para. 245.

Kanyarukiga and others met on Seromba's balcony or "upstairs" on 14 April 1994, described the meeting charged in paragraph 12 of the Amended Indictment.[125]

60. Kanyarukiga submits that the Amended Indictment does not plead a meeting on 14 April 1994 and that the Trial Chamber therefore erred in admitting and relying on the evidence of Witnesses CBN and CBS.[126]

61. The Prosecution responds that Kanyarukiga's challenges should be dismissed.[127]

62. The Appeals Chamber recalls that, as a general rule, it declines to discuss alleged errors which have no impact on the conviction or sentence.[128] Kanyarukiga's convictions for planning the killing of Tutsis at the Nyange church is not based on his participation in the meeting on 14 April 1994 as testified about by Witnesses CBN and CBS.[129] In fact, the Trial Chamber found that "it is not established that this meeting had any criminal purpose."[130] While the Trial Chamber recalled Kanyarukiga's attendance at the meeting when assessing his *mens rea* for planning, it did so only to infer that he knew as of that day that Tutsis had taken refuge at the Nyange parish.[131] This finding did not underpin his convictions as the Trial Chamber inferred his *mens rea* from other factors.[132] Consequently, the question whether Kanyarukiga participated in the meeting on 14 April 1994 does not affect the verdict and the Appeals Chamber will therefore not address Kanyarukiga's related challenges.

63. In light of the above, Kanyarukiga's grounds of appeal 35 through 39 are dismissed.

2. Alleged Errors in Relying on Events of 15 April 1994 (Grounds 40, 41, and 42 in part)

(a) Alleged Error in Relying on Meetings

64. The Trial Chamber noted that the Prosecution had led evidence through Witnesses CBK, CBY, and CBN implicating Kanyarukiga in meetings held on 15 April 1994 at the Nyange parish even though the Amended Indictment did not include any express charge to that effect.[133]

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[125] Trial Judgement, paras. 246, 253.
[126] Kanyarukiga Notice of Appeal, paras. 41-45; Kanyarukiga Appeal Brief, paras. 102-114. *See also* AT. 14 December 2011 p. 11.
[127] Prosecution Response Brief, paras. 126-131.
[128] *Renzaho* Appeal Judgement, paras. 251, 384; *Krajišnik* Appeal Judgement, para. 20; *Martić* Appeal Judgement, para. 17; *Strugar* Appeal Judgement, para. 19; *Brdanin* Appeal Judgement, para. 21. *See also Nchamihigo* Appeal Judgement, paras. 102, 112.
[129] *See* Trial Judgement, paras. 644-652, 661, 666.
[130] *See* Trial Judgement, para. 651.
[131] *See* Trial Judgement, para. 651.
[132] *See* Trial Judgement, para. 650.
[133] Trial Judgement, paras. 445-448. *See also* Amended Indictment, paras. 14, 15, which set out the allegations against Kanyarukiga in relation to 15 April 1994.

Moreover, the Trial Chamber observed that a paragraph mentioning a meeting on that day had been removed from the Amended Indictment, which suggested that the Prosecution did not intend to lead evidence on such a meeting.[134] Nevertheless, the Trial Chamber decided to consider the evidence in question for the purpose of establishing Kanyarukiga's presence at the Nyange parish on 15 April 1994.[135]

65. Kanyarukiga submits that the Trial Chamber erred in so doing.[136] He further asserts that the Trial Chamber in fact used the evidence in question to find that he planned the destruction of the Nyange church.[137]

66. The Prosecution responds that the Trial Chamber was allowed to consider evidence of meetings on 15 April 1994 as part of the events charged.[138]

67. The Appeals Chamber observes that paragraphs 14 and 15 of the Amended Indictment charged Kanyarukiga with participating in attacks on Tutsis at the Nyange parish on 15 April 1994. The Trial Chamber held that the Prosecution had proved the occurrence of the attacks, including an attempt to burn the Nyange church.[139] However, it declined to hold Kanyarukiga responsible for these crimes.[140] Moreover, the impugned evidence of Witnesses CBK, CBY, and CBN concerned meetings that took place prior to and during the attacks charged in paragraphs 14 and 15 of the Amended Indictment.[141] Contrary to Kanyarukiga's assertion, his conviction is thus not based on this evidence.[142] While the Trial Chamber recalled the evidence when assessing Kanyarukiga's *mens rea* for planning,[143] it found this element established based on other factors.[144] Consequently, the impugned evidence does not affect the verdict and the Appeals Chamber will therefore not address Kanyarukiga's challenges pertaining thereto.

68. For these reasons, Kanyarukiga's grounds of appeal 40, 41, and 42 in part are dismissed.

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[134] Trial Judgement, para. 445.
[135] Trial Judgement, paras. 446-448. *See also* Trial Judgement, paras. 455, 462, 487, fn. 1339.
[136] *See* Kanyarukiga Notice of Appeal, paras. 46-48; Kanyarukiga Appeal Brief, paras. 115-122; Kanyarukiga Reply Brief, paras. 52, 53.
[137] Kanyarukiga Appeal Brief, para. 118, *referring to* Trial Judgement, para. 645; Kanyarukiga Reply Brief, para. 55.
[138] Prosecution Response Brief, paras. 134, 135.
[139] *See* Trial Judgement, paras. 434, 475-485.
[140] *See* Trial Judgement, paras. 466-474, 491-496, 499, 633, 643-645.
[141] Trial Judgement, paras. 446-448, 455, 462, 487, fn. 1339.
[142] *See* Trial Judgement, paras. 644-649.
[143] Based on the evidence of Witnesses CBK, CBY, and CBN, the Trial Chamber found that "Kanyarukiga was present at Nyange Parish prior to 11 a.m. on 15 April [1994] with Kayishema and Ndahimana" and "was around the areas of the Statue of the Virgin Mary and Nyange Church on the morning of 15 April [1994], prior to and during the attacks outlined in paragraph 14 of the Indictment". *See* Trial Judgement, paras. 464, 499. The Trial Chamber referred to these findings in paragraph 651 of the Trial Judgement.
[144] *See* Trial Judgement, para. 650.

(b) Alleged Error in Relying on Kanyarukiga's Conversation with Kayishema

69. When assessing Kanyarukiga's role in the attacks at the Nyange parish on 15 April 1994, the Trial Chamber noted Prosecution Witness CDK's testimony that, prior to the attempted burning of the church, Kanyarukiga spoke with Seromba in front of the parish secretariat, telling him that the church had to be destroyed in order to kill all the *Inyenzi*.[145] According to the witness, Kayishema arrived shortly afterwards and agreed with Kanyarukiga's suggestion.[146] The Trial Chamber further observed that Witness CBY gave evidence that, towards the end of the day, he heard Kayishema and Kanyarukiga say that the assailants had to demolish the church.[147] The Trial Chamber relied on the evidence of Witnesses CDK and CBY to find that Kanyarukiga "conversed with Kayishema on the evening of 15 April and that the conversation affirmed that the Nyange Church was to be demolished."[148]

70. The Appeals Chamber observes that Kanyarukiga's conversation with Kayishema on 15 April 1994 is not pleaded in the Amended Indictment.[149] While Kanyarukiga did not address this issue in his Appeal Brief, the Appeals Chamber invited the parties to discuss at the appeal hearing whether the conversation should have been pleaded, whether a defect in this respect, if any, was cured, and whether Kanyarukiga suffered prejudice as a result of any such defect.[150]

71. Kanyarukiga submits that the conversation should have been pleaded in the Amended Indictment, that this defect was not cured, and that he suffered prejudice as a result.[151] In support of his view, he points out that when an accused is charged with planning, instigating, ordering, or aiding and abetting, the Prosecution is required to identify the particular acts which form the basis of the charges.[152] He further contends that the Prosecution did not provide timely, clear, and consistent information outside the Amended Indictment, which would have put him on notice of the allegation that he planned the killing of Tutsis by conversing with Kayishema on 15 April 1994.[153] He also suggests that this allegation amounted to a new charge, which could have been included in

[145] Trial Judgement, para. 497.
[146] Trial Judgement, para. 497.
[147] Trial Judgement, para. 498.
[148] Trial Judgement, para. 501. *See also* Trial Judgement, para. 498.
[149] *See* Amended Indictment, paras. 14, 15, which include the charges in relation to 15 April 1994.
[150] Order for the Preparation of the Appeal Hearing, 9 December 2011, p. 1.
[151] AT. 14 December 2011 p. 3.
[152] AT. 14 December 2011 p. 5.
[153] AT. 14 December 2011 pp. 8, 9. In this context, Kanyarukiga also refers to paragraph 446 of the Trial Judgement and states that the Trial Chamber there announced that it would use this allegation only in order to determine his presence at the Nyange parish on 15 and 16 April 1994 but impermissibly ended up basing his conviction on it. However, this argument is founded on an incorrect reading of the Trial Judgement. Paragraph 446 of the Trial Judgement is unrelated to the conversation between Kanyarukiga and Kayishema on 15 April 1994. The Appeals Chamber therefore declines to further address Kanyarukiga's argument.

the Amended Indictment only by formal amendment.[154] He further contends that any reference to his participation in meetings on 15 April 1994 had been removed from the Amended Indictment which signaled to him that he would not have to defend himself against such allegations.[155] Finally, he submits that he suffered prejudice as his Defence team "would certainly have further investigated the incident alleged, the whereabouts of Mr. Kayishema, the order of things on the day" and would have changed the cross-examination of the relevant witnesses.[156]

72. The Prosecution responds that the conversation between Kanyarukiga and Kayishema was not a material fact, but merely evidence and therefore did not need to be pleaded in the Amended Indictment.[157] In addition, the Prosecution contends that the Amended Indictment pleaded Kanyarukiga's presence at the Nyange parish on 15 April 1994 and that he was not prejudiced in relation to his conversation with Kayishema as he knew the underlying evidence and cross-examined Witnesses CBY and CDK.[158] The Prosecution finally points out that the Defence "systematically objected to every single material fact not pleaded in the indictment" but not to Witness CBY's testimony about the conversation.[159]

73. The Appeals Chamber recalls that the Prosecution is required to state the charges and the material facts underpinning those charges in the indictment, but not the evidence by which such facts are to be proven.[160] Moreover, the charges and supporting material facts must be pleaded with sufficient precision in the indictment in order to provide clear notice to the accused.[161] The Prosecution is expected to know its case before it goes to trial and cannot omit material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds.[162] An indictment which fails to set forth material facts in sufficient detail is defective.[163]

74. The Appeals Chamber rejects Kanyarukiga's argument that his conversation with Kayishema on 15 April 1994 amounted to a new charge, *i.e.*, a separate crime, for which he could have been convicted only if it had been included in the Amended Indictment by way of formal

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[154] AT. 14 December 2011 pp. 6, 7.
[155] AT. 14 December 2011 pp. 4, 6, *referring to* Trial Judgement, para. 445.
[156] AT. 14 December 2011 p. 10.
[157] AT. 14 December 2011 pp. 21, 23.
[158] AT. 14 December 2011 pp. 23-25.
[159] AT. 14 December 2011 p. 25.
[160] *Uwinkindi* Interlocutory Decision, para. 4; *Simić* Appeal Judgement, para. 20; *Ntagerura et al.* Appeal Judgement, para. 21.
[161] *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Uwinkindi* Interlocutory Decision, para. 5; *Munyakazi* Appeal Judgement, para. 36; *Renzaho* Appeal Judgement, para. 53.
[162] *Kupreškić et al.* Appeal Judgement, para. 92. *See also Muvunyi I* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27.

amendment pursuant to Rule 50 of the Rules. The only crime for which Kanyarukiga was held responsible is the planning of the destruction of the Nyange church and the killing of the Tutsis inside on 16 April 1994.[164] This crime was pleaded in paragraphs 16 to 18 of the Amended Indictment. The Trial Chamber's reasoning indicates that it treated Kanyarukiga's conversation with Kayishema on 15 April 1994 as related to the commission of this crime.[165]

75. The Prosecution contends that the conversation is merely evidence which served to demonstrate Kanyarukiga's state of mind the night before the plan for the demolition of the Nyange church was devised and executed on 16 April 1994.[166] However, this does not describe the Trial Chamber's approach.

76. The Trial Chamber referred to the conversation when assessing Kanyarukiga's *actus reus* of planning.[167] Moreover, the Trial Chamber concluded in this context that it was "satisfied beyond reasonable doubt that Gaspard Kanyarukiga, Grégoire Ndahimana, Fulgence Kayishema, Télesphore Ndungutse, Joseph Habiyambere and others planned the destruction of the Nyange [c]hurch *on 15 and 16 April 1994* and that the church was destroyed on the afternoon of 16 April 1994, killing those inside."[168] Accordingly, in the Trial Chamber's view, Kanyarukiga planned the destruction of the church on both days, his criminal conduct on 15 April 1994 consisting of his conversation with Kayishema.[169] This conversation thus amounted to a material fact that, along with others, underpinned Kanyarukiga's conviction for planning. Recalling that when the accused is charged with planning, the Prosecution is required to identify the "particular acts" or the "particular course of conduct" on the part of the accused which forms the basis for the charge in question,[170] the Appeals Chamber finds that the conversation should have been pleaded in the Amended Indictment. In this respect, the Amended Indictment was defective.

77. However, as will be discussed below, Kanyarukiga was also held responsible for participating in a meeting at the Nyange parish on the morning of 16 April 1994 where the demolition of the Nyange church was discussed and agreed to as well as for making a remark after the meeting about the need to destroy the church. This conduct was adequately pleaded in the

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[163] *Bagosora and Nsengiyumva* Appeal Judgement, para. 96; *Uwinkindi* Interlocutory Decision, para. 5; *Renzaho* Appeal Judgement, para. 55.
[164] *See* Trial Judgement, paras. 25, 654, 666, 667.
[165] *See* Trial Judgement, paras. 644, 645, 648-650.
[166] AT. 14 December 2011 p. 23.
[167] Trial Judgement, para. 644.
[168] Trial Judgement, para. 645 (emphasis added).
[169] The Appeals Chamber notes that Kanyarukiga was not convicted for crimes which occurred on 15 April 1994. *See* Trial Judgement, paras. 466-474, 491-496, 499, 633, 643-645.
[170] *Uwinkindi* Interlocutory Decision, paras. 36, 57; *Renzaho* Appeal Judgement, para. 53; *Karera* Appeal Judgement, para. 292; *Blaškić* Appeal Judgement, para. 213.

Amended Indictment and is a sufficient basis for Kanyarukiga's convictions. Therefore, by partly relying on Kanyarukiga's conversation on 15 April 1994, the Trial Chamber did not commit an error which would invalidate the verdict. The Appeals Chamber therefore declines to consider the issue further[171] and will instead simply disregard the conversation as a basis for Kanyarukiga's liability.

3. Alleged Errors in Relation to Meetings on 16 April 1994 (Grounds 42 in part, and 44)

78. The charges against Kanyarukiga relating to the events on 16 April 1994 are set out in paragraphs 16 to 18 of the Amended Indictment, which read:

> 16. On the morning of 16 April 1994 **Gaspard KANYARUKIGA**, Fulgence KAYISHEMA, Télesphore NDUNGUTSE, Judge HABYAMBERE, Francois GASHUGU, Vedaste MUPENDE, Grégoire NDAHIMANA and others held a meeting at CODEKOKI at which they mutually agreed and planned to kill all the Tutsi refugees in the church by destroying it.
>
> 17. Subsequent to this meeting, **Gaspard KANYARUKIGA** with the others met Father Anastase SEROMBA at Nyange Parish and informed him of their decision to demolish the church in order to kill all the Tutsi refugees. **Gaspard KANYARUKIGA** instigated the demolition of the church suggesting that another one would be built.
>
> 18. On 16 April 1994 at the instigation of **Gaspard KANYARUKIGA**, Fulgence KAYISHEMA, Vedaste MUPENDE, Grégoire NDAHIMANA and Anastase SEROMBA Nyange Church was destroyed using a bulldozer, killing about 2000 Tutsi refugees who had barricaded themselves inside the church. **Gaspard KANYARUKIGA** was present during the demolition of the church and was instigating the attackers to kill all the Tutsi refugees. By reason of the facts alleged in paragraphs 14 through 18 herein **Gaspard KANYARUKIGA** is individually responsible for planning, ordering, instigating, committing or otherwise aiding and abetting the killing of Tutsi civilians at Nyange Parish on 15 and 16 April 1994 in furtherance of the joint criminal enterprise.

79. The Trial Chamber held that the Prosecution had not adduced any evidence of a meeting at the CODEKOKI on the morning of 16 April 1994[172] and that the allegation in paragraph 16 of the Amended Indictment had therefore not been proved.[173]

80. The Trial Chamber further noted that paragraph 17 of the Amended Indictment charged only one meeting at the Nyange parish on 16 April 1994 but that the Prosecution had presented evidence of two meetings, one in the early morning of 16 April 1994 and the other at or near the presbytery around 9.00 or 10.00 a.m.[174] The Trial Chamber concluded that the second meeting was the one described in paragraph 17 of the Amended Indictment.[175] However, it found that "both assemblies appear to have been part of the same course of conduct" and therefore decided to also consider the evidence of the earlier meeting "to the extent to which it supports the general allegation that the

[171] *See supra*, para. 7 (setting out the standards of appellate review).
[172] Trial Judgement, para. 568.
[173] Trial Judgement, para. 612.
[174] Trial Judgement, paras. 572, 573.

Accused and others were present during the events on 16 April 1994."[176] The Trial Chamber was satisfied that Kanyarukiga had sufficient notice of this evidence given that the Amended Indictment clearly alleged that he and others were at the Nyange parish on that day.[177] On the merits, the Trial Chamber found that it had not been established that Kanyarukiga participated in the first meeting,[178] but that he attended the second meeting.[179]

81. Kanyarukiga submits that the allegation in the Amended Indictment that he was present at the Nyange parish on 16 April 1994 did not provide him with sufficient notice that he was accused of participating in meetings.[180] He further asserts that the Trial Chamber erred in concluding that paragraph 17 of the Amended Indictment described the second of the two meetings in evidence.[181] Finally, Kanyarukiga contends that, according to paragraphs 16 and 17 of the Amended Indictment, the decision to destroy the Nyange church was taken at the CODEKOKI meeting whereas the Trial Chamber impermissibly held that the decision was taken at the second meeting at the Nyange parish.[182] According to Kanyarukiga, the Trial Chamber thus moulded the allegations in paragraph 17 of the Amended Indictment to fit the evidence presented at trial and convicted him "on a factual narrative not charged".[183]

82. The Prosecution responds that Kanyarukiga was provided with sufficient notice of the allegations in relation to 16 April 1994.[184] In its opinion, the Trial Chamber reasonably concluded that the second meeting at the Nyange parish was the one described in paragraph 17 of the Amended Indictment.[185] The Prosecution also contends that there is no variance between the allegations in the Amended Indictment and the material facts that established Kanyarukiga's guilt.[186]

83. The Appeals Chamber dismisses Kanyarukiga's assertion that the Amended Indictment did not sufficiently inform him that he was alleged to have attended meetings on 16 April 1994. Paragraphs 16 and 17 of the Amended Indictment charge Kanyarukiga with participation in meetings on that day at the CODEKOKI and the Nyange parish, respectively. To the extent that

[175] Trial Judgement, para. 573.
[176] Trial Judgement, para. 573.
[177] Trial Judgement, para. 573.
[178] Trial Judgement, paras. 577, 579.
[179] Trial Judgement, paras. 613, 644, 649. *See also* Trial Judgement, paras. 580-589.
[180] Kanyarukiga Notice of Appeal, para. 48; Kanyarukiga Appeal Brief, para. 120.
[181] Kanyarukiga Notice of Appeal, para. 50; Kanyarukiga Appeal Brief, paras. 99, 125; Kanyarukiga Reply Brief, para. 57. *See also* AT. 14 December 2011 p. 13.
[182] Kanyarukiga Appeal Brief, paras. 99, 123, 124.
[183] Kanyarukiga Reply Brief, para. 57.
[184] Prosecution Response Brief, para. 138.
[185] Prosecution Response Brief, paras. 141, 145.
[186] Prosecution Response Brief, para. 146; AT. 14 December 2011 p. 27.

Kanyarukiga's submission relates to the first meeting at the parish in the morning of 16 April 1994, the Appeals Chamber recalls that the Trial Chamber found that it had not been proved that Kanyarukiga participated in this meeting.[187] Consequently, Kanyarukiga's conviction is not based on his participation in this meeting and the Appeals Chamber will not address his challenges pertaining thereto.

84. The Appeals Chamber further dismisses Kanyarukiga's contention that there was no basis for the Trial Chamber to find that the second meeting at the Nyange parish on 16 April 1994 was the one described in paragraph 17 of the Amended Indictment. The Trial Chamber came to this conclusion after having considered the evidence of both meetings.[188] Kanyarukiga does not show that the Trial Chamber erred in this respect. Contrary to his assertion,[189] paragraph 17 of the Amended Indictment contains "identifying characteristics" which reasonably allowed the Trial Chamber to conclude that it referred to the second meeting. In particular, the paragraph alleges that, at the meeting in question, Seromba was informed of the decision to destroy the Nyange church. This is consistent with evidence related to the second meeting at the Nyange parish on 16 April 1994.[190]

85. The Appeals Chamber now turns to Kanyarukiga's submission that the Trial Chamber "moulded" the allegations in paragraph 17 of the Amended Indictment and convicted him "on a factual narrative not charged". Strictly speaking, this assertion lies outside Kanyarukiga's Notice of Appeal. There, he merely asserted that the Trial Chamber erred "in treating [paragraph 17 of the Amended Indictment] as alleging the second of two meetings at Nyange Parish on 16 April 1994".[191] Only in his Appeal Brief did Kanyarukiga develop the argument that the Trial Chamber erred in holding that the decision to destroy the church was taken at the meeting at the Nyange parish rather than at the CODEKOKI meeting as alleged in paragraph 16 of the Amended Indictment.[192] Nevertheless, since the Prosecution responded to this assertion, the Appeals Chamber exercises its discretion to consider it.[193]

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[187] Trial Judgement, para. 579.
[188] Trial Judgement, para. 573.
[189] Kanyarukiga Appeal Brief, para. 125.
[190] *See* Trial Judgement, para. 588, *referring to* the testimony of Witness CDL (T. 10 September 2009 pp. 38, 39, 51, 52). In contrast, there is no evidence about the content of the earlier meeting at the Nyange parish. *See* Trial Judgement, paras. 574-576. The Appeals Chamber notes that the Trial Chamber concluded on the merits that "the Prosecution [...] has failed to establish beyond reasonable doubt that during the later meeting, the attendees 'informed [Father Seromba] of their decision to demolish the church in order to kill all the Tutsi refugees,' as alleged in paragraph 17 of the Indictment". *See* Trial Judgement, para. 613. This issue will be discussed below. *See infra*, Section III.D.4.(b).
[191] Kanyarukiga Notice of Appeal, para. 50.
[192] *See* Kanyarukiga Appeal Brief, paras. 99, 123, 124.
[193] *Cf. Simba* Appeal Judgement, para. 12.

86. The Appeals Chamber observes that paragraph 17 of the Amended Indictment, like paragraph 16, alleges conduct supporting the charge that Kanyarukiga planned to kill Tutsis by destroying the Nyange church. Paragraph 17 of the Amended Indictment alleges Kanyarukiga advancing this plan with those named in paragraph 16 by informing Seromba at the Nyange parish of their decision to demolish the church in order to kill the Tutsi refugees. The fact that paragraph 16 of the Amended Indictment alleges that the plan was made at the CODEKOKI is not in any way inconsistent with the allegation at paragraph 17 that Kanyarukiga and the others met with Seromba to inform him of their decision to kill the Tutsis by destroying the Nyange church. It is clear from the allegation of the material facts set out in paragraph 17 of the Amended Indictment, on the basis of which Kanyarukiga was convicted, that he was alleged to be responsible for planning the killing of Tutsis by destroying the Nyange church on 16 April 1994.

