

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No. MICT-12-29-R
Date: 27 September 2019
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Joseph E. Chiondo Masanche
Judge Lee G. Muthoga
Judge Aminatta Lois Runeni N'gum
Judge Gberdao Gustave Kam

Registrar: Mr. Olufemi Elias

Judgement of: 27 September 2019

PROSECUTOR

v.

AUGUSTIN NGIRABATWARE

PUBLIC

REVIEW JUDGEMENT

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Thembile Segoete
Mr. Rashid Rashid

Counsel for Augustin Ngirabatware:

Ms. Diana Ellis QC
Mr. Sam Blom-Cooper

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1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively),¹ having found that a review of the judgement rendered by the Appeals Chamber in this case on 18 December 2014 is warranted,² hereby renders its further judgement pursuant to Rule 147 of the Rules of Procedure and Evidence (“Rules”).

I. INTRODUCTION

A. The Applicant

2. Augustin Ngirabatware was born in 1957 in Nyamyumba Commune, Gisenyi Prefecture, Rwanda.³ In July 1990, he was appointed Minister of Planning, a position he retained as part of the Interim Government in April 1994.⁴ Ngirabatware was also a member of the Prefecture Committee of the *Mouvement Républicain National pour la Démocratie et le Développement* (“MRND”) political party in Gisenyi Prefecture, the National Committee of the MRND, and the technical committee of Nyamyumba Commune.⁵

B. The Trial and Appeal Proceedings

3. Trial Chamber II of the International Criminal Tribunal for Rwanda (“Trial Chamber” and “ICTR” or “Tribunal”, respectively) convicted Ngirabatware of direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road in Nyamyumba Commune on 22 February 1994.⁶ The Trial Chamber also found him guilty of instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at the Bruxelles and Gitsimbi/Cotagirwa roadblocks in Nyamyumba Commune on 7 April 1994.⁷ The Trial Chamber further convicted Ngirabatware, under the extended form of joint criminal enterprise, of rape as a crime against humanity⁸ and sentenced him to a single sentence of 35 years of imprisonment.⁹

¹ See Order Replacing a Judge in a Case Before the Appeals Chamber, 23 July 2018 (“Order of 23 July 2018”), p. 1.

² Decision on Ngirabatware’s Motion for Review, 19 June 2017 (“Review Decision”), pp. 2, 3; *Augustin Ngirabatware v. The Prosecutor*, Case No. MICT-12-29-A, Judgement, 18 December 2014 (“Appeal Judgement”).

³ Appeal Judgement, para. 2; *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Judgement and Sentence, pronounced on 20 December 2012 and issued in writing on 21 February 2013 (“Trial Judgement”), para. 3.

⁴ Appeal Judgement, para. 2; Trial Judgement, paras. 5, 7.

⁵ Appeal Judgement, para. 2; Trial Judgement, para. 6.

⁶ Trial Judgement, paras. 319, 1366-1370, 1394.

⁷ Trial Judgement, paras. 869-870, 1335-1341, 1394.

⁸ Trial Judgement, paras. 1392-1394.

⁹ Trial Judgement, paras. 1419-1420.

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4. On 18 December 2014, the Appeals Chamber of the Mechanism affirmed Ngirabatware's convictions for direct and public incitement to commit genocide and for instigating and aiding and abetting genocide and reversed Ngirabatware's conviction for rape as a crime against humanity.¹⁰ It imposed a sentence of 30 years of imprisonment.¹¹

C. The Review Proceedings

5. On 19 February 2016, Ngirabatware requested the assignment of counsel at the expense of the Mechanism to assist him with the preparation of a motion for review of his convictions for direct and public incitement to commit genocide and for instigating and aiding and abetting genocide.¹² On 5 May 2016, the Appeals Chamber granted Ngirabatware's request,¹³ and, on 8 June 2016, the Registrar assigned Mr. Peter Robinson as counsel to Ngirabatware for the purpose of assisting him in relation to his potential request for review.¹⁴

6. On 8 July 2016, Ngirabatware filed a motion, seeking, pursuant to Article 24 of the Statute and Rule 146 of the Rules, the review of his convictions on the basis that, following the rendering of the Appeal Judgement, Prosecution Witnesses ANAE, ANAM, ANAN, and ANAT, who are the key witnesses underpinning his convictions for direct and public incitement to commit genocide and instigating and aiding and abetting genocide, have recanted their testimony given at trial.¹⁵ In its response of 19 September 2016, the Prosecution agreed that the purported recantations *prima facie* amounted to new facts and that a hearing was necessary to test the credibility and reliability of the recantations, but expressed concern that the recantations may have been procured by questionable means.¹⁶

7. On 19 June 2017, the Appeals Chamber found that the purported recantations of Witnesses ANAE, ANAM, ANAN, and ANAT contain new information of an evidentiary nature relevant to the witnesses' credibility, and constitute a new fact, which, if proved, could have been a decisive factor in reaching the original decision.¹⁷ The Appeals Chamber further found that, since the purported recantations were only made after the conclusion of Ngirabatware's trial and appeal

¹⁰ Appeal Judgement, paras. 252, 278, 279.

¹¹ Appeal Judgement, paras. 278, 279.

¹² Motion for Assignment of Counsel, 19 February 2016 (confidential) ("Motion for Assignment of Counsel"), paras. 1, 15, 17, 24.

¹³ Decision on Prosecution's Motion Regarding Protected Witnesses and Ngirabatware's Motion for Assignment of Counsel, 5 May 2016, para. 31.

¹⁴ Decision, 8 June 2016 (confidential), p. 2.

¹⁵ Motion for Review of Judgement, 8 July 2016 (confidential) ("Motion for Review"), paras. 2, 3, 10-15, 18, 19, 22, 23, 26, 27, 30, 31, 33, 39-40, Annexes A-D.

¹⁶ Prosecution Response to Motion for Review of Judgement, 19 September 2016 (confidential), paras. 2, 3.

¹⁷ Review Decision, p. 2.

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proceedings, the new fact was neither known to Ngirabatware nor could have been discovered through the exercise of due diligence.¹⁸ Accordingly, the Appeals Chamber found that a review of the Appeal Judgement was warranted and that a hearing to consider evidence on the new fact should be held.¹⁹ The Appeals Chamber further ordered the parties to submit a list of evidence and witnesses each proposed to introduce at the review hearing.²⁰ The Appeals Chamber subsequently scheduled the review hearing from 8 until 16 February 2018.²¹

8. On 30 November 2017, Mr. Robinson sought to withdraw as counsel for Ngirabatware, citing the regulations governing professional conduct of defence counsel related to discontinuation of representation and conflict of interest.²² On 19 December 2017, the Appeals Chamber granted Mr. Robinson's request and adjourned the review hearing in order to provide new counsel adequate time to prepare.²³ Following the assignment of Ms. Diana Ellis QC and Mr. Sam Blom-Cooper as counsel and co-counsel for Ngirabatware,²⁴ the Appeals Chamber again ordered the parties to submit in writing a list of evidence and witnesses, if any, each proposed to introduce at the review hearing.²⁵ On 27 July 2018, the Appeals Chamber scheduled the review hearing from 24 until 28 September 2018.²⁶

9. In ancillary proceedings, on 24 August 2018, a Single Judge confirmed an indictment filed by the Prosecution against Maximilien Turinabo, Anselme Nzabonimpa, Jean de Dieu Ndagijimana, Marie Rose Fatuma, and Dick Prudence Munyeshuli, charging them with contempt and incitement to commit contempt by interfering with protected witnesses, including Witnesses ANAE, ANAM, ANAN, ANAT, and ANAL.²⁷ Following the confirmation of the *Turinabo at al.* Indictment, on

¹⁸ Review Decision, p. 2.

¹⁹ Review Decision, pp. 2, 3.

²⁰ Review Decision, p. 3.

²¹ Scheduling Order for Review Hearing, 22 November 2017, p. 1. *See also* Augustin Ngirabatware's List of Evidence and Witnesses, 6 July 2017 (confidential); Prosecution's Motion to Exclude Evidence, 24 July 2017 (confidential); Decision on Prosecution's Motion to Exclude Evidence, 10 October 2017 (confidential; public redacted version issued on 25 September 2019).

²² Defence Counsel's Motion to Withdraw, 30 November 2017 (with confidential Annex A), paras. 1, 2, *referring to* Articles 9(B) and 14(D) of the Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism (MICT/6, 14 November 2012), Annex A, paras. 8-15.

²³ Decision on Defence Counsel's Motion to Withdraw, 19 December 2017, p. 2.

²⁴ Decision, 19 January 2018, p. 3.

²⁵ Order in relation to the Review Hearing, 20 April 2018, pp. 2, 3.

²⁶ Further Order Scheduling Review Hearing, 27 July 2018, p. 2.

²⁷ *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Order on Confirmation of Indictment, 24 August 2018 (confidential and *ex parte*; made public on 18 September 2018), p. 1; *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Indictment, 5 June 2018 (confidential); *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-PT, Revised Second Amended Indictment, 11 July 2019 (confidential; public redacted version issued the same day) ("*Turinabo et al.* case" and "*Turinabo et al.* Indictment", respectively).

