



UNITED NATIONS  
NATIONS UNIES

**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Judgement of:** 20 October 2010

**EMMANUEL RUKUNDO**

v.

**THE PROSECUTOR**

*Case No. ICTR-2001-70-A*

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**JUDGEMENT**

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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 Emmanuel Rukundo and the Prosecution against the Judgement pronounced on 27 February 2009 and filed in writing on 13 March 2009 by Trial Chamber II of the Tribunal (“Trial Chamber”) in the case of *The Prosecutor v. Emmanuel Rukundo* (“Trial Judgement”).<sup>1</sup>

## I. INTRODUCTION

### A. Background

2. Emmanuel Rukundo was born on 1 December 1959 in Mukingi Commune, Gitarama Prefecture, Rwanda.<sup>2</sup> He was ordained as a priest on 28 July 1991.<sup>3</sup> In February 1993, Rukundo was appointed as a military chaplain for the Rwandan army, a position he maintained throughout the relevant events.<sup>4</sup>

3. The Trial Chamber convicted Rukundo for committing genocide through his participation in the killing of Madame Rudahunga and the causing of serious bodily harm to four other Tutsis who were abducted from Saint Joseph’s College, the abduction and killing of Tutsis from the Saint Léon Minor Seminary, and the sexual assault of a Tutsi woman at the seminary.<sup>5</sup> In addition, it convicted Rukundo for committing murder as a crime against humanity for the killing of Madame Rudahunga<sup>6</sup> and for extermination as a crime against humanity for his participation in the abduction and killing of Tutsis from the Saint Léon Minor Seminary.<sup>7</sup> The Trial Chamber sentenced Rukundo to a single term of 25 years of imprisonment.<sup>8</sup>

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<sup>1</sup> For ease of reference, two annexes are appended: Annex A – Procedural Background; Annex B – Cited Materials and Defined Terms.

<sup>2</sup> Trial Judgement, para. 4.

<sup>3</sup> Trial Judgement, para. 4.

<sup>4</sup> Trial Judgement, para. 4.

<sup>5</sup> Trial Judgement, paras. 568, 569, 573, 576.

<sup>6</sup> Trial Judgement, para. 585.

<sup>7</sup> Trial Judgement, para. 590.

<sup>8</sup> Trial Judgement, para. 608.

## **B. The Appeals**

4. Rukundo challenges his convictions and sentence.<sup>9</sup> He requests the Appeals Chamber to overturn his convictions or, in the alternative, to reduce his sentence.<sup>10</sup> The Prosecution responds that all grounds of his appeal should be dismissed.<sup>11</sup> Rukundo has divided his arguments into five categories: violations of fair trial rights, errors of law, errors relating to the alleged recantation by Prosecution Witness BLP, errors of law and fact in the evaluation of the evidence, and appeal against the sentence. Within these categories the Appeals Chamber has identified nine grounds of appeal, which it has considered in relation to each main event.

5. The Prosecution presents one ground of appeal challenging Rukundo's sentence.<sup>12</sup> The Prosecution requests the Appeals Chamber to increase Rukundo's sentence to imprisonment for the remainder of his life or, alternatively, to remit the issue of sentencing to the Trial Chamber to reconsider the appropriate sentence within the proper legal framework.<sup>13</sup> Rukundo responds that the Prosecution's ground of appeal should be dismissed.<sup>14</sup>

6. The Appeals Chamber heard oral submissions regarding these appeals on 15 June 2010.

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<sup>9</sup> Rukundo Notice of Appeal, paras. 8-110; Rukundo Appeal Brief, paras. 6-340.

<sup>10</sup> Rukundo Notice of Appeal, p. 20; Rukundo Appeal Brief, p. 68.

<sup>11</sup> Prosecution Response Brief, para. 251.

<sup>12</sup> Prosecution Notice of Appeal, paras. 1-4; Prosecution Appeal Brief, paras. 1-91.

<sup>13</sup> Prosecution Notice of Appeal, para. 4; Prosecution Appeal Brief, paras. 4, 11, 91.

<sup>14</sup> Rukundo Response Brief, p. 25.

## 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 invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.<sup>15</sup>

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.<sup>16</sup>

9. Where the Appeals Chamber finds an error of law in the trial judgement arising from the application of an incorrect legal standard, the Appeals Chamber will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly.<sup>17</sup> 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.<sup>18</sup>

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

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

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

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<sup>15</sup> *Nchamihigo* Appeal Judgement, para. 7; *Bikindi* Appeal Judgement, para. 9; *Zigiranyirazo* Appeal Judgement, para. 8. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 10.

<sup>16</sup> *Ntakirutimana* Appeal Judgement, para. 11 (internal citation omitted). See also *Nchamihigo* Appeal Judgement, para. 8; *Bikindi* Appeal Judgement, para. 10; *Zigiranyirazo* Appeal Judgement, para. 9; *Mrkšić and Šljivančanin* Appeal Judgement, para. 11.

<sup>17</sup> *Nchamihigo* Appeal Judgement, para. 9; *Bikindi* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 10. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 12.

<sup>18</sup> *Nchamihigo* Appeal Judgement, para. 9; *Bikindi* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 10. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 12.

<sup>19</sup> *Krstić* Appeal Judgement, para. 40 (internal citations omitted). See also *Nchamihigo* Appeal Judgement, para. 10; *Bikindi* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 11.

the intervention of the Appeals Chamber.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.<sup>24</sup>

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<sup>20</sup> *Nchamihigo* Appeal Judgement, para. 11; *Bikindi* Appeal Judgement, para. 13; *Zigiranyirazo* Appeal Judgement, para. 12. *See also* *Mrkšić and Šljivančanin* Appeal Judgement, para. 16.

<sup>21</sup> *Nchamihigo* Appeal Judgement, para. 11; *Bikindi* Appeal Judgement, para. 13; *Zigiranyirazo* Appeal Judgement, para. 12. *See also* *Mrkšić and Šljivančanin* Appeal Judgement, para. 16.

<sup>22</sup> Practice Direction on Formal Requirements for Appeals from Judgement, para. 4(b). *See Nchamihigo* Appeal Judgement, para. 12; *Bikindi* Appeal Judgement, para. 14; *Zigiranyirazo* Appeal Judgement, para. 13. *See also* *Mrkšić and Šljivančanin* Appeal Judgement, para. 17.

<sup>23</sup> *Nchamihigo* Appeal Judgement, para. 12; *Bikindi* Appeal Judgement, para. 14; *Zigiranyirazo* Appeal Judgement, para. 13. *See also* *Mrkšić and Šljivančanin* Appeal Judgement, para. 17.

<sup>24</sup> *Nchamihigo* Appeal Judgement, para. 12; *Bikindi* Appeal Judgement, para. 14; *Zigiranyirazo* Appeal Judgement, para. 13. *See also* *Mrkšić and Šljivančanin* Appeal Judgement, para. 18.

### III. APPEAL OF EMMANUEL RUKUNDO

#### A. Alleged Error Relating to the Pleading of Commission (Ground 1)

13. The Trial Chamber found that, in April 1994, Rukundo together with soldiers abducted Madame Rudahunga, two of her children, and two other Tutsi civilians from Saint Joseph's College at Kabgayi in Gitarama Prefecture.<sup>25</sup> Madame Rudahunga was killed, and the other four Tutsis were severely beaten by the soldiers.<sup>26</sup> Based on his role in this incident, the Trial Chamber convicted Rukundo of committing genocide by killing Madame Rudahunga and causing serious bodily harm to the others.<sup>27</sup> It also convicted him of committing murder as a crime against humanity based on Madame Rudahunga's death.<sup>28</sup>

14. The Trial Chamber also found that, between mid-April and the end of May 1994, Rukundo, soldiers, and *Interahamwe* participated on at least four occasions in the abduction and killing of Tutsi refugees from the Saint Léon Minor Seminary in Gitarama Prefecture.<sup>29</sup> For these events, the Trial Chamber convicted Rukundo of committing genocide and extermination as a crime against humanity.<sup>30</sup>

15. The Trial Chamber did not find that Rukundo physically or personally killed or caused serious bodily harm to any of these victims. Rather, relying on the more expansive definition of committing under Article 6(1) of the Statute articulated in the *Gacumbitsi* and *Seromba* Appeal Judgements,<sup>31</sup> the Trial Chamber determined that Rukundo's actions were "as much an integral part" of the crimes as the abductions, killings, and beatings which they enabled.<sup>32</sup>

16. Rukundo submits that the Trial Chamber erred in law in convicting him for these crimes on the basis of committing under Article 6(1) of the Statute because he lacked adequate notice that he was being prosecuted on this basis and because the Trial Chamber's factual findings do not support this form of responsibility.<sup>33</sup> In this section, the Appeals Chamber considers whether Rukundo had notice that he was being charged with committing these crimes under Article 6(1) of the Statute.

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<sup>25</sup> Trial Judgement, para. 171.

<sup>26</sup> Trial Judgement, para. 171.

<sup>27</sup> Trial Judgement, para. 569.

<sup>28</sup> Trial Judgement, para. 585.

<sup>29</sup> Trial Judgement, paras. 364, 570.

<sup>30</sup> Trial Judgement, paras. 573, 590.

<sup>31</sup> Trial Judgement, para. 562, citing *Gacumbitsi* Appeal Judgement, para. 60, *Seromba* Appeal Judgement, para. 161, *Ndindabahizi* Appeal Judgement, para. 123. See also Trial Judgement, para. 583.

<sup>32</sup> Trial Judgement, paras. 563, 571.

<sup>33</sup> Rukundo Notice of Appeal, paras. 16, 17, 25, 26; Rukundo Appeal Brief, paras. 10-12, 21, 22, 39, 51.

## 1. Preliminary Matter

17. The Appeals Chamber notes that it is unclear for which specific conduct Rukundo argues the Trial Chamber erred in law in convicting him of having committed genocide and crimes against humanity. Rukundo only specifically refers to paragraphs 562, 563, 571, and 590 of the Trial Judgement.<sup>34</sup> These paragraphs are related to: (i) genocide through the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians sometime in April 1994 under Count 1 of the Indictment; and (ii) genocide and extermination as a crime against humanity through the abduction and subsequent killing of Tutsi refugees from the Saint Léon Minor Seminary at Kabgayi in Gitarama Prefecture between mid-April and the end of May 1994 under Counts 1 and 3 of the Indictment.<sup>35</sup>

18. However, the Appeals Chamber notes that the killing of Madame Rudahunga constitutes the *actus reus* of both murder as a crime against humanity under Count 2 of the Indictment and, in part, of genocide under Count 1 of the Indictment.<sup>36</sup> The Appeals Chamber therefore understands that Rukundo also asserts that the Trial Chamber erred in law in convicting him of having committed murder as a crime against humanity under Count 2 of the Indictment.