87. For these reasons, Kanyarukiga's grounds of appeal 42 in part, and 44 are dismissed.

4. Conclusion

88. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 35 through 42, and 44.

C. ALLEGED ERRORS RELATING TO ALIBI

89. Kanyarukiga filed a "Provisional Formal Alibi Notice" on 30 September 2009, advancing an alibi for the period of 12 to 16 April 1994.[194] Kanyarukiga claimed that he left his house in Kivumu *secteur*,[195] Kibuye *préfecture*, on 12 April 1994 and stayed in Gitarama from 12 to 15 April 1994 whilst he endeavoured to arrange travel to Ndera, Kigali *préfecture*, to retrieve his family.[196] He further claimed that, on 15 April 1994, he passed the Gitarama military camp and proceeded to Ndera.[197] Kanyarukiga asserted that he returned to his house in Kivumu *secteur* with his family on 16 April 1994 via a different route than the one he took the day before.[198] He further submitted that during this trip he was issued three *laissez-passers* which allowed him to undertake the journey[199] but that they were confiscated from him upon his arrest by the Prosecution.[200]

90. The Trial Chamber found that Kanyarukiga's alibi could not reasonably possibly be true and rejected it in its totality.[201] In reaching this finding, the Trial Chamber took the following factors into account: (i) the late filing of the Notice of Alibi and the final list of alibi witnesses; (ii) the "quality" of the alibi evidence which it found had no gaps and was "too neatly tailored" to match the days on which the crimes at the Nyange parish were committed; (iii) the fact that all but three of the Defence witnesses were found to be closely related to or associated with Kanyarukiga and that the remaining three witnesses lacked credibility; and (iv) the Trial Chamber's conclusions from the site visit regarding the routes Kanyarukiga claimed to have taken on 15 and 16 April 1994.[202]

91. Kanyarukiga submits that the Trial Chamber erred in relation to each of the factors that it relied upon in finding that his alibi was not reasonably possibly true. He also asserts that since the rejection of the alibi was cumulative, each of these errors on its own invalidates the decision and occasions a miscarriage of justice.[203] In particular, Kanyarukiga argues that the Trial Chamber erred in: (i) drawing adverse inferences from the timing of the filing of the Notice of Alibi and list of alibi witnesses;[204] (ii) its assessment of the credibility of the Defence witnesses who testified about his

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[194] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Provisional Formal Notice of Alibi, 30 September 2009 ("Notice of Alibi"), paras. 2-9. *See also* Trial Judgement, paras. 68, 71.
[195] The Appeals Chamber notes that the Nyange parish is in Kivumu *commune*, Kibuye *préfecture*. *See* Trial Judgement, para. 615.
[196] Notice of Alibi, paras. 2, 3. *See also* Trial Judgement, para. 71.
[197] Notice of Alibi, paras. 4, 5. *See also* Trial Judgement, para. 71.
[198] Notice of Alibi, paras. 6-9. *See also* Trial Judgement, para. 71.
[199] Notice of Alibi, paras. 4, 5, 7.
[200] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Motion for the Prosecution to Disclose and Return Exculpatory Documents Sei[s]ed from the Accused, 7 August 2009 ("Motion for Return of *Laissez-Passers*").
[201] Trial Judgement, para. 136. *See also* Trial Judgement, para. 121.
[202] Trial Judgement, paras. 121, 136.
[203] Kanyarukiga Notice of Appeal, para. 4; Kanyarukiga Appeal Brief, para. 6.
[204] Kanyarukiga Notice of Appeal, paras. 5-17; Kanyarukiga Appeal Brief, paras. 6, 7, 12-39. The Appeals Chamber notes that Kanyarukiga has subsumed ground 11 within ground 6 of his appeal. *See* Kanyarukiga Appeal Brief, para. 3.

alibi;[205] (iii) the treatment of its observations during the site visit;[206] (iv) failing to consider the *laissez-passers*;[207] and (v) its application of the burden and standard of proof to the alibi.[208] The Appeals Chamber will consider these arguments in turn.

1. Alleged Errors Relating to the Notice of Alibi and Alibi Witness List (Grounds 1 through 13)

92. Kanyarukiga's Notice of Alibi was filed on 30 September 2009, after the presentation of the Prosecution case from 31 August to 17 September 2009.[209] Kanyarukiga provided an initial alibi witness list in his Notice of Alibi. The list of alibi witnesses expected to testify was subsequently amended by filings on 6 November 2009, 1 December 2009, and finally in the Pre-Defence Brief filed on 18 December 2009.[210] Kanyarukiga's Defence case started on 18 January 2010.[211]

93. The Trial Chamber noted that Kanyarukiga did not file his Notice of Alibi until after the Prosecution case and that he did not finalise his list of alibi witnesses until a month prior to the start of the Defence case.[212] The late filing of the Notice of Alibi and the late finalisation of the alibi witness list led the Trial Chamber to believe that the Defence witnesses, having had time to hear the Prosecution witnesses, moulded their evidence to fit the Prosecution case and that Kanyarukiga sought out witnesses to accord with his alibi.[213] The Trial Chamber concluded that it suspected that Kanyarukiga's alibi had been constructed to respond to the Prosecution case.[214]

94. Kanyarukiga submits that the Trial Chamber erred in relying on the delay in the filing of the Notice of Alibi and the changes to the composition of the list of alibi witnesses to draw adverse inferences against the alibi evidence.[215] He argues that the Trial Chamber erred with respect to the applicable legal principles as it drew adverse inferences in the absence of any prejudice to the Prosecution's ability to challenge the alibi evidence.[216] Even if the Prosecution had been prejudiced, Kanyarukiga asserts that the Trial Chamber erred in failing to consider whether any less severe

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[205] Kanyarukiga Notice of Appeal, paras. 18-29; Kanyarukiga Appeal Brief, paras. 8, 40-69.
[206] Kanyarukiga Notice of Appeal, paras. 30, 33; Kanyarukiga Appeal Brief, paras. 9, 70-77. The Appeals Chamber notes that Kanyarukiga has withdrawn grounds 26 and 27 of his appeal and subsumed ground 25 within ground 28. *See* Kanyarukiga Appeal Brief, para. 3.
[207] Kanyarukiga Notice of Appeal, paras. 34, 35, 37; Kanyarukiga Appeal Brief, paras. 10, 78, 79, 83-88.
[208] Kanyarukiga Notice of Appeal, paras. 53, 54; Kanyarukiga Appeal Brief, paras. 132-135.
[209] Notice of Alibi. *See also* Trial Judgement, para. 68.
[210] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Defense Alibi Witnesses Particulars, confidential, 6 November 2009; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Further Defence Alibi Witnesses Particulars, confidential, 1 December 2009; Kanyarukiga Pre-Defence Brief, pp. 6-20.
[211] T. 18 January 2010.
[212] Trial Judgement, para. 124.
[213] Trial Judgement, paras. 124, 125.
[214] Trial Judgement, para. 125.
[215] Kanyarukiga Notice of Appeal, paras. 5-17; Kanyarukiga Appeal Brief, paras. 7, 12-39; AT. 14 December 2011 p. 15.
[216] Kanyarukiga Notice of Appeal, para. 5; Kanyarukiga Appeal Brief, para. 14; AT. 14 December 2011 pp. 14, 15, 40. *See also* Kanyarukiga Reply Brief, para. 8.

measures than drawing an adverse inference were reasonably capable of remedying the late notice.[217] Kanyarukiga also argues that the Trial Chamber erred in drawing adverse inferences given that it knew that the filing of the Notice of Alibi had been delayed due to Kanyarukiga's position that he could not file it until the *laissez-passers* were disclosed to him and because he was continuing to interview witnesses.[218]

95. In particular, Kanyarukiga challenges the Trial Chamber's inference that the late filing of the Notice of Alibi allowed the alibi to be "manufactured" to respond to the Prosecution case.[219] He submits that the period requiring an alibi was known to the Defence long before the Prosecution case and, as such, the delay in filing the Notice of Alibi offered no advantage to him.[220] He further argues that the details of the alibi did not depend on the Prosecution evidence and that the Trial Chamber did not offer a reasoned opinion as to how the alibi evidence was moulded to the testimony of the Prosecution witnesses.[221] Finally, Kanyarukiga challenges the Trial Chamber's inference that he sought out witnesses to accord with his alibi story.[222] He asserts that this was unreasonable given that: no evidence was presented that he or anyone else directed alibi witnesses as to what their evidence should be; the Trial Chamber itself requested him to reduce the number of alibi witnesses; the Trial Chamber was advised of the various reasons for the late finalisation of the witness list; changes to witness lists are contemplated by the Rules; Rule 66(B) disclosure was completed late; and the Trial Chamber did not draw adverse inferences from the Prosecution's changes to its witness list.[223]

96. The Prosecution responds that it was within the Trial Chamber's discretion to take into account Kanyarukiga's late filing of the Notice of Alibi.[224] It further argues that Kanyarukiga did not show good cause for the late filing of his Notice of Alibi and the late finalisation of the witness list.[225]

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[217] Kanyarukiga Notice of Appeal, para. 6; Kanyarukiga Appeal Brief, paras. 15-17. *See also* Kanyarukiga Reply Brief, para. 9; AT. 14 December 2011 p. 16. In this regard, Kanyarukiga compares the late notification of alibi with the less severe measures to remedy disclosure violations made by the Prosecution and contends that the same should apply in this case. *See* Kanyarukiga Appeal Brief, para. 17.
[218] Kanyarukiga Notice of Appeal, para. 16; Kanyarukiga Appeal Brief, paras. 35, 36; AT. 14 December 2011 p. 16.
[219] Kanyarukiga Notice of Appeal, para. 7; Kanyarukiga Appeal Brief, para. 18,
[220] Kanyarukiga Appeal Brief, para. 19.
[221] Kanyarukiga Notice of Appeal, paras. 8, 9; Kanyarukiga Appeal Brief, paras. 20-22. *See also* Kanyarukiga Reply Brief, paras. 10, 11.
[222] Kanyarukiga Notice of Appeal, paras. 10, 17; Kanyarukiga Appeal Brief, paras. 23, 39.
[223] Kanyarukiga Notice of Appeal, paras. 11-14; Kanyarukiga Appeal Brief, paras. 24-34, 38, 39; AT. 14 December 2011 pp. 15-17. *See also* Kanyarukiga Reply Brief, paras. 12-21. The alleged differential treatment between the Prosecution and Defence will be addressed along with similar arguments under ground 31 of Kanyarukiga's appeal. *See infra*, Section III.D.8.
[224] Prosecution Response Brief, paras. 15, 29; AT. 14 December 2011 p. 35.
[225] *See* Prosecution Response Brief, paras. 18-28.

97. The Appeals Chamber recalls that Rule 67(A)(ii)(a) of the Rules requires the Defence to notify the Prosecution before the commencement of trial of its intent to rely on an alibi. The notification is to "specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of the witnesses and any other evidence upon which the accused intends to rely to establish the alibi".[226] In certain circumstances, failure to raise an alibi in a timely manner can impact a trial chamber's findings, as the trial chamber may take such failure into account when weighing the credibility of the alibi.[227] The Appeals Chamber recalls that it has previously upheld trial chambers' inferences that the failure to raise an alibi in a timely manner suggested that the alibi was invented to respond to the Prosecution case.[228]

98. Contrary to Kanyarukiga's assertion, the Trial Chamber was not required to consider whether the Prosecution suffered prejudice from the delayed filing of the Notice of Alibi. Similarly, the Trial Chamber needed not to consider whether less severe measures than drawing an adverse inference from the late filing were available. Accordingly, the Appeals Chamber dismisses these arguments.

99. The Appeals Chamber further finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in drawing an adverse inference from the late filing of the Notice of Alibi. The fact that the period requiring the alibi was clear long before the start of the trial does not show that the Trial Chamber erred in taking into account that the Notice of Alibi was filed late. On the contrary, it suggests that Kanyarukiga could have been investigating and interviewing alibi witnesses in order to file his Notice of Alibi in a timely manner. Similarly, the Appeals Chamber is not convinced by Kanyarukiga's assertion that the absence of the *laissez-passers* prevented him from timely filing his Notice of Alibi. Kanyarukiga could have filed a notice of alibi, setting out the evidence in his possession upon which he intended to rely and indicating that the notice of alibi would be amended upon receipt of any further disclosure. In light of these facts, the Appeals Chamber is of the view that Kanyarukiga should have filed the Notice of Alibi within the prescribed time-limit and finds that the Trial Chamber was allowed to consider his failure to do so when assessing the credibility of the alibi.

100. Turning to the issue of the late finalisation of Kanyarukiga's alibi witness list, the Appeals Chamber dismisses his argument that the changes to the list were attributable to the Trial Chamber and the late receipt of Rule 66(B) disclosure material. The Appeals Chamber notes that

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[226] Rule 67(A)(ii)(a) of the Rules.
[227] *Munyakazi* Appeal Judgement, para. 18; *Nchamihigo* Appeal Judgement, para. 97; *Kalimanzira* Appeal Judgement, para. 56; *Ndindabahizi* Appeal Judgement, para. 66.
[228] *Cf. Kalimanzira* Appeal Judgement, paras. 54-58; *Nchamihigo* Appeal Judgement, paras. 94-99.

Kanyarukiga filed his Rule 66(B) request on 12 January 2010[229] and that the Trial Chamber directed him to reduce his witness list on 27 January 2010.[230] Both Kanyarukiga's Rule 66(B) request as well as the Trial Chamber's order to reduce the number of witnesses thus occurred after Kanyarukiga filed his final alibi witness list on 18 December 2009. Therefore, they cannot serve to explain the timing of the finalisation of the list. Additionally, the fact that the Rules allow for the variation of a witness list does not mean that a trial chamber does not have the discretion to take such variations into account.

101. With respect to Kanyarukiga's challenge to the Trial Chamber's inference that he sought out witnesses to accord with his alibi and that the Defence witnesses moulded their evidence to fit the Prosecution case, the Appeals Chamber considers that no reasonable trier of fact could have concluded this from the late finalisation of the witness list alone without further discussion. However, the Appeals Chamber notes that the Trial Chamber also found that the neatness with which the dates of the alibi matched the dates of the alleged criminal conduct undermined the credibility of the Defence witnesses.[231] The Appeals Chamber will consider below whether this inference was reasonable.[232]

102. The Appeals Chamber considers that it was reasonable for the Trial Chamber to question the circumstances surrounding the late filing of the Notice of Alibi and the changes to the witness list. The Appeals Chamber therefore finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in the exercise of its discretion in drawing an adverse inference against the credibility of his alibi from these circumstances. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 1 through 13.

2. Alleged Errors in the Assessment of the Alibi Evidence (Grounds 14 through 24)

103. Kanyarukiga submits that the Trial Chamber erred in its assessment of the credibility of the alibi witnesses. In particular, he argues that the Trial Chamber unreasonably found that their evidence was not credible on the basis of: (i) the neatness of the fit of the evidence; (ii) the witnesses' connections to him; and (iii) the inconsistencies in the evidence of the witnesses who did not have connections with him.[233] The Appeals Chamber will consider these arguments in turn.

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[229] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Extremely Urgent Motion for Disclosure of Documents Material to the Preparation of the Defence Case, 12 January 2010.
[230] T. 27 January 2010 p. 66.
[231] *See* Trial Judgement, paras. 121, 126, 127.
[232] *See infra*, Section III.C.2.(a).
[233] Kanyarukiga Notice of Appeal, paras. 18-29; Kanyarukiga Appeal Brief, paras. 8, 40-69; Kanyarukiga Reply Brief, paras. 22-31.

(a) Neatness of Alibi

104. In assessing the credibility of the alibi evidence, the Trial Chamber stated that it was "further comforted in its belief that Kanyarukiga's alibi cannot be reasonably possibly true given that the evidence provided by Defence witnesses has no gaps and is too neatly tailored to match the specific days on which the criminal conduct is alleged to have taken place at Nyange Parish."[234] It further noted that "for each part of his trip and each location Kanyarukiga visited, the Defence presented one or two witnesses who remember having seen him. There is no gap in the evidence, which the Chamber expects would occur naturally 16 years after the event."[235] With respect to Defence Witnesses Ndaberetse, KG44, and KG46, the Trial Chamber further stated that it "does not believe they are credible given their evidence, which fits extraordinarily neatly into the alibi 'story'."[236]

105. Kanyarukiga submits that the Trial Chamber erred in relying on the "neatness" and "completeness" of his alibi as an indicator of its falsity.[237] He asserts that the Trial Chamber erroneously found that his alibi covered the specific days on which the criminal conduct was alleged to have occurred whereas the Prosecution case was in fact based on allegations from 9 to 16 April 1994 and his alibi only covered 12 to 16 April 1994.[238]

106. Kanyarukiga also argues that the Trial Chamber: (i) erred in law by failing to consider the alternative reasonable inference that there were no gaps because the alibi was true;[239] (ii) contradicted its own finding that the alibi evidence fitted together neatly when it considered that the times provided in the alibi did not match the travelling times noted on the site visit;[240] and (iii) failed to provide a reasoned opinion for its finding that the evidence of Witnesses Ndaberetse, KG44, and KG46 fitted "extraordinarily neatly" into the alibi story.[241] Additionally, Kanyarukiga points to the fact that some of the "confirmatory details that knit the alibi together so tightly were secured from alibi witnesses during cross-examination or judicial questioning, not by the Defence."[242] Finally, Kanyarukiga asserts that the alibi was too complicated to have been invented

[234] Trial Judgement, para. 126.
[235] Trial Judgement, para. 127.
[236] Trial Judgement, para. 128.
[237] Kanyarukiga Notice of Appeal, paras. 18-20; Kanyarukiga Appeal Brief, paras. 40, 42.
[238] Kanyarukiga Notice of Appeal, para. 18; Kanyarukiga Appeal Brief, para. 41. *See also* Kanyarukiga Reply Brief, para. 22.
[239] Kanyarukiga Notice of Appeal, para. 20; Kanyarukiga Appeal Brief, para. 43.
[240] Kanyarukiga Notice of Appeal, para. 19; Kanyarukiga Appeal Brief, para. 42.
[241] Kanyarukiga Notice of Appeal, para. 27; Kanyarukiga Appeal Brief, para. 61.
[242] Kanyarukiga Notice of Appeal, para. 21; Kanyarukiga Appeal Brief, para. 49. *See also* AT. 14 December 2011 pp. 39, 40.

and that there was no evidence whatsoever of collusion between the alibi witnesses or that the Defence team or anyone else sought to secure false testimony from them.[243]

107. The Prosecution responds that the Trial Chamber's findings indeed show that the evidence was too neat and tailored to the relevant period and asserts that overly neat details of evidence can be indicia of fabrication.[244] It argues that it was apparent from the Amended Indictment that the allegation regarding 10 April 1994 had little criminal significance and could therefore be excluded from the alibi period.[245]

108. In reply, Kanyarukiga adds that if completeness and the ability of a witness to recall dates were reasons to disbelieve evidence, it would be impossible to successfully raise an alibi as incompleteness is also a ground for rejection.[246]

109. The Appeals Chamber rejects Kanyarukiga's argument that the alibi was too complicated to have been fabricated since the complexity of an alibi has no bearing on the likelihood of its truth. Further, the Appeals Chamber considers that the fact that some details of the alibi evidence emerged during cross-examination or questioning by the Judges does not render unreasonable the Trial Chamber's finding that the alibi fitted too neatly together.

110. With respect to the dates that the alibi covered, the Trial Chamber found that "Kanyarukiga was absent, according to the Defence evidence, exactly during the time the events in the Amended Indictment are alleged to have taken place".[247] In so finding, it noted the Defence evidence that "Kanyarukiga left Kivumu *commune* on 12 April 1994 – the day before the Tutsi at Nyange Parish were attacked for the first time, the day of one of the alleged meetings in the Amended Indictment and the date from which assailants are alleged to have surrounded the parish – and returned on the evening of 16 April 1994, only a few hours after the church had been destroyed and after the killings had ended".[248]

[243] Kanyarukiga Appeal Brief, paras. 44, 45; AT. 14 December 2011 pp. 15, 16. The Appeals Chamber notes that during the appeal hearing the Defence suggested that the Prosecution had an obligation under Rule 90(G) of the Rules to cross-examine the alibi witnesses on the allegation that their evidence was contrived. *See* AT. 14 December 2011 p. 18. However, the Prosecution challenged the credibility of the alibi witnesses in cross-examination. *See* AT. 14 December 2011 pp. 36, 37, *referring to* the references in Prosecution Response Brief, fn. 84.
[244] Prosecution Response Brief, paras. 34, 35; AT. 14 December 2011 p. 34.
[245] Prosecution Response Brief, para. 33.
[246] Kanyarukiga Reply Brief, para. 23.
[247] Trial Judgement, para. 126.
[248] Trial Judgement, para. 126.

111. The Appeals Chamber observes that the allegations set out in the Amended Indictment cover the period of 6 to 16 April 1994.[249] Paragraphs 9 and 10 of the Amended Indictment refer to specific killings in Kivumu *commune* on 6 April 1994 and mention that, as a result, Tutsi civilians took refuge in public buildings, but do not make reference to Kanyarukiga. Paragraph 11 of the Amended Indictment refers to a meeting on or about 10 April 1994 allegedly attended by Kanyarukiga, among others, but does not explicitly allege that the meeting was criminal in nature. Similarly, paragraph 12 of the Amended Indictment refers to another meeting allegedly attended by Kanyarukiga on or about 12 April 1994 without explicit mention of criminal conduct. Paragraph 13 of the Amended Indictment refers to attackers surrounding the Nyange church from 12 April 1994 onwards. The main allegations against Kanyarukiga are found at paragraphs 14 through 18 of the Amended Indictment, covering the days of 15 and 16 April 1994.

112. Although the dates of Kanyarukiga's alibi were not "exactly" the same as those set out in the Amended Indictment, as the Trial Chamber noted, Kanyarukiga allegedly left one day before the attacks at the Nyange parish started and returned only a few hours after the Nyange church had been destroyed. The Appeals Chamber considers that Kanyarukiga has failed to demonstrate that no reasonable trier of fact could have concluded that this alignment of dates contributed to the suspicion that the alibi was fabricated. Accordingly, the Appeals Chamber dismisses Kanyarukiga's argument in this regard.

113. The Appeals Chamber also considers that Kanyarukiga has failed to demonstrate that no reasonable trier of fact could have found that the neatness of the alibi evidence and the absence of gaps gave rise to a suspicion that it had been fabricated. In this regard, the Appeals Chamber notes that the Trial Chamber reasonably explained that, 16 years after the event, it would have expected gaps to naturally occur in the evidence.[250] Furthermore, in making this finding, the Trial Chamber was seised of the fact that the evidence was not identical in all respects; it noted some discrepancies elsewhere in its deliberations on the credibility of the alibi, but nonetheless considered that the evidence fitted too neatly together.[251]

114. With respect to Kanyarukiga's argument that the Trial Chamber failed to provide a reasoned opinion for its finding that the evidence of Witnesses Ndaberetse, KG44, and KG46 "fits extraordinarily neatly into the alibi 'story'", the Appeals Chamber recalls that a trial chamber need

[249] Amended Indictment, paras. 9-18. The Amended Indictment also refers to the period of 6 to 30 April 1994 (*see* Amended Indictment, paras. 7, 8, 19); however, the specific paragraphs setting out the factual basis for the allegations only cover 6 to 16 April 1994.
[250] *See* Trial Judgement, para. 127.
[251] Trial Judgement, paras. 132-135.

not explain every step of its reasoning.[252] While the Trial Chamber did not explain its finding with respect to these witnesses specifically, the Appeals Chamber considers that the meaning of this statement is clear from the context of the Trial Chamber's other findings on the neatness and completeness of the alibi.