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30 August 2018 the Prosecution sought reconsideration of the Review Decision.²⁸ The Appeals Chamber dismissed the Prosecution's request on 7 September 2018, noting that neither the purported recantations of Witnesses ANAE, ANAM, ANAN, and ANAT, nor any evidence suggesting interference with the administration of justice have been tested, and that the admissibility of, and weight, if any, to be afforded to any such evidence would be determined only after hearing the parties' submissions at the review hearing.²⁹

10. On 12 September 2018, Ngirabatware informed the Appeals Chamber that, in view of disclosure by the Prosecution of voluminous material originating from the *Turinabo et al.* case, he required additional time to prepare and, therefore, requested that the review hearing be adjourned.³⁰ On 14 September 2018, the Appeals Chamber granted Ngirabatware's request and adjourned the review hearing until further order to provide Ngirabatware adequate time to prepare.³¹

11. On 3 October 2018, the Pre-Review Judge³² ordered Ngirabatware to inform the Appeals Chamber of the time that he considered necessary to prepare for the review hearing.³³ Ngirabatware submitted that the hearing should be adjourned either until the conclusion of the *Turinabo et al.* case or until at least the completion of the investigation and the consideration of the material collected in that case.³⁴ Likewise, the Prosecution responded that, in view of the link between the *Turinabo et al.* case and the review proceedings, it was in the interests of justice that the Appeals Chamber adjourn the review hearing until after the completion of the *Turinabo et al.* case.³⁵

12. On 8 November 2018, the Appeals Chamber ordered the parties to file written submissions as to whether there were grounds for reconsideration of the Review Decision,³⁶ noting that Ngirabatware's apparent unwillingness to proceed with discharging his burden of proof within a

²⁸ Prosecution Motion for Reconsideration of Decision on Ngirabatware's Motion for Review, 30 August 2018 (confidential and *ex parte*; *ex parte* status lifted on 7 September 2018), para. 1.

²⁹ Decision on Prosecution Motion for Reconsideration of Decision on Ngirabatware's Motion for Review, 7 September 2018, p. 2.

³⁰ Motion to Adjourn the Review Hearing & Response to Order for Submissions Re: Scheduling, 12 September 2018 (confidential), paras. 3, 4, 9-19. *See also* Order for Submissions, 7 September 2018 (confidential), p. 1.

³¹ Decision on Motion to Adjourn the Review Hearing, 14 September 2018, p. 2.

³² *See* Order Designating a Pre-Review Judge, 17 August 2016, p. 1.

³³ Order for Submissions, 3 October 2018, pp. 1, 2.

³⁴ Further Response to the Order for Submissions on Scheduling of the Review Hearing in the Case of Augustin Ngirabatware, 25 October 2018 (confidential), para. 7; Informal Communication, 28 October 2018. Ngirabatware had initially stated that he was unable to indicate a date when he would be ready to proceed with the review hearing. *See* Response to the Order for Submissions on Scheduling of the Review Hearing, 10 October 2018 (confidential), para. 12. *See also* Addendum Response to the Order for Submissions on Scheduling of the Review Hearing, 10 October 2018 (confidential).

³⁵ Prosecution Response to Submissions on Scheduling of the Review Hearing, 15 October 2018 (confidential), paras. 2, 5-8, 10. The Prosecution further submitted that, if the review hearing were to be held prior to the completion of the *Turinabo et al.* case, it is preferable to have it scheduled in March or April 2019 (Informal Communication, 25 October 2018).

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reasonable time may constitute a new circumstance requiring reconsideration of the Review Decision and dismissal, without prejudice, of the Motion for Review.³⁷

13. On 16 November 2018, Ngirabatware informed the Appeals Chamber that he was willing to proceed with proving the existence of the new fact and that he would present his case at such time as is determined by the Appeals Chamber.³⁸ The Prosecution, in contrast, supported reconsideration of the Review Decision.³⁹ On 7 December 2018, the Appeals Chamber issued a decision, finding that, in light of Ngirabatware's willingness to proceed with discharging his burden of proof, there were no new circumstances justifying reconsideration of the Review Decision.⁴⁰ The Appeals Chamber emphasized that the *Turinabo et al.* case is an ancillary proceeding and that Ngirabatware, who bears the burden of proving the new fact, must be prepared to proceed irrespective of the status of the *Turinabo et al.* case.⁴¹ It considered, however, that this review presented exceptional circumstances that justified allowing Ngirabatware additional time to conduct further preparation for the review hearing⁴² and, therefore, decided that the review hearing would be held in September 2019.⁴³

14. On 22 July 2019, the Appeals Chamber scheduled the review hearing from 16 September 2019 up until 27 September 2019, if necessary.⁴⁴ It informed the parties that, at the conclusion of the presentation of evidence by Ngirabatware, it would hear oral submissions from the parties for the purpose of determining whether Ngirabatware presented sufficient evidence capable of belief to establish the new fact.⁴⁵ The Appeals Chamber further informed the parties that it would then proceed with hearing Prosecution evidence in rebuttal, if necessary.⁴⁶ On 20 August 2019, the Appeals Chamber dismissed a Prosecution request to postpone the review hearing.⁴⁷ On 30 August 2019, the parties filed revised witness and exhibit lists,⁴⁸ and, on 6

³⁶ Order for Submissions, 8 November 2018 ("Order of 8 November 2018"), p. 3.

³⁷ Order of 8 November 2018, p. 3.

³⁸ Response to Order for Submissions Dated 8 November 2018, 16 November 2018 (confidential), paras. 3, 17, 20, 23; Reply to Prosecution Submissions Re: Order of 8 November 2018, 21 November 2018 (confidential), para. 5.

³⁹ Prosecution Submissions Pursuant to the Order for Submissions Dated 8 November 2018, 16 November 2018 (confidential), paras. 1, 5, 10.

⁴⁰ Decision in Relation to Review Hearing, 7 December 2018 ("Decision of 7 December 2018"), p. 2.

⁴¹ Decision of 7 December 2018, p. 3.

⁴² Decision of 7 December 2018, p. 2.

⁴³ Decision of 7 December 2018, p. 3.

⁴⁴ Further Order Scheduling Review Hearing, 22 July 2019 ("Scheduling Order"), p. 1.

⁴⁵ Scheduling Order, p. 2.

⁴⁶ See Scheduling Order, p. 2.

⁴⁷ Decision on Prosecution Request to Postpone the Review Hearing, 20 August 2019 (confidential and *ex parte*; public redacted version issued on the same day).

⁴⁸ Augustin Ngirabatware's Revised List of Witnesses and Evidence, 30 August 2019 (confidential); Prosecution Notice of Filing Revised Witness List and Evidence List, 30 August 2019 (confidential with confidential Annexes A and B). See also Order Regarding the Scope of the Review Hearing, 30 July 2019 ("Order on Scope of Review Hearing"), p. 3;

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September 2019, they filed lists of documents and material to be used during the direct and cross-examination of each witness.⁴⁹

15. In furtherance of the Order on Scope of Review Hearing, the Prosecution requested, on 27 August 2019, the admission of the evidence of Witness ANR5 pursuant to Rule 110 of the Rules,⁵⁰ and, on 10 September 2019, the admission of electronic data evidence and additional documents pursuant to Rule 105(C) of the Rules.⁵¹ On 16 September 2019, the Appeals Chamber decided that the evidence of Witness ANR5 was appropriate for admission under Rule 110(A) of the Rules, in the event that the Appeals Chamber considered it necessary to hear rebuttal evidence from the Prosecution.⁵² On the same date, it dismissed Ngirabatware's challenge to the Prosecution's exhibit list, indicating that it would adjudicate objections on a case-by-case basis.⁵³ The Appeals Chamber further granted, on 16 September 2019, Ngirabatware's request to admit the expert report of Witness Paul Griffiths into evidence under Rules 105(C) and 116 of the Rules,⁵⁴ and, on 19 September 2019, it granted, in part, his request to admit additional evidence in written form pursuant to Rule 105(C) of the Rules.⁵⁵ On 23 September 2019, Ngirabatware filed a request to admit the expert report of David Martin Woodgate under Rule 105(C) of the Rules,⁵⁶ which the Appeals Chamber hereby dismisses as moot.⁵⁷ On 24 September 2019, the Appeals Chamber further dismissed as moot the Prosecution's pending motion for the admission of evidence pursuant to Rule 105(C) of the Rules.⁵⁸

Decision on Prosecution Request for Clarification, 21 August 2019; Decision on Prosecution Request for Extension of Time, 30 August 2019 (confidential).

⁴⁹ Augustin Ngirabatware's Revised List of Evidence Indicating the Documents to be Adduced in Direct Examination and Cross-Examination, 6 September 2019 (confidential with confidential Annex A); Prosecution Notice of Filing List of Evidence to Be Used With Witnesses, 6 September 2019 (confidential with confidential Annex A).

⁵⁰ Prosecution Motion for Admission of Evidence of ANR5 Pursuant to Rule 110, 27 August 2019 (confidential with confidential Annex A), paras. 1-8. *See also* Order on Scope of Review Hearing, p. 3.

⁵¹ Prosecution Motion for Admission of Evidence Pursuant to Rule 105(C), 10 September 2019 (confidential with confidential Annex A), paras. 1-5. *See also* Order on Scope of Review Hearing, p. 3.

⁵² Decision on Prosecution Motion for Admission of Evidence of Witness ANR5 Pursuant to Rule 110, 16 September 2019 (confidential), p. 3.

⁵³ T. 16 September 2019 pp. 6, 7. *See also* Response to "Prosecution Notice of Filing Revised Witness List and Evidence List", 8 September 2019 (confidential), paras. 14-24.