## 2. Alleged Defects in the Form of the Indictment

19. The *chapeau* paragraphs charging individual criminal responsibility for all three counts in the Indictment contain the following similar language:

Pursuant to Article 6 (1) of the Statute, the accused, Emmanuel RUKUNDO, is individually responsible for the crime [...] because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of this crime [...]. With respect to the commission of this crime, Emmanuel RUKUNDO [...], ordered, instigated, or aided and abetted soldiers, armed civilians and [the] *interahamwe* [...] to do the acts described below [...]. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs [...] below.<sup>37</sup>

20. Although these introductory paragraphs of the Indictment mention all forms of responsibility under Article 6(1) of the Statute, the specific paragraphs related to the relevant crimes

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<sup>34</sup> Rukundo Notice of Appeal, para. 16, *referring to* Trial Judgement, paras. 563, 571; Rukundo Appeal Brief, nn. 6, 10, *referring to* Trial Judgement, paras. 562, 563, 571, 590. *See also* Rukundo Reply Brief, para. 5. During the Appeal hearing, Rukundo specified that he is only referring to the abductions and killings related to the Saint Léon Minor Seminary and Saint Joseph's College. *See* T. 15 June 2010 p. 22.

<sup>35</sup> The Appeals Chamber notes that the Trial Chamber did not use the term "committing" in its legal findings regarding extermination as a crime against humanity. Trial Judgement, para. 590. In Ground 6, the Appeals Chamber finds that the Trial Chamber implicitly found that Rukundo committed extermination as a crime against humanity in relation to the abductions from Saint Léon Minor Seminary. *See infra* Section III.F.1.a (Rukundo's Role in Committing the Crimes).

<sup>36</sup> Trial Judgement, paras. 569, 585.

<sup>37</sup> Indictment, pp. 3, 4, 8-10.

underpinning Rukundo's convictions are more limited and expressly refer only to ordering, instigating, and aiding and abetting.<sup>38</sup>

21. Rukundo submits that the Trial Chamber erred in law in convicting him for "committing" genocide and crimes against humanity.<sup>39</sup> He avers that the Trial Chamber acknowledged that the form of individual criminal responsibility alleged in the Indictment was ambiguous.<sup>40</sup> Consequently, he argues that he had inadequate notice of the nature of his participation in the crimes to prepare his defence.<sup>41</sup>

22. Rukundo argues that the term "committed" appears three times in the Indictment, in the *chapeau* paragraphs alleging individual criminal responsibility for each count, which specify the particulars of each crime.<sup>42</sup> He asserts that the Trial Chamber recognised that only the *chapeau* of the concise statement of facts for Counts 1 and 2 in the Indictment referred to the commission of the crimes, while the paragraphs setting out specific factual allegations underpinning his individual criminal responsibility limit Rukundo's participation to ordering, instigating, or aiding and abetting the said crimes.<sup>43</sup> Rukundo contends that the alleged specific form(s) of individual criminal responsibility must be clearly set out in the Indictment in relation to each individual count and that the Prosecution was requested to avoid merely quoting all the forms included in Article 6(1) of the Statute.<sup>44</sup>

23. Rukundo further argues that the ambiguity in the Indictment was not clarified by the Prosecution Pre-Trial Brief, as suggested by the Trial Chamber, or by the Prosecution's opening statement.<sup>45</sup> Rukundo claims that he understood that his individual criminal responsibility was only based on "ordering, instigating or aiding and abetting" the said crimes under Article 6(1) of the

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<sup>38</sup> Indictment, paras. 10(iii), 12, 22, 27.

<sup>39</sup> Rukundo Notice of Appeal, para. 16; Rukundo Appeal Brief, paras. 10, 22.

<sup>40</sup> Rukundo Notice of Appeal, para. 15; Rukundo Appeal Brief, paras. 10-12, 21. With respect to Rukundo's argument that the Trial Chamber acknowledged that the form of liability alleged in the Indictment was ambiguous, the Appeals Chamber notes that the Trial Chamber referred to joint criminal enterprise in particular and not to "committing" in general. *See also* Rukundo Reply Brief, para. 10.

<sup>41</sup> Rukundo Notice of Appeal, para. 16; Rukundo Appeal Brief, paras. 12, 22.

<sup>42</sup> Rukundo Appeal Brief, para. 13. The Appeals Chamber notes that Rukundo incorrectly refers to "the preamble to paragraphs 2, 21 and 23" of the Indictment. However, the Appeals Chamber understands from his Appeal Brief that Rukundo means to refer to the *chapeau* paragraphs alleging individual criminal responsibility for each count, more specifically the preamble to paragraphs 3, 22, and 24.

<sup>43</sup> Rukundo Notice of Appeal, para. 15, *referring to* Trial Judgement, paras. 25-27; Rukundo Appeal Brief, para. 11, *referring to* Trial Judgement, paras. 25, 27, 31.

<sup>44</sup> Rukundo Appeal Brief, paras. 18, 19, *referring to Blagoje Simić* Appeal Judgement, para. 22, *Gacumbitsi* Appeal Judgement, para. 122.

<sup>45</sup> Rukundo Appeal Brief, paras. 11 (*referring to* Trial Judgement, para. 31), 14, 15 (*referring to* T. 15 November 2006 p. 3).

Statute, not on “committing”, and, therefore, that he was not informed of the nature of his participation in the crimes, suffering serious prejudice as a result.<sup>46</sup>

24. Finally, Rukundo argues that the Trial Chamber erred in relying on the more expansive definition of “committing” under Article 6(1) of the Statute articulated in the *Gacumbitsi, Seromba, and Ndindabahizi* Appeal Judgements<sup>47</sup> because, unlike in the present case, the indictments in those cases mention “committing” unambiguously and no other forms of responsibility could capture the acts of the three accused.<sup>48</sup> Therefore, Rukundo contends that his case is not comparable to those cases.<sup>49</sup>

25. The Prosecution responds that Rukundo’s role as a principal perpetrator of the crimes, including his presence at the crime scenes, is described with sufficient detail in the Indictment.<sup>50</sup> Furthermore, it argues that Rukundo was aware of the material facts necessary for the preparation of his defence.<sup>51</sup> In particular, the Prosecution asserts that the Indictment contains seven variations of the word “commit” and that the *chapeau* paragraphs alleging individual criminal responsibility for each count specifically charge Rukundo with committing the crimes under Article 6(1) of the Statute.<sup>52</sup>

26. The Prosecution also contends that the issue is not whether an Indictment contains specific words but whether, when considered as a whole, it meaningfully gives the accused sufficient notice of the nature of the charges in order to prepare an effective defence.<sup>53</sup> The Prosecution relies on paragraph 14 of the Indictment<sup>54</sup> regarding the crime of causing serious mental harm through sexual assault to argue that the Indictment clearly indicated that Rukundo physically committed genocide and that he “understood” or “must have understood” the nature of the charge against him.<sup>55</sup>

27. The Prosecution submits that, in any event, a defective indictment may be cured “by giving timely, clear and consistent notice to the Defence” and that, in this case, such notice was given through the Prosecution’s Pre-Trial Brief, opening statement, Final Trial Brief, and closing

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<sup>46</sup> Rukundo Notice of Appeal, paras. 16-18; Rukundo Appeal Brief, paras. 16-18.

<sup>47</sup> See Trial Judgement, para. 562, citing *Gacumbitsi* Appeal Judgement, para. 60, *Seromba* Appeal Judgement, para. 161, and referring to *Ndindabahizi* Appeal Judgement, para. 123.

<sup>48</sup> T. 15 June 2010 p. 23.

<sup>49</sup> T. 15 June 2010 p. 23.

<sup>50</sup> Prosecution Response Brief, para. 18.

<sup>51</sup> Prosecution Response Brief, paras. 18, 19.

<sup>52</sup> Prosecution Response Brief, para. 17.

<sup>53</sup> Prosecution Response Brief, para. 16, referring to *Gacumbitsi* Appeal Judgement, paras. 122, 123, 165.

<sup>54</sup> Paragraph 14 of the Indictment reads as follows: “[...] Emmanuel RUKUNDO [...] took a young Tutsi refugee woman into his room, locked the door, and sexually assaulted her. [...]”.

<sup>55</sup> Prosecution Response Brief, paras. 18, 19. See also Rukundo Reply Brief, para. 4.

statement.<sup>56</sup> It further contends that the time to raise objections based on lack of notice is at the pre-trial stage or when “the evidence of an allegedly new material fact is introduced” and that Rukundo’s failure to object in a timely manner led to a shift in the burden of proof, requiring him to demonstrate that his ability to defend himself has been materially impaired.<sup>57</sup>

28. The Prosecution claims that the whole trial record shows that Rukundo knew or, at least, should have understood that he was charged with “committing” under Article 6(1) of the Statute.<sup>58</sup> In particular, it submits that Rukundo specifically acknowledged, in his preliminary motion of 17 September 2002, that he was charged with “committing”.<sup>59</sup> It further submits that Rukundo’s objection in his Final Trial Brief to the insufficient pleading of joint criminal enterprise, on one hand, and his failure to argue that he was not charged with committing, on the other, indicate that he knew he was charged with “committing” and did not take issue with the charge.<sup>60</sup> Finally, with regard to both the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians abducted from Saint Joseph’s College and the abduction and subsequent killing of Tutsi refugees from the Saint Léon Minor Seminary, the Prosecution contends that the Indictment mentions Rukundo’s presence at the scenes of the crimes, indicating his role as both “a principal perpetrator” and “integral to the commission of the crime”.<sup>61</sup> The Prosecution points out that Rukundo’s defence theory is a blanket denial of his involvement in these crimes and that he “failed to demonstrate how his defence would have been different had he known that he was charged with ‘committing’” or “how his ability to prepare his defence was prejudiced”.<sup>62</sup>

29. The Appeals Chamber has previously emphasized that “[t]he charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused”.<sup>63</sup> An indictment which fails to duly set forth the

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<sup>56</sup> Prosecution Response Brief, paras. 20, 21. *See also* Rukundo Reply Brief, para. 6.

<sup>57</sup> Prosecution Response Brief, paras. 22, 23. *See also* Rukundo Reply Brief, para. 7.

<sup>58</sup> Prosecution Response Brief, para. 24.

<sup>59</sup> Prosecution Response Brief, para. 24.

<sup>60</sup> Prosecution Response Brief, para. 24.

<sup>61</sup> Prosecution Response Brief, paras. 25, 26. *See also* Rukundo Reply Brief, para. 5. The Prosecution claims that, contrary to Rukundo’s submissions, the Trial Chamber correctly applied the more expansive definition of “committing” under Article 6(1) of the Statute articulated in the *Gacumbitsi*, *Seromba*, and *Ndindabahizi* Appeal Judgements, because the indictments in those three cases were drafted similarly to the Indictment in the present case. In particular, the Prosecution contends that each indictment has a *chapeau* paragraph mentioning all forms of responsibility but that the paragraphs related to the factual particulars of the crimes did not refer to commission explicitly. The Prosecution submits that, in light of these three Appeal Judgements, it would be inconsistent to find that the Indictment in the present case was deficient. *See* T. 15 June 2010 pp. 43, 44, 46-48, *referring to Gacumbitsi* Appeal Judgement, paras. 59, 60, *Seromba* Appeal Judgement, paras. 171, 182, 190, *Ndindabahizi* Appeal Judgement, para. 123.

<sup>62</sup> Prosecution Response Brief, paras. 25, 26.