115. Furthermore, the Appeals Chamber recalls that the Trial Chamber's rejection of the evidence of the alibi witnesses was not based solely on the neat fit and complete nature of the alibi evidence presented. The Trial Chamber also found that: the alibi witnesses who had a connection with Kanyarukiga had an interest in a positive outcome;[253] the alibi witnesses who did not have a relationship with Kanyarukiga were not credible;[254] it was not believable that Kanyarukiga would have taken five days attempting to rescue his family when the trip could have been completed in one or two days;[255] its observations on the site visit called into question the alibi witnesses' accounts of the times at which Kanyarukiga was supposed to have been at various locations;[256] and the late filing of the Notice of Alibi and finalisation of the alibi witness list led it to believe that the witnesses had been sought out and moulded their evidence.[257]

116. In light of the foregoing, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in taking into account the neatness and completeness of his alibi as a factor in assessing the credibility of the alibi evidence. Kanyarukiga's arguments in this regard are therefore dismissed.

(b) Alibi Witnesses' Connections to Kanyarukiga

117. In assessing the credibility of the alibi evidence, the Trial Chamber stated that:

> The profile of the alibi witnesses further supports the Chamber's view that the alibi cannot reasonably be true. Ten of the thirteen Defence witnesses who testified as to the whereabouts of Kanyarukiga during the relevant period were either related to the Accused, had business or other relationships with the Accused or depended financially on the Accused. All these witnesses have an interest in a positive outcome for the Accused in this trial. For example, Witness Nshogozabahizi, who is the Accused's son, stated that he believes Kanyarukiga is unjustly accused and believes he should be freed. Further, Witness KG45 testified that, she has always been grateful to Kanyarukiga and she responded affirmatively to questioning that suggested that she would willingly help Kanyarukiga if she could.[258]

[252] *Renzaho* Appeal Judgement, para. 405; *Nchamihigo* Appeal Judgement, paras. 165, 166.
[253] Trial Judgement, para. 128.
[254] Trial Judgement, paras. 128, 129.
[255] Trial Judgement, para. 127.
[256] Trial Judgement, paras. 131-135.
[257] Trial Judgement, paras. 124, 125.
[258] Trial Judgement, para. 128 (references omitted). The Appeals Chamber notes that the Trial Chamber's reference to 13 alibi witnesses is incorrect as there were in fact 14 witnesses who testified in support of Kanyarukiga's alibi. *See* Trial Judgement, paras. 74-119.

118. Kanyarukiga submits that the Trial Chamber erred in law by *ex facie* giving little or no weight to alibi witnesses whom it found to have "a close familial, close personal or business relationship" with him.[259] He submits that the legally correct approach would have been to simply apply caution rather than to presumptively dismiss the evidence of these witnesses.[260] He argues that, by doing so, the Trial Chamber lumped together witnesses who had diverse, and at times remote, connections to him whereas the legal principles governing the evaluation of witness credibility required the Trial Chamber to consider each of the witnesses individually according to the nature of the connection to him and the quality of their evidence.[261] In particular, Kanyarukiga submits that neither Defence Witness Mutoneshwa nor Defence Witness Rukabyatorero had a particularly close relationship to him.[262] Referring to Defence Witnesses Muhayimana, KG18, and KG24, Kanyarukiga further asserts that the Prosecution had in fact challenged their credibility on the basis that they were not close enough to him to have been aware of his movements which, he contends, highlights the unreasonableness of the Trial Chamber's finding that they were closely related to him.[263] Kanyarukiga argues that the Trial Chamber failed to provide a reasoned opinion that adequately explained why each of the diverse relationships warranted a heightened degree of scepticism.[264] He contends that the credibility of the alibi witnesses was crucial to the verdict and a finding that they were not credible required a "full explanation", rather than summary dismissal.[265] Furthermore, he notes that the Trial Chamber did not evaluate the evidence of Defence Witness Hitimana.[266]

119. Kanyarukiga also argues that the Trial Chamber erred in law by misapplying the principles of credibility assessment as it did not address any inconsistencies or "incredible features" in the testimony of any of the alibi witnesses whom it found to have a close relationship with him.[267] Finally, he submits that in the few instances where the Trial Chamber did particularise its assessment of these witnesses, it failed to give sufficient weight to relevant considerations in concluding that the witnesses would lie to assist him.[268] In this regard, Kanyarukiga argues that his son's (Defence Witness Nshogozabahizi) belief that his father was unjustly accused was consistent

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[259] Kanyarukiga Notice of Appeal, para. 23, *referring to* Trial Judgement, paras. 121, 128; Kanyarukiga Appeal Brief, para. 51.
[260] Kanyarukiga Notice of Appeal, para. 23; Kanyarukiga Appeal Brief, para. 52.
[261] Kanyarukiga Notice of Appeal, para. 24; Kanyarukiga Appeal Brief, paras. 54, 56. *See also* Kanyarukiga Reply Brief, paras. 24, 25.
[262] Kanyarukiga Appeal Brief, para. 54.
[263] Kanyarukiga Appeal Brief, para. 55. *See also* Kanyarukiga Reply Brief, para. 26.
[264] Kanyarukiga Notice of Appeal, para. 25; Kanyarukiga Appeal Brief, para. 57.
[265] Kanyarukiga Appeal Brief, para. 57. *See also* AT. 14 December 2011 p. 17.
[266] Kanyarukiga Appeal Brief, fn. 56.
[267] Kanyarukiga Appeal Brief, para. 59.
[268] Kanyarukiga Notice of Appeal, para. 26; Kanyarukiga Appeal Brief, paras. 58, 59. *See also* Kanyarukiga Reply Brief, para. 27.

with the alibi being true because Kanyarukiga was elsewhere at the time of the crimes.[269] Similarly, he submits that the Trial Chamber only considered that part of Defence Witness KG45's evidence which could have suggested a motive to provide favourable evidence but disregarded her testimony that she would not lie to exculpate him.[270]

120. The Prosecution responds that the Trial Chamber reasonably considered that the alibi witnesses who had close relationships with Kanyarukiga had an interest in helping him to craft an alibi.[271] The Prosecution further asserts that the Trial Chamber did not exclusively or categorically rely on the witnesses' close relationships with Kanyarukiga in disbelieving their testimony, but carefully analysed the witnesses' credibility and provided a reasoned opinion.[272]

121. The Appeals Chamber recalls that trial chambers are best placed to assess the evidence, including the demeanour of witnesses.[273] Therefore, trial chambers have full discretionary power in assessing the credibility of a witness and in determining the weight to be accorded to his or her testimony.[274] 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.[275] In addition, the Appeals Chamber has previously stated that it is within a trial chamber's discretion to accept or reject a witness's testimony, after seeing the witness, hearing the testimony, and observing him or her under cross-examination.[276] Finally, the Appeals Chamber has held that a witness's close personal relationship to an accused is one of the factors which a trial chamber may consider in assessing his or her evidence.[277]

122. While the Trial Chamber did not expressly consider the nature of each witness's connection to Kanyarukiga in its deliberations, the Appeals Chamber recalls that the Trial Chamber noted each witness's relationship with him in its summary of their evidence.[278] Accordingly, contrary to

[269] Kanyarukiga Appeal Brief, para. 60; AT. 14 December 2011 p. 17.
[270] Kanyarukiga Appeal Brief, para. 60.
[271] Prosecution Response Brief, paras. 81-95; AT. 14 December 2011 p. 34.
[272] *See* Prosecution Response Brief, paras. 82-94.
[273] *Simba* Appeal Judgement, para. 9; *Limaj et al.* Appeal Judgement, para. 88; *Ntagerura et al.* Appeal Judgement, paras. 12, 213.
[274] *Bikindi* Appeal Judgement, para. 114; *Nchamihigo* Appeal Judgement, para. 47; *Nahimana et al.* Appeal Judgement, para. 194.
[275] *Bikindi* Appeal Judgement, para. 114; *Nchamihigo* Appeal Judgement, para. 47; *Nahimana et al.* Appeal Judgement, para. 194.
[276] *Nchamihigo* Appeal Judgement, para. 210; *Seromba* Appeal Judgement, para. 116.
[277] *Bikindi* Appeal Judgement, para. 117.
[278] *See* Trial Judgement, paras. 74, 77, 79, 84, 89, 101, 103, 109, 112, 114, 116.

Kanyarukiga's submission, the Trial Chamber was properly seised of the differing nature of the witnesses' relationships to him.

123. Turning to Kanyarukiga's specific assertion that the Trial Chamber erred in finding that Witnesses Mutoneshwa and Rukabyatorero had relationships with him, the Appeals Chamber considers that Kanyarukiga has not demonstrated that no reasonable trier of fact could have found that their relationships were such that their credibility was put in question. The Appeals Chamber notes that Kanyarukiga does not identify any major differences between the Trial Chamber's description of the relationship of each witness to him and his understanding of their relationships,[279] but only challenges the Trial Chamber's assessment that such connections were sufficiently close to warrant caution. Accordingly, Kanyarukiga has failed to demonstrate any error of fact in this respect.

124. Similarly, the Appeals Chamber is not convinced by Kanyarukiga's argument that the Trial Chamber erred in finding that his connection to Witnesses Muhayimana, KG18, and KG24 affected their credibility. The Appeals Chamber does not consider that the questions put by the Prosecution to these witnesses during cross-examination established that they did not have a connection to Kanyarukiga.[280] In any event, the Appeals Chamber recalls that the Trial Chamber, as the trier of fact, is bound to make its own factual findings irrespective of any characterisation of the evidence by the parties.

125. The Appeals Chamber also dismisses Kanyarukiga's argument that the Trial Chamber erred in concluding that Witnesses Nshogozabahizi and KG45 might have lied to assist him. The Appeals Chamber considers that it was not unreasonable for the Trial Chamber to take into account

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[279] Kanyarukiga submits that Witness Mutoneshwa was 10 years old in 1994 and a friend of his daughter and that Witness Rukabyatorero met him through a mutual acquaintance and visited him several times between 1984 and 1990 at his workplace but had not seen him since and did not even know that he was in the pharmacy business. *See* Kanyarukiga Appeal Brief, para. 54. Meanwhile the Trial Judgement stated that: "In 1994, Witness Mutoneshwa, a Hutu, was a 10-year-old student living in Ndera with her parents. She knew Kanyarukiga well because he was a friend of the witness's family, they were neighbours in Ndera and she liked going to his house. Witness Mutoneshwa was also friends with Kanyarukiga's daughters." *See* Trial Judgement, para. 112 (references omitted). The Trial Chamber described Witness Rukabyatorero as being "the interim commander at Gitarama Military Camp from August 1993 until approximately 14 April 1994. He has known Kanyarukiga since 1986, when the witness was at ESM (*École Supérieure Militaire*)." *See* Trial Judgement, para. 89 (references omitted).

[280] *See* Witness Muhayimana, T. 20 January 2010 pp. 25, 26 ("Q. Now, your answer was you were not aware of any political activity [Kanyarukiga] may have been involved in when a question was put to you. Do you recall giving that answer, Madam Witness? A. I answered. I said I did not know whether he was involved in any political activities. And I said I know that he is someone who liked playing–who liked playing traditional draught called *Igisero*. That is all I know about the activities of Mr. Kanyarukiga's activities. [...] I knew that he was a businessman who did not have a high educational background, but I do not know whether he was involved in any political activities. That is a question that you would have to put to him. [...] Q. Madam Witness, Kanyarukiga is not your peer, is he? A. That is true."); Witness KG18, T. 10 February 2010 p. 22 (closed session); Witness KG24, T. 2 February 2010 pp. 15, 16 (closed session).

Witness Nshogozabahizi's statement that he believed that his father was unjustly accused.[281] Similarly, although the Trial Chamber did not explicitly recall Witness KG45's testimony that she would not lie to exculpate Kanyarukiga,[282] it was within the Trial Chamber's discretion to entertain concerns about her credibility in light of her statement that she would always be grateful to Kanyarukiga and help him if she could.[283]

126. Although the Trial Chamber did not individually assess the credibility of the witnesses whom it found to have relationships with Kanyarukiga, the Appeals Chamber recalls that the Trial Chamber's rejection of their evidence was not based solely on their connections to Kanyarukiga.[284] The Trial Chamber also found that: the alibi witnesses who did not have a relationship with Kanyarukiga were not credible;[285] it was not believable that Kanyarukiga would have taken five days attempting to rescue his family when the trip could have been completed in one or two days;[286] its observations on the site visit called into question the alibi witnesses' accounts of the times at which Kanyarukiga was supposed to have been at various locations;[287] and the late filing of the Notice of Alibi and finalisation of the alibi witness list led it to believe that the witnesses had been sought out and moulded their evidence.[288]

127. With respect to Kanyarukiga's assertion that the Trial Chamber failed to consider the evidence of Witness Hitimana, the Appeals Chamber recalls that a trial chamber need not refer to every piece of evidence provided there is no indication that the trial chamber completely disregarded any particular piece of evidence; such disregard is shown where evidence that is clearly relevant to the findings is not addressed by the trial chamber's reasoning.[289] In this particular instance, the Trial Chamber summarised the evidence of Witness Hitimana.[290] Furthermore, while the Trial Chamber failed to mention Witness Hitimana as one of the Defence witnesses who had relationships with Kanyarukiga,[291] it noted the witness's evidence that Kanyarukiga was at his shop in Kigali on 15 April 1994 when discussing its observations during the site visit.[292] There is

[281] Trial Judgement, para. 128.
[282] *See* Witness KG45, T. 21 January 2010 p. 80 (closed session).
[283] Trial Judgement, para. 128. *See also* Witness KG45, T. 21 January 2010 pp. 63, 66 (closed session).
[284] Trial Judgement, paras. 121, 136.
[285] Trial Judgement, paras. 128, 129.
[286] Trial Judgement, para. 127.
[287] Trial Judgement, paras. 131-135.
[288] Trial Judgement, paras. 124, 125.
[289] *Kalimanzira* Appeal Judgement, para. 195; *Nchamihigo* Appeal Judgement, para. 166. *See also Limaj et al.* Appeal Judgement, para. 86, *citing Kvočka et al.* Appeal Judgement, para. 23.
[290] Trial Judgement, para. 103.
[291] *See* Trial Judgement, para. 128, in particular fn. 289.
[292] Trial Judgement, para. 132.

therefore no indication that the Trial Chamber failed to consider Witness Hitimana's evidence in its assessment of the alibi.[293]

128. In light of the foregoing, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in its assessment of the credibility of the alibi witnesses with connections to him.

(c) Inconsistencies in the Evidence

129. The Trial Chamber also rejected the evidence of the remaining alibi witnesses whom it did not consider to have a relationship with Kanyarukiga. In assessing Defence Witness Ndaberetse's evidence, the Trial Chamber stated:

> With regard to the three remaining Defence witnesses, the Chamber does not believe they are credible given their evidence, which fits extraordinarily neatly into the alibi "story". The first of these is Witness Ndaberetse, who gave three different explanations as to why he and Kanyarukiga took a different route back to Gitarama on 16 April 1994 than the route they took on 15 April 1994. Further, notification of this witness was only provided by Defence one month before the Defence case commenced.[294]

130. With respect to Defence Witnesses KG44 and KG46, the Trial Chamber stated:

> The other witnesses that the Chamber does not believe to be credible are Witnesses KG44 and KG46. These two witnesses manned the roadblocks that Kanyarukiga supposedly passed through in Ndera. However, they could only remember that Kanyarukiga and those with him passed through their roadblock and could not recall the name of any other person who did. This leads the Chamber to treat these witnesses with caution. Secondly, Witnesses KG44 and KG46 gave evidence with regard to Kanyarukiga's whereabouts on 15 and 16 April 1994, and based on its observations during the site visit, as discussed below, the Chamber disbelieves this evidence in its totality.[295]

131. Kanyarukiga submits that the Trial Chamber erred in its assessment of these witnesses.[296] He argues that the Trial Chamber erred in rejecting Witness Ndaberetse's evidence on the basis that he gave three different explanations for why an alternative route was taken on the return trip to Gitarama.[297] According to Kanyarukiga, there was nothing inconsistent about Witness Ndaberetse's evidence and the supposed inconsistencies were only elaborations of his initial answer.[298] He adds that this witness had no motive to mislead the Trial Chamber and his evidence was circumstantially corroborated by other evidence, which the Trial Chamber failed to consider.[299]

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[293] Trial Judgement, para. 103.
[294] Trial Judgement, para. 128 (references omitted).
[295] Trial Judgement, para. 129 (reference omitted).
[296] Kanyarukiga Notice of Appeal, paras. 28, 29; Kanyarukiga Appeal Brief, paras. 63-69.
[297] Kanyarukiga Notice of Appeal, para. 28; Kanyarukiga Appeal Brief, para. 63.
[298] Kanyarukiga Appeal Brief, para. 64.
[299] Kanyarukiga Appeal Brief, paras. 65, 66. In this regard, Kanyarukiga asserts that Witness Ndaberetse was corroborated with respect to the facts that: it was Philippe Rukabyatorero who issued Witness Ndaberetse's order; the

132. Kanyarukiga also claims that the only reason given for the Trial Chamber's disbelief of the evidence of Witnesses KG44 and KG46 was that they could not recall the names of others who passed through the roadblocks which, he asserts, was an insufficient basis for rejecting their testimonies and indicates that the Trial Chamber failed to consider the totality of their evidence.[300] He further submits that it is inaccurate that the witnesses could not recall the name of anyone else who passed through the roadblock, but that they were asked to name all people who passed on 16 April 1994, which was unreasonable to expect from them.[301]

133. The Prosecution responds that the Trial Chamber reasonably rejected Witness Ndaberetse's testimony on the return trip to Gitarama.[302] It also points to other aspects of Witness Ndaberetse's evidence which raised questions about his credibility.[303] It further submits that the Trial Chamber reasonably rejected the evidence of Witnesses KG44 and KG46 since their credibility was fatally damaged by their inability to recall who passed through the roadblock on 16 April 1994.[304]

134. Kanyarukiga replies that the Prosecution points to a number of arguments which were never mentioned by the Trial Chamber.[305]

135. In respect of the three different explanations Witness Ndaberetse gave for taking a different route back to Gitarama on 16 April 1994, the Trial Chamber noted in a footnote that:

> The first time the witness answered that question on direct examination, Witness Ndaberetse testified that as a sol[di]er, he had learnt that on a return journey he should avoid taking the same route. When asked again during the same course of questioning, the witness said that he had suggested to Kanyarukiga that they should change the route because there were too many roadblocks. [...] During cross-examination, the witness was asked about this point and testified that in the course of his military training, he was taught that he had to avoid using the same road that he had used the first time. [...] When the Bench sought to clarify the discrepancy between the answers by asking the same question again, the witness said that as he had previously testified (during direct examination) during military training he was told that he had to avoid using the same itinerary going to and from any given place. [...] Witness Ndaberetse also added that the camp commander had authorised him to take a different road [...].[306]

136. Having reviewed Witness Ndaberetse's testimony, the Appeals Chamber notes that the Trial Chamber accurately summarised the explanations he gave for having taken an alternative route on

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car was a red Pajero; Witness Ndaberetse was wearing a uniform and carried a rifle; Kanyarukiga drove and Witness Ndaberetse sat in the passenger seat; there was an ill elderly woman in the car; they encountered problems at the *kilomètre 19* roadblock; and they had a tire puncture in Ruhuha and a young boy helped with the tire. *See* Kanyarukiga Appeal Brief, para. 65.

[300] Kanyarukiga Notice of Appeal, para. 29; Kanyarukiga Appeal Brief, paras. 67-69.

[301] Kanyarukiga Appeal Brief, paras. 68, 69.

[302] Prosecution Response Brief, paras. 52, 54-60.

[303] Prosecution Response Brief, para. 53. The Prosecution submits that while Witness Ndaberetse claimed to have been a soldier from Gitarama military camp, he could not remember his military number or his date of graduation from military school. *See* Prosecution Response Brief, para. 53.

[304] Prosecution Response Brief, paras. 61-63.

[305] Kanyarukiga Reply Brief, para. 30.

the return journey.[307] The Appeals Chamber is not convinced that no reasonable trier of fact could have found, as the Trial Chamber did, that he was providing explanations which were actually different and contradictory. In this regard, the Appeals Chamber recalls that the trial chamber has the main responsibility to resolve any inconsistencies that may arise within or amongst witnesses' testimonies.[308] It is within the discretion of the trial chamber to evaluate any such inconsistencies, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the fundamental features of the evidence.[309]

137. Furthermore, the Appeals Chamber notes that Witness Rukabyatorero did not confirm any of Witness Ndaberetse's explanations for the detour but rather testified that Witness Ndaberetse provided him with another different explanation upon his return: that there was fighting in the areas of Kanombe and Kicukiro.[310] The Appeals Chamber also observes that this was not the only basis on which the Trial Chamber dismissed Witness Ndaberetse's evidence as it also took into account his late addition to the witness list[311] and the fact that the times he provided for the trip did not match those noted on the site visit.[312]

138. Turning to Witnesses KG44 and KG46, the Appeals Chamber considers that it was not unreasonable for the Trial Chamber to doubt that these two witnesses would remember that Kanyarukiga had passed through the roadblock but not remember anyone else who had passed through on the same day. Furthermore, contrary to Kanyarukiga's assertion, Witnesses KG44 and KG46 were asked whether they could recall the names of anyone else who passed through the roadblock on 16 April 1994 and they both answered that they could not.[313] The Appeals Chamber notes that the only other name Witness KG44 provided was that of someone who passed through the roadblock on another day, and in whose killing he had played a role.[314] Additionally, the Appeals Chamber recalls that this was not the only basis on which the Trial Chamber disbelieved the evidence of Witnesses KG44 and KG46 as it also noted its observations made during the site visit in relation to the timing of Kanyarukiga's alleged trip.[315]

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[306] Trial Judgement, fn. 293.
[307] *See* Thicien Ndaberetse, T. 21 January 2010 pp. 14, 39, 40.
[308] *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.
[309] *Setako* Appeal Judgement, para. 31; *Rukundo* Appeal Judgement, para. 207; *Simba* Appeal Judgement, para. 103.
[310] Philippe Rukabyatorero, T. 2 February 2010 p. 29.
[311] *See* Trial Judgement, para. 128.
[312] *See* Trial Judgement, paras. 132-135.
[313] Witness KG44, T. 26 January 2010 p. 22 (closed session).
[314] Witness KG44, T. 26 January 2010 pp. 10, 11 (closed session).
[315] *See* Trial Judgement, para. 129.

139. In light of the foregoing, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate an error in the Trial Chamber's assessment of the credibility of Witnesses Ndaberetse, KG44, and KG46.