⁵⁴ T. 16 September 2019 pp. 7, 8. *See also* Application to Have Part of the Evidence of Defence Telecommunications Expert Admitted Pursuant to Rule 111, 5 September 2019 (confidential with confidential Annex A), paras. 4, 6-9.

⁵⁵ *See* Decision on Defence Motion for Admission of Evidence Pursuant to Rule 105(C) of the Rules, 19 September 2019, p. 3. *See also* Defence Motion for Admission of Evidence Pursuant to Rule 105(C) with Confidential Annex A, 15 September 2019 (confidential with confidential Annex A), paras. 1-4.

⁵⁶ Defence Motion for Admission of Report of David Martin Woodgate under Rule 105(C) with Annex A, 23 September 2019, paras. 1, 6.

⁵⁷ The Appeals Chamber does not rely, in its findings, on the metadata reports exhibited in court. *See infra*, para. 39. *See also* T. 17 September 2019 p. 24; T. 18 September 2019 pp. 14-17, 22, 23; Prosecution Exhibit 4 (confidential); Prosecution Exhibit 10 (confidential); Prosecution Exhibit 12 (confidential).

⁵⁸ T. 24 September 2019 p. 2.

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D. Witness Protective Measures and Allegations of Witness Interference

16. On 7 May 2009, the Trial Chamber granted Witnesses ANAE, ANAM, ANAN, and ANAL protective measures in relation to their testimony in the *Ngirabatware* case⁵⁹ and, on 28 January 2010, extended the same protective measures to Witness ANAT.⁶⁰ On 5 August 2016, the Appeals Chamber varied the protective measures of Witnesses ANAE, ANAM, ANAN, and ANAT and ordered that a party who wishes to contact any of the witnesses shall notify the Witness Support and Protection Unit (“WISP”) and the opposing party, and that, should the witness consent to the meeting, WISP shall facilitate the meeting at which the opposing party may also be present.⁶¹ The Appeals Chamber further ordered the parties to keep confidential any information concerning the witnesses and their identities, and not to share, discuss, or reveal, directly or indirectly, such information to any person or entity outside of the Defence and the Prosecution teams.⁶² On 12 September 2019, the Appeals Chamber granted *Ngirabatware*’s request to modify the protective measures of Witnesses ANAE, ANAM, ANAN, and ANAT to allow the Defence as the calling party to interview them prior to the review hearing in the absence of the Prosecution.⁶³

17. In submissions filed on 16 December 2016 and 11 August 2017, the Registrar informed the Appeals Chamber of an allegation by Witness ANAL that she had been contacted, both directly and indirectly, by certain individuals requesting her to testify for *Ngirabatware*’s defence in exchange for financial and material benefits.⁶⁴ On 22 November 2017, the Appeals Chamber reminded the parties to strictly comply with the applicable witness protective measures and deferred its determination on the appropriate course of action to address the allegations of witness interference raised by Witness ANAL.⁶⁵ In view of the *Turinabo et al.* Indictment, the Appeals Chamber considers that the allegations of witness interference raised by Witness ANAL are being adequately pursued, and that no additional measures by the Appeals Chamber are warranted at this stage.

⁵⁹ *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution’s Motion for Special Protective Measures for Prosecution Witnesses and Others, 7 May 2009, pp. 6, 7.

⁶⁰ *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, Decision on Prosecution Motion for Leave to Vary its Witness List, 28 January 2010, p. 15.

⁶¹ Decision on a Motion for Modification of Protective Measures, 5 August 2016 (confidential) (“Decision of 5 August 2016”), p. 4.

⁶² Decision of 5 August 2016, p. 4.

⁶³ Decision on Application for Modification of Protective Measures, 12 September 2019, p. 3. *See also* Application for Modification of Protective Measures, 23 August 2019 (confidential), paras. 1, 9-13.

⁶⁴ Order Regarding Status of Filings, 22 November 2017 (confidential) (“Order of 22 November 2017”), p. 1. *See also* Registrar’s Submission Regarding Witness ANAL, 16 December 2016 (confidential and *ex parte*; *ex parte* status lifted on 22 November 2017); Registrar’s Submission Pursuant to the Order for Further Submissions of 21 July 2017, 11 August 2017 (confidential and *ex parte*; *ex parte* status lifted on 22 November 2017).

⁶⁵ Order of 22 November 2017, p. 2.

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18. At the early stages of the review proceedings, the Appeals Chamber decided, out of an abundance of caution, to treat the basis of the new fact, provisionally, as confidential, given the limited number of witnesses whose testimonies critically underpin Ngirabatware's convictions as well as Ngirabatware's submission that the witnesses had expressed security concerns if it were known to the Rwandan authorities that they had recanted their testimonies.⁶⁶ Following the receipt of a report by the WISP and further submissions by the parties, on 17 April 2019, the Appeals Chamber found that maintaining the confidentiality of the new fact was not required to ensure the security of the witnesses or to preserve the integrity of the review proceedings.⁶⁷ The Appeals Chamber also noted in this regard that the protective measures of Witnesses ANAE, ANAM, ANAN, and ANAT had been varied for the purpose of the service of the indictment and the execution of any related orders in the *Turinabo et al.* case and that, as a consequence, the Government of Rwanda was already aware of the basis of the review hearing.⁶⁸ The Appeals Chamber, therefore, informed the parties that the confidentiality of the basis of the new fact would be lifted at the commencement of the review hearing.⁶⁹

E. Composition of the Appeals Chamber in the Review Proceedings

19. On 25 July 2016, the President of the Mechanism ordered that the Bench in the present case be composed of Judge Theodor Meron (Presiding), Judge Joseph E. Chiondo Masanche, Judge Aydin Sefa Akay, Judge Aminatta Lois Runeni N'gum, and Judge Gberdao Gustave Kam.⁷⁰ The proceedings, however, came to a standstill following Judge Akay's detention – notwithstanding the formal assertion of his diplomatic immunity by the United Nations – on or around 21 September 2016 in Turkey, in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey.⁷¹

20. On 10 November 2016, Ngirabatware sought an order, pursuant to Article 28 of the Statute and Rule 55 of the Rules, to the Government of the Republic of Turkey to cease its prosecution of Judge Akay so that he could resume his judicial functions in this case.⁷² On 28 November 2016, the Pre-Review Judge invited the Government of the Republic of Turkey to file written submissions in response to Ngirabatware's request,⁷³ and subsequently ordered that a public hearing be held to

⁶⁶ See Order for Redaction of Submissions, 20 April 2018 (confidential), p. 1; Motion for Assignment of Counsel, n. 1.

⁶⁷ Decision Regarding the Confidentiality of the Basis of the New Fact, 17 April 2019 ("Decision of 17 April 2019"), pp. 2, 3.

⁶⁸ Decision of 17 April 2019, p. 3.

⁶⁹ Decision of 17 April 2019, p. 4. See also T. 16 September 2019 p. 3.

⁷⁰ Order Assigning Judges to Consider a Case Before the Appeals Chamber, 25 July 2016, p. 2.

⁷¹ See Oral Hearing, T. 17 January 2017 p. 2.

⁷² Motion for Order to Government of Turkey or for Temporary Provisional Release, 10 November 2016, para. 1.

⁷³ Invitation to the Government of the Republic of Turkey, 28 November 2016, pp. 1, 2.

provide the Government of the Republic of Turkey with an additional opportunity to be heard in relation to Judge Akay's arrest and detention.⁷⁴ Despite having been given multiple opportunities to be heard in writing and in person, the Government of the Republic of Turkey neither filed a written submission nor attended the hearing, which took place on 17 January 2017.⁷⁵ At the hearing, Ngirabatware reiterated his request for an order to the Government of the Republic of Turkey to cease its prosecution of Judge Akay, and did not support the Prosecution's proposal that Judge Akay be replaced on the bench.⁷⁶

21. On 31 January 2017, the Pre-Review Judge ordered the Government of the Republic of Turkey to cease all proceedings against Judge Akay and to take all necessary measures to ensure his release from detention as soon as possible, so that he could resume his judicial functions in this case.⁷⁷ The Order of 31 January 2017 emphasized the fundamental importance of the immunity enjoyed by the judges of the Mechanism to the proper functioning of the Institution, and their independence in exercising their judicial functions.⁷⁸ Following the failure of the Government of the Republic of Turkey to comply with the Order of 31 January 2017 and its obligations under Article 28 of the Statute, the President of the Mechanism reported the matter to the United Nations Security Council.⁷⁹

22. Upon Judge Akay's provisional release from detention on 14 June 2017, the proceedings on the merits of Ngirabatware's request for review of his convictions resumed.⁸⁰ Nevertheless, following a decision by the United Nations Secretary General not to reappoint Judge Akay for a new term of office as a judge of the Mechanism, Judge Akay was replaced by Judge Lee. G. Muthoga on 23 July 2018.⁸¹

F. The Review Hearing

23. The review hearing was held at the Mechanism's branch in Arusha, Tanzania, from 16 to 24 September 2019. Over the course of five days, the Appeals Chamber heard the evidence of

⁷⁴ Order for Oral Hearing, 21 December 2016, pp. 2, 3.

⁷⁵ Order to the Government of the Republic of Turkey for the Release of Judge Aydin Sefa Akay, 31 January 2017 ("Order of 31 January 2017"), paras. 7, 8.

⁷⁶ Oral Hearing, T. 17 January 2017 pp. 10, 12, 13, 21, 22, 29.