<sup>63</sup> *Muvunyi* Appeal Judgement, para. 18, *referring to Seromba* Appeal Judgement, paras. 27, 100, *Simba* Appeal Judgement para. 63, *Muhimana* Appeal Judgement, paras. 76, 167, 195, *Gacumbitsi* Appeal Judgement, para. 49, *Ndindabahizi* Appeal Judgement, para. 16.

specific material facts underpinning the charges against the accused is defective.<sup>64</sup> The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.<sup>65</sup> However, a clear distinction has to be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.<sup>66</sup> While it is possible, as stated above, to remedy the vagueness of an indictment, omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.<sup>67</sup> Finally, in reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.<sup>68</sup>

30. The Appeals Chamber recalls that the practice of both the Tribunal and the ICTY requires the Prosecution to plead the specific forms of individual criminal responsibility for which the accused is being charged.<sup>69</sup> The Prosecution has repeatedly been discouraged from simply restating Article 6(1) of the Statute, unless it intends to rely on all of the forms of individual criminal responsibility contained therein, because of the ambiguity that this causes.<sup>70</sup>

31. Bearing these principles in mind, the Appeals Chamber addresses whether the Trial Chamber erred in law in convicting Rukundo for his crimes relating to Saint Joseph's College and the Saint Léon Minor Seminary based on "committing".<sup>71</sup>

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<sup>64</sup> *Nahimana et al.* Appeal Judgement, para. 322; *Ntagerura et al.* Appeal Judgement, para. 22; *Niyitegeka* Appeal Judgement, para. 195; *Kupreškić et al.* Appeal Judgement, para. 114.

<sup>65</sup> *Muvunyi* Appeal Judgement, para. 20, referring to *Seromba* Appeal Judgement, para. 100; *Simba* Appeal Judgement, para. 64; *Muhimana* Appeal Judgement, paras. 76, 195, 217; *Gacumbitsi* Appeal Judgement, para. 49. See also *Ntagerura et al.* Appeal Judgement, paras. 28, 65.

<sup>66</sup> *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 32. See also *Muvunyi* Appeal Judgement, para. 20, citing *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 ("*Bagosora et al.* Decision of 18 September 2006"), para. 30.

<sup>67</sup> *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 32. See also *Muvunyi* Appeal Judgement, para. 20, citing *Bagosora et al.* Decision of 18 September 2006, para. 30.

<sup>68</sup> *Muvunyi* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 28; *Kvočka et al.* Appeal Judgement, para. 33.

<sup>69</sup> *Semanza* Appeal Judgement, para. 357; *Blagoje Simić* Appeal Judgement, para. 21; *Blaškić* Appeal Judgement, para. 215. See also *Ntakirutimana* Appeal Judgement, para. 473; *Aleksovski* Appeal Judgement, para. 171, n. 319; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Objections by Momir Talić to the form of the Amended Indictment, 20 February 2001 ("*Brđanin and Talić* Decision of 20 February 2001"), para. 10; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Decision on Preliminary Motion on Form of Amended Indictment, 11 February 2000 ("*Krnojelac* Decision of 11 February 2000"), para. 60.

<sup>70</sup> See, e.g., *Semanza* Appeal Judgement, para. 357; *Ntakirutimana* Appeal Judgement, para. 473; *Krnojelac* Decision of 11 February 2000, para. 60; *Aleksovski* Appeal Judgement, para. 171, n. 319; *Delalić et al.* Appeal Judgement, para. 351; *Brđanin and Talić* Decision of 20 February 2001, para. 10.

<sup>71</sup> Rukundo was also convicted for committing genocide for causing serious mental harm to a Tutsi woman at Saint Léon Minor Seminar as a result of sexually assaulting her. See Trial Judgement, paras. 574-576. Paragraph 14 of the Indictment provides clear notice that he committed this crime, and Rukundo does not challenge this notice under this ground of appeal. See also Rukundo Reply Brief, paras. 4, 5; T. 15 June 2010 p. 22.

32. The Appeals Chamber notes that, when considering whether joint criminal enterprise was pleaded as a form of individual criminal responsibility in the Indictment, the Trial Chamber held:

Indeed, the majority of the paragraphs set out specific factual allegations and state only that Rukundo “ordered, instigated or aided and abetted” the killing of Tutsi. The reference to “commission” in the two paragraphs relating to individual criminal responsibility is particularly ambiguous when read in light of the particulars allegedly giving rise to individual criminal responsibility which refer only to the Accused’s mode of participation as “ordering, instigating or aiding and abetting”.<sup>72</sup>

Accordingly, the Trial Chamber found that “the pleading of [joint criminal enterprise] in the Indictment does not provide adequate notice to [Rukundo] of his alleged involvement in a [joint criminal enterprise] and is defective”.<sup>73</sup> This conclusion is clearly consistent with a plain reading of the Indictment that the relevant forms of responsibility for the crimes were ordering, instigating, and aiding and abetting, as specifically pleaded in the relevant paragraphs.<sup>74</sup>

33. The three *chapeau* paragraphs alleging individual criminal responsibility for each count in the Indictment start with a *verbatim* reproduction of Article 6(1) of the Statute stating that Rukundo “planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of th[e] crime[s]”.<sup>75</sup> The Appeals Chamber is of the opinion that in this case this broad formulation is simply an introduction to the more specific paragraphs contained under each Count.

34. The Appeals Chamber notes that the three *chapeau* paragraphs further state that “[w]ith respect to the commission of th[e] crime[s]”, Rukundo “ordered, instigated, or aided and abetted” soldiers, armed civilians and *Interahamwe* “to do the acts” described in the Indictment.<sup>76</sup> These paragraphs end with a sentence specifying that “[t]he particulars that give rise to [Rukundo’s] individual criminal responsibility are set forth in paragraphs [...] below”.<sup>77</sup> With respect to the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians,

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<sup>72</sup> Trial Judgement, para. 27.

<sup>73</sup> Trial Judgement, para. 28. *See also* Trial Judgement, para. 35.

<sup>74</sup> The Appeals Chamber observes that, in summarizing the allegations related to the events at Saint Joseph College and Saint Léon Minor Seminary at the outset of its deliberations, the Trial Chamber also referred to the Indictment as pleading ordering, instigating, and aiding and abetting. *See* Trial Judgement, para. 132 (“Emmanuel Rukundo, who was at the location at all material times, ordered, instigated or aided and abetted the killing of Madame Rudahunga and the causing of grievous bodily harm to two of her children and to Justin and Jeanne.”), para. 337 (“Paragraph 12 of the Indictment alleges that during the months of April and May 1994, the Accused ordered, instigated, or aided and abetted soldiers and *Interahamwe* to kill Tutsi refugees at the St. Léon Minor Seminary by identifying specific refugees to be abducted, and that on more than one occasion, this was done using a list.”).

<sup>75</sup> Indictment, pp. 3, 4, 8-10.

<sup>76</sup> Indictment, pp. 3, 4, 8-10.

<sup>77</sup> Indictment, pp. 4, 9, 10.

subsequent paragraphs specify that Rukundo “ordered, instigated or aided and abetted” these crimes.<sup>78</sup>

35. With regard to the abduction and killing of Tutsi refugees from the Saint Léon Minor Seminary, subsequent paragraphs in the Indictment clarify that Rukundo “ordered, instigated, or aided and abetted” these crimes.<sup>79</sup> The Appeals Chamber finds that these paragraphs clearly show that Rukundo was not accused of “committing” these crimes, as the Indictment specifically charged him for ordering, instigating, or aiding and abetting them, but did not plead “committing” as a form of individual criminal responsibility.<sup>80</sup>

36. The Appeals Chamber is therefore satisfied that the charges against Rukundo and the material facts supporting those charges are pleaded specifically and with sufficient precision in the Indictment. Based on the Indictment, Rukundo would have known that he was being prosecuted for ordering, instigating, and aiding and abetting in connection with the abductions and killings related to Saint Joseph’s College and the Saint Léon Minor Seminary. As noted above, the Trial Chamber’s conclusion with respect to the pleading of joint criminal enterprise would have only reinforced this plain reading.

37. In sum, the Appeals Chamber finds that the Indictment does not plead “commission” as a form of individual criminal responsibility for the crimes of genocide and murder and extermination as crimes against humanity for the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians and for the abduction and subsequent killing of Tutsi refugees from the Saint Léon Minor Seminary. By convicting Rukundo of “committing” these crimes, the Trial Chamber erred in law by expanding the charges against Rukundo to encompass an unpleaded form of responsibility. Even if the failure to plead “committing” with respect to these events could be cured, as the Prosecution suggests, a review of the Prosecution’s opening statement reveals that “committing” was not part of its case at the commencement of the case.<sup>81</sup>

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<sup>78</sup> Indictment, paras. 10(iii), 22.

<sup>79</sup> Indictment, paras. 12, 27.

<sup>80</sup> Moreover, the Appeals Chamber observes that, contrary to the Prosecution’s submissions, the Indictment in this case is distinguishable from those in the *Gacumbitsi*, *Seromba*, and *Ndindabahizi* cases wherein the Indictments were framed differently. *Cf. Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-I, Indictment, 20 June 2001; *The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-I, Indictment, 5 July 2001; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-I, Indictment, 1 September 2003.

<sup>81</sup> T. 15 November 2006 p. 3 (“Your Honours, through evidence we will establish the following: That the role of Emmanuel Rukundo was a subtle one involving instigation, aiding and abetting the soldiers, *Interahamwe* and armed civilians who physically committed the crimes that are charged in this indictment.”). *See also* T. 15 November 2006 pp. 3-5. Notably, in its closing arguments, the Prosecution recalled this statement. *See* T. 20 February 2008 p. 5 (“Your Honours, against this backdrop, it is easy to understand the role that Emmanuel Rukundo played during the genocide in 1994. As we represented to Your Honours during our opening statement, the role of Emmanuel Rukundo

### 3. Conclusion

38. In light of the foregoing, the Appeals Chamber finds that the Trial Chamber erred in law in convicting Rukundo for “committing” genocide and murder and extermination as crimes against humanity for the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians and for the abduction and subsequent killing of Tutsi refugees from the Saint Léon Minor Seminary. Accordingly, the Appeals Chamber grants Rukundo’s First Ground of Appeal, in part, and sets aside Rukundo’s convictions for these crimes on this basis. As a result, the Appeals Chamber need not address Rukundo’s ground of appeal concerning the alleged errors relating to the application of “committing” as a form of responsibility.<sup>82</sup>

39. Nonetheless, the Appeals Chamber notes that the above findings do not exclude Rukundo being held responsible for the other modes of liability for which he was charged under Article 6(1) of the Statute. The Appeals Chamber notes that the Indictment alleges Rukundo’s responsibility for aiding and abetting, ordering, or instigating the crimes charged. The Trial Chamber did not assess Rukundo’s alleged responsibility for these forms of liability given that it found him guilty of committing. As discussed under the Second and Sixth Grounds of Appeal, the Appeals Chamber considers that, based on the Trial Chamber’s findings, Rukundo’s responsibility for these crimes, under Article 6(1) of the Statute, is best described as aiding and abetting.<sup>83</sup>

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was a subtle one, involving instigation and aiding and abetting soldiers, the *Interahamwe* and armed civilians who physically killed members of the Tutsi ethnic group.”). However, the Prosecution went on to state that its theory of the case has always been that “Rukundo was responsible for [the crimes] by commission.” See T. 20 February 2008 p. 6. It illustrated this claim by primarily pointing to the discussion of joint criminal enterprise in its Pre-Trial Brief and then by invoking the *Gacumbitsi* Appeal Judgement. See T. 20 February 2008 p. 6. The Appeals Chamber notes that, while the Prosecution extensively discussed joint criminal enterprise in its Pre-Trial Brief, it did not refer to the *Gacumbitsi* Appeal Judgement.