3. Alleged Errors Relating to the Site Visit (Ground 28)

140. The Defence alibi evidence was that on 15 April 1994, Kanyarukiga and Witness Ndaberetse travelled from Gitarama, leaving the Gitarama Military Camp at around 9.00 a.m., to Ndera, passing through Kigali and stopping at Defence Witness KG55's house and Witness Hitimana's shop along the way.[316]

141. With respect to the return journey on 16 April 1994, the Defence evidence was that Kanyarukiga, Witness Ndaberetse, and members of Kanyarukiga's family travelled back from Ndera to Gitarama taking a different route.[317] This alternative route passed through Bugesera, with a stop in Ruhuha, where they had trouble starting the car and a flat tyre, crossing the Rwabusoro bridge, and continuing through Ruhango and Gahogo before arriving in Gitarama.[318] After stopping in Gitarama, Kanyarukiga continued to his home in Kivumu.[319] There was also evidence that, at the beginning of the return journey, they were stopped at the *kilomètre 19* roadblock and had to return to the Kanombe Military Camp to be issued another *laissez-passer*.[320]

142. The Trial Chamber undertook a site visit to Rwanda from 19 to 21 April 2010.[321] During this visit, it took measurements of the distances and time taken to travel between Kivumu and Ndera, making stops at the locations where the Defence witnesses testified that Kanyarukiga had stopped on his journey.[322] In the Trial Judgement, the Trial Chamber found that "[h]aving undertaken the site visit in Rwanda, [...] in addition to the reasons given above, the alibi for 15 and 16 April 1994 cannot be reasonably possibly true in light of the timings recorded and the routes taken that were observed."[323]

143. In particular, the Trial Chamber considered that, according to the evidence of the Defence witnesses, Kanyarukiga's trip on 15 April 1994 took "around six hours" whereas based on the observations made during the site visit, even taking into account the stops mentioned in the

[316] *See* Trial Judgement, paras. 94, 101, 103. *See also* Trial Judgement, para. 132.
[317] *See* Trial Judgement, paras. 92, 96, 100. *See also* Trial Judgement, para. 134.
[318] *See* Trial Judgement, paras. 100, 113, 117, 118. *See also* Trial Judgement, para. 135.
[319] *See* Trial Judgement, paras. 83, 88, 113.
[320] *See* Trial Judgement, paras. 96-99. *See also* Trial Judgement, para. 135.
[321] *See* Trial Judgement, paras. 130, 747.
[322] *See* Exhibit R4 (Site Visit Mission Report). *See also* Trial Judgement, para. 130.
[323] Trial Judgement, para. 131.

evidence, it "should have taken him around three hours" or about half the time testified to by the Defence witnesses.[324]

144. Similarly, with respect to the route allegedly taken by Kanyarukiga on 16 April 1994, the Trial Chamber expressed "misgivings" on the basis that "this route, particularly given the insecurity in Rwanda in April 1994, would be precarious, long and difficult with many people in the vehicle."[325] It also noted that only the day before, Kanyarukiga had apparently travelled by the Gitarama-Kigali highway in far less time and that "there is no evidence on the record that any major difficulties were encountered on that highway which would then lead Kanyarukiga to take this long precarious journey instead."[326] These considerations led the Trial Chamber to conclude that it did "not believe [...] that the route through Ruhuha would have reasonably been taken at all on 16 April 1994".[327]

145. Furthermore, the Trial Chamber noted that, according to the Defence evidence, the journey on 16 April 1994 from Ndera to Kanyarukiga's house in Kivumu *commune* took "approximately 14 hours" whereas based on its observations during the site visit "the total time would be eleven hours", taking into account the stops mentioned in the evidence.[328] It concluded that "the alignment between the site visit results and the evidence provided by the Defence witnesses is consistent with a fabricated story."[329]

146. Kanyarukiga submits that the Trial Chamber erred in drawing the unreasonable inference that the alibi could not reasonably possibly be true because the time required to travel the routes taken was not consistent with the claims made in the alibi.[330] Pointing to the *Zigiranyirazo* Appeal Judgement, he argues that the Trial Chamber erred in law by basing its assessment of the credibility of the alibi on a comparison of the times testified to by the Defence witnesses and those observed on the site visit.[331] Kanyarukiga further submits that the Trial Chamber failed "to appreciate the lack of continuity in the relative conditions on the relevant route" between April 1994 and the site visit.[332] He argues that the Trial Chamber failed to give adequate weight to relevant evidence such as the wartime conditions, the numerous roadblocks, the difficult travel conditions, the condition of

[324] Trial Judgement, paras. 132, 133.
[325] Trial Judgement, para. 134.
[326] Trial Judgement, para. 134.
[327] Trial Judgement, para. 134.
[328] Trial Judgement, para. 135.
[329] Trial Judgement, para. 135.
[330] Kanyarukiga Notice of Appeal, para. 33; Kanyarukiga Appeal Brief, para. 70.
[331] Kanyarukiga Appeal Brief, paras. 70-72, *citing Zigiranyirazo* Appeal Judgement, para. 69; Kanyarukiga Reply Brief, paras. 32, 33; AT. 14 December 2011 p. 19.
[332] Kanyarukiga Notice of Appeal, para. 33. *See also* Kanyarukiga Notice of Appeal, para. 30; Kanyarukiga Appeal Brief, para. 74.

the vehicle, the condition of the passengers, and unscheduled stops which were not the same during the site visit, which "was conducted in peace-time 16 years after the events."[333]

147. Kanyarukiga also challenges the Trial Chamber's calculation of the travel times of the trip based on mere estimates given by Defence witnesses and its comparison of those times with the times calculated from the site visit.[334] In this regard, Kanyarukiga submits that Witness Ndaberetse consistently qualified his timelines as mere estimates and stated that he could not recall all the events that occurred during the trip given the passage of time since the events.[335]

148. Finally, Kanyarukiga argues that the Trial Chamber disregarded "evidence that reasonably explained the travel itinerary selected, including the decision not to take the shorter route" on the return trip.[336] He contends that, at the time, the reason for taking one route instead of another was not dictated by distance, but by the aim of reducing risks during a period of insecurity, since the original route had become perilous.[337] Additionally, he maintains that the Trial Chamber was inconsistent in that it relied on the insecurity prevailing in Rwanda in April 1994, the condition of the longer route, as well as the number of people in the vehicle to infer that this route could not have been taken at all but did not take the same considerations into account when evaluating whether the travel times calculated during the site visit were realistic.[338]

149. The Prosecution responds that the Trial Chamber properly considered the travel times testified to by the Defence witnesses and the discrepancies in their evidence compared to the results of the site visit in assessing the credibility of the alibi.[339] It adds that there was insufficient evidence to suggest that the conditions referred to by Kanyarukiga affected the alleged trip.[340] Further, it asserts that the Trial Chamber included as part of the travel times calculated during the site visit the alleged facts that Kanyarukiga was turned back at the *kilomètre 19* roadblock and had car problems and a flat tyre.[341]

150. The Appeals Chamber recalls the finding in the *Zigiranyirazo* Appeal Judgement that "evidence concerning specific travel details taken after several years can only be of limited

[333] Kanyarukiga Notice of Appeal, para. 33; Kanyarukiga Appeal Brief, paras. 73, 74; AT. 14 December 2011 p. 19.
[334] Kanyarukiga Appeal Brief, para. 77.
[335] Kanyarukiga Appeal Brief, para. 77.
[336] Kanyarukiga Notice of Appeal, para. 30. *See also* Kanyarukiga Appeal Brief, paras. 74, 76.
[337] Kanyarukiga Appeal Brief, para. 76.
[338] Kanyarukiga Appeal Brief, para. 75; AT. 14 December 2011 p. 38. *See also* Kanyarukiga Reply Brief, para. 34.
[339] Prosecution Response Brief, paras. 64, 68. The Prosecution asserts that Kanyarukiga's reliance on the *Zigiranyirazo* Appeal Judgement is misplaced because in that case the issue related to different routes which could have been taken whereas in this case the route was not in question, only the travel times. *See* Prosecution Response Brief, paras. 65, 66.
[340] Prosecution Response Brief, paras. 70-73, 76, 78-80.
[341] Prosecution Response Brief, paras. 74, 77. *See also* AT. 14 December 2011 p. 37.

assistance in establishing the time and exact itinerary" of a trip taken in April 1994.[342] However, it also recalls that, in the circumstances of that case, the observations of the Trial Chamber on the site visit were found to be a relevant factor in assessing the credibility of the alibi.[343] As such, although it is true that observations from a site visit taken several years after an event may only be of limited assistance, their relevance will depend on the circumstances of each case. Therefore, the Appeals Chamber does not find that the Trial Chamber erred in law by comparing its observations during the site visit with the evidence of the alibi witnesses. The Appeals Chamber will therefore turn to consider whether the Trial Chamber was reasonable in this comparison.

151. Contrary to Kanyarukiga's assertions, the Trial Chamber did take into account the stops testified to by the Defence witnesses when estimating the timing of the trips on 15 and 16 April 1994. For the trip on 15 April 1994, the Trial Chamber noted that Kanyarukiga and Witness Ndaberetse stopped at Witness KG55's house and Witness Hitimana's shop and added an hour to the time it took on the site visit "for the stops that the evidence suggests Kanyarukiga made."[344] Similarly, with respect to the return journey on 16 April 1994, the Trial Chamber added to the time observed on the site visit required to travel between Ndera and Kanyarukiga's residence in Kivumu *commune* "two hours to account for the problems that occurred at the '*kilomètre 19*' roadblock, another hour and a half for the time the Accused and his party spent at Ruhuha Centre and an hour and a half for the time spent in Gitarama".[345] Thus, the Trial Chamber duly took into consideration the factors to which Kanyarukiga points on appeal.

152. Furthermore, the Appeals Chamber is satisfied that the Trial Chamber was seised of other factors which may have affected the time required to undertake the journey. Specifically, the Trial Chamber noted the number and condition of the passengers in the vehicle, the insecurity in Rwanda in April 1994, and the long and precarious nature of the route taken on 16 April 1994 when considering the feasibility of taking the return route.[346] Although the Trial Chamber did not specifically refer to these factors when comparing the times noted in the evidence and on the site visit, Kanyarukiga has failed to demonstrate that it did not take these factors into consideration. The Appeals Chamber therefore rejects Kanyarukiga's assertion that the Trial Chamber disregarded these factors or treated them inconsistently.

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[342] *Zigiranyirazo* Appeal Judgement, para. 69. Although the *Zigiranyirazo* case concerned not only the question of timing but also the route taken, the Appeals Chamber considers that the reasoning in that case is equally applicable to the general timing of a trip along a given route.
[343] *Zigiranyirazo* Appeal Judgement, para. 69.
[344] Trial Judgement, para. 132.
[345] Trial Judgement, para. 135.
[346] Trial Judgement, para. 134.

153. Contrary to Kanyarukiga's submission, the Trial Chamber was also aware that the times provided by the alibi witnesses were estimates as is reflected in its use of terms such as "about" and "approximately".[347] Furthermore, while the passage of time could have affected the times recalled by the alibi witnesses, the Appeals Chamber considers that it was reasonable for the Trial Chamber to consider that their evidence that the trip in each direction took three hours longer than the timing observed during the site visit called into question the credibility of the alibi evidence. Accordingly, the Appeals Chamber considers that Kanyarukiga has failed to demonstrate that no reasonable trier of fact could have found that the discrepancies between the times testified to by the alibi witnesses and those observed on the site visit undermined the credibility of the alibi.

154. With respect to the Trial Chamber's finding that it "[did] not believe [...] that the route through Ruhuha would have reasonably been taken at all on 16 April 1994", the Appeals Chamber notes that in reaching this conclusion, the Trial Chamber relied on the fact that Kanyarukiga had taken the shorter route along the Gitarama-Kigali highway the day before.[348] The Trial Chamber stated that "there is no evidence on the record that any major difficulties were encountered on [the Gitarama-Kigali] highway, which would then lead Kanyarukiga to take this long and precarious journey instead."[349] Kanyarukiga points to a number of witnesses who referred to fighting in Kigali on 16 April 1994 and testified that other people also took the Ruhuha route because the other roads were not serviceable due to the fighting.[350] However, he fails to point to any evidence of difficulties encountered on the Gitarama-Kigali highway on 15 April 1994 which would have persuaded him to take a different and much longer route the next day. Furthermore, Kanyarukiga points to no evidence on the record that would have indicated to the Trial Chamber that the conditions along the shorter route which he took on 15 April 1994 changed before he commenced his return journey the next day, prompting him to take the much longer route.

155. As such, Kanyarukiga fails to demonstrate that the Trial Chamber erred in stating that there was no evidence of difficulties on the Gitarama-Kigali highway on 15 April 1994 which could have explained his decision to take the longer route on the next day. Furthermore, in light of the other factors taken into consideration by the Trial Chamber, including the precarious, difficult and long road, the number of passengers in the vehicle, and the state of the vehicle, the Appeals Chamber considers that Kanyarukiga has failed to show that no reasonable trier of fact could have questioned, as the Trial Chamber did, whether Kanyarukiga would reasonably have taken the alternative route on 16 April 1994.

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[347] *See* Trial Judgement, paras. 132, 135.
[348] Trial Judgement, para. 134.

156. For the foregoing reasons, the Appeals Chamber dismisses Kanyarukiga's ground of appeal 28.

4. Alleged Errors in Failing to Consider the *Laissez-Passers* (Grounds 29 and 30)

157. In the Trial Judgement, the Trial Chamber recalled that when Kanyarukiga was transferred to the custody of Tribunal representatives in South Africa on 19 July 2004, the Prosecution produced a preliminary inventory of items seised from him.[351] A second, more detailed inventory was prepared on 10 September 2004, after Kanyarukiga was transferred to Arusha.[352] Kanyarukiga signed this second inventory list on 10 September 2004 but made notations indicating that certain items, including two *laissez-passers*, were missing from the inventory.[353]

158. The Trial Chamber further recalled that, in its Decision on Motion for Return of *Laissez-Passers*, it dismissed Kanyarukiga's request to have the *laissez-passers* returned to him on the basis that it had not been established that they were in the custody or control of the Prosecution.[354] It also recalled that the Appeals Chamber dismissed Kanyarukiga's appeal of the Decision on Motion for Return of *Laissez-Passers*.[355]

159. The Trial Chamber noted Kanyarukiga's request in his closing brief to revisit the issue of the *laissez-passers*, but considered that "the issue at hand has already been resolved by the Appeals Chamber."[356] It considered that

> [...] even if believed, the evidence presented by Defence witnesses at trial can only establish that the documents were issued to the Accused in 1994. It cannot prove that these documents were among the items seised from the Accused when he was arrested in South Africa in 2004. Thus, because the Defence has not adduced any evidence since the Appeals Chamber decision to support a finding that the alleged travel documents were ever in the custody or control of the Prosecution, the Trial Chamber shall not revisit the issue.[357]

160. Kanyarukiga submits that the Trial Chamber erred in law in failing to consider the support given by the *laissez-passers* to his alibi.[358] In particular, Kanyarukiga submits that the notations he made on the inventory list proved that he was asserting an alibi that included the *laissez-passers*.[359] Kanyarukiga further submits that the Trial Chamber erred in treating the previous interlocutory

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[349] Trial Judgement, para. 134.
[350] *See* Kanyarukiga Appeal Brief, para. 76.
[351] Trial Judgement, para. 62.
[352] *See* Trial Judgement, para. 62.
[353] *See* Trial Judgement, para. 62.
[354] Trial Judgement, para. 63, *referring to* Decision on Motion for Return of *Laissez-Passers*, para. 19.
[355] Trial Judgement, paras. 64, 65, *referring to* Decision on Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents.
[356] Trial Judgement, para. 67. *See also* Trial Judgement, para. 66.
[357] Trial Judgement, para. 67.
[358] Kanyarukiga Notice of Appeal, para. 34; Kanyarukiga Appeal Brief, para. 78.

decisions on the *laissez-passers* as resolving the issue.[360] In this respect, he asserts that in the Decision on Motion for Return of *Laissez-Passers*, the issue was that the Defence had failed to meet its burden of proving the existence of the documents on the balance of probabilities.[361] By contrast, he submits, the law does not require alibi evidence to be proven on the balance of probabilities before it can be admitted or considered at trial.[362]

161. The Prosecution responds that Kanyarukiga's arguments should fail.[363] It submits that Kanyarukiga's notations on the inventory list have no evidentiary value as to the existence of the *laissez-passers* and that, accordingly, it was reasonable for the Trial Chamber to attach no weight to them.[364]

162. In reply, Kanyarukiga argues that there has been no finding that the *laissez-passers* were never in the Prosecution's possession.[365]

163. The Appeals Chamber recalls that the *laissez-passers* were not admitted into evidence and as such did not form part of the trial record. Accordingly, the Trial Chamber did not err by not considering them in its assessment of the evidence.[366] The Trial Chamber did, however, take into account the testimony of alibi witnesses on the issuance of the *laissez-passers* in the course of Kanyarukiga's alleged journey to Ndera and back.[367] Kanyarukiga has therefore failed to demonstrate that the Trial Chamber did not consider the evidence on the record about the *laissez-passers* in its assessment of the alibi.

164. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 29 and 30.

5. Alleged Errors Relating to Burden and Standard of Proof Applied to the Alibi (Grounds 16, 18, and 24, all in part, and 47)

165. Kanyarukiga submits that, while the Trial Chamber correctly stated the standard of proof for assessing alibi evidence, it erred when applying it to the evidence.[368] He argues that the Trial Chamber "consistently applied incorrect standards" and points to its consideration that it viewed the

[359] Kanyarukiga Appeal Brief, para. 78.
[360] Kanyarukiga Notice of Appeal, para. 35; Kanyarukiga Appeal Brief, para. 79.
[361] Kanyarukiga Appeal Brief, para. 79.
[362] Kanyarukiga Appeal Brief, para. 79.
[363] Prosecution Response Brief, paras. 98, 115.
[364] Prosecution Response Brief, paras. 110-115.
[365] Kanyarukiga Reply Brief, para. 35.
[366] *See Milošević* Appeal Judgement, para. 17; *Krajišnik* Appeal Judgement, para. 25. *See also Kajelijeli* Appeal Judgement, para. 74.
[367] Trial Judgement, paras. 91, 95-100.
[368] Kanyarukiga Notice of Appeal, para. 53; Kanyarukiga Appeal Brief, para. 133(a). *See also* Kanyarukiga Appeal Brief, para. 67.

evidence with "suspicion", had "misgivings" and "serious concerns" about it, did not believe it, or considered that it was "consistent with a fabricated story".[369] Kanyarukiga further asserts that the Trial Chamber erroneously rejected the testimony of the alibi witnesses because it "did not believe their accounts" without evaluating whether their testimony might nonetheless raise a reasonable doubt.[370] He argues that these errors show that he was not given the benefit of the doubt and that they invalidate the decision.[371] Kanyarukiga also argues that the Trial Chamber misapplied the burden of proof in its evaluation of the dates of the alibi, the evidence of witnesses who had connections to him, and the evidence of Witnesses KG44 and KG46 and thereby deprived him of the presumption of innocence.[372]

166. The Prosecution responds that Kanyarukiga does not explain how the Trial Chamber failed to apply the required standard of proof either to individual elements of the evidence or when reaching the conclusion about the alibi as a whole.[373] It submits that the Trial Chamber's phrases which Kanyarukiga refers to show no misapplication of the standard of proof to the alibi.[374]

167. The Appeals Chamber notes that the Trial Chamber correctly recalled that "Article 20(3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused beyond reasonable doubt rests solely on the Prosecution and never shifts to the Defence."[375] Furthermore, the Trial Chamber recalled that "[w]here an alibi is raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. When the alibi does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must 'eliminate the reasonable possibility that the alibi is true'."[376]

168. The Appeals Chamber turns to consider the Trial Chamber's application of the standard of proof. With respect to the Trial Chamber's statement that it had a "suspicion that the alibi has been constructed", the Appeals Chamber notes that this finding was made on the basis of the late filing of the Notice of Alibi and the late finalisation of the alibi witness list.[377] The Appeals Chamber

[369] Kanyarukiga Appeal Brief, para. 133(a), *referring to* Trial Judgement, paras. 125, 134, 135.
[370] Kanyarukiga Appeal Brief, para. 133(b), *referring to* Trial Judgement, para. 129. *See also* Kanyarukiga Reply Brief, para. 59.
[371] Kanyarukiga Appeal Brief, paras. 134, 135.
[372] Kanyarukiga Notice of Appeal, paras. 20, 23; Kanyarukiga Appeal Brief, paras. 43, 53, 67.
[373] Prosecution Response Brief, para. 149.
[374] Prosecution Response Brief, para. 152.
[375] Trial Judgement, para. 43.
[376] Trial Judgement, para. 44, *citing Zigiranyirazo* Appeal Judgement, para. 18. *See also* Trial Judgement, para. 120.
[377] *See* Trial Judgement, para. 125.

considers that the Trial Chamber was merely drawing an adverse inference against the credibility of the alibi in light of these circumstances, which it was entitled to do.[378]

169. The Appeals Chamber considers that by stating that it "[did] not believe the accounts of any of the Defence witnesses",[379] the Trial Chamber was expressing the view that none of their evidence was sufficiently credible to be relied upon and thus failed to raise a reasonable doubt. Similarly, in stating that it had "misgivings about the route taken on 16 April 1994"[380] and that "the alignment between the site visit results and the evidence provided by the Defence witnesses [was] consistent with a fabricated story",[381] the Trial Chamber was explaining its reasons for finding that the alibi was not reasonably possibly true and therefore did not raise any reasonable doubt about Kanyarukiga's guilt. The Appeals Chamber finds no error in this regard.

170. For the foregoing reasons, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber's assessment of the alibi evidence reversed the burden of proof and was contrary to the presumption of innocence. Accordingly, the Appeals Chamber dismisses Kanyarukiga's arguments.

6. Conclusion

171. In light of the above, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in concluding that his alibi was not reasonably possibly true. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 1 through 30, and 47.

[378] *See supra*, Section III.C.1.
[379] Trial Judgement, para. 129.
[380] Trial Judgement, para. 134.
[381] Trial Judgement, para. 135.

D. ALLEGED ERRORS RELATING TO THE ASSESSMENT OF THE EVIDENCE

1. Introduction

172. Kanyarukiga raises numerous challenges to the Trial Chamber's assessment of evidence on the events at the Nyange parish in April 1994.[382] The Appeals Chamber recalls that, as a general rule, it declines to address alleged errors which do not have the potential to impact the conviction or sentence or upon which the conviction does not rest.[383] Kanyarukiga was convicted for planning the killing of Tutsis at the Nyange church on 16 April 1994.[384] In assessing whether the *actus reus* of this crime had been proven, the Trial Chamber relied on the fact that: (i) Kanyarukiga had a conversation with Kayishema on the evening of 15 April 1994 during which they affirmed that the Nyange church was to be demolished;[385] (ii) on the morning of 16 April 1994, Kanyarukiga attended a meeting at the Nyange parish with Seromba and others at which the demolition of the church was discussed and agreed to;[386] and (iii) following this meeting, Kanyarukiga said that the church had to be destroyed and that he would make it his responsibility to rebuild it in three days.[387] The Trial Chamber referred to the same findings when assessing Kanyarukiga's *mens rea* of planning as well as his genocidal intent.[388]

173. The Appeals Chamber recalls that Kanyarukiga's conversation with Kayishema on 15 April 1994 cannot form the basis of his convictions for lack of notice in the Amended Indictment.[389] As a consequence, the Appeals Chamber dismisses as moot Kanyarukiga's challenges to the Trial Chamber's assessment of evidence relating to this conversation.[390]

174. The evidence on the meeting at the Nyange parish on the morning of 16 April 1994 was provided by Prosecution Witnesses CDL, CBK, CBR, and CBY.[391] Witness CBR also testified to Kanyarukiga's remark after the meeting.[392] Since only this evidence is relevant to Kanyarukiga's convictions, the Appeals Chamber summarily dismisses his challenges to the Trial Chamber's

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[382] The Appeals Chamber notes that Kanyarukiga has withdrawn ground 56 of his appeal. *See* Kanyarukiga Appeal Brief, para. 3.
[383] *Renzaho* Appeal Judgement, paras. 251, 384; *Krajišnik* Appeal Judgement, para. 20; *Martić* Appeal Judgement, para. 17; *Strugar* Appeal Judgement, para. 19; *Brdanin* Appeal Judgement, paras. 19, 21.
[384] *See* Trial Judgement, paras. 25, 644-654, 666.
[385] Trial Judgement, paras. 644, 648. *See also* Trial Judgement, paras. 12, 497, 498, 501.
[386] Trial Judgement, paras. 644, 649. *See also* Trial Judgement, paras. 16, 580, 581, 587-589, 613.
[387] Trial Judgement, para. 644. *See also* Trial Judgement, paras. 17, 590, 595, 613.
[388] Trial Judgement, paras. 650, 653.
[389] *See supra*, Section III.B.2.(b).
[390] This applies to challenges to the credibility of Witness CDK (*see* Kanyarukiga Notice of Appeal, paras. 58, 62, 68; Kanyarukiga Appeal Brief, paras. 139, 157, 175) and the corroboration of his evidence with that of Witness CBY (*see* Kanyarukiga Notice of Appeal, para. 70; Kanyarukiga Appeal Brief, paras. 144(b), 184).
[391] Trial Judgement, paras. 580, 581, 587-589.
[392] Trial Judgement, para. 590.

assessment of the evidence of other witnesses.[393] Moreover, the Appeals Chamber summarily dismisses Kanyarukiga's arguments to the extent that he challenges evidence of Witnesses CDL, CBK, CBR, and CBY which does not underpin his convictions and has no impact on the evaluation of their overall credibility and reliability.[394]

2. Alleged Errors Relating to the Application of the Law on Corroboration and Accomplice Witnesses (Grounds 50, 52, 53, all in part)

(a) Law on Corroboration

175. Kanyarukiga submits that the Trial Chamber erred with respect to the applicable law on corroboration because it accepted evidence lacking "*prima facie* or independent weight" only because it was corroborated and relied on the testimony of witnesses found not to be credible or reliable to corroborate other evidence.[395] In support of his allegations, Kanyarukiga argues that both the corroborating evidence and the corroborated evidence should be *prima facie* credible.[396]

176. The Prosecution responds that the Trial Chamber properly applied the principles on corroboration.[397]

177. The Appeals Chamber recalls 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.[398] However, even if the trial chamber finds that a witness's testimony is inconsistent or otherwise problematic, it may still choose to accept it because it is corroborated by other evidence.[399] The Trial Chamber correctly noted these principles[400] and the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that it erred in applying them to

[393] This applies to the evidence of Prosecution Witnesses CNJ (Kanyarukiga Notice of Appeal, paras. 58, 62, 68; Kanyarukiga Appeal Brief, paras. 139, 143, 146, 150, 154, 157, 173), CBT (Kanyarukiga Notice of Appeal, paras. 58, 62, 68; Kanyarukiga Appeal Brief, paras. 157, 176), CBS (Kanyarukiga Notice of Appeal, paras. 58, 68, 69; Kanyarukiga Appeal Brief, paras. 133(c), 138, 139, 142, 179, 182), CBN (Kanyarukiga Notice of Appeal, paras. 58, 68, 69; Kanyarukiga Appeal Brief, paras. 138, 142, 179, 180, 182), and YAU (Kanyarukiga Notice of Appeal, para. 68; Kanyarukiga Appeal Brief, paras. 142, 181) as well as Defence Witness KG15 (Kanyarukiga Notice of Appeal, para. 65; Kanyarukiga Appeal Brief, paras. 166, 167).