⁷⁷ Order of 31 January 2017, para. 18.

⁷⁸ Order of 31 January 2017, para. 11.

⁷⁹ See Letter dated 9 March 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2017/204), 9 March 2017. See also Decision on Republic of Turkey's Non-Compliance with Its Obligation to Cooperate with the Mechanism, 6 March 2017, p. 2.

⁸⁰ Review Decision, p. 2.

⁸¹ See Order of 23 July 2018, p. 1.

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Witnesses Paul Griffiths,⁸² ANAT, ANAN, ANAM, ANAE, and DWAN-147.⁸³ The parties made oral submissions on 23 September 2019 on whether Ngirabatware had presented sufficient evidence capable of belief to establish the new fact.⁸⁴ On 24 September 2019, the Appeals Chamber decided that Ngirabatware had not presented sufficient evidence capable of belief to establish the new fact.⁸⁵ It therefore concluded that it was unnecessary to hear Prosecution evidence in rebuttal and announced that it would pronounce the judgement on review on Friday, 27 September 2019.⁸⁶

II. APPLICABLE LAW

24. Pursuant to Article 24 of the Statute and Rule 147 of the Rules, the Appeals Chamber shall review a judgement if, after a preliminary examination, a majority of the judges agree that the new fact, if proved, could have been a decisive factor in reaching a decision. Following this determination, the Appeals Chamber shall pronounce a further judgement after hearing the parties, in accordance with Rule 147 of the Rules.⁸⁷

III. DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

A. Proceedings before the Trial and Appeals Chambers

25. The Trial Chamber convicted Ngirabatware of direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road on 22 February 1994.⁸⁸ In reaching this finding, the Trial Chamber relied primarily on the direct evidence of Witnesses ANAN and ANAT.⁸⁹

⁸² Paul Griffiths provided an expert opinion and report relating to the integrity and reliability of the telecommunication evidence, as provided by the Rwandan telephone service provider to the Prosecution and onwards to the Defence between September 2018 and August 2019. *See* Defence Exhibit 1 (confidential); Defence Exhibit 2 (confidential); T. 16 September 2019 pp. 9-36, 39-54. The expert witness stated that the variable writeable format in which the telecommunication data and intercepts was provided, as well as discrepancies and errors, raise concerns over its quality and integrity and leads him to believe that the original raw data has been manipulated before disclosure. *See* Defence Exhibit 1 (confidential), paras. 3.2, 3.3, 3.6-3.8, 4.3-4.14, 5.1-5.3; T. 16 September 2019 pp. 12, 13, 23, 24, 46-49, 54. Griffiths acknowledged, however, that the discrepancies he highlighted may have resulted from translation errors or the location where devices were accessed. *See* T. 16 September 2019 pp. 42-44. Given that telecommunication evidence was used during the review proceedings by both parties and that it was generally acknowledged by witnesses, the Appeals Chamber does not consider it necessary to address Griffiths' evidence in detail. *See, e.g.*, Defence Exhibit 3 (confidential); T. 23 September 2019 pp. 15, 20-29, 55-59; T. 23 September 2019 pp. 50-53.

⁸³ *See* T. 16-20 September 2019.

⁸⁴ *See* T. 23 September 2019 pp. 2-67.

⁸⁵ *See* T. 24 September 2019 p. 2.

⁸⁶ *See* T. 24 September 2019 p. 2.

⁸⁷ *See Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-R.1, Review Judgement, 8 December 2010, para. 12.

⁸⁸ Trial Judgement, paras. 1366-1370.

⁸⁹ Trial Judgement, paras. 300-319.

26. At trial, Witness ANAN testified that in February 1994 he went to Cyanika, as part of the demonstration following the killing of Martin Bucyana, the National Chairman of the *Coalition pour la Défense de la République* (“CDR”).⁹⁰ The witness stated that a roadblock was erected on a tarmac road near the Cyanika market where between 150 and 250 youths were present.⁹¹ According to the witness, Ngirabatware was at the roadblock around 2.00 pm and spoke with Honoré Ndayamiyemshi, the leader of the *Impuzamugambi* of the CDR, and the youths.⁹² The witness testified that he heard Ngirabatware delivering a speech at the roadblock about taking revenge against the Tutsis and stating that they had to be killed.⁹³ Similarly, Witness ANAT testified that, a day after the death of Bucyana, he saw Ngirabatware at the roadblock he was manning in Cyanika, on the road leading from Gisenyi to Ruhengeri.⁹⁴ According to the witness, Ngirabatware assembled the group at the roadblock and told them that Bucyana had been killed and that it was the time to track and kill all the Tutsis, none of whom should escape.⁹⁵ Both witnesses testified that Ngirabatware gave money to Ndayamiyemshi to buy drinks and/or traditional weapons.⁹⁶

27. In assessing the evidence of Witnesses ANAN and ANAT, the Trial Chamber noted their convictions for crimes committed during the genocide, and considered their testimony “with the appropriate degree of caution”.⁹⁷ Having dismissed as speculative Ngirabatware’s submission that the two witnesses had colluded,⁹⁸ the Trial Chamber concluded that Witnesses ANAN and ANAT were able to reliably identify Ngirabatware at the Cyanika-Gisa roadblock and gave credible and consistent accounts of the events that occurred there in February 1994.⁹⁹ Relying primarily on the evidence of the two witnesses, the Trial Chamber found that the Prosecution had proved beyond reasonable doubt that, following the murder of Bucyana in February 1994, Ngirabatware went to the Cyanika-Gisa roadblock and urged a crowd of 150 to 250 people who had assembled there to kill Tutsis.¹⁰⁰ The Trial Chamber concluded, however, that the Prosecution had not established

⁹⁰ Trial Judgement, paras. 237, 301. *See also* T. 1 February 2010 pp. 33, 36.

⁹¹ Trial Judgement, paras. 237, 301. *See also* T. 1 February 2010 pp. 36, 37, 43; T. 8 February 2010 p. 94 (closed session).

⁹² Trial Judgement, paras. 237, 301. *See also* T. 1 February 2010 pp. 36, 40.

⁹³ Trial Judgement, paras. 237, 301. *See also* T. 1 February 2010 pp. 36, 40.

⁹⁴ Trial Judgement, paras. 239, 302. *See also* T. 16 March 2010 p. 67; T. 17 March 2010 p. 59.

⁹⁵ Trial Judgement, paras. 239, 302. *See also* T. 16 March 2010 pp. 67, 70.

⁹⁶ Trial Judgement, paras. 237, 239, 301, 302, 319. *See also* T. 1 February 2010 p. 36; T. 16 March 2010 p. 68.

⁹⁷ Trial Judgement, para. 283.

⁹⁸ Trial Judgement, para. 309.

⁹⁹ Trial Judgement, para. 313.

¹⁰⁰ Trial Judgement, paras. 319, 1367. *See also* Trial Judgement, para. 1332.

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beyond reasonable doubt that any weapons were purchased with the money that Ngirabatware gave to Ndayamiyemensi.¹⁰¹

28. On appeal, Ngirabatware argued that the Trial Chamber erred in finding that there was no collusion between Witnesses ANAN and ANAT and that their testimonies were reliable, consistent, and corroborated each other despite their previous convictions and the Trial Chamber's obligation to exercise caution in its assessment.¹⁰² In addressing Ngirabatware's appeal, the Appeals Chamber rejected his challenges to the Trial Chamber's assessment of Witnesses ANAN's and ANAT's accounts with respect to: (i) the existence of collusion or tainting between the two witnesses;¹⁰³ (ii) the location of the roadblock;¹⁰⁴ (iii) the date of the commission of the crime;¹⁰⁵ (iv) the presence of both witnesses at the roadblock;¹⁰⁶ and (v) the reliance on Witness ANAN's uncorroborated evidence regarding the size of the group assembled at the roadblock.¹⁰⁷ The Appeals Chamber, accordingly, dismissed Ngirabatware's submissions that the Trial Chamber erred in relying on the evidence of Witnesses ANAN and ANAT, and affirmed his conviction for the crime of direct and public incitement to commit genocide.¹⁰⁸

B. Recantation of Prosecution Witnesses ANAT and ANAN

29. In a letter dated 11 November 2015 and addressed to the Prosecutor of the ICTR, Witness ANAT recanted his trial testimony and explained that his testimony concerning Ngirabatware's role in inciting the killing of Tutsis in February 1994 was false.¹⁰⁹ In his testimony at the review hearing, Witness ANAT confirmed that he wrote the letter and admitted to falsely accusing Ngirabatware.¹¹⁰ Witness ANAT further explained that he gave false testimony against Ngirabatware because he and other prisoners were ordered to do so by a Rwandan prosecutor named Oscar Badiga, who asked prisoners to falsely implicate former leaders.¹¹¹ The witness also agreed to give false testimony in order to have his sentence reduced, and indeed his death sentence

¹⁰¹ Trial Judgement, para. 320.

¹⁰² Appeal Judgement, paras. 64, 71.

¹⁰³ Appeal Judgement, paras. 66-70.

¹⁰⁴ Appeal Judgement, para. 73.

¹⁰⁵ Appeal Judgement, para. 74.

¹⁰⁶ Appeal Judgement, para. 75.

¹⁰⁷ Appeal Judgement, paras. 76-81.

¹⁰⁸ Appeal Judgement, paras. 83, 279.