<sup>82</sup> Rukundo Notice of Appeal, paras. 25, 26; Rukundo Appeal Brief, paras. 39-52. See also Prosecution Response Brief, paras. 33-38.

<sup>83</sup> See *infra* Sections III.B.1.b (Constituent Elements of Murder and Causing Serious Bodily Harm); III.F.1.a (Rukundo’s Role in Committing the Crimes).

## **B. Alleged Errors Relating to the Events at Saint Joseph's College (Ground 2)**

40. The Trial Chamber convicted Rukundo for committing genocide based, in part, on his role in the killing of Madame Rudahunga and the beating of two of her children and two other Tutsi civilians, all of whom were abducted from Saint Joseph's College at Kabgayi in Gitarama Prefecture.<sup>84</sup> It also convicted him for committing murder as a crime against humanity for the killing of Madame Rudahunga.<sup>85</sup> In particular, the Trial Chamber found that, sometime in April 1994, Madame Rudahunga, a Tutsi woman, was abducted from Saint Joseph's College by Rukundo, acting with unknown soldiers, and was taken to her home nearby, where she was shot and killed.<sup>86</sup> It also found that the same group of soldiers returned to the college about 20 minutes later and took away two of her children and two other Tutsi civilians, Justin and Jeanne.<sup>87</sup> All four victims were severely beaten and injured by the soldiers and left for dead.<sup>88</sup>

41. Rukundo submits that the Trial Chamber erred in law and in fact in convicting him based on this incident.<sup>89</sup> The Appeals Chamber considers whether the Trial Chamber erred in its assessment of (1) the legal elements of the crimes and (2) the evidence.

### **1. Legal Elements of the Crimes**

42. Rukundo argues that the Trial Chamber committed a number of errors in convicting him for these events.<sup>90</sup> The Appeals Chamber will consider whether the Trial Chamber erred in (a) treating the murder of Madame Rudahunga and the serious bodily harm caused to her children and the two other Tutsi civilians as a single criminal transaction; (b) finding that the constituent elements of murder and causing serious bodily harm had been proven; (c) finding that the *chapeau* elements of crimes against humanity had been proven; and (d) finding that Rukundo had the intent to commit genocide.

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<sup>84</sup> Trial Judgement, paras. 171, 569, 591.

<sup>85</sup> Trial Judgement, paras. 585, 591.

<sup>86</sup> Trial Judgement, para. 171.

<sup>87</sup> Trial Judgement, para. 171.

<sup>88</sup> Trial Judgement, para. 171.

<sup>89</sup> Rukundo Notice of Appeal, paras. 27-35, 54, 55, 57-61, 65-70, 73, 81, 83, 85, 87-89, 97-99, 104, 105; Rukundo Appeal Brief, paras. 54-79, 108-114, 121-126, 133-145, 176-179, 184-196, 212-220, 225-228, 230, 256-269, 279-300.

<sup>90</sup> Rukundo Notice of Appeal, paras. 27-35; Rukundo Appeal Brief, paras. 54-79, 108-114; Rukundo Reply Brief, para. 25. Rukundo characterizes the alleged errors in this section as errors of law. However, the Appeals Chamber has previously noted that: "although a Trial Chamber's factual findings are governed by the legal rule that facts essential to establishing the guilt of an accused have to be proven beyond reasonable doubt, this does not affect their nature as factual conclusions. A party arguing that a Trial Chamber based its factual conclusions on insufficient evidence therefore submits that the Trial Chamber committed an error in fact, not an error in law." *See Blagojević and Jokić* Appeal Judgement, para. 145.

(a) The Events at Saint Joseph's College as a Single Criminal Transaction

43. In convicting Rukundo for the murder of Madame Rudahunga and the beating of four others abducted from Saint Joseph's College, the Trial Chamber noted: (i) the short interval between the abduction of Madame Rudahunga and the abduction of her children and the two other Tutsi civilians; (ii) that both abductions were carried out by the same soldiers driving a vehicle identified as belonging to Rukundo; (iii) that Rukundo followed Madame Rudahunga's abductors in another vehicle; and (iv) that he boasted about having killed Madame Rudahunga and her two children.<sup>91</sup> Based on these findings, the Trial Chamber concluded that Rukundo "participated in a series of actions, which all form part of the same criminal transaction"<sup>92</sup> and that he "participated in the entire criminal transaction from the beginning [...] until its completion".<sup>93</sup>

44. Rukundo submits that the Trial Chamber erred in treating the murder of Madame Rudahunga and the serious bodily harm caused to her children and the two other Tutsi civilians as a single criminal transaction.<sup>94</sup> He asserts that these are not continuing crimes but instantaneous ones and that the Trial Chamber ought to have examined the *actus reus* of the two crimes separately.<sup>95</sup>

45. The Appeals Chamber finds that the way in which the Trial Chamber used the term "criminal transaction" had no specific legal import in these circumstances. The Appeals Chamber considers that the Trial Chamber used the term "criminal transaction" to encompass and describe the circumstantial evidence of the series of acts which led up to the murder of Madame Rudahunga and the beating of the four others.<sup>96</sup> It then relied on this circumstantial evidence of Rukundo's involvement to convict him. The Trial Chamber used the term "criminal transaction" to emphasize that, given the evidence of Rukundo's involvement in the killing of Madame Rudahunga, and given the circumstantial evidence showing that this event was linked to the beating of her two children and the two other Tutsi civilians, the only reasonable inference was that he was also involved in the beatings. In so doing, the Trial Chamber considered that the circumstantial evidence surrounding both abductions supported its finding that the constitutive elements of both crimes had been proven. The Appeals Chamber recalls that Trial Chambers may base a conviction upon circumstantial evidence<sup>97</sup> and, accordingly, it finds no error on the part of the Trial Chamber in this regard.

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<sup>91</sup> Trial Judgement, para. 171.

<sup>92</sup> Trial Judgement, para. 171. *See also* Trial Judgement, para. 563.

<sup>93</sup> Trial Judgement, para. 172. *See also* Trial Judgement, para. 563.

<sup>94</sup> Rukundo Notice of Appeal, paras. 32, 33; Rukundo Appeal Brief, paras. 55, 57-59, 61.

<sup>95</sup> Rukundo Notice of Appeal, para. 33; Rukundo Appeal Brief, paras. 56-61.

<sup>96</sup> Trial Judgement, para. 171.

<sup>97</sup> *Muvunyi* Appeal Judgement, para. 70; *Muhimana* Appeal Judgement, para. 49.

(b) Constituent Elements of Murder and Causing Serious Bodily Harm

46. The Trial Chamber found that the killing of Madame Rudahunga and the beatings of the four others abducted from Saint Joseph's College formed, in part, the *actus reus* of genocide<sup>98</sup> and that Madame Rudahunga's killing also constituted the *actus reus* of murder as a crime against humanity.<sup>99</sup>

47. Rukundo argues that the Trial Chamber erred in convicting him for committing the murder of Madame Rudahunga and for causing serious bodily harm to two of her children and two other Tutsi civilians despite the fact that the *actus reus* of the crimes had not been established.<sup>100</sup> In support of this, he asserts that the evidence fails to establish that Madame Rudahunga died and that the others were beaten as a result of his acts; thus, there was no causal link between his acts and the death of Madame Rudahunga and the beating of the others.<sup>101</sup>

48. The Prosecution responds that the Trial Chamber found that Rukundo was instrumental in the abductions and subsequent killing of Madame Rudahunga.<sup>102</sup> It submits that, as set out in the *Gacumbitsi* Appeal Judgement, it is immaterial that Rukundo did not physically commit the crime.<sup>103</sup> It further submits that the Trial Chamber correctly found that Rukundo intended the killing of Madame Rudahunga and the serious bodily harm caused to the four others and that he possessed the *mens rea* for genocide and murder as a crime against humanity.<sup>104</sup>

49. The Appeals Chamber notes that Rukundo does not challenge the finding that Madame Rudahunga was killed and that two of her children and two other Tutsi refugees abducted from Saint Joseph's College were beaten.<sup>105</sup> His only challenge is to whether there was a causal link between his alleged role in the attacks and the occurrence of the attacks.

50. The Appeals Chamber recalls that it has found that the Trial Chamber erred in finding that Rukundo committed the killing of Madame Rudahunga and the beatings of the four others because this form of responsibility was not pleaded in the Indictment.<sup>106</sup> The Appeals Chamber will therefore consider whether Rukundo's acts, as found by the Trial Chamber, amounted to one of the

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<sup>98</sup> Trial Judgement, para. 569.

<sup>99</sup> Trial Judgement, para. 585.

<sup>100</sup> Rukundo Notice of Appeal, paras. 34, 35. Rukundo also submits that the *mens rea* of the crimes was not established. Rukundo Notice of Appeal, paras. 34, 35. His arguments in this respect are addressed in Sections III.B.1.c (*Chapeau* Elements of Crimes Against Humanity) and III.B.1.d (Intent to Commit Genocide).

<sup>101</sup> Rukundo Appeal Brief, paras. 62-74, 77-79.

<sup>102</sup> Prosecution Response Brief, paras. 43-46.

<sup>103</sup> Prosecution Response Brief, paras. 42, 45.

<sup>104</sup> Prosecution Response Brief, para. 47.

<sup>105</sup> See Rukundo Appeal Brief, paras. 62-74.

other forms of responsibility pleaded in the Indictment. In the course of doing so, the Appeals Chamber will consider whether there was a sufficient nexus between Rukundo's acts, which he disputes under this ground of appeal, and the perpetration of the crimes as required by the relevant form of responsibility.

51. In determining Rukundo's role in the murder of Madame Rudahunga and the beating of the four others, the Trial Chamber noted that all four of the Prosecution witnesses who testified about this event connected him to the attacks.<sup>107</sup> It found that Rukundo was at the scene of the abduction and that he followed the vehicle carrying Madame Rudahunga and the soldiers who abducted her.<sup>108</sup> It further found that these same soldiers returned to Saint Joseph's College about 20 minutes later and abducted her children and two other Tutsi civilians.<sup>109</sup> Rukundo's car was also observed in the area of Madame Rudahunga's house after the killing and the beatings.<sup>110</sup> Furthermore, the Trial Chamber noted that Witness BLC attested to hearing him boast that "[w]e entered in Rudahunga's Inyenzi's house, we killed the wife and the children, but the idiot managed to get away",<sup>111</sup> while Witness CCH stated that Rukundo told her that Louis Rudahunga had to be killed.<sup>112</sup> The Appeals Chamber finds that it was reasonable for the Trial Chamber to conclude that this evidence was sufficient to support a finding that Rukundo was involved in the killing of Madame Rudahunga and the beatings of the four others.

52. The Appeals Chamber has explained that an "aider and abettor commits acts specifically aimed at assisting, encouraging, or lending moral support for the perpetration of a specific crime, and that this support had a substantial effect on the perpetration of the crime."<sup>113</sup> It recalls that there is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime nor that such conduct served as a condition precedent to the commission of the crime.<sup>114</sup> It is sufficient for the aider and abettor's assistance or encouragement to have had a substantial effect on the realisation of that crime,<sup>115</sup> the establishment of which is a "fact-based

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<sup>106</sup> See *supra* Section III.A (Ground 1: Alleged Error Relating to the Pleading of Commission).

<sup>107</sup> Trial Judgement, para. 165.