[394] *See* Kanyarukiga Notice of Appeal, para. 70; Kanyarukiga Appeal Brief, paras. 172, 183, *referring to* Witness CBR's evidence that Kanyarukiga was with Ndahimana when the latter directed assailants to start the attacks on 15 April 1994; Kanyarukiga Appeal Brief, paras. 154(b), 177, *referring to* Witness CBK's testimony that Kanyarukiga met with assailants on the morning of 15 April 1994 before the Nyange church was attacked and was armed on that day; Kanyarukiga Appeal Brief, para. 178, *referring to* Witness CBY's testimony that Kanyarukiga attended a meeting on 15 April 1994.

[395] Kanyarukiga Notice of Appeal, paras. 59, 60; Kanyarukiga Appeal Brief, paras. 140, 141, 146. *See also* Kanyarukiga Reply Brief, para. 66.

[396] *See* Kanyarukiga Appeal Brief, paras. 141, 143, 146; Kanyarukiga Reply Brief, para. 66.

[397] Prosecution Response Brief, para. 160-164.

[398] *Bikindi* Appeal Judgement, para. 81; *Karera* Appeal Judgement, paras. 173, 192; *Nahimana et al.* Appeal Judgement, para. 428.

[399] *Ntakirutimana* Appeal Judgement, para. 132.

the facts of his case. In particular, the Appeals Chamber observes that in relation to both allegations which underpin Kanyarukiga's convictions – the meeting at the Nyange parish on 16 April 1994 and his remark afterwards – the Trial Chamber relied on witnesses whom it found to be generally credible (Witnesses CBY and CBR).[401] The Appeals Chamber discerns no error in the Trial Chamber's acceptance of the testimony of other witnesses (CBK and CDL) whom it considered not credible or reliable on their own because they were corroborated by Witnesses CBY and CBR.

178. Accordingly, Kanyarukiga's argument is dismissed.

(b) Law on Accomplice Witnesses

179. Kanyarukiga submits that the Trial Chamber erred in law in confusing "credibility" with "reliability" with respect to the testimony of accomplice Witnesses CBR and CDL.[402] He argues that, given their motivation to lie, the crucial issue with accomplice witnesses is their credibility, not their reliability.[403]

180. The Prosecution responds that the Trial Chamber did not confuse the notions of credibility and reliability and took into account relevant factors in assessing the evidence of accomplice witnesses, including, *inter alia*, the possible motive to implicate Kanyarukiga.[404]

181. The Appeals Chamber has previously held that a trial chamber has the discretion to rely upon evidence of accomplice witnesses.[405] However, considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, the trial chamber is required to approach accomplice evidence with appropriate caution and to consider the totality of circumstances in which such evidence is tendered.[406] While credibility and reliability are distinct notions, they are interlinked and both are at issue when assessing the evidence of accomplice witnesses.

182. The Appeals Chamber notes that Kanyarukiga's challenge relates to paragraph 576 of the Trial Judgement, where the Trial Chamber found that "the fact that [Witnesses CBR and CDL] are accomplices does not necessarily render their testimony unreliable" and that "as participants in the

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[400] *See* Trial Judgement, paras. 47, 48.
[401] *See infra*, Section III.D.3.(c), (d) *and* 4.
[402] Kanyarukiga Notice of Appeal, para. 57; Kanyarukiga Appeal Brief, para. 138, *referring to* Trial Judgement, para. 576. *See also* AT. 14 December 2011 p. 45.
[403] Kanyarukiga Appeal Brief, para. 138.
[404] Prosecution Response Brief, paras. 188-193.
[405] *Setako* Appeal Judgement, para. 143; *Muvunyi II* Appeal Judgement, para. 37; *Nchamihigo* Appeal Judgement, para. 42; *Muvunyi I* Appeal Judgement, para. 128. *See also Bagosora and Nsengiyumva* Appeal Judgement, para. 251.
[406] *Setako* Appeal Judgement, para. 143; *Muvunyi II* Appeal Judgement, para. 37; *Nchamihigo* Appeal Judgement, para. 42; *Muvunyi I* Appeal Judgement, para. 128.

attacks [at the Nyange parish on 16 April 1994], these witnesses were inherently well placed to observe the scene [...]." The Appeals Chamber finds that such a holding is in conformity with the principle expressed in the *Niyitegeka* Appeal Judgement that "accomplice testimony is not *per se* unreliable"[407] and does not demonstrate that the Trial Chamber confused the concepts of credibility and reliability.

183. Furthermore, the Appeals Chamber recalls that paragraph 576 of the Trial Judgement concerns evidence of a meeting at the Nyange parish in the early morning of 16 April 1994, which is irrelevant to Kanyarukiga's convictions.[408] Kanyarukiga has failed to demonstrate that the Trial Chamber's impugned finding had any impact on its assessment of the evidence of Witnesses CDL and CBR in relation to the meeting and comment for which he was held responsible.

184. Accordingly, Kanyarukiga's argument is dismissed.

3. Challenges to the Credibility Assessment of Individual Witnesses (Grounds 51, 55, 61)[409]

(a) Witness CDL

185. Kanyarukiga submits that the Trial Chamber erred in relying on the evidence of Witness CDL because: (i) he was an accomplice who lied to the Trial Chamber about his involvement in the attacks at the Nyange parish, offering instead escalating allegations against Kanyarukiga;[410] (ii) the Trial Chamber recognised that his testimony could include information learned from others during sensitisation sessions in prison;[411] (iii) the Trial Chamber rejected large parts of his testimony due to credibility concerns;[412] and (iv) he was "evasive" when confronted with inconsistencies in his evidence, for example, about his testimony in the *Seromba* case.[413]

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[407] *Niyitegeka* Appeal Judgement, para. 98.
[408] *See supra*, Section III.B.3.
[409] The Appeals Chamber notes that Kanyarukiga alleges under ground 49 of his appeal that the Trial Chamber failed to "undertake the kind of comprehensive [credibility] assessment of each Prosecution witness as found here, in Ground 61." *See* Kanyarukiga Appeal Brief, para. 137. The Appeals Chamber therefore deems Kanyarukiga's ground of appeal 61 to be a clarification of ground 49 and has decided to address only the former.
[410] Kanyarukiga Appeal Brief, para. 174.
[411] Kanyarukiga Appeal Brief, para. 174(a).
[412] Kanyarukiga Appeal Brief, para. 174(b), *referring to* Trial Judgement, paras. 193, 601, 605. *See also* Kanyarukiga Notice of Appeal, paras. 58, 62, 68; Kanyarukiga Appeal Brief, paras. 139, 156, 157; Kanyarukiga Reply Brief, para. 72.
[413] Kanyarukiga Appeal Brief, para. 174(d). *See also* Kanyarukiga Appeal Brief, para. 191(b). Kanyarukiga further argues that the Trial Chamber erroneously accepted Witness CDL's testimony that Kanyarukiga did not participate in an early meeting at the Nyange parish on 16 April 1994 and considered this "a mark of credibility for what was to follow", namely "a raft of inculpatory testimony about Kanyarukiga's actions later that same morning." *See* Kanyarukiga Appeal Brief, para. 160. The Appeals Chamber dismisses this argument. The Trial Chamber accepted Witness CDL's evidence about the meeting on which Kanyarukiga's conviction rests because it was partially corroborated by other witnesses and not because he told the truth about the earlier meeting. *See* Trial Judgement, paras. 574-581, 588, 589.

186. The Prosecution responds that Kanyarukiga's arguments should be rejected as the Trial Chamber was aware of Witness CDL's accomplice status and viewed his evidence with appropriate caution.[414]

187. The Appeals Chamber notes that the Trial Chamber largely considered Witness CDL to be an unreliable witness whose evidence required extreme caution and could not be accepted without corroboration.[415] In so finding, the Trial Chamber considered that Witness CDL was an accomplice who tried to minimise his own role in the attacks at the Nyange parish and participated in *Gacaca* sessions and a sensitisation programme while in prison.[416] Kanyarukiga submits that in light of these factors Witness CDL's evidence should have been rejected in its entirety. The Appeals Chamber disagrees. It is well established that trial chambers have the discretion to accept some but reject other parts of a witness's testimony.[417] The Appeals Chamber therefore dismisses Kanyarukiga's assertion that the Trial Chamber was precluded from relying on Witness CDL with respect to the 16 April 1994 meeting because it rejected other parts of his evidence. The Trial Chamber's rejection of portions of his testimony rather demonstrates that it was fully aware of credibility concerns relating to this witness and that it adopted a cautious approach to his evidence.

188. In addition, the Appeals Chamber observes that the Trial Chamber accepted Witness CDL's testimony on the 16 April 1994 meeting because it was "partially corroborated", *inter alia*, by Witnesses CBR and CBY who were both found generally credible.[418] Furthermore, the Trial Chamber was satisfied that Witness CDL personally attended the meeting and was thus in close proximity to Ndahimana and the other "officials" because several witnesses had identified him as one of the leaders of the attacks.[419] Under these circumstances, the Appeals Chamber does not detect any error for crediting Witness CDL with respect to the 16 April 1994 meeting.

189. Finally, with respect to Kanyarukiga's argument that Witness CDL did not mention his presence at the meeting at the Nyange parish on 16 April 1994 in the *Seromba* case, the Appeals Chamber notes that Witness CDL explained at trial that he "did not deem it necessary to dwell on Kanyarukiga" in that case.[420] The Appeals Chamber does not find that this explanation was unreasonable.

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[414] Prosecution Response Brief, paras. 193, 202-209.
[415] Trial Judgement, paras. 453, 589, 601.
[416] Trial Judgement, paras. 452, 453, 576, 578, 589.
[417] *Bagosora and Nsengiyumva* Appeal Judgement, para. 243; *Setako* Appeal Judgement, paras. 31, 48; *Haradinaj et al.* Appeal Judgement, para. 201.
[418] Trial Judgement, para. 589.
[419] Trial Judgement, para. 589.
[420] Witness CDL, T. 11 September 2009 p. 19.

190. Accordingly, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in relying on Witness CDL's evidence.

(b) Witness CBK

191. Kanyarukiga submits that the Trial Chamber erred in relying on the evidence of Witness CBK because: (i) he was an accomplice in the attacks at the Nyange parish in April 1994;[421] (ii) he had stated in a previous statement of 2001 that the last time he saw Kanyarukiga was on 15 April 1994 and the Trial Chamber disbelieved his explanation for this discrepancy with his trial testimony;[422] (iii) the Trial Chamber rejected large parts of his testimony for credibility reasons;[423] and (iv) he falsely alleged that the Defence team tried to bribe him.[424]

192. The Prosecution responds that the Trial Chamber was not precluded from relying on parts of Witness CBK's evidence, particularly where it was corroborated.[425]

193. The Appeals Chamber notes that the Trial Chamber had serious concerns about Witness CBK's overall credibility as it suspected him to have participated in the killings at the Nyange parish in April 1994 and indicated that he may have been prone to embellishing the truth.[426] It therefore decided to treat his evidence with extreme caution and accept it only if corroborated.[427] The Trial Chamber was thus aware of the credibility issues surrounding Witness CBK. Furthermore, the Appeals Chamber observes that the Trial Chamber accepted Witness CBK's evidence on the 16 April 1994 meeting because it was corroborated, *inter alia*, by Witnesses CBR and CBY who were both found generally credible.[428] Under these circumstances, the Appeals Chamber finds that the Trial Chamber's rejection of portions of Witness CBK's evidence did not preclude it from relying on his testimony on the 16 April 1994 meeting.[429]

194. The Appeals Chamber notes that Witness CBK asserted in his statement of 2001 that the last time he saw Kanyarukiga at the Nyange parish was on 15 April 1994.[430] The Trial Chamber noted this information when assessing Witness CBK's testimony that Kanyarukiga was present during the demolition of the Nyange church on 16 April 1996 and stated that it did not believe his explanation

[421] Kanyarukiga Notice of Appeal, paras. 58, 68; Kanyarukiga Appeal Brief, paras. 139, 177.
[422] Kanyarukiga Appeal Brief, para. 177(a), *referring to* Trial Judgement, para. 581, fn. 1695.
[423] Kanyarukiga Appeal Brief, para. 177(b).
[424] Kanyarukiga Appeal Brief, para. 177(e).
[425] Prosecution Response Brief, para. 228.
[426] Trial Judgement, para. 491.
[427] Trial Judgement, paras. 487, 491, 608. *See also* Trial Judgement, paras. 311, 440.
[428] Trial Judgement, paras. 580, 581.
[429] *Cf. Bagosora and Nsengiyumva* Appeal Judgement, para. 243; *Setako* Appeal Judgement, paras. 31, 48; *Haradinaj et al.* Appeal Judgement, para. 201.
[430] Exhibit D15A (Statement of Witness CBK of 2001) (under seal), p. 4.

for the discrepancy.[431] However, this was only one reason why the Trial Chamber rejected Witness CBK's claim that Kanyarukiga was present while the church was being destroyed.[432] By contrast, as stated above, the Trial Chamber found that Witness CBK's testimony on Kanyarukiga's participation in the 16 April 1994 meeting was corroborated by other witnesses.[433] In light of these differences, the Appeals Chamber finds that it was not unreasonable for the Trial Chamber to accept this portion of Witness CBK's evidence.

195. Finally, as Kanyarukiga submits, Witness CBK alleged that the Defence team had tried to bribe him.[434] However, this issue was thoroughly explored at trial.[435] Accordingly, the Appeals Chamber is satisfied that the Trial Chamber was properly seised of the matter. While it did not expressly consider the issue in the Trial Judgement, the Appeals Chamber is not convinced that this undermines the Trial Chamber's careful assessment of Witness CBK's evidence on Kanyarukiga's participation in the 16 April 1994 meeting.

196. Accordingly, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in relying on Witness CBK's evidence.

(c) Witness CBR

197. Kanyarukiga submits that the Trial Chamber erred in relying on the evidence of Witness CBR since he was an accomplice in the attacks at the Nyange parish, led sensitisation sessions, tried to minimise his role in the attacks, and lied during his testimony.[436] He contends that the Trial Chamber erroneously discounted Witness CBR's accomplice status because he had already confessed to his crimes and been sentenced.[437] He further asserts that the Trial Chamber disregarded its own credibility findings when it accepted Witness CBR's uncorroborated testimony after having explicitly recognised the need for caution and relied on him as corroboration for other witnesses while rejecting part of his testimony.[438] Finally, he submits that the witness's claim to

[431] Trial Judgement, fn. 1695.
[432] In addition, the Trial Chamber took into account that his assertions were uncorroborated and partially contradicted by other witnesses as well as inconsistent with statements he had made in 2000 and 2002. *See* Trial Judgement, paras. 608, 609.
[433] Trial Judgement, paras. 588, 589.
[434] Witness CBK, T. 4 September 2009 pp. 39-41 (closed session).
[435] Witness CBK, T. 4 September 2009 pp. 39-41 (closed session), T. 17 September 2009 pp. 40-45 (closed session).
[436] Kanyarukiga Notice of Appeal, paras. 58, 62, 68, 73; Kanyarukiga Appeal Brief, paras. 139, 157, 172. *See also* AT. 14 December 2011 p. 45.
[437] Kanyarukiga Appeal Brief, para. 158. *See also* Kanyarukiga Reply Brief, para. 79.
[438] Kanyarukiga Appeal Brief, paras. 157, 159, 172(a); Kanyarukiga Reply Brief, para. 72.

have overheard his remark after the 16 April 1994 meeting is inconsistent with previous statements and implausible given the circumstances prevalent at the Nyange parish at the time.[439]

198. The Prosecution responds that the Trial Chamber was aware of the accomplice status of Witness CBR and approached his evidence with the requisite caution.[440]

199. The Appeals Chamber notes that the Trial Chamber observed that Witness CBR was an accomplice who had been incarcerated in Rwanda together with Witnesses CDL, CBT, CDK, and CNJ and "sensitised" other prisoners to plead guilty and therefore needed to be approached with requisite caution.[441] Nevertheless, the Trial Chamber found that Witness CBR was generally credible.[442] In so finding, the Trial Chamber considered that Witness CBR had already confessed to his crimes and been sentenced in Rwanda and that there was no reason to believe that he would receive favourable treatment for testifying against Kanyarukiga.[443] The Trial Chamber also observed that Witness CBR was a member of Kanyarukiga's extended family who told the court that he had nothing against him.[444] Finally, the Trial Chamber noted that Witness CBR's testimony was detailed as well as consistent both internally and with other credible evidence and stated that it was impressed by his demeanour in court and found his narration of the events at the Nyange parish compelling.[445]

200. In light of these facts, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that it was unreasonable for the Trial Chamber to consider Witness CBR a credible witness. The need for caution, which the Trial Chamber recognised, did not preclude it from finding Witness CBR credible, as Kanyarukiga appears to suggest. Moreover, the Appeals Chamber recalls that the Trial Chamber was not bound to reject his testimony on the 16 April 1994 meeting and Kanyarukiga's remark afterwards simply because it had rejected other portions of his evidence.[446]

201. The Appeals Chamber also does not agree with Kanyarukiga's argument that because Witness CBR received a reduction in sentence and his sentence had yet to expire in Rwanda, it could not be ruled out that he had a motive to testify falsely. In the Appeals Chamber's view, the fact that Witness CBR had been sentenced was a relevant consideration and it was reasonable for

[439] Kanyarukiga Appeal Brief, para. 195.
[440] Prosecution Response Brief, paras. 193-201.
[441] Trial Judgement, paras. 591, 592, fn. 1641.
[442] Trial Judgement, para. 181, *referring to* Trial Judgement, paras. 591-595.
[443] Trial Judgement, para. 591.
[444] Trial Judgement, para. 591.
[445] Trial Judgement, para. 593.
[446] *Cf. Bagosora and Nsengiyumva* Appeal Judgement, para. 243; *Setako* Appeal Judgement, paras. 31, 48; *Haradinaj et al.* Appeal Judgement, para. 201.

the Trial Chamber to take it into account together with his confession and statement that he had nothing against Kanyarukiga.

202. Furthermore, the Appeals Chamber is not convinced by Kanyarukiga's argument that Witness CBR's evidence about his remark on 16 April 1994 is inconsistent with prior statements. Kanyarukiga only refers to a statement which Witness CBR made in 2000.[447] A statement he gave to the Prosecution in 2001 did mention the remark.[448] Further, Kanyarukiga submits that other witnesses testifying in this and other proceedings attributed a similar remark about the rebuilding of the Nyange church to Seromba, not him.[449] However, the Appeals Chamber considers that this is incapable of demonstrating that the Trial Chamber erred in assessing Witness CBR's evidence.

203. Finally, Kanyarukiga suggests that given the chaotic situation prevailing at the Nyange parish on 16 April 1994, Witness CBR could not possibly have overheard his remark.[450] However, the Appeals Chamber rejects this argument as Kanyarukiga merely offers a different interpretation of the evidence without showing that the Trial Chamber erred in its assessment.

204. In light of the foregoing, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in relying on the evidence of Witness CBR.

(d) Witness CBY

205. Kanyarukiga submits that the Trial Chamber erred in relying on the evidence of Witness CBY because no reasonable trier of fact could have found this witness credible and reliable.[451] Kanyarukiga asserts that the Trial Chamber erred in finding that, since the witness had been acquitted of crimes committed at the Nyange parish in Rwanda, he had no motive to incriminate him.[452] He contends that Witness CBY was "clearly dangerous" because his past experiences with criminal proceedings continued to have an impact on his evidence and that his motive to "align himself with the authorities" was revealed when he lied during his testimony before the Tribunal about saving Witness YAU.[453] Kanyarukiga further submits that Witness CBY testified at trial to "most everything", which was implausible in light of the situation prevalent at the Nyange parish when the attacks occurred.[454]

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[447] Kanyarukiga Appeal Brief, para. 197, *referring to* Exhibit D26(B) (under seal).
[448] Exhibit D27(B) (Statement of Witness CBR of 2001) (under seal), p. 4.
[449] *See* Kanyarukiga Appeal Brief, para. 196.
[450] *See* Kanyarukiga Appeal Brief, para. 195, *referring to* Witness CBR, T. 10 September 2009 p. 9.
[451] Kanyarukiga Notice of Appeal, paras. 58, 68, 70; Kanyarukiga Appeal Brief, para. 178.
[452] Kanyarukiga Appeal Brief, para. 161.
[453] Kanyarukiga Appeal Brief, paras. 161, 178(a), 178(b).
[454] Kanyarukiga Appeal Brief, para. 178(c).