¹⁰⁹ Defence Exhibit 4 (confidential); Defence Exhibit 20 (confidential). *See also* Prosecution Exhibit 8 (confidential).

¹¹⁰ T. 16 September 2019 pp. 58, 60, 61, 65, 66; T. 17 September 2019 pp. 48, 50.

¹¹¹ T. 16 September 2019 pp. 73, 74, 83; T. 17 September 2019 pp. 38, 39, 66, 67.

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was commuted to a term of imprisonment of 15 years and he was released three years after his testimony.¹¹²

30. Witness ANAT testified that, after being released from prison, he felt guilty about falsely accusing Ngirabatware and decided to write the letter to assuage his conscience.¹¹³ According to the witness, in August 2015, he began writing the letter by hand, paragraph by paragraph, over the course of three months until he finished it on 11 November 2015.¹¹⁴ Witness ANAT explained that, after he finished writing the letter, he contacted Vincent Twagirayezu, a trusted friend and former co-detainee, who gave the witness advice and assistance in relation to having the letter typed, addressed, and sent to the Tribunal.¹¹⁵ The witness acknowledged that he may have discussed the letter with Twagirayezu prior to or while writing it, but that Twagirayezu did not assist him in drafting the letter.¹¹⁶ According to the witness, after the letter was typed, he verified the contents, placed his thumbprint on the document, gave it to Twagirayezu to have it sent, and kept the handwritten copy.¹¹⁷ Witness ANAT stated that he did not know how the letter was sent, only that Twagirayezu informed him that it was posted.¹¹⁸

31. Witness ANAT acknowledged that he received a total of 447,000 Rwandan Francs in a series of payments from Twagirayezu after he prepared his recantation letter.¹¹⁹ The witness testified that Twagirayezu gave him the money to help him because he was unemployed.¹²⁰ He also stated that, at the second payment, Twagirayezu told him that “the money he was giving [him] was to assist [him] so that [he] can keep the decision, because [he] had written the recantation letter on [his] own initiative and he wanted [him] to continue like that.”¹²¹ The witness also believed that someone was asking Twagirayezu to give him money to maintain his recantation.¹²²

32. In a letter, dated 25 November 2015 and addressed to the President of the ICTR, Witness ANAN recanted his trial testimony and explained that he falsely accused Ngirabatware.¹²³ In his testimony before the Appeals Chamber, Witness ANAN confirmed he wrote the letter and

¹¹² T. 16 September 2019 pp. 61, 62, 66, 74, 76, 82; T. 17 September 2019 pp. 38, 39, 51.

¹¹³ T. 16 September 2019 pp. 62, 63; T. 17 September 2019 p. 52.

¹¹⁴ T. 16 September 2019 pp. 63, 77, 84, 85; T. 17 September 2019 pp. 54-56.

¹¹⁵ T. 16 September 2019 pp. 64, 78, 85, 86, 92; T. 17 September 2019 pp. 9, 22, 31, 32, 34, 43, 44, 48-50.

¹¹⁶ T. 16 September 2019 pp. 64, 86, 89; T. 17 September 2019 pp. 9, 48.

¹¹⁷ T. 16 September 2019 p. 65; T. 17 September 2019 pp. 15, 17, 20-22, 34, 48.

¹¹⁸ T. 17 September 2019 pp. 9, 22, 46.

¹¹⁹ T. 17 September 2019 pp. 36, 37, 52, 53, 60, 61.

¹²⁰ T. 17 September 2019 pp. 36, 60, 67.

¹²¹ T. 17 September 2019 p. 60. *See also* T. 17 September 2019 p. 67 (“[Twagirayezu] asked me to be courageous and to stick to the decision I had taken to go and testify for the Defence, because that was a decision that I had taken advisedly.”).

¹²² T. 17 September 2019 p. 61.

¹²³ Defence Exhibit 15 (confidential). *See also* Prosecution Exhibit 17 (confidential).

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maintained that his testimony at trial against Ngirabatware was false and the product of a story others had given to him.¹²⁴ Witness ANAN stated that, while in prison, Badiga, a Rwandan prosecutor, gave him and others the names of officials to implicate, including Ngirabatware.¹²⁵ The witness explained that he had been tortured and mistreated in prison and that he received better treatment and leniency after implicating Ngirabatware and others.¹²⁶ According to Witness ANAN, he never set foot in the area where he testified at trial that Ngirabatware incited the killing of Tutsis; instead, the witness lived in a different part of Gisenyi Prefecture far away from that area.¹²⁷

33. Witness ANAN testified that, during the reconciliation process in Rwanda, he began to feel remorse for falsely incriminating Ngirabatware.¹²⁸ According to Witness ANAN, at some point prior to 2015, he began discussing this matter with Vedaste Mbarimo, who put him in contact with Nzabonimpa.¹²⁹ The witness explained that he handwrote the recantation letter without any assistance and had it typed.¹³⁰ The witness added that, while in Kigali, Nzabonimpa assisted him and added the address to the letter, which the witness then signed.¹³¹ Witness ANAN stated that he then gave the letter to Nzabonimpa for it to be sent to Arusha.¹³²

34. Witness ANAN agreed that Nzabonimpa gave him 100,000 Rwandan Francs on 29 September 2015.¹³³ The witness acknowledged that between 2015 and 2018 he received additional sums of money from Nzabonimpa in amounts up to 300,000 Rwandan Francs, but claimed that the total sum was not more than 700,000 Rwandan Francs.¹³⁴ Witness ANAN stated that this money was not provided in exchange for his recantation and that in fact he received money from many other people as well to assist him with the reconstruction of his house, which was destroyed in 2016.¹³⁵ The witness agreed, however, that in his exchanges with Nzabonimpa, he was asked and encouraged to maintain the truthfulness of his recantation.¹³⁶

¹²⁴ T. 17 September 2019 pp. 73, 76, 77, 79, 81, 82, 88-91; T. 18 September 2019 pp. 17, 49, 50.

¹²⁵ T. 17 September 2019 pp. 82, 86; T. 18 September 2019 pp. 67, 68.

¹²⁶ T. 17 September 2019 pp. 77, 78, 81, 82, 84-87; T. 18 September 2019 pp. 67, 68.

¹²⁷ T. 17 September 2019 pp. 74-76; T. 18 September 2019 pp. 49, 50.

¹²⁸ T. 18 September 2019 p. 36.

¹²⁹ T. 18 September 2019 pp. 18, 19, 43-48.

¹³⁰ T. 18 September 2019 pp. 7, 13, 48, 49, 52.

¹³¹ T. 18 September 2019 pp. 49, 51, 52.

¹³² T. 18 September 2019 pp. 28, 41, 52, 55.

¹³³ T. 18 September 2019 pp. 34, 42.

¹³⁴ T. 18 September 2019 pp. 38, 42, 59-61.

¹³⁵ T. 18 September 2019 pp. 28, 30, 35-37, 42, 56-58, 61, 66.

¹³⁶ T. 18 September 2019 pp. 62, 64.

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C. Deliberations

35. In his oral submissions at the review hearing, Ngirabatware submitted that Witnesses ANAT and ANAN truthfully recanted their testimonies and provided clear explanations why their original evidence was false.¹³⁷ Ngirabatware acknowledged that the witnesses may have been assisted by others in sending their recantation letters to the Tribunal, but Ngirabatware maintained that they were never asked to lie.¹³⁸ Ngirabatware also accepted that the witnesses received money, but contended that this was never their motivation for coming forward.¹³⁹ In the alternative, Ngirabatware argued that their willingness to accept money thoroughly discredits them and irreparably impacts their credibility to the point that, had the Trial Chamber known that they would do this, it would not have placed any weight on them.¹⁴⁰

36. The Prosecution argued that Witnesses ANAT and ANAN only recanted because they were bribed and coached in a coordinated effort and that their recantations cannot be believed in view of the circumstances surrounding them and the implausibility and numerous inconsistencies permeating their evidence at the review hearing.¹⁴¹

37. The Appeals Chamber considers that the circumstances surrounding the recantations provided by Witnesses ANAT and ANAN of their trial testimonies raise considerable suspicion in relation to the veracity and genuineness of their accounts at the review hearing. In particular, the Appeals Chamber finds it striking that their crises of conscience so many years after their initial testimonies at trial in 2010 resulted in recantation letters being written within two weeks of each other.

38. The Appeals Chamber further notes that Witnesses ANAT and ANAN both stated that they discussed their decision to recant with others prior to writing the recantation letters. The witnesses also acknowledged that these individuals paid them comparatively large sums of money in instalments between 2015 and 2018. Notably, Witness ANAT indicated that the first payment came shortly after he signed his letter, and Witness ANAN acknowledged receiving money a few months before his recantation.¹⁴² Although the witnesses suggested that these payments were altruistic and unrelated to their recantations and eventual testimonies, the Appeals Chamber notes that both

¹³⁷ T. 23 September 2019 pp. 4-9, 15.

¹³⁸ T. 23 September 2019 pp. 4, 7, 61, 62.

¹³⁹ T. 23 September 2019 pp. 5, 8, 16, 54, 55, 64, 65.

¹⁴⁰ T. 23 September 2019 p. 17.

¹⁴¹ T. 23 September 2019 pp. 33-37, 42-49.

¹⁴² In his testimony, Witness ANAN claimed that he had not received any money prior to drafting the recantation letter. See T. 18 September 2019 p. 57. However, the witness did acknowledge receiving money in September 2015, which is two months before his recantation letter was dated. See T. 18 September 2019 p. 34.