<sup>108</sup> Trial Judgement, paras. 165, 171.

<sup>109</sup> Trial Judgement, para. 171.

<sup>110</sup> Trial Judgement, para. 166.

<sup>111</sup> Trial Judgement, para. 167.

<sup>112</sup> Trial Judgement, para. 168.

<sup>113</sup> *Seromba* Appeal Judgement, para. 44. See also *Karera* Appeal Judgement, para. 321; *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 81; *Blagojevi} and Joki}* Appeal Judgement, para. 127.

<sup>114</sup> *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 81; *Blagojevi} and Joki}* Appeal Judgement, para. 134; *Blaškić* Appeal Judgment, para. 48.

<sup>115</sup> *Mrk{i} and [ljivan~anin* Appeal Judgement, para. 81; *Ori}* Appeal Judgement, para. 43; *Nahimana et al.* Appeal Judgement, para. 482; *Blagojevi} and Joki}* Appeal Judgement, para. 134.

inquiry”.<sup>116</sup> The Appeals Chamber is satisfied that the Trial Chamber’s findings on Rukundo’s role in the attacks, as set out above, demonstrate that his acts substantially contributed to the commission of the crimes.

53. With regard to the *mens rea* required for aiding and abetting, the Appeals Chamber has held that “Ftǵhe requisite mental element F...ǵ is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.”<sup>117</sup> Specific intent crimes such as genocide also require that “the aider and abettor must know of the principal perpetrator’s specific intent.”<sup>118</sup>

54. Bearing in mind the Trial Chamber’s findings that these attacks formed part of a larger campaign of ethnic violence in the area and country,<sup>119</sup> the Appeals Chamber is convinced that the perpetrators acted with both genocidal intent and knowledge of the widespread and systematic attack against Tutsi civilians. In his consultation with the assailants prior to the crimes, his presence during the abduction of Madame Rudahunga, and his subsequent boasting of the killing, Rukundo would have been aware of his role in the crimes and the perpetrators’ *mens rea*. Consequently, the Appeals Chamber finds that Rukundo’s actions aided and abetted genocide and murder as a crime against humanity.

(c) Chapeau Elements of Crimes Against Humanity

55. Rukundo challenges his conviction for murder as a crime against humanity on the basis that Madame Rudahunga did not belong to a political group and it was not proven that he was aware of the existence of a widespread or systematic attack on a civilian population.<sup>120</sup>

56. Article 3 of the Statute requires that the crimes be committed “as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.” In the present case, the Trial Chamber found that the killing of Madame Rudahunga, a Tutsi, was part of a widespread and systematic attack against Tutsi civilians on ethnic grounds.<sup>121</sup>

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<sup>116</sup> *Blagojević and Jokić* Appeal Judgement, para. 134.

<sup>117</sup> *Muvunyi* Appeal Judgement, para. 79. See also *Karera* Appeal Judgement, para. 321; *Mrkšić and [Ijivan-anin]* Appeal Judgement, para. 49.

<sup>118</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Blagoje Simić* Appeal Judgement, para. 86.

<sup>119</sup> Trial Judgement, paras. 565-568, 581-582.

<sup>120</sup> Rukundo Appeal Brief, paras. 75, 76.

<sup>121</sup> Trial Judgement, paras. 581, 582. The Appeals Chamber also recalls that the individual victim’s membership in a national, political, ethnic, racial or religious group is not required for a conviction for crimes against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population. See, e.g., *Muhimana* Appeal Judgement, paras. 172-174 (upholding a conviction for the rape as a crime against humanity of two women whose ethnicity was unknown but which was found to be part of a widespread and systematic attack on ethnic grounds against Tutsis). See also *Mrkšić and [Ijivan-anin]*

Accordingly, for the purposes of Rukundo's conviction, it is irrelevant whether Madame Rudahunga belonged to a political group.

57. Furthermore, the Appeals Chamber finds no error in the Trial Chamber's reliance on Rukundo's evidence that he knew that Tutsis were being targeted at roadblocks and elsewhere on the basis of their ethnicity to find that he was aware of the existence of a widespread or systematic attack on a civilian population.<sup>122</sup> The fact that he stated this as part of his evidence that he assisted Tutsis does not negate the fact that his testimony indicates his awareness of the existence of the widespread and systematic attack on the civilian population.

(d) Intent to Commit Genocide

58. The Trial Chamber took into account a number of factors in finding that Rukundo possessed the intent to destroy in whole or in part the Tutsi ethnic group when he committed the murder of Madame Rudahunga and caused serious bodily harm to her two children and two other Tutsi civilians.<sup>123</sup> It took judicial notice of the fact that, during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population, and it relied on contextual evidence that, in Gitarama Prefecture, Tutsis were targeted on the basis of their ethnicity, including at Saint Joseph's College.<sup>124</sup> It also found that Rukundo led a group of soldiers who systematically searched for Tutsi refugees in Saint Joseph's College and checked their identity cards for their ethnicity.<sup>125</sup> Furthermore, the Trial Chamber considered that Rukundo boasted about having killed Madame Rudahunga and her two children, whom he referred to as *Inyenzi*.<sup>126</sup>

59. Rukundo argues that the Trial Chamber erred in finding that he possessed the requisite intent to commit genocide.<sup>127</sup> He submits that the Trial Chamber erred by relying on judicial notice taken of the context of mass killing in Rwanda in 1994, and on the evidence adduced at trial of the general context in Gitarama Prefecture in which Tutsis were targeted on the basis of their ethnicity.<sup>128</sup> He asserts that this contextual evidence did not relieve the Prosecution of the burden of proving that he possessed the requisite specific intent at the time the crimes were committed and

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Appeal Judgement, paras. 29-32; *Marti*} Appeal Judgement, paras. 305, 307 (holding that individual victims of crimes against humanity do not have to be part of the targeted civilian population provided that the crime was part of a widespread or systematic attack on a civilian population).

<sup>122</sup> See Trial Judgement, para. 582.

<sup>123</sup> Trial Judgement, paras. 565-568.

<sup>124</sup> Trial Judgement, paras. 565, 566, 568.

<sup>125</sup> Trial Judgement, paras. 567, 568.

<sup>126</sup> Trial Judgement, paras. 567, 568.

<sup>127</sup> Rukundo Notice of Appeal, para. 30; Rukundo Appeal Brief, paras. 108-114; Rukundo Reply Brief, paras. 52-56.

<sup>128</sup> Rukundo Appeal Brief, para. 108.

that there was no evidence upon which the Trial Chamber could have relied to find that he possessed the requisite intent.<sup>129</sup>

60. Furthermore, Rukundo submits that while the identities of the refugees at Saint Joseph's College were checked, only the members of the Rudahunga family were abused, which indicates that Tutsis in general were not targeted but only the Rudahunga family on the basis of their political affiliation.<sup>130</sup> In this regard, he asserts that the Trial Chamber erred in considering his reference to the Rudahunga family as being *Inyenzi* to refer to the fact that they were Tutsi.<sup>131</sup> He recalls that genocide within the meaning of Article 2 of the Statute does not cover political parties as a targeted group.<sup>132</sup>

61. The Appeals Chamber has determined that Rukundo's actions in relation to these crimes constitute aiding and abetting, not committing, under Article 6(1) of the Statute. Therefore, as noted above, it is not required that he possess genocidal intent, only knowledge that the principal perpetrators possessed it.<sup>133</sup> In this case, the relevant findings underpinning the Trial Chamber's findings that he possessed the *mens rea* for genocide are equally applicable to the question of whether the principal perpetrators had this intent and that he was aware of this fact. The Trial Chamber correctly held that the specific intent for genocide may be inferred from an accused's overt statements or other circumstantial evidence.<sup>134</sup> In line with the Appeals Chamber's previous holdings,<sup>135</sup> the Trial Chamber stated that:

Factors that may enable a Trial Chamber to infer the perpetrator's genocidal intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group or the repetition of destructive and discriminatory acts.<sup>136</sup>

62. The Appeals Chamber finds no error in the fact that the Trial Chamber took into consideration the judicially-noticed fact that "during 1994, there was a campaign of mass killing

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<sup>129</sup> Rukundo Appeal Brief, para. 109.

<sup>130</sup> Rukundo Appeal Brief, paras. 111, 113.

<sup>131</sup> Rukundo Appeal Brief, para. 112.

<sup>132</sup> Rukundo Appeal Brief, para. 114.

<sup>133</sup> See *supra* Section III.B.1.b (Constituent Elements of Murder and Causing Serious Bodily Harm). See also *Blagojević and Jokić* Appeal Judgement, para. 127; *Blagoje Simić* Appeal Judgement, para. 86.

<sup>134</sup> Trial Judgement, paras. 556, 557.

<sup>135</sup> See *Seromba* Appeal Judgement, para. 176; *Gacumbitsi* Appeal Judgement, para. 40; *Krstić* Appeal Judgement, para. 34.

<sup>136</sup> Trial Judgement, para. 557, citing *Semanza* Appeal Judgement, paras. 261, 262; *Rutaganda* Appeal Judgement, para. 525; *Ndindabahizi* Trial Judgement, para. 454; *Ntagerura et al.* Trial Judgement, para. 663.

intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population".<sup>137</sup> The Appeals Chamber has held that:

[t]here is a significant difference between the taking of judicial notice of a fact of genocide and the determination that an accused is individually criminally responsible for the crime of genocide. The former gives a factual context to the allegations of the crime of genocide. The latter requires a finding of whether the elements of the crime of genocide, such as *actus reus* and *mens rea*, exist in order to ascertain whether an accused is responsible for the crime.<sup>138</sup>

It has also explained that "it would plainly be improper for facts judicially noticed to be the basis for proving the Appellant's criminal responsibility (in the sense of being *sufficient* to establish that responsibility)."<sup>139</sup> However, judicial notice is appropriate in providing "the context for understanding an individual's actions."<sup>140</sup>

63. As the Appeals Chamber's jurisprudence underscores, Rukundo is correct in contending that judicial notice and evidence of the general context cannot be a substitute for specific findings on *mens rea*. However, the Trial Chamber's analysis does not use the general context in Rwanda and in Gitarama Prefecture as the sole basis for finding that Rukundo possessed the *mens rea* for genocide. Instead, it appropriately used the judicially-noticed finding of widespread attacks against Tutsis in Rwanda, and the contextual evidence about the targeting of Tutsis in Gitarama Prefecture, as a frame or context in which to interpret numerous other indicators of Rukundo's *mens rea*. In particular, the Trial Chamber relied on evidence that Rukundo led a group of soldiers who searched for Tutsi refugees at Saint Joseph's College and checked their identity cards, and later referred to the Rudahunga family as "*Inyenzi*".<sup>141</sup>

64. Finally, the Appeals Chamber is not convinced that the members of the Rudahunga family were the only individuals targeted or that they were targeted solely because of their political affiliations. In this regard, it notes that they were not the only individuals asked to present their identification cards and were not the only ones abducted and assaulted.<sup>142</sup> Indeed, there was no evidence that the other two Tutsi civilians, Justin and Jeanne, who were abducted and assaulted had any political affiliations.<sup>143</sup> The Appeals Chamber also finds that it was reasonable for the Trial Chamber to consider that Rukundo's reference to the Rudahunga family as *Inyenzi* referred to the

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<sup>137</sup> Trial Judgement, para. 565, citing *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(c), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 ("*Karemera et al.* Appeal of Decision on Judicial Notice"), para. 35.