206. Kanyarukiga also contends that the Trial Chamber erred in finding that inconsistencies in Witness CBY's evidence were minor and did not affect his credibility.[455] He points out that Witness CBY: (i) testified at trial that Kanyarukiga attended various meetings at the Nyange parish between 8 to 13 April 1994 while, in a statement made in 1996, he claimed that Ndahimana was the only authority he saw at the parish prior to the attacks and did not refer to any meetings;[456] (ii) gave an entirely different account of Kanyarukiga's activities in his statement of 1996 and made no mention of his conversation with Kayishema on the evening of 15 April 1994;[457] and (iii) did not mention in his statement of 2000 that Kanyarukiga was present at the Nyange parish on 15 and 16 April 1994.[458] Kanyarukiga argues that these inconsistencies went to the heart of his involvement in crimes at the Nyange parish and that, when confronted with them, Witness CBY's responses were evasive and unhelpful.[459] Kanyarukiga further submits that the Trial Chamber erred because, instead of finding that the inconsistent narratives undermined Witness CBY's credibility, it reasoned that his trial testimony was less incriminatory than his 1996 statement and thus reinforced the truthfulness of his accounts at trial.[460]

207. The Prosecution responds that Kanyarukiga shows no error in the Trial Chamber's reasoning and reliance on Witness CBY's testimony.[461] It further submits that the acquittal of an "alleged accomplice" is relevant to the assessment of his testimony.[462]

208. The Appeals Chamber notes that the Trial Chamber generally regarded Witness CBY as a credible witness.[463] It dismisses Kanyarukiga's contention that this assessment was erroneous because Witness CBY had a motive to testify falsely. It was reasonable for the Trial Chamber to conclude that, since Witness CBY was acquitted of crimes in relation to the events at the Nyange parish, he had no personal reasons to incriminate Kanyarukiga. Kanyarukiga's claim that Witness CBY acted under the pressure of possible future proceedings and showed that he was inclined to "align himself with the authorities" because he asserted to have rescued Witness YAU is speculative and does not demonstrate an error on the part of the Trial Chamber.

209. The Appeals Chamber further dismisses Kanyarukiga's assertion that Witness CBY provided implausible evidence at trial given the chaotic situation prevailing at the Nyange parish when the attacks occurred. In this respect, Kanyarukiga merely suggests a different interpretation of

[455] Kanyarukiga Appeal Brief, para. 178(d).
[456] Kanyarukiga Appeal Brief, para. 178(d).
[457] Kanyarukiga Appeal Brief, para. 185.
[458] Kanyarukiga Appeal Brief, para. 178(d).
[459] Kanyarukiga Appeal Brief, para. 178(d).
[460] Kanyarukiga Appeal Brief, para. 186.
[461] Prosecution Response Brief, paras. 210-214.
[462] Prosecution Response Brief, para. 211.

Witness CBY's testimony without showing that the Trial Chamber committed a specific error in its assessment of the evidence.

210. The Appeals Chamber also dismisses Kanyarukiga's assertions in relation to Witness CBY's testimony at trial about various meetings which were not included in his 1996 statement. The Trial Chamber addressed this matter and decided not to rely on this part of Witness CBY's testimony.[464] Kanyarukiga fails to show that this issue was so significant that it rendered the Trial Chamber's conclusion about Witness CBY's general credibility unreasonable.[465]

211. The Appeals Chamber now turns to Kanyarukiga's argument that Witness CBY's testimony at trial about the attacks at the Nyange parish on 15 and 16 April 1994 was significantly inconsistent with his prior statements. The Appeals Chamber notes that, in his 1996 statement, Witness CBY identified Kanyarukiga as one of the leaders of the attacks at the Nyange parish on 15 April 1994, stating that he saw Kanyarukiga and two other persons many times in the "front position", leading the attacks.[466] He did not mention Kanyarukiga in relation to the events on 16 April 1994, but stated expressly that "I have not seen any other authorities except [the] burgomaster NDAHIMANA Gr[é]goire who had come to visit Father SEROMBA a few days before the destruction of the church."[467]

212. In his statement of 2000, Witness CBY reported that Kanyarukiga participated in meetings with Seromba and other "authorities" at the Nyange parish on 10, 11, and 14 April 1994.[468] With respect to 15 April 1994, the witness stated that the "authorities" visited Seromba after the attack in the morning and left before an attempt to demolish the Nyange church by bulldozer was made later in the afternoon.[469] The statement does not refer to Kanyarukiga's conversation with Kayishema on the evening of 15 April 1994, about which Witness CBY testified at trial.[470] Also, there is no

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[463] *See* Trial Judgement, paras. 257, 498.
[464] *See* Trial Judgement, para. 257.
[465] For the same reason, the Appeals Chamber disregards Kanyarukiga's argument that the Trial Chamber erred by rejecting Witness CBY's testimony on meetings but believing him on other matters (*see* Kanyarukiga Appeal Brief, para. 178(d)) and that Witness CBY lied to avoid contradictions, *inter alia*, by claiming "a date was wrongly recorded in his [1996] statement about when the equipment was brought to the church" (*see* Kanyarukiga Appeal Brief, para. 178(e)).
[466] Exhibit D33(B) (Statement of Witness CBY of 1996) (under seal), para. 11. While the statement referred to 14 April 1994, it is clear from the context that Witness CBY was in fact talking about events on 15 April 1994. *See also* Trial Judgement, fn. 1369.
[467] Exhibit D33(B) (Statement of Witness CBY of 1996) (under seal), para. 11.
[468] Exhibit D34(B) (Statement of Witness CBY of 2000) (under seal), pp. 3, 4. The statement puts these meetings on 8, 9, and 12 April 1994, respectively. However, a reading in context shows that the meetings took place on 10, 11, and 14 April 1994. *See also* Trial Judgement, fn. 1369.
[469] Exhibit D34(B) (Statement of Witness CBY of 2000) (under seal), p. 5.
[470] *See* Trial Judgement, para. 498. The Appeals Chamber has held above that this conversation cannot form the basis for Kanyarukiga's conviction. *See supra*, Section III.B.2.(b).

mention of Kanyarukiga's presence at the Nyange church on 16 April 1994 except for the claim that Witness CBY saw the "authorities" visit Seromba after the church had been destroyed.[471]

213. The Appeals Chamber notes the Trial Chamber's finding that there were "certain minor inconsistencies between Witness CBY's testimony and his prior statements, particularly with regard to dates", but that these discrepancies did not affect the witness's overall credibility.[472] In this context, the Trial Chamber stated that "it has considered specific inconsistencies on a case-by-case basis to determine whether they affect the reliability of particular pieces of evidence."[473] The Appeals Chamber is not entirely convinced by this reasoning as Witness CBY's prior statements and his trial testimony on Kanyarukiga's involvement in the attacks on 15 and 16 April 1994 do not concern only dates, but substance. Furthermore, while the Trial Chamber did assess some inconsistencies specifically,[474] it did not address that Witness CBY had not mentioned in his prior statements that Kanyarukiga was present at the Nyange parish on 16 April 1994 prior to the demolition of the church.

214. However, the Appeals Chamber recalls that the Trial Chamber found Witness CBY credible for a variety of reasons, in particular, because he: (i) as a Hutu present at the Nyange parish, was in a position to observe certain events that the Tutsi refugees or assailants outside the parish could not; (ii) provided a generally credible and reliable account of what he witnessed at the parish; (iii) was tried in Rwanda in connection with the events at the parish and acquitted of any wrongdoing, and, therefore, lacked personal motivation – such as a desire for leniency – to testify against Kanyarukiga; and (iv) identified Kanyarukiga in court and testified that he had known him for eight years prior to the events.[475] In light of these facts, the Appeals Chamber finds that the inconsistencies between Witness CBY's prior statements and his testimony do not render unreasonable the Trial Chamber's conclusion that the witness was credible and could be relied upon in relation to Kanyarukiga's participation in the 16 April 1994 meeting.

215. For the foregoing reasons, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in relying on the evidence of Witness CBY.

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[471] Exhibit D34(B) (Statement of Witness CBY of 2000) (under seal), p. 5.
[472] Trial Judgement, para. 498.
[473] Trial Judgement, fn. 1369.
[474] *See, e.g.*, Trial Judgement, fn. 1370.
[475] Trial Judgement, para. 498. The Trial Chamber further noted that Witness CBY had already mentioned in his 1996 statement a comment made by Kanyarukiga in the presence of Ndungutse on 15 April 1994 that the Nyange church had to be destroyed and that, although this differed from his testimony at trial where he stated that Kanyarukiga conversed with Kayishema about the issue, he was at least always consistent with respect to Kanyarukiga. *See* Trial Judgement, fn. 1370. In this context, the Trial Chamber further considered that "this witness has implicated Kanyarukiga less in his oral testimony than in his written statement, which suggests to the Chamber that this witness's account is credible." While the Appeals Chamber is not fully convinced by this reasoning, it finds that it does not call into question the Trial Chamber's acceptance of Witness CBY's overall credibility.

4. Challenges in Relation to the Meeting on 16 April 1994 at the Nyange Parish and Kanyarukiga's Remark Afterwards (Grounds 52, 64 through 66)

(a) Occurrence of the Meeting

216. Based on the evidence of Witnesses CBR, CDL, CBK, and CBY, the Trial Chamber found that Kanyarukiga attended a meeting at the Nyange parish on the morning of 16 April 1994 with Seromba, Kayishema, Ndungutse, Habiyambere and others.[476] In so finding, the Trial Chamber observed that, while the witnesses disagreed somewhat over the exact venue of the meeting and its participants, they corroborated each other with respect to the occurrence of the meeting and, *inter alia*, Kanyarukiga's, Seromba's and Kayishema's participation in it.[477] Accordingly, the Trial Chamber concluded that the slight variations in the witnesses' accounts could be explained by the passage of time and different vantage points.[478]

217. Kanyarukiga submits that the Trial Chamber erred by treating the testimonies of Witnesses CBR, CDL, CBK, and CBY as mutually corroborative of the meeting.[479] He argues that the witnesses put this meeting in entirely different locations and varied in their accounts of the participants.[480] He further asserts that the Trial Chamber acknowledged that the witnesses described two separate meetings but then treated all this evidence as corroborative of the same meeting.[481] Finally, Kanyarukiga asserts that the Trial Chamber erred in law because it used the testimony of Witnesses CDL and CBK to corroborate each other even though they were found, in and of themselves, not credible or reliable.[482]

218. The Prosecution responds that the main features of the evidence of Witnesses CBR, CDL, CBK, and CBY were compatible.[483]

219. The Appeals Chamber notes that according to the testimony of Witness CBR, the meeting was attended by Ndahimana, Kanyarukiga, Kayishema, Ndungutse, Habiyambere, Murangwabugabo, Habarugira, as well as Seromba and took place in front of Seromba's office at the Nyange parish sometime between 8.00 and 10.00 a.m. on 16 April 1994.[484] Witness CDL

[476] Trial Judgement, paras. 587, 613, 644.
[477] Trial Judgement, para. 581.
[478] Trial Judgement, para. 581.
[479] Kanyarukiga Notice of Appeal, para. 71; Kanyarukiga Appeal Brief, para. 187. *See also* Kanyarukiga Appeal Brief, para. 144(a).
[480] Kanyarukiga Appeal Brief, para. 187.
[481] Kanyarukiga Appeal Brief, paras. 188, 189.
[482] Kanyarukiga Appeal Brief, para. 142.
[483] Prosecution Response Brief, paras. 173-176.
[484] While Witness CBR did not recall a specific time for the meeting, the following details of his testimony allow for the conclusion that it took place between 8.00 and 10.00 a.m.: (i) Witness CBR arrived at the Nyange parish between 6.00

testified that, at around 10.00 a.m. on 16 April 1994, Ndahimana, Kanyarukiga, Ndungutse, and other "authorities" informed Seromba, in front of the parish secretariat, of their decision to destroy the church with a bulldozer.[485] Witness CBK recounted that Kanyarukiga, Kayishema, and others met on the morning of 16 April 1994 in the internal courtyard of the parish presbytery.[486] Witness CBY confirmed that the "authorities" had a meeting with Seromba on the morning of 16 April 1994 without specifying a time or location.[487]

220. The Appeals Chamber recalls 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.[488] The Appeals Chamber finds that it was not unreasonable for the Trial Chamber to conclude that the accounts of Witnesses CBR, CDL, CBK, and CBY corroborated each other, especially given that the secretariat and the presbytery were both part of the Nyange parish and that the presence of several named participants, including Kanyarukiga, was a common feature in the testimony of all witnesses.

221. The Appeals Chamber further dismisses Kanyarukiga's assertion that the witnesses gave evidence about two different meetings which the Trial Chamber inadmissibly treated as one. Most of Kanyarukiga's arguments in this respect have already been discussed and rejected in the section on alleged errors relating to the Amended Indictment.[489] The Appeals Chamber recalls that there was evidence about a first and a second meeting in the morning of 16 April 1994 at the Nyange parish and that the Trial Chamber reasonably found that the second meeting – which is at issue here – was the one charged in paragraph 17 of the Amended Indictment.[490] Furthermore, the Trial Chamber clearly distinguished between these two meetings.[491] Kanyarukiga's claim that the Trial

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and 7.00 a.m.; (ii) Ndahimana, Kanyarukiga, Kayishema, Ndungutse, Habiyambere, Murangwabugabo, and Habarugira assembled in front of Seromba's office at the Nyange parish for the first time at a non-specified time; (iii) with the exception of Seromba, these individuals then moved towards the Nyange church with Ndahimana firing shots at the Tutsis inside at around 8.00 a.m.; (iv) these individuals returned to the place in front of Seromba's office when realising that the attack was not going to be successful and that other means would be needed to destroy the Nyange church; and (v) "[l]ater on," meaning between 9.00 and 10.00 a.m., Kanyarukiga made his comment that the church was to be destroyed and that he would build another one. *See* Witness CBR, T. 9 September 2009 pp. 29-32; T. 10 September 2009 pp. 9, 11.

[485] Witness CDL, T. 10 September 2009 pp. 36, 38, 39, 51, 52; T. 11 September 2009 pp. 18, 19.

[486] Witness CBK, T. 3 September 2009 p. 25.

[487] Witness CBY, T. 8 September 2009 p. 47. As the Trial Chamber noted, the earlier testimony of Witness CBY indicates that Kanyarukiga, Kayishema, Ndungutse, Ndahimana, and a certain "Théodomir" participated in the said meeting. *See* Trial Judgement, fn. 1616, *referring to* T. 8 September 2009 pp. 44-46.

[488] *Bikindi* Appeal Judgement, para. 81; *Karera* Appeal Judgement, paras. 173, 192; *Nahimana et al.* Appeal Judgement, para. 428.

[489] *See supra*, Section III.B.3.

[490] *See supra*, Section III.B.3. *See also* Trial Judgement paras. 572, 573.

[491] *See* Trial Judgement, paras. 574-579 (regarding the first meeting), 580, 581 (regarding the second meeting).

Chamber used evidence about the first meeting to corroborate the occurrence of the later meeting is incorrect.

222. With respect to Kanyarukiga's contention that Witnesses CDL, CBR, and CBK could not corroborate each other because they were not credible or reliable, the Appeals Chamber recalls that the Trial Chamber reasonably considered Witnesses CBR and CBY to be credible.[492] Furthermore, the Appeals Chamber has already considered Kanyarukiga's contentions relating to the Trial Chamber's assessment of and reliance on the evidence of Witnesses CDL and CBK and recalls that it has found no error in this respect.[493]

223. Accordingly, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in considering that Witnesses CDL, CBR, CBK, and CBY corroborated each other on the occurrence of the meeting at the Nyange parish on the morning of 16 April 1994.

(b) Content of the Meeting and Kanyarukiga's Role Therein

224. The Trial Chamber acknowledged that Witness CDL was the only one to testify about the content of the meeting at the Nyange parish on the morning of 16 April 1994.[494] Given that it would not rely on the witness's uncorroborated testimony, the Trial Chamber rejected his evidence that Kanyarukiga, Ndahimana, Kayishema, Ndungutse, Habiyambere, and others "informed" Seromba of their decision to destroy the Nyange church at that meeting, as was alleged in paragraph 17 of the Amended Indictment.[495] However, the Trial Chamber noted that Witnesses CBR and CBK assumed that the meeting had addressed the destruction of the church because the demolition followed the meeting, and that Witness CBY likewise testified that, after the meeting, the "authorities" ordered the assailants at the parish to destroy the church.[496] The Trial Chamber thus found that Witness CDL's testimony was "partially corroborated" by the circumstantial evidence of Witnesses CBR, CBK, and CBY and that therefore the demolition of the Nyange church was "discussed and agreed" to during the meeting at the parish on the morning of 16 April 1994.[497]

225. Kanyarukiga submits that, even if his presence at the meeting was confirmed and Witnesses CBR and CBK testified that the Nyange church was destroyed after the meeting, these facts could not serve as "partial corroboration" for a finding that he agreed to the plan to destroy the

[492] *See supra*, Section III.D.3.(c), (d).
[493] *See supra*, Section III.D.3.(a), (b).
[494] Trial Judgement, para. 588.
[495] Trial Judgement, paras. 588, 613.
[496] Trial Judgement, para. 588.
[497] Trial Judgement, para. 589. *See also* Trial Judgement, paras. 613, 644, 649.

church or played any role in the meeting.[498] Kanyarukiga further submits that Witness CDL did not testify that the decision to demolish the church was taken at this meeting, and that the Trial Chamber misinterpreted his evidence. He asserts that, according to the witness, the demolition of the church was decided during a meeting in front of Kanyarukiga's pharmacy on the morning of 16 April 1994 and this decision was then only communicated to Seromba at the meeting at the Nyange parish, whereas the Trial Chamber found that the decision was initially taken at the meeting with Seromba.[499]

226. The Prosecution responds that Kanyarukiga's arguments should be rejected as he shows no error in the Trial Chamber's approach.[500]

227. The Appeals Chamber rejects Kanyarukiga's assertion that the Trial Chamber misinterpreted Witness CDL's testimony. It is irrelevant that the witness stated that the decision to destroy the Nyange church was originally taken elsewhere (namely at a meeting in front of the pharmacy) and only communicated to Seromba at the meeting at the Nyange parish. In any case, his testimony was that the decision to destroy the church was discussed and agreed to during the meeting at the parish. The Appeals Chamber further finds that it was reasonable for the Trial Chamber to consider that Witnesses CBR, CBK, and CBY partially corroborated the account of Witness CDL and to accept, based on the evidence as a whole, as the only reasonable inference that the destruction of the Nyange church was discussed and agreed to during that meeting.

228. The Appeals Chamber notes that there is no finding in the Trial Judgement as to the specific role Kanyarukiga played during the meeting. However, it is clear that the Trial Chamber inferred that he planned the demolition of the church and the killing of the Tutsis inside from the fact that: (i) the meeting concerned the destruction of the Nyange church; (ii) Kanyarukiga participated in the meeting together with leaders of the attacks at the Nyange parish on 15 and 16 April 1994; and (iii) Kanyarukiga made a remark about the need to destroy the church after the meeting.[501] Under the circumstances, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that no reasonable trier of fact could have concluded that this was the only reasonable inference.

229. Accordingly, Kanyarukiga's arguments are dismissed.

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[498] Kanyarukiga Appeal Brief, paras. 145(a), 191(d).
[499] Kanyarukiga Appeal Brief, para. 191(a).
[500] Prosecution Response Brief, para. 206.
[501] *See* Trial Judgement, paras. 644, 645, 649, 650.

(c) Kanyarukiga's Remark After the Meeting

230. Based on Witness CBR's "consistent and compelling eye-witness testimony, as supported by other circumstantial evidence in the record", the Trial Chamber found that, after the meeting at the Nyange parish on the morning of 16 April 1994, Kanyarukiga told Ndahimana, Kayishema, Habiyambere, Ndungutse, and others that the Nyange church had to be destroyed and that he would make it his responsibility to rebuild it in three days.[502]

231. Kanyarukiga submits that the Trial Chamber erred in fact in treating as "confirmed" the evidence of Witness CBR that Kanyarukiga encouraged the destruction of the Nyange church by promising that he would rebuild it.[503] He argues that the Trial Chamber erroneously considered the evidence of Witnesses CDL, CBK, and CBY that there was a meeting at the Nyange parish on the morning of 16 April 1994 as circumstantial support for what he said after that meeting.[504]

232. The Prosecution responds that the Trial Chamber reasonably relied on circumstantial support for Witness CBR's otherwise credible testimony.[505]

233. The circumstantial evidence taken into account by the Trial Chamber in support of Witness CBR's evidence was: (i) that prior to making his remark, Kanyarukiga attended the meeting at which the demolition of the church was discussed; (ii) Witness CBY's testimony that, after this meeting, the "authorities" ordered the assailants to complete the demolition of the church; (iii) Witness CBR's testimony that, after Kanyarukiga's remark, Kayishema and Ndungutse went to fetch a bulldozer which was brought to the church; (iv) that Witnesses CBY, CDL, and KG15 all corroborated Witness CBR with respect to the arrival of a bulldozer in the late morning on 16 April 1994; and (v) that the church was demolished later that day.[506]

234. The Appeals Chamber recalls that the Trial Chamber reasonably viewed Witness CBR as generally credible.[507] The Appeals Chamber sees no reason why the Trial Chamber could not have relied on his testimony that Kanyarukiga told others after the meeting on 16 April 1994 that the Nyange church should be destroyed. Furthermore, it was reasonable for the Trial Chamber to consider that the circumstances described in the previous paragraph provided circumstantial support and thus reinforced the conclusion that Kanyarukiga made such a comment.

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[502] Trial Judgement, para. 595.
[503] Kanyarukiga Notice of Appeal, para. 73.
[504] Kanyarukiga Appeal Brief, para. 145(b).
[505] Prosecution Response Brief, para. 199.
[506] Trial Judgement, para. 594.
[507] *See supra*, Section III.D.3.(c).

235. Accordingly, Kanyarukiga's arguments are dismissed.

5. Collusion of Witnesses (Ground 54)

236. Kanyarukiga submits that the Trial Chamber erred in law because it failed to appropriately consider the risk of collusion and witness-tainting.[508] He submits that several of the Prosecution witnesses took part in a "sensitisation" programme and *Gacaca* sessions regarding the events at the Nyange parish and that some of them were roommates in Arusha when waiting to testify in his trial.[509] Kanyarukiga essentially submits that the Trial Chamber should have exercised extreme caution at all times and equally in relation to all of the concerned witnesses but instead applied different levels of caution to different witnesses and inconsistently accepted or rejected portions of their evidence.[510] Kanyarukiga adds that the Trial Chamber misapplied the burden of proof when finding that the fact that the witnesses attended *Gacaca* sessions together was insufficient to support an inference of collusion.[511]

237. The Prosecution responds that the Trial Chamber duly considered allegations of collusion and witness-tainting.[512]

238. The Appeals Chamber recalls that collusion has been defined as an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose.[513] If an agreement between witnesses for the purpose of untruthfully incriminating an accused were indeed established, their evidence would have to be excluded pursuant to Rule 95 of the Rules.[514] However, a mere risk of collusion is insufficient to exclude evidence under Rule 95 of the Rules.

239. The Appeals Chamber has already rejected Kanyarukiga's submission that Witness CDL's evidence on the content of the meeting at the Nyange parish on the morning of 16 April 1994 was uncorroborated and should not have been relied upon by the Trial Chamber.[515] Likewise, the Appeals Chamber has rejected Kanyarukiga's argument that the Trial Chamber erred in assessing

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[508] Kanyarukiga Notice of Appeal, para. 61; Kanyarukiga Appeal Brief, paras. 148-155, *referring to* Witnesses CBR, CDL, CDK, CNJ, and CBT. *See also* Kanyarukiga Reply Brief, paras. 69-71. The Appeals Chamber notes that it has summarily dismissed Kanyarukiga's challenges to the evidence of Witnesses CDK, CNJ, and CBT for lack of impact on his convictions. *See supra*, Section III.D.1

[509] Kanyarukiga Appeal Brief, para. 149, *referring to* Witnesses CBR, CDL, and CBT.

[510] Kanyarukiga Appeal Brief, paras. 150, 151.

[511] Kanyarukiga Appeal Brief, para. 155.

[512] Prosecution Response Brief, paras. 177-187.

[513] *Setako* Appeal Judgement, para. 137; *Renzaho* Appeal Judgement, para. 275, *referring to Karera* Appeal Judgement, para. 234.