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witnesses acknowledged that the individuals with whom they spoke made reference to their respective recantations and their decisions to maintain them. The fact that the witnesses acknowledged receiving money at the approximate time that they signed their recantation letters and in the period prior to their testimony at the review hearing casts a considerable shadow over the sincerity of their respective decisions to recant and their evidence in relation to their recantations. Moreover, the Appeals Chamber observes that, as protected witnesses, the witnesses could have contacted the WISP to seek assistance in communicating with Mechanism officials rather than rely on the assistance of others with a seeming interest in the content of their evidence.

39. The Appeals Chamber notes that a document obtained from a laptop belonging to Nzabonimpa appears to contain instructions on what Witness ANAT should say if questioned in an interview, which seems to overlap in material respects with the contents of the witness's recantation letter.¹⁴³ In addition, there also appear to be two identical copies on the laptop of the recantation letter submitted by Witness ANAN.¹⁴⁴ The Appeals Chamber need not comment on the reliability, origin, and forensic accuracy of these documents or their purported author beyond noting that the admission of these documents was not objected to by the Defence. No reasons have been advanced in these proceedings to doubt the reliability of this evidence, and there of course may be reasonable explanations why this material was found there. In addition, the fact that Ngirabatware is listed in the author column of the metadata reports exhibited in court is not, as the Defence noted, in and of itself definitive proof that this was indeed the case.¹⁴⁵ Nonetheless, bearing in mind the above considerations, this evidence raises further concerns that the witnesses' respective decisions to recant and their accounts may not in fact have been entirely their own.

40. The Appeals Chamber also considers that other aspects of Witness ANAT's evidence raise additional concern. For example, Witness ANAT did not have a clear or convincing explanation for having implicated Badiga, the Rwandan prosecutor, for the first time in the review hearing as the individual who pressured him to give false testimony at trial, in particular given the fact that in his first interview with the Defence he rejected the suggestion from counsel that the Rwandan authorities had pressured him.¹⁴⁶ In addition, Witness ANAT's explanation of handwriting his recantation letter paragraph by paragraph over a period of three months seems both exaggerated and

¹⁴³ T. 17 September 2019 pp. 22-26; Prosecution Exhibit 3 (confidential).

¹⁴⁴ T. 18 September pp. 8-14; Prosecution Exhibit 9 (confidential); Prosecution Exhibit 11 (confidential). Witness ANAN suggested that someone may have made a copy of the letter as he was not the one who sent it. However, the Appeals Chamber observes that the copies do not bear the witness's signature. *See* T. 18 September 2019 pp. 13, 14.

¹⁴⁵ T. 17 September 2019 p. 24; T. 18 September 2019 pp. 14-17, 22, 23; Prosecution Exhibit 4 (confidential); Prosecution Exhibit 10 (confidential); Prosecution Exhibit 12 (confidential).

¹⁴⁶ T. 16 September 2019 pp. 82, 83; Defence Exhibit 21 (confidential), p. 4.

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unbelievable. In this respect, the Appeals Chamber further notes that this carefully crafted letter references that he repeatedly attempted “in vain” to contact the ICTR to share his decision to recant,¹⁴⁷ yet his testimony contains no indication that he did so, but instead relied on Twagirayezu. The Appeals Chamber observes that, given he was a protected witness and in view of the presence of an office of the Mechanism and witness support staff in Kigali, it would not have been difficult to make direct contact with court officials rather than relying on the assistance of others.

41. In relation to Witness ANAN, the Appeals Chamber observes that the suggestion that he testified falsely in relation to Ngirabatware as a direct result of mistreatment and the possibility of leniency is not entirely convincing. While such circumstances, if true, would indeed raise legitimate questions about his motivations for implicating Ngirabatware while in prison, it does not account for his decision to continue to do so after a lapse of three years from his release until his testimony in 2010.¹⁴⁸

42. In addition, the Appeals Chamber notes that Witness ANAN’s explanation that the destruction of his home prompted the sums of money he received is not at all convincing, particularly given that he began receiving the money in 2015 and his home was only destroyed in 2016.¹⁴⁹ The Appeals Chamber further notes Witness ANAN’s admission that he intentionally omitted key details surrounding the recantation while being interviewed by the Prosecution.¹⁵⁰ The witness explained that he did not trust the Prosecution and intended to give his full account to the Appeals Chamber.¹⁵¹ This may have been so, but while the witness may not have been under a legal obligation to answer the questions truthfully, his reluctance to fully cooperate to the best of his ability indicates that he is less than forthcoming and thus raises serious concerns about the credibility of his account of his recantation.

43. Finally, the Appeals Chamber notes that, in assessing Witnesses ANAT and ANAN, the Trial Chamber was mindful of the circumstances concerning their convictions and the inherent risks that their incarceration might have had on the credibility of their evidence.¹⁵² The Appeals Chamber does not consider it necessary or appropriate to re-examine their credibility at trial on the basis of the new or additional information provided by them in this respect at the review hearing. This

¹⁴⁷ See Defence Exhibit 4 (confidential); Prosecution Exhibit 8 (confidential).

¹⁴⁸ According to Witness ANAN, he was released from prison in 2007 and was a free man at the time of his testimony at trial in 2010. See T. 17 September 2019 p. 78; T. 18 September 2019 pp. 2, 21, 53.

¹⁴⁹ T. 18 September 2019 p. 66.

¹⁵⁰ T. 18 September 2019 pp. 3-5, 19, 20.

¹⁵¹ T. 18 September 2019 pp. 3-5.

¹⁵² Trial Judgement, paras. 192, 193, 196, 283, 308, 309, 311, 313.

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evidence is only relevant as background in assessing the genuineness of their recantations, which as explained above is lacking.

D. Conclusion

44. In sum, the Appeals Chamber finds that the evidence that Witnesses ANAT and ANAN truthfully recanted their evidence is not sufficiently reliable and credible, and therefore Ngirabatware has not presented sufficient evidence capable of belief to prove the existence of a new fact in relation to his conviction for direct and public incitement to commit genocide. The Appeals Chamber considers that the credibility concerns that arise in relation to the evidence provided by Witnesses ANAT and ANAN result from circumstances that significantly followed their appearance at trial. Accordingly, the Appeals Chamber is not satisfied that these concerns are sufficient to disturb the original findings made by the Trial Chamber and affirmed on appeal in relation to this conviction.

IV. GENOCIDE

A. Proceedings before the Trial and Appeals Chambers

45. Having considered all the evidence on the record, the Trial Chamber concluded that, on 7 April 1994, Ngirabatware delivered weapons and addressed local officials and *Interahamwe* at the Bruxelles and Gitsimbi/Cotagirwa roadblocks in Nyamyumba Commune.¹⁵³ The Trial Chamber relied on these factual findings to determine that Ngirabatware instigated and aided and abetted genocide in Nyamyumba Commune.¹⁵⁴ In finding that Ngirabatware was present in Nyamyumba Commune on 7 April 1994, the Trial Chamber relied principally on the evidence of Witnesses ANAM and ANAE, which was further corroborated by the evidence of Witness ANAL.¹⁵⁵

46. At trial, Witness ANAM testified that seven or eight days after the death of President Habyarimana, but prior to Safari Nyambwega's attack, she saw Ngirabatware arriving in a black Pajero at the Bruxelles roadblock at around 2.00 pm.¹⁵⁶ The witness heard Ngirabatware chastising the *Interahamwe* for only pretending to work, accusing Nyambwega of communicating with "Inyenzi", and declaring that he had delivered weapons because he did not want to see any Tutsis in

¹⁵³ Trial Judgement, paras. 839, 840, 869, 870, 1303, 1304, 1335, 1336.

¹⁵⁴ Trial Judgement, para. 1345.

¹⁵⁵ Trial Judgement, paras. 789, 815, 817, 838. *See also* Trial Judgement, paras. 818, 823, 825, 827, 832, 833, 836, 837.

¹⁵⁶ Trial Judgement, paras. 713, 804, 1251. *See also* T. 25 January 2010 pp. 25, 29, 37 (closed session); T. 25 January 2010 pp. 81, 82; T. 27 January 2010 p. 16 (closed session).

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Busheke Cellule.¹⁵⁷ According to the witness, once some of the weapons were offloaded from his vehicle, Ngirabatware drove to the nearby Gitsimbi/Cotagirwa roadblock and the *Interahamwe* left for Nyambwega's house.¹⁵⁸ At the Gitsimbi/Cotagirwa roadblock other weapons were offloaded into Faustin Bagango's vehicle.¹⁵⁹ Witness ANAM testified that Ngirabatware ordered Bagango to work well because he did not want to see any Tutsis in the Nyamyumba Commune, and instructed that Nyambwega be located and killed.¹⁶⁰ On her way home, the witness saw Nyambwega wounded in a coffee plantation and subsequently heard that he had died.¹⁶¹ Witness ANAM testified that Bagango was the leader of the *Interahamwe* manning the Bruxelles and Gitsimbi roadblocks and he provided them with weapons which they used to kill people.¹⁶²

47. At trial, Witness ANAE testified that in April 1994 she saw Ngirabatware at a Busheke Cellule roadblock in the Nyamyumba Commune, after the death of President Habyarimana but before the attack on Nyambwega.¹⁶³ She stated that sometime during the day, Ngirabatware arrived in a black Pajero and told his younger brother Cenge to get Bagango.¹⁶⁴ Once Bagango arrived, Ngirabatware informed him that he had delivered weapons and that he did not want to see any Tutsis alive in the Bruxelles area.¹⁶⁵ The witness testified that Bagango in turn gave the weapons to Jean Simpunga for further distribution to the different roadblocks at Bruxelles.¹⁶⁶ According to the witness, these weapons were intended to kill Tutsis.¹⁶⁷ Witness ANAE further testified that, following the weapons distribution, she learned that Nyambwega had been attacked and saw him wounded in a nearby coffee plantation.¹⁶⁸ The witness left the scene of Nyambwega's attack together with Witness ANAM.¹⁶⁹

48. The Trial Chamber found that the testimonies of Witnesses ANAM and ANAE were detailed, consistent, and credible.¹⁷⁰ It considered that the witnesses corroborated each other to the

¹⁵⁷ Trial Judgement, paras. 713, 804, 1251. See also T. 25 January 2010 pp. 25-28, 36 (closed session); T. 26 January 2010 pp. 48, 49 (closed session).