<sup>138</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(c), Decision on Motions for Reconsideration, 1 December 2006, para. 16.

<sup>139</sup> *Karemera et al.* Appeal of Decision on Judicial Notice, para. 47.

<sup>140</sup> *Karemera et al.* Appeal of Decision on Judicial Notice, para. 36 (internal quotations omitted).

<sup>141</sup> See Trial Judgement, paras. 567, 568.

<sup>142</sup> See Trial Judgement, paras. 115, 130.

<sup>143</sup> See Trial Judgement, paras. 98, 102, 116.

fact that they were Tutsi.<sup>144</sup> Accordingly, the Appeals Chamber finds that Rukundo has failed to demonstrate that the Trial Chamber erred in its assessment of the facts relating to the *mens rea* of genocide.

## 2. Assessment of the Evidence

65. Rukundo submits that the Trial Chamber committed a number of errors of law and fact in the assessment of the evidence supporting his conviction for the events at Saint Joseph's College.<sup>145</sup> The Appeals Chamber will consider, as Rukundo contends, whether the Trial Chamber: (a) disregarded the standards applicable to the identification of the accused; (b) failed to apply the relevant principles governing corroboration; (c) failed to consider inconsistencies in the evidence properly; (d) erred in finding that Rukundo was in a position of authority; (e) distorted the evidence of Witness BLP; or (f) systematically accorded minimal weight to the evidence of Defence witnesses.

### (a) Alleged Errors in Relation to Witnesses' Identification of Rukundo

66. Rukundo argues that the Trial Chamber erred in law by failing to respond to a number of his submissions in his Final Trial Brief challenging the Prosecution witnesses' identification of him.<sup>146</sup> He asserts that this failure to provide a reasoned opinion invalidates the Trial Judgement.<sup>147</sup> He further submits that the Trial Chamber erred in relation to the standards applicable to the identification of an accused by witnesses.<sup>148</sup> In particular, in relation to the events at Saint Joseph's College, he contends that the Trial Chamber erred in accepting Witnesses BLJ's and BLP's identification of him.<sup>149</sup> Rukundo asserts that Witness BLJ's evidence that Rukundo's nickname was "Chicago", that she met him in Kabgayi at Christmas 1993, and that he ill-treated her brother at the Saint Léon Minor Seminary when he never taught there raises the possibility that she was mistaken about his identity.<sup>150</sup> In addition, Rukundo recalls that Witness BLP was unable to identify

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<sup>144</sup> See *Nahimana et al.* Appeal Judgement, para. 739 ("[...] even though the terms *Inyenzi* and *Inkotanyi* may have various meanings in various contexts (as with many words in every language), the Appeals Chamber is of the opinion that it was reasonable for the Trial Chamber to conclude that these expressions could in certain cases be taken to refer to the Tutsi population as a whole.").

<sup>145</sup> Rukundo Notice of Appeal, paras. 44, 45, 53-55, 57-61, 65-70, 73, 81, 83, 85-89, 97-99, 104, 105; Rukundo Appeal Brief, paras. 121-126, 133-145, 176-179, 184-196, 212-220, 225-228, 230, 256, 257, 259, 260, 263-269, 279-300. Rukundo frames his arguments in this section as errors of fact, but presents arguments alleging both errors of law and of fact.

<sup>146</sup> Rukundo Notice of Appeal, paras. 44, 45; Rukundo Appeal Brief, paras. 121-123, *citing* Rukundo Final Trial Brief, paras. 950-955, 1447-1912.

<sup>147</sup> Rukundo Appeal Brief, para. 123.

<sup>148</sup> Rukundo Notice of Appeal, para. 53; Rukundo Appeal Brief, paras. 124-126; Rukundo Reply Brief, paras. 59-63.

<sup>149</sup> Rukundo Notice of Appeal, para. 54; Rukundo Appeal Brief, paras. 133-145; Rukundo Reply Brief, paras. 70-77.

<sup>150</sup> Rukundo Appeal Brief, paras. 133-137.

him at trial.<sup>151</sup> He asserts that Witness BLP's evidence that he met Rukundo in September 1991 at Kabgayi Cathedral, in 1992 and 1993 at the ordination of Fathers Rukanika and Kiwanuka, and in 1992 and 1993 at the Maundy Thursday masses,<sup>152</sup> is contradicted by other evidence thus calling into question whether Witness BLP actually knew him.<sup>153</sup>

67. The Appeals Chamber recalls that a reasonable Trial Chamber must take into account the difficulties associated with identification evidence in a given case and must carefully evaluate any such evidence before accepting it as the basis for sustaining a conviction.<sup>154</sup> The Appeals Chamber notes that the Trial Chamber did not explicitly consider the issues raised by Rukundo regarding Witness BLJ's confusion between him and Chicago, whether he was the priest who mistreated her brother, and when she first met Rukundo.<sup>155</sup> Although Trial Chambers are not required to refer to every piece of evidence on the trial record,<sup>156</sup> the Appeals Chamber considers that the Trial Chamber's failure to address these points in relation to Witness BLJ's identification of him amounts to a failure to provide a reasoned opinion.

68. Nonetheless, the Appeals Chamber is not convinced that this error invalidates the Trial Judgement. Witness BLJ was cross-examined extensively about her confusion between Rukundo and Chicago, whether he was the priest who mistreated her brother, and when she first met Rukundo.<sup>157</sup> She explained that she had been confused between Chicago, who her brother told her had mistreated him at school, and Rukundo because she had never seen Chicago and assumed that they were the same person because they were both said to hate Tutsis; being a young girl at the time, she assumed that there was only one such priest.<sup>158</sup> She explained that it was later, upon further reflection, that she realised that they were not the same person.<sup>159</sup> Furthermore, when it was put to her that she could not have first seen Rukundo at the Kabgayi Cathedral at Christmas of 1993 because Christmas is a busy time of year for priests and thus he would have been in Ruhengeri, she explained that it was sometime during the Christmas vacation which lasted three weeks and not

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<sup>151</sup> Rukundo Appeal Brief, paras. 138, 141.

<sup>152</sup> The Maundy Thursday masses are also referred to as the Holy Thursday masses which occur just before Easter.

<sup>153</sup> Rukundo Appeal Brief, paras. 139-141.

<sup>154</sup> *Limaj et al.* Appeal Judgement, para. 30; *Kamuhanda* Appeal Judgement, para. 234; *Kupre{ki} et al.* Appeal Judgement, para. 34.

<sup>155</sup> See Rukundo Final Trial Brief, paras. 1486-1511.

<sup>156</sup> *Nchamihigo* Appeal Judgement, para. 121; *Kajelijeli* Appeal Judgement, paras. 59, 60.

<sup>157</sup> T. 9 March 2007 pp. 31, 32; T. 12 March 2007 pp. 14-33.

<sup>158</sup> T. 12 March 2007 pp. 19-24.

<sup>159</sup> T. 12 March 2007 pp. 20-24.

specifically on Christmas.<sup>160</sup> Rukundo has not demonstrated that these explanations are unreasonable.

69. Furthermore, the Appeals Chamber recalls that after Witness BLJ and the others were abducted from Saint Joseph's College and attacked, she was told that "Father Emmanuel's car" was still in the vicinity of the attack and that Rukundo later appeared at the Kabgayi hospital with two of the soldiers who had abducted her. Witness BLJ testified that this allowed her to make the connection between the reference to the presence of "Father Emmanuel's car" and Rukundo.<sup>161</sup> The Trial Chamber considered this evidence, as well as the fact that she had not referred to the presence of Father Emmanuel's car in her previous statement.<sup>162</sup> It excluded a portion of her evidence regarding Rukundo's presence at Kabgayi hospital because it was not pleaded in the Indictment, but concluded that, given that nine years had passed since the traumatic incident, the discrepancy with her previous statement did not undermine her credibility.<sup>163</sup>

70. The Appeals Chamber considers that Rukundo has not shown that it was unreasonable for the Trial Chamber to have accepted Witness BLJ's explanation of how she knew Rukundo and that he was involved in the abductions and attacks on those taken from Saint Joseph's College.

71. With respect to Witness BLP's identification evidence of Rukundo, the Trial Chamber took into account the fact that he incorrectly identified Rukundo at trial.<sup>164</sup> Although the Trial Chamber noted that in-court identification of the accused has little probative value,<sup>165</sup> this was one of the factors it identified as affecting his credibility and as leading it to conclude that it could only rely on Witness BLP's evidence if corroborated.<sup>166</sup> The Appeals Chamber does not find that the Trial Chamber erred in this regard.

72. Although the Trial Chamber noted that Witness BLP testified that he knew Rukundo in 1994,<sup>167</sup> it did not explicitly consider the contradictory evidence of other witnesses regarding how he knew Rukundo prior to 1994. In light of Witness BLP's difficulty identifying Rukundo at trial and the other issues affecting his credibility, the Appeals Chamber considers that the Trial Chamber should have addressed these inconsistencies. Accordingly, the Appeals Chamber will consider whether this error invalidated the Trial Chamber's decision.

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<sup>160</sup> T. 12 March 2007 pp. 32, 33.

<sup>161</sup> T. 9 March 2007 p. 19; T. 12 March 2007 p. 11.

<sup>162</sup> Trial Judgement, paras. 148-153, 166.

<sup>163</sup> Trial Judgement, paras. 152, 153.

<sup>164</sup> Trial Judgement, para. 143.

<sup>165</sup> Trial Judgement, n. 212.

<sup>166</sup> Trial Judgement, paras. 143, 146.

<sup>167</sup> Trial Judgement, para. 57.

73. Witness BLP testified that he had seen Rukundo on five occasions prior to 1994: (i) in approximately September 1991, just after Rukundo was ordained and was introduced to the congregation at Kabgayi Cathedral; (ii) on Holy Thursday in 1992; (iii) in the summer of 1992 during an ordination of priests, including Fathers Emme Rukamanika and Kiwanuaka; (iv) on Holy Thursday in 1993; and (v) during the summer of 1993 during an ordination in Kabgayi.<sup>168</sup>

74. While Rukundo denied being introduced at the Kabgayi Cathedral after his ordination and denied attending the 1993 Holy Thursday ceremony, he explicitly acknowledged attending the 1992 Holy Thursday mass.<sup>169</sup> Furthermore, in relation to Rukundo's submission that Witnesses CCN and BPA contradicted Witness BLP's evidence that Fathers Emme Rukamanika and Kiwanuaka were ordained in 1992, the Appeals Chamber notes that the Trial Chamber did not find Witness BPA to be credible<sup>170</sup> and considers that Witness CCN's evidence does not address when Father Rukamanika was ordained. However, Witnesses SLA and EVC did both testify that there were no ordinations in Kabgayi Cathedral in 1992 and 1993.<sup>171</sup> Nonetheless, even if the evidence of Witnesses SLA, EVC, and Rukundo were accepted, given that Rukundo acknowledged being present at the Holy Thursday mass in 1992 where Witness BLP said he saw him, the Appeals Chamber finds no error in the Trial Chamber's finding that Witness BLP knew him in 1994.<sup>172</sup>

(b) Alleged Errors Regarding Corroboration

75. Rukundo argues that the Trial Chamber failed to apply the relevant principles governing corroboration to its assessment of the evidence.<sup>173</sup> He submits that, despite the Trial Chamber stating that it would rely on Witness BLP's evidence only if corroborated, it proceeded to rely on the witness's evidence that Rukundo was at Saint Joseph's College on the day Madame Rudahunga was abducted, that soldiers showed Rukundo documents outside the college, and that Rukundo followed the soldiers' vehicle carrying Madame Rudahunga, all of which was uncorroborated.<sup>174</sup> Rukundo asserts that the Trial Chamber should have set aside all uncorroborated portions of Witness BLP's evidence.<sup>175</sup> In this regard, he asserts that Witnesses BLJ's and CCH's evidence does not link him to the attacks on the Rudahunga family.<sup>176</sup> He also contends that the evidence of

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<sup>168</sup> T. 16 November 2006 pp. 10, 16-21.