[514] *Setako* Appeal Judgement, para. 137; *Renzaho* Appeal Judgement, para. 275, *referring to Karera* Appeal Judgement, para. 234. Rule 95 of the Rules states: "No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings".

[515] *See supra*, Section III.D.3.(a) *and* 4.(a), (b).

Witness CBR's testimony about his remark after that meeting.[516] In addition, the Appeals Chamber notes that, while the Trial Chamber stated that Witnesses CBT, CDL, and CNJ required greater caution than Witnesses CBR and CDK, it gave reasonable explanations for this conclusion.[517] The Appeals Chamber therefore dismisses Kanyarukiga's contention that the Trial Chamber was inconsistent in applying the requisite caution to witnesses in light of the possibility of collusion.[518]

240. The Appeals Chamber further finds that the Trial Chamber cautiously assessed the allegations of collusion and witness-tainting. It was mindful of the fact that Witnesses CBR, CDK, and CDL had been incarcerated together and participated in a sensitisation programme and *Gacaca* proceedings.[519] The Appeals Chamber discerns no error in the Trial Chamber's conclusion that the mere fact that these witnesses attended *Gacaca* sessions together was insufficient to support an inference of collusion.[520] Kanyarukiga's argument that the Trial Chamber reversed the burden of proof is therefore rejected.

241. When assessing Witness CBR's evidence on Kanyarukiga's remark that the Nyange church had to be destroyed and that he would rebuild it, the Trial Chamber also considered that this witness was housed with Witnesses CDL and CBT in Arusha prior to his testimony.[521] The Trial Chamber concluded that the housing arrangement did not support an inference of collusion because each of the witnesses had attributed such a remark to Kanyarukiga several years prior to their testimony in court and placed the statement at different geographical locations and times, indicating that they were not describing the same incident.[522] The Appeals Chamber discerns no error in this reasoning.[523]

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[516] *See supra*, Section III.D.3.(c) *and* 4.(c).

[517] *See* Trial Judgement, paras. 453, 468, 496, according to which: (i) Witness CDL may have been more involved in the attacks at the Nyange parish than he testified to, which could have influenced his allegations against Kanyarukiga; (ii) Witness CNJ admitted to taking $ 5,000 from a person in detention with him in Rwanda in order to change his testimony in the *Seromba* case; and (iii) Witness CBT's allegations against Kanyarukiga were not contained in previous letters and statements.

[518] Kanyarukiga further contends that the Trial Chamber was inconsistent since it rejected evidence of Witness CBT because he had given statements to Tribunal investigators in 2000 and 2001, which coincided with his participation in the sensitisation programme, but did not apply this logic to Witness CDL who gave a statement at the same time. *See* Kanyarukiga Appeal Brief, paras. 152, 153. However, the Appeals Chamber finds this argument misplaced. The Trial Chamber's concern about the timing of Witness CBT's statements was not the primary reason for rejecting his evidence; it took other circumstances concerning the testimony of Witness CBT into account, which were absent in relation to Witness CDL. *See* Trial Judgement, para. 496.

[519] Trial Judgement, paras. 452, 453, 591, 592, fn. 1641.

[520] Trial Judgement, para. 592.

[521] Trial Judgement, fn. 1644.

[522] Trial Judgement, fn. 1644.

[523] The Appeals Chamber dismisses Kanyarukiga's further argument that the Trial Chamber could not have relied on Witness CBT's 2000 and 2001 statements to find that Witness CBR's testimony was not tainted because it had previously rejected Witness CBT's evidence on the basis that his statements coincided with his participation in the sensitisation programme. *See* Kanyarukiga Appeal Brief, para. 153. As stated above, the timing of Witness CBT's statements was not the primary reason why the Trial Chamber rejected his evidence. Furthermore, the rejected evidence

242. For the foregoing reasons, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber erred in its assessment of collusion and witness-tainting. Accordingly, Kanyarukiga's ground of appeal 54 is dismissed.

6. National Proceedings (Ground 57)

243. Kanyarukiga submits that the Trial Chamber erred in law in disregarding national proceedings held in Kibuye, Rwanda, in 1998, against leaders of the massacres at the Nyange parish.[524] He asserts that his name was not mentioned in these proceedings and that this undermines the credibility of the claims of Witnesses CDL and CBY since they testified there.[525] He further challenges the Trial Chamber's reliance on the fact that Ndahimana and Ndungutse were also not prosecuted in Kibuye, arguing that they were heavily implicated during the proceedings, whereas his involvement was not even "hinted at".[526]

244. The Prosecution does not respond to this allegation.

245. The Trial Chamber found that the absence of reference to Kanyarukiga in the Kibuye proceedings was "inconclusive" given that the proceedings also did not include Ndahimana and Ndungutse who were at the Nyange church during the attacks.[527] The Appeals Chamber does not detect any error in the Trial Chamber's assessment.

246. Accordingly, the Appeals Chamber dismisses Kanyarukiga's ground of appeal 57.

7. Unreasonableness of the Conviction (Grounds 45 and 46)

247. Kanyarukiga further challenges "the general conviction as unreasonable, making a miscarriage of justice inevitable."[528] He designates ground 46 of his appeal as a "global ground of appeal relating to all findings" and argues that the Trial Chamber erred in fact in convicting him.[529] Under ground 45 of his appeal, Kanyarukiga submits that the Trial Chamber erred in fact by

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was unrelated to Kanyarukiga's remark. *See* Trial Judgement, paras. 495, 496. Finally, given that Witness CBR mentioned Kanyarukiga's remark already in 2001 (*see* Trial Judgement, fn. 1644, *referring to* Exhibit D27(B)), the Trial Chamber correctly considered that there was no indication that he colluded with Witnesses CBT and CDL in 2009.

[524] Kanyarukiga Notice of Appeal, para. 64; Kanyarukiga Appeal Brief, paras. 162, 163, *referring to* Exhibit D8A (under seal).

[525] Kanyarukiga Appeal Brief, para. 162. The Appeals Chamber notes that while Kanyarukiga's arguments also extend to Witnesses CBS, CBN, and YAU, it has already summarily dismissed any challenges to their evidence for lack of impact on Kanyarukiga's convictions and sentence. *See supra*, Section III.D.1.

[526] Kanyarukiga Appeal Brief, para. 163.

[527] Trial Judgement, para. 459.

[528] Kanyarukiga Appeal Brief, para. 127.

[529] Kanyarukiga Notice of Appeal, para. 52; Kanyarukiga Appeal Brief, para. 130.

accepting an irrational and incoherent narrative,[530] and being "irrationally selective, picking and rejecting in turn, evidence from the demonstrably unreliable witnesses and splicing their inconsistent stories together."[531]

248. The Prosecution does not specifically respond to these submissions.

249. The Appeals Chamber has addressed above Kanyarukiga's specific challenges to the Trial Chamber's assessment of the evidence. It finds that the generalised assertions under grounds 45 and 46 of his appeal add nothing in substance and do not require further analysis.

250. Accordingly, Kanyarukiga's grounds of appeal 45 and 46 are dismissed.

8. Alleged Inconsistencies in the Treatment of the Prosecution and Defence Evidence (Grounds 31, 67, and 68)

251. Kanyarukiga submits that the Trial Chamber erred in law in applying different standards and inconsistent approaches to the treatment of Prosecution and Defence evidence, which rendered the trial unfair and invalidates the decision.[532] Kanyarukiga asserts that this differential standard was evidenced by: (i) the Trial Chamber's more generous approach in permitting the Prosecution to cross-examine alibi witnesses;[533] (ii) the greater significance the Trial Chamber attached to the delay in filing his Notice of Alibi than to Prosecution delays in its response to disclosure requests, including with respect to the *laissez-passer* requests;[534] (iii) the Trial Chamber's readiness to draw adverse inferences from changes to the alibi witness list while not drawing adverse inferences from changes to the Prosecution's case, including its witness list;[535] (iv) the Trial Chamber's inconsistent approach to the evaluation of Prosecution and Defence evidence with respect to collusion, witness-tainting, and motives to falsify testimony, which was demonstrated by the fact that it downplayed "markers of incredibility" of Prosecution witnesses, minimised inconsistencies, and treated "vaguely compatible" Prosecution evidence as being mutually corroborative whereas it rejected the evidence of Defence witnesses without foundation or "on trivial grounds";[536] and (v) the Trial

[530] Kanyarukiga Notice of Appeal, para. 51; Kanyarukiga Appeal Brief, para. 128.
[531] Kanyarukiga Appeal Brief, paras. 128, 129; AT. 14 December 2011 pp. 13, 41.
[532] Kanyarukiga Notice of Appeal, paras. 36, 74, 75; Kanyarukiga Appeal Brief, paras. 80, 82, 198, 199; AT. 14 December 2011 p. 3.
[533] Kanyarukiga Notice of Appeal, para. 36, *referring to* T. 2 February 2010 p. 36 and ground of appeal 70; Kanyarukiga Appeal Brief, para. 80, *referring to* ground of appeal 71.
[534] Kanyarukiga Notice of Appeal, para. 36, *referring to* grounds of appeal 1-13, 69; Kanyarukiga Appeal Brief, para. 80, *referring to* grounds of appeal 1-10, 32, 70.
[535] Kanyarukiga Notice of Appeal, para. 36, *referring to* ground of appeal 10; Kanyarukiga Appeal Brief, para. 80, *referring to* ground of appeal 10.
[536] Kanyarukiga Notice of Appeal, para. 36, *referring to* grounds of appeal 17-21, 53-55; Kanyarukiga Appeal Brief, para. 80, *referring to* grounds of appeal 17-21, 52, 53. *See also* Kanyarukiga Notice of Appeal, paras. 74, 75, *referring*

Chamber's readiness to believe Prosecution evidence beyond reasonable doubt although it suffered from greater credibility issues than Defence evidence which was considered not to even raise a reasonable doubt.[537]

252. The Prosecution responds that the Trial Chamber followed applicable legal standards and properly considered and weighed Prosecution and Defence evidence.[538]

253. The Appeals Chamber notes that Kanyarukiga's arguments are made by way of cross-reference to other grounds of appeal.[539] The Appeals Chamber has already dismissed the referenced grounds of appeal in their entirety. It therefore finds that Kanyarukiga has failed to demonstrate that the Trial Chamber applied different standards and inconsistent approaches to the treatment of Prosecution and Defence evidence.

254. Accordingly, Kanyarukiga's grounds of appeal 31, 67, and 68 are dismissed.

9. Conclusion

255. Kanyarukiga has failed to demonstrate that the Trial Chamber erred in its assessment of the evidence. Accordingly, Kanyarukiga's grounds of appeal 31, 45 through 46, 49 through 55, 57 through 58, and 61 through 68 are dismissed.

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to grounds of appeal 18-24, 50-55; Kanyarukiga Appeal Brief, paras. 198, 199, *referring to* grounds of appeal 22-24, 51-55.

[537] Kanyarukiga Notice of Appeal, para. 36, *referring to* grounds of appeal 22-24, 60; Kanyarukiga Appeal Brief, para. 80, *referring to* grounds of appeal 22-24, 61.

[538] *See* Prosecution Response Brief, para. 147.

[539] Under ground 31 of his appeal, Kanyarukiga additionally argues that the Trial Chamber's inconsistent approach to Prosecution and Defence evidence is demonstrated by its "treating Prosecution testimony about who were not present during the attacks on Nyange Parish as feasible when provided by Prosecution witnesses but not feasible when provided by Defence witnesses." *See* Kanyarukiga Notice of Appeal, para. 36; Kanyarukiga Appeal Brief, para. 81, *referring to* Trial Judgement, paras. 10, 16, 463, 489, 584, 608. However, the Appeals Chamber rejects this argument for lack of merit. Four out of the five references provided by Kanyarukiga are irrelevant to his convictions. The remaining reference to paragraph 584 of the Trial Judgement shows that the Trial Chamber reasonably rejected the testimony of Defence witnesses that they did not see Kanyarukiga at the Nyange parish on 16 April 1994 given that there were thousands of people at the Nyange parish on 16 April 1994 and that the Defence witnesses did not go to the church while it was being demolished. Finally, the Appeals Chamber notes that only one of the references concerns evidence of Prosecution witnesses (CBS and CBR) and that the Trial Chamber used this particular evidence (about the absence of certain people from the Nyange parish on 16 April 1994) to the benefit of Kanyarukiga.

E. KANYARUKIGA'S POSITION OF AUTHORITY

256. Under ground 59 of his appeal, Kanyarukiga submits that the Trial Chamber erred in law by failing to rule on whether he was an authority, linked to the MRND or otherwise.[540] He argues that his position of authority was central to the Prosecution case[541] and that the Trial Chamber was therefore required to decide the issue.[542] Under ground 60 of his appeal, Kanyarukiga submits that in case the Trial Chamber implicitly accepted that he was an authority and/or had links to the MRND or its philosophy, it erred in fact.

257. The Prosecution does not respond to these submissions.

258. The Appeals Chamber recalls that liability for planning requires that one or more persons design the criminal conduct constituting one or more statutory crimes which are later perpetrated.[543] A conviction for planning does not require a finding of a position of authority. Consequently, the question whether Kanyarukiga was in such a position does not have the potential to invalidate the verdict and the Appeals Chamber declines to consider it.[544]

259. Accordingly, the Appeals Chamber dismisses Kanyarukiga's grounds of appeal 59 and 60.

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[540] Kanyarukiga Notice of Appeal, para. 66; Kanyarukiga Appeal Brief, para. 168; AT. 14 December 2011 p. 41.
[541] Kanyarukiga Appeal Brief, para. 168, *referring to* Prosecution Closing Brief, para. 8, and the fact that "[a]ll of the Prosecution witnesses baldly described Mr. Kanyarukiga, repeatedly, as an 'authority' or 'official'."
[542] Kanyarukiga Appeal Brief, para. 168, *referring to Kvočka et al.* Appeal Judgement, para. 25.
[543] *See Milošević* Appeal Judgement, para. 268; *Nahimana et al.* Appeal Judgement, para. 479; *Kordić and Čerkez* Appeal Judgement, para. 26.
[544] *See supra*, para. 7 (setting out the standards of appellate review).

F. KANYARUKIGA'S MOTIVE

260. Under ground 48 of his appeal, Kanyarukiga submits that the Trial Chamber erred in law by disregarding that he had no motive to commit the crimes for which he was convicted, which was shown by his proven good relations with Tutsis and political hostility towards the MRND.[545]

261. The Prosecution responds that Kanyarukiga mixes intent and motive.[546] It submits that Kanyarukiga had the necessary intent[547] and that the alleged lack of motive and alleged good relationships with Tutsis are irrelevant to his criminal responsibility.[548]

262. The Appeals Chamber notes that motive, as opposed to *mens rea*, is not an element of any crime.[549] The question whether Kanyarukiga lacked a motive to participate in the crimes for which he was convicted thus does not have the potential to invalidate the verdict and the Appeals Chamber declines to consider it.[550]

263. The Appeals Chamber therefore dismisses Kanyarukiga's ground of appeal 48.

[545] Kanyarukiga Notice of Appeal, para. 55; Kanyarukiga Appeal Brief, para. 136.
[546] Prosecution Response Brief, para. 159.
[547] Prosecution Response Brief, para. 158.
[548] Prosecution Response Brief, para. 156.
[549] *Cf. Limaj et al.* Appeal Judgement, para. 109.
[550] *See supra*, para. 7 (setting out the standards of appellate review).

IV. APPEAL OF THE PROSECUTION: ALLEGED ERROR RELATING TO JOINT CRIMINAL ENTERPRISE

264. The Trial Chamber considered that "for an accused to be convicted of 'committing' pursuant to a theory of [joint criminal enterprise], it must be established that he or she participated in the *execution* of the common plan or purpose of the enterprise".[551] The Trial Chamber reasoned that, while Kanyarukiga participated in the planning of the destruction of the Nyange church, there was no evidence to suggest that he ordered, instigated, encouraged, or provided material assistance to the attackers.[552] Accordingly, it concluded that the evidence was insufficient to establish that Kanyarukiga "significantly contributed to the execution or commission of the crimes charged."[553]

265. Under ground 1 of its appeal, the Prosecution submits that the Trial Chamber erred in law when it found that Kanyarukiga's planning could not constitute the requisite contribution to a joint criminal enterprise.[554] It asserts that liability for joint criminal enterprise encompasses any significant contribution to a crime, regardless of whether it occurs during its execution. In the Prosecution's view, Kanyarukiga's planning fulfilled this requirement.[555]

266. Kanyarukiga responds that this ground of appeal should be dismissed.[556]

267. The Appeals Chamber notes that the Prosecution does not seek the invalidation of the Trial Judgement, but merely requests clarification on an issue of general importance to the development of the Tribunal's case law.[557] The Appeals Chamber recalls that the Statute empowers it to hear appeals concerning an alleged error on a question of law "invalidating the decision".[558] While, in exceptional circumstances, the Appeals Chamber has discretion to hear appeals where a party has raised a legal issue that would not invalidate the judgement,[559] it declines to do so in this case.[560]

268. Accordingly, the Prosecution's ground of appeal 1 is dismissed.

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[551] Trial Judgement, para. 643 (emphasis in original), *referring to Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100; *Ntakirutimana* Appeal Judgement, para. 466; *Tadić* Appeal Judgement, para. 227.
[552] Trial Judgement, para. 643.
[553] Trial Judgement, para. 643.
[554] Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 6, 7, 11.
[555] Prosecution Appeal Brief, paras. 6, 7.
[556] Kanyarukiga Response Brief, paras 1-32.
[557] Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, para. 6.
[558] Article 24(1)(a) of the Statute.
[559] *See, inter alia, Haradinaj et al.* Appeal Judgement, para. 9; *Boškoski and Tarčulovski* Appeal Judgement, para. 9; *Nahimana et al.* Appeal Judgement, para. 12.
[560] *See* Article 24(1)(a) of the Statute.

V. SENTENCING APPEALS

269. The Trial Chamber sentenced Kanyarukiga to a single sentence of 30 years' imprisonment for his convictions for genocide (Count 1) and extermination as a crime against humanity (Count 3).[561]

270. Kanyarukiga and the Prosecution have both appealed this sentence.[562] The Appeals Chamber addresses their appeals in turn, bearing in mind that trial chambers are vested with broad discretion in determining an appropriate sentence due to their obligation to individualise penalties to fit the circumstances of the accused and the gravity of the crime.[563] As a rule, the Appeals Chamber will revise a sentence only if the appealing party demonstrates that the trial chamber committed a discernible error in exercising its sentencing discretion or that it failed to follow the applicable law.[564]

A. KANYARUKIGA'S SENTENCING APPEAL

271. Under ground 72 of his appeal, Kanyarukiga submits that the Trial Chamber erred in law by imposing on him a "harsh and excessive" sentence and requests the Appeals Chamber to substantially reduce it.[565] He argues that the Trial Chamber erred by "double counting" the same factor both in relation to the gravity of his crimes and as an aggravating circumstance.[566] He further argues that the Trial Chamber erred in its assessment of the gravity of the offence since it failed to take into account that he was not shown to have had a position of leadership and authority.[567] He also argues that the Trial Chamber failed to take into account as a mitigating factor his prior good relationship with Tutsis.[568] In light of the latter fact, he submits that a "30 year sentence for a man who was between 63 and 72 years old [...] was an abuse of discretion."[569]

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[561] Trial Judgement, para. 688.
[562] Kanyarukiga Notice of Appeal, para. 79; Prosecution Notice of Appeal, para. 3.
[563] *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Ntawukulilyayo* Appeal Judgement, para. 232; *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277.
[564] *See, e.g., Bagosora and Nsengiyumva* Appeal Judgement, para. 419; *Ntawukulilyayo* Appeal Judgement, para. 232; *Munyakazi* Appeal Judgement, para. 166; *Setako* Appeal Judgement, para. 277.
[565] Kanyarukiga Notice of Appeal, paras. 79, 81; Kanyarukiga Appeal Brief, paras. 204, 208.
[566] Kanyarukiga Appeal Brief, para. 204, *referring to* Trial Judgement, paras. 675, 678. *See also* AT. 14 December 2011 p. 49.
[567] Kanyarukiga Notice of Appeal, para. 79; Kanyarukiga Appeal Brief, para. 205. *See also* Kanyarukiga Reply Brief, para. 100. In particular, Kanyarukiga submits that there was no evidence of the particular role he played "in the planning," and no proof that he made any particularised or special causal contribution to the attacks. *See* Kanyarukiga Appeal Brief, para. 205.
[568] Kanyarukiga Notice of Appeal, para. 79; Kanyarukiga Appeal Brief, para. 206.
[569] Kanyarukiga Appeal Brief, para. 206.

272. The Prosecution responds that Kanyarukiga's arguments should be dismissed as he shows no discernible error in the Trial Chamber's exercise of its discretion in sentencing.[570] It also contends that since Kanyarukiga made no sentencing submissions at trial, he cannot complain on appeal that the Trial Chamber failed to assess mitigating factors.[571]

273. In support of his claim that the Trial Chamber double-counted sentencing factors, Kanyarukiga points to the Trial Chamber's finding in its assessment of the gravity of the offence that he "participated in the planning of the destruction of the Nyange Church on 16 April 1994, which resulted in the deaths of over 2000 Tutsi civilians".[572] In his opinion, the Trial Chamber considered the same issue as an aggravating circumstance when stating that the victims were "civilians, including women, children and the elderly" who "were ultimately crushed by the church structure itself".[573] However, the Appeals Chamber notes that the Trial Chamber clearly indicated that the latter finding related to the particular vulnerability of the victims.[574] In contrast, the former finding concerned the number of victims as an element of the gravity of the offence. Accordingly, the Trial Chamber did not take into account the same factor twice. Kanyarukiga's argument is therefore dismissed.

274. The Appeals Chamber further recalls that under Rule 86(C) of the Rules, the parties shall address matters of sentencing in their closing arguments. It is thus the accused's prerogative to identify any mitigating circumstances before the trial chamber and he cannot raise them for the first time on appeal.[575] As Kanyarukiga made no submissions on sentencing in his closing brief and arguments at trial,[576] the Appeals Chamber will not consider his contention that the Trial Chamber should have considered his lack of leadership and authority or his prior good relationship with Tutsis.

275. Finally, the Appeals Chamber observes that the Trial Chamber expressly treated Kanyarukiga's age as a mitigating factor.[577]

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[570] Prosecution Response Brief, paras. 280, 281, 291-293.
[571] Prosecution Response Brief, para. 287.
[572] Kanyarukiga Appeal Brief, para. 204, *referring to* Trial Judgement, para. 675.
[573] Kanyarukiga Appeal Brief, para. 204, *referring to* Trial Judgement, para. 678.
[574] *See* Trial Judgement, paras. 678, 679.
[575] *Bikindi* Appeal Judgement, para. 165; *Nahimana et al.* Appeal Judgement, para. 1049; *Kamuhanda* Appeal Judgement, para. 354. *See also Kvočka et al.* Appeal Judgement, para. 674; *Kupreškić et al.* Appeal Judgement, para. 414.
[576] Kanyarukiga Closing Brief, paras. 502-505; Closing Arguments, T. 24 May 2010 p. 84. *See also* Trial Judgement, paras. 671, 672.
[577] Trial Judgement, para. 681.

276. In light of the above, the Appeals Chamber finds that Kanyarukiga has failed to demonstrate that the Trial Chamber committed a discernible error in determining his sentence. The Appeals Chamber therefore dismisses Kanyarukiga's ground of appeal 72.