¹⁵⁸ Trial Judgement, paras. 714, 804, 1251. See also T. 25 January 2010 pp. 27, 37, 43-45 (closed session).

¹⁵⁹ Trial Judgement, paras. 716, 804, 1251. See also T. 25 January 2010 pp. 40, 44, 45 (closed session); T. 27 January 2010 p. 12 (closed session).

¹⁶⁰ Trial Judgement, paras. 716, 804, 1251. See also T. 25 January 2010 pp. 40, 45 (closed session); T. 27 January 2010 pp. 14, 15 (closed session).

¹⁶¹ Trial Judgement, para. 717. See also T. 25 January 2010 pp. 45-51, 62 (closed session); T. 26 January 2010 pp. 45-49 (closed session).

¹⁶² Trial Judgement, para. 718. See also T. 25 January 2010 p. 52 (closed session).

¹⁶³ Trial Judgement, paras. 709, 794, 1250, 1268. See also T. 20 October 2009 pp. 30, 71 (closed session); T. 20 October 2009 pp. 32-34, 44; T. 21 October 2009 p. 38.

¹⁶⁴ Trial Judgement, paras. 709, 794, 1250. See also T. 21 October 2009 pp. 39, 46, 47, 54, 55.

¹⁶⁵ Trial Judgement, paras. 710, 794, 1269. See also T. 20 October 2009 pp. 33, 38; T. 21 October 2009 p. 46.

¹⁶⁶ Trial Judgement, paras. 710, 794, 1269. See also T. 20 October 2009 pp. 34, 41, 44; T. 21 October 2009 pp. 46-48.

¹⁶⁷ Trial Judgement, para. 711. See also T. 20 October 2009 p. 40.

¹⁶⁸ Trial Judgement, para. 711. See also T. 20 October 2009 pp. 66-68, 70, 71, 77 (closed session).

¹⁶⁹ Trial Judgement, para. 711. See also T. 20 October 2009 pp. 70, 71 (closed session).

¹⁷⁰ Trial Judgement, paras. 795-815, 838.

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extent that Ngirabatware was in the area of Bruxelles roadblock on 7 April 1994, where he was engaged in distributing weapons to Bagango and the *Interahamwe*, as well as in encouraging attacks on Tutsis.¹⁷¹ Accordingly, relying principally on the evidence of Witnesses ANAM and ANAE, the Trial Chamber concluded that, on 7 April 1994, prior to the attack on Nyambwega, Ngirabatware delivered weapons to the Bruxelles roadblock, where he told Bagango that he did not want any Tutsis alive in Bruxelles.¹⁷² The Trial Chamber found that Bagango and Simpunga ensured the further distribution of the weapons in Nyamyumba Commune.¹⁷³

49. The Trial Chamber also concluded that, later the same day, and still prior to the attack on Nyambwega, Ngirabatware returned to the Bruxelles roadblock and delivered more weapons.¹⁷⁴ It found that, upon arriving at the roadblock, Ngirabatware reprimanded the *Interahamwe*, including Juma, for only pretending to work, stated that he brought weapons because he did not want to see any Tutsis in Busheke Cellule, and accused Nyambwega of communicating with “*Inyenzi*”.¹⁷⁵ The Trial Chamber determined that following this incident, Ngirabatware delivered weapons to the nearby Gitsimbi/Cotagirwa roadblock where he told Bagango that he did not want to see any Tutsis in Nyamyumba Commune, ordered Bagango to work well, and told him that Nyambwega needed to be located and killed.¹⁷⁶ According to the Trial Judgement, later that same day, various *Interahamwe*, including Juma, attacked and seriously injured Nyambwega.¹⁷⁷

50. On appeal, Ngirabatware argued that the Trial Chamber erred in the assessment of his alibi and of the Prosecution’s evidence placing him in Nyamyumba Commune on 7 April 1994.¹⁷⁸ In relation to Ngirabatware’s alibi, the Appeals Chamber found that the Trial Chamber’s assessment was correct and did not demonstrate a misapplication of the burden of proof.¹⁷⁹ Similarly, the Appeals Chamber found no merit in Ngirabatware’s attempt to challenge the Trial Chamber’s reliance on particular aspects of Witnesses ANAM’s and ANAE’s testimonies by pointing to differences in their evidence.¹⁸⁰ Consequently, the Appeals Chamber affirmed Ngirabatware’s

¹⁷¹ Trial Judgement, para. 815.

¹⁷² Trial Judgement, paras. 839, 869, 1335.

¹⁷³ Trial Judgement, paras. 839, 869, 875, 1335.

¹⁷⁴ Trial Judgement, paras. 840, 870, 1336.

¹⁷⁵ Trial Judgement, paras. 840, 870, 1336.

¹⁷⁶ Trial Judgement, paras. 840, 870, 1336.

¹⁷⁷ Trial Judgement, paras. 871, 1336.

¹⁷⁸ Appeal Judgement, para. 186.

¹⁷⁹ Appeal Judgement, paras. 202, 208.

¹⁸⁰ Appeal Judgement, paras. 213-215.

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conviction for instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at the two roadblocks in Nyamyumba Commune on 7 April 1994.¹⁸¹

B. Recantation of Prosecution Witnesses ANAM and ANAE

51. In a letter dated 26 October 2015 and addressed to Ngirabatware's trial counsel, Witness ANAM recanted her trial testimony, stating that she did not see Ngirabatware in 1994.¹⁸² On 5 July 2016, in a declaration provided to the Defence, Witness ANAM confirmed her recantation.¹⁸³ In the declaration, Witness ANAM explained that she was encouraged to give false testimony at trial by "people in [her] area", and that, while she was advised by Ndagijimana to write the recantation letter, she was not given or promised any benefits in exchange for her recantation.¹⁸⁴ In her testimony at the review hearing, Witness ANAM withdrew her recantation and confirmed the truthfulness of her trial testimony against Ngirabatware.¹⁸⁵ While the witness acknowledged signing the recantation letter¹⁸⁶ and the declaration,¹⁸⁷ she stated that she was not aware who drafted the recantation letter¹⁸⁸ and was told that Laurent Maniraguha and Ndagijimana had asked her to sign it.¹⁸⁹

52. Witness ANAM emphasized that her recantation was not voluntary as she was subjected to pressure by Valentine Mukamisha and Ndagijimana.¹⁹⁰ The witness explained that Mukamisha instructed her to change her trial testimony, telling her that, otherwise, the witness would suffer "serious consequences".¹⁹¹ According to Witness ANAM, in these circumstances, she had no choice but to recant her trial testimony.¹⁹² The witness also confirmed giving statements to the Prosecution and the Defence in relation to her recantation,¹⁹³ but stated that her responses in those statements were in accordance with what she had been previously instructed to say.¹⁹⁴ In her testimony, the

¹⁸¹ Appeal Judgement, para. 279.

¹⁸² Defence Exhibit 9 (confidential).

¹⁸³ Defence Exhibit 11 (confidential), paras. 2-9.

¹⁸⁴ Defence Exhibit 11 (confidential), paras. 10, 12, 13.

¹⁸⁵ T. 18 September 2019 pp. 73, 75; T. 19 September 2019 pp. 18, 24, 35.

¹⁸⁶ T. 19 September 2019 pp. 11, 12.

¹⁸⁷ T. 19 September 2019 p. 13.

¹⁸⁸ T. 19 September 2019 p. 33.

¹⁸⁹ T. 19 September 2019 pp. 22, 24.

¹⁹⁰ T. 19 September 2019 pp. 23-25, 30, 35.

¹⁹¹ T. 19 September 2019 pp. 22, 26-28.

¹⁹² T. 19 September 2019 pp. 26, 27, 29.

¹⁹³ T. 19 September 2019 pp. 14-22. *See also* Defence Exhibit 12 (confidential), paras. 5, 23; Defence Exhibit 13 (confidential), para. 11; Defence Exhibit 14 (confidential), p. 2.

¹⁹⁴ T. 19 September 2019 p. 24.