<sup>169</sup> T. 9 October 2007 p. 32.

<sup>170</sup> Trial Judgement, para. 268.

<sup>171</sup> T. 1 October 2007 p. 11 (Witness SLA); T. 11 September 2007 p. 30 (Witness EVC).

<sup>172</sup> See Trial Judgement, para. 57.

<sup>173</sup> Rukundo Appeal Brief, para. 196; Rukundo Reply Brief, para. 80.

<sup>174</sup> Rukundo Notice of Appeal, paras. 55, 57-61; Rukundo Reply Brief, paras. 81, 82.

<sup>175</sup> Rukundo Appeal Brief, para. 178.

<sup>176</sup> Rukundo Appeal Brief, paras. 185, 186, 188; Rukundo Reply Brief, para. 88.

Witnesses BLP, BLJ, and BLC is contradictory with respect to the date and time of the events as well as the type of vehicle used.<sup>177</sup>

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

two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.<sup>178</sup>

77. The Appeals Chamber finds no error in the Trial Chamber's finding that Witnesses BLP, BLJ, BLC, and CCH corroborated each other on the sequence of events at Saint Joseph's College, despite the fact that they did not all testify about the same fact or from the same vantage point. The Trial Chamber took into consideration that Witness BLJ corroborated Witness BLP on the fact that Madame Rudahunga was abducted from Saint Joseph's College by a group of soldiers and that the same soldiers returned about 20 minutes later and abducted two of her children and two other Tutsi civilians.<sup>179</sup> It also found that these two witnesses corroborated each other regarding the fact that Rukundo was acting with the soldiers.<sup>180</sup> While Witness BLP saw Rukundo leave Saint Joseph's College with the soldiers and Madame Rudahunga, Witness BLJ was told of "Father Emmanuel's car" still being in the vicinity of the attack, and she saw Rukundo at the hospital with the same soldiers who abducted her.<sup>181</sup> Although their evidence was different, both gave evidence that Rukundo was involved.

78. Similarly, the Trial Chamber noted that Witness BLC's evidence that Rukundo boasted about the killing of the Rudahunga family was consistent with the evidence of Witnesses BLP and BLJ.<sup>182</sup> Witness BLC's evidence was from a different perspective, as he was not present at the events but was told about them by Rukundo. However, it nonetheless supports the conclusion that Rukundo was involved in the attacks.

79. Finally, the Trial Chamber noted that Witness CCH's evidence that Rukundo told her that Louis Rudahunga had to be killed and that they had found documents at Louis Rudahunga's house

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<sup>177</sup> Rukundo Appeal Brief, paras. 187, 192-195; Rukundo Reply Brief, paras. 83-86.

<sup>178</sup> *Nahimana et al.* Appeal Judgement, para. 428. See also *Karera* Appeal Judgement, para. 173.

<sup>179</sup> Trial Judgement, paras. 165, 166.

<sup>180</sup> Trial Judgement, para. 166.

<sup>181</sup> Trial Judgement, paras. 165, 166.

<sup>182</sup> Trial Judgement, para. 167.

was consistent with Witness BLC's evidence.<sup>183</sup> According to Witness BLC, Rukundo had said that Louis Rudahunga had escaped but that Madame Rudahunga and her children had been killed.<sup>184</sup>

80. The Appeals Chamber finds no error in the Trial Chamber's reasoning that this evidence is corroborative of Witness BLP's evidence despite coming from different perspectives.

81. The Appeals Chamber further recalls that minor inconsistencies commonly occur in witness testimony without rendering the testimony unreliable and that it is within the discretion of the Trial Chamber to evaluate such inconsistencies and to consider whether the evidence as a whole is credible, without explaining its decision in every detail.<sup>185</sup>

82. The Appeals Chamber is not convinced that the evidence of Witnesses BLP, BLJ, and BLC regarding the dates of the abductions from Saint Joseph's College is sufficiently inconsistent to render unreasonable the Trial Chamber's finding that these witnesses corroborated each other. Witnesses BLP and BLJ placed the event in late April 1994 and on 27 April 1994 respectively,<sup>186</sup> whereas Witness BLC testified that it was in May when Rukundo boasted that they had killed Madame Rudahunga and her children after coming from the Rudahunga home.<sup>187</sup> While Witness BLC's evidence about the date of the attacks varies from that of Witnesses BLP and BLJ, the latter two witnesses' testimony is consistent. As Witnesses BLP and BLJ were the two eyewitnesses to the attack, the Appeals Chamber does not consider that this minor inconsistency in Witness BLC's evidence undermines the general finding that these witnesses corroborated each other.

83. Similarly, while the Trial Chamber did not explicitly address at what time the abductions and attacks on Madame Rudahunga, her children, and the two others took place, the Appeals Chamber considers that the inconsistencies between the witnesses' evidence were minor and that their testimonies on this point were largely consistent. All the witnesses placed the abductions in the

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<sup>183</sup> Trial Judgement, para. 168. *See also* Trial Judgement, para. 158.

<sup>184</sup> Trial Judgement, para. 154.

<sup>185</sup> *Karera* Appeal Judgement, para. 174; *Kvočka et al.* Appeal Judgement, para. 23.

<sup>186</sup> Trial Judgement, paras. 96, 101.

<sup>187</sup> T. 7 December 2006 p. 39. Witness BLC did not specify the date on which he heard Rukundo boasting about the killing of the Rudahunga family during his examination-in-chief. T. 4 December 2006 pp. 21, 22. However, during cross-examination he stated: "A. I'm talking about a particular day but not a date that I recall. I'm talking about the images that I recall, the weather. It had just rained, for example, and I did not say that it was such a date. Q. Witness, are you able to situate this event in April, May, early – early April, early May – early April, early – end of May, early April, end of May? A. It is true that it was a certain period, obviously not in April. It must have been in May, certainly. Q. (Microphones overlapping) A. It was – I believe it was around mid May, but it's certain that it was in May, not in April. That I recall." *See* T. 7 December 2006 p. 39. When confronted with the assertion that Madam Rudahunga died in the middle of April 1994, Witness BLC stated: "Of course. You can contest or question the time. You see, when I came here, I said, 'Let me not be asked questions about specific dates.'" *See* T. 7 December 2006 p. 41.

morning, within a range of a few hours.<sup>188</sup> Furthermore, as the Trial Chamber noted, Witnesses BLP and BLJ were consistent regarding the short period of time between the abduction of Madame Rudahunga, her children, and the two others.<sup>189</sup>

84. With respect to the type of vehicles used in the abductions, although the Trial Chamber did not explicitly address this matter, the Appeals Chamber finds that the alleged inconsistency is minor.<sup>190</sup> Accordingly, the Trial Chamber's failure to address this issue does not call into question the consistency of the witnesses' evidence.

(c) Alleged Inconsistencies in the Evidence

85. Rukundo argues that given the numerous inconsistencies in the evidence of Witnesses BLJ, BLC, and BLP, no reasonable trier of fact could have found them credible.<sup>191</sup> In relation to Witness BLJ, Rukundo notes a number of inconsistencies between her testimony at trial and her written statement. These include who told her that Father Emmanuel's car was still in the vicinity after the attack; which vehicle she was shown; her confusion regarding whether Rukundo was the person known as Chicago; when she first met Rukundo; and how many times Rukundo visited Kabgayi hospital.<sup>192</sup> Rukundo asserts that Witness BLC's 1997 memoir gives the impression that he witnessed Madame Rudahunga's killing, which is inconsistent with his testimony.<sup>193</sup> Rukundo also submits that Witness BLP's testimony differed from his written statement of 5 October 2005 with respect to whether Madame Rudahunga, two of her children, and the two other Tutsi civilians were abducted at the same time or separately and the number of vehicles that were present during the abduction.<sup>194</sup> Rukundo also points to the fact that a joint statement of detainees at Gitarama prison

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<sup>188</sup> Witness BLP placed the abduction of Madame Rudahunga at around 10.00 a.m. and stated that the soldiers returned about 20 minutes later for her two children and two other Tutsi civilians. Trial Judgement, paras. 96-98. Meanwhile Witness BLJ testified that Madame Rudahunga was taken away at about 6.00 a.m. and the soldiers returned to abduct her and the three others about 30 minutes later. Trial Judgement, paras. 101, 102. Witness SJD testified that at about 4.30 or 5.00 a.m. soldiers were searching rooms at Saint Joseph's College and on his way to mass he saw the Rudahunga children in the back of a truck. Trial Judgement, paras. 115, 116. Witness SJA testified that soldiers knocked on his door at about 5.20 a.m. and were still searching the college at 10.00 a.m. He stated that Madame Rudahunga and her children and two others were taken away later in the day. Trial Judgement, paras. 130, 131.

<sup>189</sup> Trial Judgement, para. 166.

<sup>190</sup> Witness BLP testified that he saw three vehicles at Saint Joseph's College that day: a blue Hiace taxi, a khaki-coloured Toyota pick-up Hilux, and a white Suzuki Samurai vehicle. Trial Judgement, para. 96. Witness BLJ testified that she was taken from the college in a blue Toyota pick-up vehicle and that she saw the same blue Toyota pick-up after her attack near the Rudahunga house. Trial Judgement, paras. 102, 103. Witness BLC testified that Rukundo arrived in a pick-up truck covered in mud which he thought might have been green, but he was not sure about the colour. Trial Judgement, para. 106; T. 7 December 2006 p. 40.

<sup>191</sup> Rukundo Notice of Appeal, para. 65; Rukundo Appeal Brief, para. 230; Rukundo Reply Brief, para. 95.

<sup>192</sup> Rukundo Notice of Appeal, paras. 66-68; Rukundo Appeal Brief, paras. 214-220.

<sup>193</sup> Rukundo Notice of Appeal, para. 69; Rukundo Appeal Brief, paras. 221-224.

<sup>194</sup> Rukundo Appeal Brief, paras. 225, 226.

describing the attack on the Rudahunga family, which Witness BLP signed, does not contain Rukundo's name.<sup>195</sup>

86. The Appeals Chamber recalls that a Trial Chamber has the discretion to accept a witness's evidence, notwithstanding inconsistencies between the said evidence and his or her previous statements, as it is up to the Trial Chamber to determine whether an alleged inconsistency is sufficient to cast doubt on the evidence of the witness concerned.<sup>196</sup> Nonetheless, it will consider Rukundo's arguments in turn.