B. PROSECUTION'S SENTENCING APPEAL

277. Under ground 2 of its appeal, the Prosecution submits that the Trial Chamber committed a discernible error in its assessment of the gravity of the offence by giving weight to irrelevant factors, namely that Kanyarukiga did not directly participate in and was not present during the destruction of the Nyange church on 16 April 1994.[578] The Prosecution submits that these factors did not alter the impact of Kanyarukiga's criminal conduct.[579] It asserts that Kanyarukiga was a "mastermind" of the attacks and that the Trial Chamber erred in considering that his planning was less grave than the conduct of the physical perpetrators.[580] The Prosecution therefore requests that the Appeals Chamber increase Kanyarukiga's sentence substantially or to life imprisonment, or, in the alternative, remand the case to the Trial Chamber to re-evaluate the gravity of Kanyarukiga's offences.[581]

278. Kanyarukiga responds that the Trial Chamber did not imply that planning is a less serious mode of liability, but "was simply attempting to gauge the gravity of Kanyarukiga's crime or individual responsibility, a characterization that must surely be influenced by actual participation and presence".[582]

279. In assessing the gravity of the offence, the Trial Chamber found that "[a]lthough Kanyarukiga's crimes are grave, [it] is not satisfied that he is deserving of the most serious sanction available under the Statute, given that it has not been established that he directly participated in, or was present during the destruction of Nyange church itself".[583]

280. The Appeals Chamber recalls that the well-established principle of gradation in sentencing holds that leaders and planners should bear heavier criminal responsibility than those further down the scale, subject to the proviso that the gravity of the offence is the primary consideration for a trial

[578] Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 13, 16, 24; AT. 14 December 2011 pp. 47, 48.
[579] Prosecution Appeal Brief, paras. 20, 27, 28.
[580] Prosecution Appeal Brief, paras. 18, 19, 21, 22, 29.
[581] Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras. 31, 32; AT. 14 December 2011 p. 49.
[582] Kanyarukiga Response Brief, para. 39. *See also* Kanyarukiga Response Brief, paras. 2, 40, 42, 46.
[583] Trial Judgement, para. 676.

chamber in imposing a sentence.[584] Thus, although Kanyarukiga was convicted as a planner, the primary consideration remained the gravity of his offences.

281. The determination of the gravity of the offence requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the convicted person in the crime.[585] The Appeals Chamber notes that the Trial Chamber expressly considered the very serious nature of the crimes committed, their scale, and the fact that Kanyarukiga participated in planning them.[586] In particular, the Trial Chamber observed that the destruction of the Nyange church on 16 April 1994 resulted in the deaths of over 2,000 Tutsi civilians and that the crimes "were grave and resulted in overwhelming human suffering".[587]

282. The Appeals Chamber further notes that there is no finding in the Trial Judgement that Kanyarukiga played a central or a leading role or was a mastermind of the attacks at the Nyange church on 16 April 1994. By contrast, other planners of the crime were found to have been present and directly involved in it.[588] The Appeals Chamber finds that under these specific circumstances, Kanyarukiga's absence and lack of direct participation could be reasonably considered by the Trial Chamber as relevant factors in individualising his sentence. The Appeals Chamber therefore also rejects the Prosecution's contention that the Trial Chamber implied that planning is a less grave mode of liability than physical perpetration.

283. In any event, the Appeals Chamber is of the view that the weight given by the Trial Chamber to the contested factors must have been limited given the severity of the sentence imposed. A sentence of 30 years' imprisonment may be considered among the most severe sentences. The Appeals Chamber does not find it so unreasonable or plainly unjust to require its intervention.

284. In view of the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate that the Trial Chamber committed a discernible error in determining Kanyarukiga's sentence. Accordingly, the Appeals Chamber dismisses the Prosecution's ground of appeal 2.

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[584] *Kalimanzira* Appeal Judgement, para. 236. *See also Setako* Appeal Judgement, para. 280; *Nshogoza* Appeal Judgement, para. 98. *See also* Article 23 of the Statute.
[585] *Munyakazi* Appeal Judgement, para. 185; *Nshogoza* Appeal Judgement, para. 98; *Rukundo* Appeal Judgement, para. 243; *Mrkšić and Šljivančanin* Appeal Judgement, para. 375.
[586] Trial Judgement, paras. 674, 675.
[587] Trial Judgement, para. 675.
[588] *See* Trial Judgement, paras. 598, 602, 603, 614, naming Ndahimana, Kayishema, Ndungutse, and Seromba.

VI. DISPOSITION

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

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

SITTING in open session;

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 14 December 2011;

DISMISSES Gaspard Kanyarukiga's appeal in its entirety;

DISMISSES the Prosecution's appeal in its entirety;

AFFIRMS Gaspard Kanyarukiga's convictions for planning genocide and extermination as a crime against humanity;

AFFIRMS the sentence of 30 years' imprisonment imposed on Gaspard Kanyarukiga by the Trial Chamber to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period Gaspard Kanyarukiga has already spent in detention since his arrest on 16 July 2004;

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

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

Judge Pocar appends a separate opinion.

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

Patrick Robinson
Presiding Judge

Mehmet Güney
Judge

Fausto Pocar
Judge

Arlette Ramaroson
Judge

Andrésia Vaz
Judge

Done this eighth day of May 2012 at Arusha, Tanzania.

[Seal of the Tribunal]

VII. SEPARATE OPINION OF JUDGE POCAR

1. In this Judgement, the Appeals Chamber declines to consider the Prosecution's ground of appeal 1 as the Prosecution does not seek the invalidation of the Trial Judgement, but merely requests clarification of a legal issue of general importance to the development of the Tribunal's jurisprudence.[1] The legal issue raised by the Prosecution is whether planning can constitute the requisite contribution to a joint criminal enterprise.[2] I fully agree that the Appeals Chamber has discretion to hear appeals where a party has raised a legal issue that would not invalidate the judgement.[3] However, given that the legal issue presented in the Prosecution's ground of appeal 1 is related to an element of joint criminal enterprise and that the clarification of this issue will avoid uncertainty and confusion in future cases, I have decided to address this question here.[4]

2. The Trial Chamber found that the Prosecution had failed to prove beyond reasonable doubt that Kanyarukiga had participated in a joint criminal enterprise.[5] In reaching this conclusion, it considered that "for an accused to be convicted of 'committing' pursuant to a theory of [joint criminal enterprise], it must be established that he or she participated in the *execution* of the common plan or purpose of the enterprise".[6] The Trial Chamber reasoned that, although it had found that Kanyarukiga participated in the planning of the destruction of the Nyange church, there was no credible evidence to suggest that he ordered, instigated, encouraged, or provided material assistance to the attackers.[7] Accordingly, it concluded that the evidence was insufficient to establish that Kanyarukiga "significantly contributed to the execution or commission of the crimes charged."[8] However, the Trial Chamber found that Kanyarukiga and others planned the destruction of the Nyange church[9] and, accordingly, found him guilty of genocide and extermination as a crime against humanity for planning the killing of the Tutsi civilians sheltering in the Nyange church.[10]

3. All three categories of a joint criminal enterprise share the following constitutive elements: (i) a plurality of persons; (ii) the existence of a common plan, design or purpose which amounts to

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[1] Appeal Judgement, para. 267. *See also* Appeal Judgement, para. 268; Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, para. 6.
[2] Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 2, 6-12.
[3] *See* Appeal Judgement, para. 267.
[4] My analysis will not address all the parties' arguments, but will be limited to what I consider of general significance to the Tribunal's jurisprudence.
[5] Trial Judgement, para. 643. The Trial Chamber found that Kanyarukiga was provided with adequate notice that he was charged with the basic form of joint criminal enterprise. *See* Trial Judgement, para. 630.
[6] Trial Judgement, para. 643 (emphasis in original), *referring to Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100; *Ntakirutimana* Appeal Judgement, para. 466; *Tadić* Appeal Judgement, para. 227.
[7] Trial Judgement, para. 643.
[8] Trial Judgement, para. 643.
[9] Trial Judgement, para. 645.

or involves the commission of a crime provided for in the Statute; and (iii) the participation of the accused in the common purpose.[11] This participation need not involve commission of a specific crime under one of the provisions of the Statute, but may take the form of assistance in, or contribution to, the execution of the common purpose.[12]

4. The Trial Chamber reasoned that the requisite contribution would have been met if Kanyarukiga had "ordered, instigated, encouraged or provided material assistance to the attackers"[13] but that his participation in planning the destruction of the church did not establish his participation in the *execution* of the common plan or purpose of the joint criminal enterprise.[14] The jurisprudence does not specify what form the participation of an accused in the common purpose of a joint criminal enterprise must take. Although it establishes that this participation need not involve the commission of a specific crime, it clarifies that it should at least be a significant contribution to the crimes for which the accused is to be found responsible.[15] As the Appeals Chamber in the *Tadić* case explained, "[a]lthough only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question."[16] Thus, planning a crime may amount to a significant contribution to the execution of the common purpose. Indeed, by designing the criminal conduct constituting one or more statutory crimes that are later perpetrated, which amounts to planning,[17] an accused assists in the commission of the crime.

5. In light of the foregoing, I find that the Trial Chamber erred in finding that planning is insufficient to constitute the requisite contribution to a joint criminal enterprise.

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[10] Trial Judgement, paras. 654, 666.

[11] *Vasiljević* Appeal Judgement, para. 100, *referring to Tadić* Appeal Judgement, para. 227. *See also Kvočka et al.* Appeal Judgement, para. 96. The *Tadić* Appeal Judgement uses the expressions, "purpose," "plan," and "design" interchangeably.

[12] *Vasiljević* Appeal Judgement, para. 100, *referring to Tadić* Appeal Judgement, para. 227. *See also Kvočka et al.* Appeal Judgement, para. 96; *Ntakirutimana* Appeal Judgement, para. 466.

[13] *See* Trial Judgement, para. 643.

[14] *See* Trial Judgement, para. 643.

[15] *Brđanin* Appeal Judgement, para. 430; *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100; *Ntakirutimana* Appeal Judgement, para. 466; *Tadić* Appeal Judgement, para. 227.

[16] *Tadić* Appeal Judgement, para. 191. *See also Kvočka et al.* Appeal Judgement, para. 99.

[17] *Milošević* Appeal Judgement, para. 268; *Nahimana et al.* Appeal Judgement, para. 479; *Kordić and Čerkez* Appeal Judgement, para. 26.

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

Judge Fausto Pocar

Done this eighth day of May 2012 at Arusha, Tanzania.

[Seal of the Tribunal]

VIII. ANNEX A – PROCEDURAL HISTORY

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

A. NOTICES OF APPEAL AND BRIEFS

2. Trial Chamber II of the Tribunal rendered the judgement in this case on 1 November 2010. Both parties appealed.

1. Kanyarukiga's Appeal

3. Kanyarukiga filed his notice of appeal on 9 December 2010.[1] On 20 January 2011, the Pre-Appeal Judge granted in part Kanyarukiga's motion for extension of time to file his appeal brief and ordered him to file his appeal brief no later than 30 days from the date of his receipt of the Kinyarwanda translation of the Trial Judgement.[2] This translation was served on Kanyarukiga on 22 March 2011.[3] Kanyarukiga filed his appeal brief on 20 April 2011.[4] The Prosecution filed its response brief on 30 May 2011.[5] Kanyarukiga filed his reply brief on 13 June 2011.[6]

2. Prosecution's Appeal

4. The Prosecution filed its notice of appeal on 10 December 2010[7] and its appeal brief on 23 February 2011.[8] Kanyarukiga filed his response brief on 4 April 2011.[9] The Prosecution filed its reply brief on 19 April 2011.[10]

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[1] Kanyarukiga Notice of Appeal, 9 December 2010.

[2] Decision on Gaspard Kanyarukiga's Motion for Extension of Time for Filing Appellant's Brief and to Expedite Translation of Judgement into Kinyarwanda, 20 January 2011.

[3] Information to the Appeals Chamber Regarding Direction in "Decision on Gaspard Kanyarukiga's Motion for Extension of Time for Filing of Appellant's Brief and to Expedite Translation of Judgement into Kinyarwanda" Dated 20 January 2011, 22 March 2011, para. 2.

[4] Confidential Appellant Brief, 20 April 2011. In compliance with the Order on the Status of Gaspard Kanyarukiga's Briefs and Annexes of 9 May 2011, Kanyarukiga filed a public redacted version of his appeal brief with its four annexes on 18 May 2011. *See* Redacted Appellant Brief Pursuant to the Order on the Status of Gaspard Kanyarukiga's Brief and Annexes Dated 9 May 2011, 18 May 2011.

[5] Prosecutor's Respondent's Brief, 30 May 2011.

[6] Confidential Defence Reply Brief, 13 June 2011. In compliance with the Order on the Status of Gaspard Kanyarukiga's Reply Brief of 14 June 2011, Kanyarukiga filed a public redacted version of his reply brief on 20 June 2011. *See* Redacted Defence Reply Brief Pursuant to the Order on the Status of Gaspard Kanyarukiga's Reply Brief Dated 14 June 2011, 20 June 2011.

[7] Prosecutor's Notice of Appeal, 10 December 2010.

[8] Prosecutor's Appellant's Brief, 23 February 2011.

[9] Defence Respondent's Brief, 4 April 2011. On 6 April 2011, the Pre-Appeal Judge dismissed as moot Kanyarukiga's request of a one-day extension for filing his response brief. *See* Decision on Gaspard Kanyarukiga's Motion for Extension of Time for Filing the Respondent's Brief, 6 April 2011. In compliance with the Order on the Status of Gaspard Kanyarukiga's Briefs and Annexes of 9 May 2011, Kanyarukiga filed a public redacted Annex I to his response brief on 18 May 2011.

B. ASSIGNMENT OF JUDGES

5. On 13 December 2010, the Presiding Judge of the Appeals Chamber assigned the following Judges to hear the appeal: Judge Patrick Robinson, Judge Mehmet Güney, Judge Fausto Pocar, Judge Andrésia Vaz, and Judge Theodor Meron.[11] On 14 January 2011, the Presiding Judge assigned himself as the Pre-Appeal Judge in this case.[12] On 24 February 2011, the Presiding Judge denied Kanyarukiga's request for disqualification of Judge Vaz from the Bench.[13] On 11 November 2011, the Presiding Judge assigned Judge Arlette Ramaroson to replace Judge Theodor Meron on the Bench seised of the case.[14]

C. HEARING OF THE APPEALS

6. On 14 December 2011, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 18 November 2011.[15]

[10] Prosecution's Reply Brief, 19 April 2011. On 26 May 2011, the Appeals Chamber denied Kanyarukiga's request to strike several paragraphs in the Prosecution Reply Brief or, in the alternative, to accept his motion as a sur-reply. *See* Decision on Motion to Strike Passages from the Prosecutor's Reply Brief, 26 May 2011.
[11] Order Assigning Judges to a Case Before the Appeals Chamber, 13 December 2010.
[12] Order Assigning a Pre-Appeal Judge, 14 January 2011.
[13] Decision on Gaspard Kanyarukiga's Motion to Disqualify Judge Vaz, 24 February 2011.
[14] Order Replacing a Judge in a Case Before the Appeals Chamber, 11 November 2011.
[15] Scheduling Order, 18 November 2011. On 12 December 2011, the Appeals Chamber issued an order for the preparation of the appeal hearing. *See* Order for the Preparation of the Appeal Hearing, signed on 9 December 2011, filed on 12 December 2011.

IX. ANNEX B – CITED MATERIALS AND DEFINED TERMS

A. JURISPRUDENCE

1. Tribunal

AKAYESU, Jean-Paul

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

BAGOSORA, Théoneste and NSENGIYUMVA, Anatole

Théoneste Bagosora and Anatole Nsengiyumva v. The Prosecutor, Case No. ICTR-98-41-A, Judgement, 14 December 2011 ("*Bagosora and Nsengiyumva* Appeal Judgement").

BARAYAGWIZA, Jean-Bosco

Jean-Bosco Barayagwiza v. The Prosecutor, Case No. ICTR-97-19-AR72, Decision, 3 November 1999 ("*Barayagwiza* Decision of 3 November 1999").

BIKINDI, Simon

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

KAJELIJELI, Juvénal

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

KALIMANZIRA, Callixte

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

KAMUHANDA, Jean de Dieu

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

KANYARUKIGA, Gaspard

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-AR73, Decision on Kanyarukiga's Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents, 19 February 2010 ("Decision on Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-T, Decision on Defence Motion for Certification to Appeal the Trial Chamber's 15 January 2010 Decision on Stay of Proceedings or Exclusion of Evidence, 9 February 2010 ("Decision on Defence Motion for Certification to Appeal").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-T, Decision on Defence Motion for a Stay of the Proceedings or Exclusion of Evidence Outside the Scope of the Indictment, 15 January 2010 ("15 January 2010 Decision").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-T, Decision on Defence Motion for Disclosure and Return of Exculpatory Documents Seised from the Accused, 30 October 2009 ("Decision on Motion for Return of *Laissez-Passers*").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-T, Decision on the Extremely Urgent Defence Motion for a Stay of Proceedings, 28 August 2009 ("Decision Denying a Stay of Proceedings").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-I, Decision on Prosecution Request to Amend the Indictment, 14 November 2007 ("Decision on Prosecution Request to Amend the Indictment").

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-02-78-I, Decision on the Prosecutor's *Ex Parte* Motion for Review and Confirmation of the Indictment and Other Related Orders, 4 March 2002 ("Decision on the Prosecutor's *Ex Parte* Motion for Review and Confirmation of the Indictment").

KAREMERA, Édouard *et al.*

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal, 28 April 2006 ("*Karemera et al.* Decision of 28 April 2006").

KARERA, François

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

KAYISHEMA, Clément and RUZINDANA, Obed

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

MUNYAKAZI, Yussuf

The Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A-A, Judgement, 28 September 2011 ("*Munyakazi* Appeal Judgement").

MUVUNYI, Tharcisse

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

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 1 April 2011 ("*Muvunyi II* Appeal Judgement").

NAHIMANA, Ferdinand *et al.*

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

NCHAMIHIGO, Siméon

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

NDINDABAHIZI, Emmanuel

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

NGIRABATWARE, Augustin

Augustin Ngirabatware v. The Prosecutor, Case No. ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009 ("*Ngirabatware* Decision of 12 May 2009").

NIYITEGEKA, Eliézer

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

NSHOGOZA, Léonidas

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

NTAKIRUTIMANA, Elizaphan and Gérard

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").

NTAWUKULILYAYO, Dominique

Dominique Ntawukulilyayo v. The Prosecutor, Case No. ICTR-05-82-A, Judgement, 14 December 2011 ("*Ntawukulilyayo* Appeal Judgement").

RENZAHO, Tharcisse

Tharcisse Renzaho v. The Prosecutor, Case No. ICTR-97-31-A, Judgement, 1 April 2011 ("*Renzaho* Appeal Judgement").

RUKUNDO, Emmanuel

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-01-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement").

RUTAGANDA, Georges Anderson Nderubumwe

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

SEROMBA, Athanase

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

SETAKO, Ephrem

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement, 28 September 2011 ("*Setako* Appeal Judgement").

SIMBA, Aloys

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

UWINKINDI, Jean

Jean Uwinkindi v. The Prosecutor, Case No. ICTR-01-75-AR72(C), Decision on Defence Appeal Against the Decision Denying Motion Alleging Defects in the Indictment, 16 November 2011 ("*Uwinkindi* Interlocutory Decision").

ZIGIRANYIRAZO, Protais

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

2. International Criminal Tribunal for the Former Yugoslavia

BLAŠKIĆ, Tihomir

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

BOŠKOSKI, Ljube and TARČULOVSKI, Johan

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

BRĐANIN, Radoslav

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 ("*Brđanin* Appeal Judgement").

DELALIĆ, Zejnil *et al.*

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

FURUNDŽIJA, Anto

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

HARADINAJ, Ramush *et al.*

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

KORDIĆ, Dario and ČERKEZ, Mario

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

KRAJIŠNIK, Momčilo

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

KRNOJELAC, Milorad

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement").

KRSTIĆ, Radoslav

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

KUPREŠKIĆ, Zoran *et al.*

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

KVOČKA, Miroslav *et al.*

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

LIMAJ, Fatmir *et al.*

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

MARTIĆ, Milan

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

MILOŠEVIĆ, Dragomir

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

MRKŠIĆ, Mile and ŠLJIVANČANIN, Veselin

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

PRLIĆ, Jadranko *et al.*

Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-AR73.7, Decision on Defendants['] Appeal Against "*Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge,*" 1 July 2008 ("*Prlić et al.* Decision of 1 July 2008").

Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination by Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae Brief*, 4 July 2006 ("*Prlić et al.* Decision of 4 July 2006").

ŠEŠELJ, Vojislav

Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-AR73.8, Decision on Prosecution's Appeal Against the Trial Chamber's Order Regarding the Resumption of Proceedings, 16 September 2008 ("*Šešelj* Decision of 16 September 2008").

STAKIĆ, Milomir

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

STRUGAR, Pavle

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

TADIĆ, Duško

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

VASILJEVIĆ, Mitar

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

B. DEFINED TERMS AND ABBREVIATIONS

Amended Indictment	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Amended Indictment, 14 November 2007
AT.	Transcript from the appeal hearings in the present case. All references are to the official English transcript
CODEKOKI	Cooperation for the Development of Kivumu Commune, a building in Nyange Trading Centre which housed the local cooperative society
ESM	*École supérieure militaire* (Kigali)
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
Kanyarukiga Appeal Brief	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Redacted Appellant Brief Pursuant to the Order on the Status of Gaspard Kanyarukiga's Brief and Annexes Dated 9 May 2011, 18 May 2011, *as corrected by* Confidential Corrigendum To Defence Appeal Brief and Related Annex, Defence Respondent Brief and Related Annex, and Defence Reply Brief and Related Annex, confidential, 2 December 2011
Kanyarukiga Closing Brief	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Defence Final Brief, confidential, 11 May 2011
Kanyarukiga Reply Brief	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Redacted Defence Reply Brief Pursuant to Order on the Status of Gaspard Kanyarukiga's Reply Brief Dated 14 June 2011, 20 June 2011, *as corrected by* Confidential Corrigendum To Defence Appeal Brief and Related Annex, Defence Respondent Brief and Related Annex, and Defence Reply Brief and Related Annex, confidential, 2 December 2011
Kanyarukiga Notice of Appeal	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Notice of Appeal (Rule 108 R.P.E.), 9 December 2010
Kanyarukiga Pre-Defence Brief	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-T, Pre-Defence Brief, confidential, 18 December 2009
Kanyarukiga Response Brief	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Defence Respondent's Brief, 4 April 2011 *with* confidential Annex I filed on 4 April 2011 and public redacted version of Annex I filed on 18 May 2011, *as corrected by* Confidential Corrigendum To Defence

	Appeal Brief and Related Annex, Defence Respondent Brief and Related Annex, and Defence Reply Brief and Related Annex, confidential, 2 December 2011
MRND	*Mouvement révolutionnaire national pour la démocratie et le développement* [before July 1991] *Mouvement républicain national pour la démocratie et le développement* [after July 1991]
Original Indictment	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Indictment, 5 December 2001
Prosecution	Office of the Prosecutor
Prosecution Closing Brief	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Prosecutor's Final Trial Brief, confidential, 11 May 2010, *as corrected by* Corrigenda to Prosecutor's Final Trial Brief, confidential, 24 May and 4 June 2010
Prosecution Appeal Brief	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-A, Prosecutor's Appellant's Brief, 23 February 2011
Prosecution Notice of Appeal	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-A, Prosecutor's Notice of Appeal, 10 December 2010
Prosecution Pre-Trial Brief	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, The Prosecutor's Pre-Trial Brief, 4 May 2009
Prosecution Reply Brief	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-A, Prosecution's Reply Brief, 19 April 2011
Prosecution Response Brief	*Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Prosecutor's Respondent's Brief, 30 May 2011
Rules	Rules of Procedure and Evidence of the Tribunal
Statute	Statute of the Tribunal established by Security Council Resolution 955 (1994)

T.	Transcript from hearings at trial in the present case. All references are to the official English transcript
Trial Chamber	Trial Chamber II of the Tribunal
Trial Judgement	*The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Judgement and Sentence, pronounced on 1 November 2010, issued in writing on 9 November 2010
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