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witness maintained that she neither asked for nor received any money in exchange for her recantation.¹⁹⁵

53. In a declaration dated 5 July 2016 and provided to the Defence, Witness ANAE recanted her trial testimony, explained that she was “trained” to testify falsely against Ngirabatware, and confirmed that she was not given or promised any benefits in exchange for her recantation.¹⁹⁶ In her testimony at the review hearing, Witness ANAE withdrew her recantation and confirmed the truthfulness of her trial testimony against Ngirabatware.¹⁹⁷ The witness testified that she was pressured by Maniraguha and Ndagijimana,¹⁹⁸ and described a meeting at which she, together with Witness ANAM, were instructed by Maniraguha and Ndagijimana to sign letters consenting to meet with the Defence.¹⁹⁹

54. While Witness ANAE acknowledged that, in the declaration, she recanted her trial testimony,²⁰⁰ and confirmed giving statements to the Prosecution and the Defence to this effect,²⁰¹ she stated that her recantation was not voluntary as she was mistreated and compelled to recant in order to save her life and that of her children.²⁰² The witness maintained that she was not given any money in exchange for her recantation.²⁰³ She acknowledged, however, that if Maniraguha was given money, she might have received part of that money.²⁰⁴

55. At the review hearing, Witness DWAN-147, who appeared as a Defence witness at trial,²⁰⁵ testified that he was told by Witness ANAE that her trial testimony against Ngirabatware was false.²⁰⁶ Witness DWAN-147 maintained that Witness ANAE voluntarily recanted her testimony and that he assisted her with the recantation upon her request.²⁰⁷

¹⁹⁵ T. 19 September 2019 pp. 35, 36.

¹⁹⁶ Defence Exhibit 5 (confidential), paras. 2-9.

¹⁹⁷ T. 19 September 2019 pp. 42, 63.

¹⁹⁸ T. 19 September 2019 pp. 44-48, 53, 54.

¹⁹⁹ T. 19 September 2019 pp. 53, 54; Defence Exhibit 10 (confidential); Defence Exhibit 25 (confidential).

²⁰⁰ T. 19 September 2019 pp. 49, 50.

²⁰¹ T. 19 September 2019 pp. 51, 55, 62; Defence Exhibit 6 (confidential), paras. 4, 5, 12; Defence Exhibit 7 (confidential), paras. 15, 17, 18; Defence Exhibit 8 (confidential), p. 3.

²⁰² T. 19 September 2019 pp. 50, 55, 62, 63, 68, 69.

²⁰³ T. 19 September 2019 pp. 69, 70.

²⁰⁴ T. 19 September 2019 pp. 70, 71.

²⁰⁵ Trial Judgement, paras. 754-757.

²⁰⁶ T. 20 September 2019 p. 11; Defence Exhibit 24 (confidential), para. 7.

²⁰⁷ T. 20 September 2019 pp. 12, 13, 15; Defence Exhibit 24 (confidential), para. 12.

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C. Deliberations

56. In his oral submissions at the review hearing, Ngirabatware argued that Witnesses ANAM and ANAE did not give truthful testimony during the hearing.²⁰⁸ He asserted, in particular, that both witnesses lied in claiming that they did not receive money, from Ngirabatware's "supporters",²⁰⁹ in exchange for their recantations.²¹⁰ Ngirabatware argued that this aspect of Witnesses ANAM's and ANAE's evidence thoroughly undermines the witnesses' overall credibility and, by extension, the reliability of their trial testimony against him.²¹¹ In its response, the Prosecution argued that the circumstances of the recantations indicate that they were the result of a concerted effort, and that the purpose of the review is limited to assessing whether the witnesses' recantations were truthful.²¹²

57. In sworn testimony at the review hearing, Witnesses ANAM and ANAE affirmed the truth of their prior testimonies before the Trial Chamber and renounced the assertion that they had genuinely recanted. In such circumstances, the Appeals Chamber is not satisfied that their written letters, declarations, or interviews with the Prosecution and the Defence alone constitute sufficiently reliable proof of recantation. The consistency of such statements over a period of several years is, of course, relevant to whether they are true, but mere consistency is not in and of itself sufficient proof that they are, especially where that proposition is renounced under oath and a reasonable explanation is provided for it.

58. Indeed, the Appeals Chamber accepts as reasonable that the witnesses may have recanted due to the outside pressures described in their testimony at the review hearing. Even if the decision to recant had been for other reasons, such as financial benefits, it would only further undermine the reliability of the recantations, which were expressly renounced at the review hearing. In addition, the credibility concerns that arise in relation to the evidence provided by Witnesses ANAM and ANAE at the review hearing, such as the possibility of them soliciting or being offered financial benefits, result from circumstances that are significantly later than their appearance at trial.

59. Furthermore, the Appeals Chamber has considered the recantations of Witnesses ANAM and ANAE in context with those provided by Witnesses ANAT and ANAN. Notably, the recantation letter signed by Witness ANAM is dated within one month of the two recantation letters provided by Witnesses ANAT and ANAN. That three of the four key witnesses underpinning

²⁰⁸ T. 23 September 2019 pp. 9, 10, 18, 20-22, 29, 30.

²⁰⁹ T. 23 September 2019 p. 22.

²¹⁰ T. 23 September 2019 pp. 19, 21-29, 54-65, *referring, generally, to Defence Exhibit 3 (confidential)*.

²¹¹ T. 23 September 2019 pp. 17, 31, 56-65, *referring to Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 466.

²¹² T. 23 September 2019 pp. 34-38, 39-42, 53.

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Ngirabatware's convictions would recant, of their own volition, within this short time period seems implausible. Moreover, there are striking similarities between the consent letters that Witnesses ANAM and ANAE purportedly wrote and signed, one day apart, in order to meet with the Defence. This lends further credence to the witnesses' evidence that they simply signed pre-prepared letters or statements to recant, and did not do so of their own initiative and in their own words. When viewed together, these circumstances lead to the impression that the recantations were orchestrated. Moreover, as protected witnesses, the witnesses could have contacted the WISP to seek assistance in communicating with Mechanism officials, rather than rely on the assistance of others with a seeming interest in the content of their evidence.

60. Finally, bearing the foregoing in mind, the Appeals Chamber places little weight on the evidence of Witness DWAN-147 concerning the circumstances of Witness ANAE's recantation. Witness DWAN-147's evidence cannot serve as a substitute for Witness ANAE's clear renunciation of the recantation of her trial testimony.

D. Conclusion

61. In sum, the Appeals Chamber considers that Ngirabatware has not advanced sufficient evidence capable of belief to prove the existence of a new fact in relation to his conviction for instigating and aiding and abetting genocide.

V. CONCLUSION

62. The Appeals Chamber recalls that the review proceedings were authorized in order to test the veracity of the purported recantations. For the reasons stated above, the Appeals Chamber has found that Ngirabatware has not proven the new fact that the witnesses have truthfully recanted their trial testimonies. The Appeals Chamber has noted the shift in Ngirabatware's argument on review, which has evolved to include that the witnesses may have been paid or otherwise influenced and that their lack of credibility as a result should render the original verdict unsafe. This of course is a different argument than originally put before the Appeals Chamber in the Motion for Review that the recantations were genuine.

63. Notwithstanding this shift in Ngirabatware's argument, as noted above, the Appeals Chamber has fully considered this argument in assessing the impact of the evidence presented on the convictions. The Appeals Chamber is mindful that Witnesses ANAT, ANAN, ANAM, and ANAE were in vulnerable economic situations at the time of their recantations and accepts that they may have been susceptible to financial incentives (either offered or sought) and influence. Indeed,

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the evidence presented at the review hearing raises many questions about their credibility. The Appeals Chamber emphasizes, however, that it will not lightly disturb on review a trial chamber's credibility assessment, which was subjected to appellate review, based on a witness's subsequent conduct occurring more than five years after their original testimony. To do so, would in fact provide incentives to convicted persons, or individuals close to them, to interfere with susceptible witnesses with the hope that it will not be discovered and the convicted person will be released or, if discovered, that the witnesses will then be so thoroughly discredited that their original testimony cannot be trusted and the convicted person will be released. To put it simply, an applicant bears a heavy burden in showing that the conduct of a witness, occurring significantly post trial testimony, taints their original testimony. This burden has not been met in this case.

64. Finally, the Appeals Chamber recalls that the purpose of these proceedings was not to determine the full extent and responsibility for possible witness interference in this case. That is for other proceedings, if necessary, in accordance with Rule 90 of the Rules. The purpose of the review proceedings was simply to test the evidence advanced in support of the new fact, which the Appeals Chamber in this judgement has found not credible.

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VI. DISPOSITION

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

PURSUANT to Article 24 of the Statute and Rule 147 of the Rules;

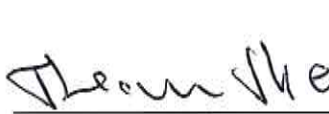
NOTING the evidence presented by the parties and their oral arguments presented at the review hearing;

SITTING in open session;

CONSIDERING that Ngirabatware has not presented sufficient evidence capable of belief at the review hearing to prove the existence of the new fact in relation to his convictions for direct and public incitement to commit genocide and instigating and aiding and abetting genocide;

DECIDES, unanimously, that the Appeal Judgement remains in force in all respects.

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



Theodor Meron

Presiding Judge



Joseph E. Chiondo Masanche

Judge



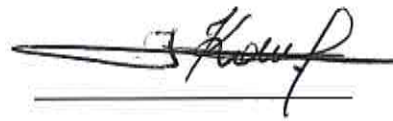
Lee G. Muthoga

Judge



Aminatta Lois Runeni N'gum

Judge



Gberdao Gustave Kam

Judge

Done this 27th day of September 2019 at Arusha, Tanzania

[Seal of the Mechanism]



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