87. The Appeals Chamber notes that the Trial Chamber took into consideration that Witness BLJ's statement of 20 and 21 December 2003 did not make reference to Father Kayibanda telling her about Father Emmanuel's car.<sup>197</sup> The Trial Chamber concluded that this omission did not affect her overall account of the events and that it was reasonable that she may have forgotten details nine years after the traumatic incident.<sup>198</sup> Rukundo argues that this was not an omission but rather a contradiction because in her statement she mentioned that her neighbour told her that the vehicle which brought her was still around whereas in her testimony she stated that it was Father Kayibanda who warned her.<sup>199</sup> However, in her testimony at trial, Witness BLJ stated that both her neighbour and Father Kayibanda had warned her.<sup>200</sup> Accordingly, it was reasonable for the Trial Chamber to conclude that the absence of reference to Father Kayibanda in her statement was an omission, and the Appeals Chamber therefore finds no contradiction in this respect.

88. The Appeals Chamber recalls that it has already considered Witness BLJ's evidence regarding her confusion between Rukundo and another priest named Chicago and about when she met Rukundo before 1994. It found that her explanations were reasonable.<sup>201</sup> The Appeals Chamber also finds that, although the Trial Chamber did not consider the fact that in her witness statement of 20 and 21 December 2003 she only mentioned seeing Rukundo at the hospital once whereas in her testimony at trial she stated that she saw him at the hospital twice, this discrepancy is minor. Accordingly, it finds no error on the part of the Trial Chamber in its assessment of Witness BLJ's evidence.

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<sup>195</sup> Rukundo Notice of Appeal, para. 70; Rukundo Appeal Brief, para. 227.

<sup>196</sup> *Kajelijeli* Appeal Judgement, para. 96. *See also Rutaganda* Appeal Judgement, para. 443; *Musema* Appeal Judgement, para. 89.

<sup>197</sup> Trial Judgement, para. 153.

<sup>198</sup> Trial Judgement, para. 153.

<sup>199</sup> Rukundo Appeal Brief, para. 214.

<sup>200</sup> Trial Judgement, para. 103.

<sup>201</sup> *See supra* Section III.B.2.a (Alleged Errors in Relation to Witnesses' Identification of Rukundo).

89. With respect to the alleged inconsistency between Witness BLC's evidence at trial and his 1997 memoir regarding the abduction and killing of Madame Rudahunga, the Appeals Chamber notes that the Trial Chamber explicitly considered Rukundo's submissions on the issue.<sup>202</sup> It accepted Witness BLC's explanation that the memoir was not intended to give the impression that he had been present at the Rudahunga home and concluded that the inconsistency was minor and did not affect his credibility.<sup>203</sup> Rukundo merely raises the same argument on appeal as he did at trial and fails to demonstrate that the Trial Chamber erred in its assessment. Accordingly, the Appeals Chamber dismisses this argument.

90. In relation to the evidence of Witness BLP, the Appeals Chamber notes that the Trial Chamber explicitly took into account the fact that Rukundo's name did not appear in the joint statement of the prisoners of Gitarama which Witness BLP signed.<sup>204</sup> Indeed, this inconsistency was one of the factors which led the Trial Chamber to conclude that it would only rely on the evidence of Witness BLP if it was corroborated.<sup>205</sup> With respect to the inconsistencies regarding the number of vehicles present, the Appeals Chamber does not consider that the Trial Chamber's failure to explicitly address this issue undermines the cautious analysis of Witness BLP's evidence.

(d) Position of Authority

91. Rukundo recalls that, in relation to the count of genocide, the Indictment charged him with having "relied on the authority due to him as a priest and military chaplain in the [Rwandan Armed Forces] to order soldiers, armed civilians and the *Interahamwe* militias to do the acts [referred to in paragraphs 3 to 22 of the Indictment], to instigate them to act in that way or in aiding and abetting them to do the acts".<sup>206</sup> He asserts that the Prosecution failed to establish that he had authority, and the Trial Chamber, accordingly, erred in convicting him.<sup>207</sup>

92. The Appeals Chamber recalls that it has found that Rukundo aided and abetted genocide and murder as a crime against humanity for the events at Saint Joseph's College.<sup>208</sup> It further recalls that aiding and abetting as a form of responsibility pursuant to Article 6(1) of the Statute does not require that the accused be in a position of authority.<sup>209</sup> Accordingly, Rukundo's challenges

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<sup>202</sup> Trial Judgement, paras. 156, 157.

<sup>203</sup> Trial Judgement, para. 157.

<sup>204</sup> Trial Judgement, para. 144.

<sup>205</sup> Trial Judgement, para. 146.

<sup>206</sup> Rukundo Notice of Appeal, para. 84. *See also* Rukundo Appeal Brief, para. 256.

<sup>207</sup> Rukundo Notice of Appeal, paras. 85, 86; Rukundo Appeal Brief, paras. 257-266; Rukundo Reply Brief, paras. 104-108.

<sup>208</sup> *See supra* Section III.B.1.b (Constituent Elements of Murder and Causing Serious Bodily Harm).

<sup>209</sup> *Muhimana* Appeal Judgement, para. 189.

regarding his authority do not have the potential to invalidate any conviction. Nonetheless, the Appeals Chamber recalls that the Trial Chamber found the fact that he abused his authority to be an aggravating factor in sentencing him. Accordingly, the Appeals Chamber will consider the findings on Rukundo's position of authority in the sentencing section.<sup>210</sup>

(e) Alleged Distortion of the Evidence

93. Rukundo submits that the Trial Chamber distorted the evidence of Witnesses BLP, BLC, and CCH.<sup>211</sup> He asserts that, whereas the Trial Chamber found that Witnesses BLP, SJD, and BLJ testified that the abductions from Saint Joseph's College occurred around 27 April 1994, Witness BLP actually testified that they occurred between 12 and 15 April 1994.<sup>212</sup> He further asserts that Witness BLC placed the events around mid-May 1994, and accordingly it was impossible for Rukundo to have boasted to Witness BLC about the abductions as they would have taken place several weeks earlier.<sup>213</sup> He contends that the Trial Chamber's finding that Witness CCH's testimony about Rukundo telling her that he discovered documents at the Rudahunga home connected him to the events was speculative as there was no finding as to when the documents were discovered.<sup>214</sup>

94. The Trial Chamber found that the abductions of and attacks on Madame Rudahunga, her children, and two other Tutsi civilians took place "sometime in April 1994".<sup>215</sup> In reaching this conclusion, it found that Witnesses BLP, SJD, and BLJ testified that these crimes took place around 27 April 1994.<sup>216</sup> In assessing Witness BLP's evidence, the Trial Chamber noted that he initially testified that the abductions of the Rudahungas from Saint Joseph's College occurred between 12 and 15 April 1994.<sup>217</sup> However, it also noted that in cross-examination Witness BLP appeared to have placed the incident sometime around late April 1994.<sup>218</sup> In this respect, it noted in a footnote that "Witness BLP testified that the incident which occurred at the Major Seminary [...] took place towards the end of May 1994, *about a month after* (emphasis added) the incident involving the Rudahunga family."<sup>219</sup>

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<sup>210</sup> See *infra* Section IV.A (Ground 9: Rukundo's Sentencing Appeal).

<sup>211</sup> Rukundo Notice of Appeal, paras. 87-89; Rukundo Reply Brief, para. 109.

<sup>212</sup> Rukundo Notice of Appeal, para. 87; Rukundo Appeal Brief, paras. 267-269.

<sup>213</sup> Rukundo Notice of Appeal, para. 88.

<sup>214</sup> Rukundo Notice of Appeal, para. 89.

<sup>215</sup> Trial Judgement, paras. 135, 171.

<sup>216</sup> Trial Judgement, para. 136. The Trial Judgement lists the witnesses as "Witnesses BLP, SJD and BLP" but the footnote refers to Witnesses BLP, SJD, and BLJ. See Trial Judgement, n. 195.

<sup>217</sup> Trial Judgement, para. 96.

<sup>218</sup> Trial Judgement, para. 96.

<sup>219</sup> Trial Judgement, n. 138.

95. The Appeals Chamber does not find that the Trial Chamber distorted Witness BLP's evidence. The Trial Chamber demonstrated attention to detail in noting the discrepancy in the dates in Witness BLP's evidence,<sup>220</sup> and the text in the footnote accurately reflects Witness BLP's evidence in his cross-examination. In response to a question regarding how long after the abductions and attacks on the Rudahunga family occurred the incident in the Major Seminary took place, he stated: "[a]bout a month later. I do remember that the incident which occurred in the major seminary took place towards the end of May."<sup>221</sup> This would place the abductions of the Rudahungas toward the end of April 1994 which is consistent with the Trial Chamber's finding that his evidence placed the incident "around 27 April 1994"<sup>222</sup> and is certainly consistent with the Trial Chamber's ultimate finding that the event occurred "sometime in April 1994".<sup>223</sup>

96. With respect to Witness BLC's evidence that Rukundo boasted about the killing of the Rudahungas in May 1994, Rukundo has not demonstrated that the Trial Chamber distorted Witness BLC's evidence. He merely points out that an inconsistency exists between the evidence of Witness BLC and Witnesses BLP and BLJ. Furthermore, the Appeals Chamber recalls that it has already considered this issue and found that it was a minor inconsistency which did not undermine the Trial Chamber's general findings.<sup>224</sup>

97. Similarly, the Appeals Chamber does not find that the Trial Chamber distorted Witness CCH's evidence that sometime in May 1994 Rukundo told her that Louis Rudahunga had to be killed and that they had found documents at the Rudahungas' home. Witness CCH testified that she arrived at the Saint Léon Minor Seminary in mid-May 1994 and remained there until 3 June 1994 and that it was while she was there that she spoke with Rukundo.<sup>225</sup> Furthermore, whether or not their conversation took place at around the same time as the abductions from Saint Joseph's College does not undermine the fact that her testimony corroborates that of Witness BLC to the effect that Louis Rudahunga had managed to get away from the assailants when the rest of the family was killed.<sup>226</sup>

98. For the foregoing reasons, the Appeals Chamber finds that Rukundo has failed to demonstrate that the Trial Chamber distorted the evidence.

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<sup>220</sup> Trial Judgement, para. 96.

<sup>221</sup> T. 16 November 2006 p. 30.

<sup>222</sup> Trial Judgement, para. 136.

<sup>223</sup> Trial Judgement, paras. 135, 171.

<sup>224</sup> See *supra* Section III.B.2.b (Alleged Errors Regarding Corroboration).

<sup>225</sup> T. 13 February 2008 p. 62.

<sup>226</sup> Trial Judgement, para. 168.

(f) Assessment of Defence Evidence

99. Rukundo submits that the Trial Chamber systematically accorded minimal weight to the testimonies of Defence witnesses and found that their evidence did not discredit Prosecution evidence.<sup>227</sup> He asserts that the Trial Chamber erred in failing to give sufficient reasons for its preference for Prosecution evidence.<sup>228</sup> In particular, he challenges the Trial Chamber's treatment of Defence Witnesses SJA, SJD, SJC, SAE, BCD, SLA, EVC, EVA, EVB, and ATT.<sup>229</sup>

(i) Witness SJA

100. Rukundo challenges the Trial Chamber's finding that Witness SJA did not discredit the Prosecution evidence because he only saw the backs of the soldiers and people who were abducted from Saint Joseph's College.<sup>230</sup> He submits that Witness SJA actually saw the faces of the attackers and testified that Rukundo was not among them.<sup>231</sup> Rukundo also asserts that Witness SJA's evidence undermines that of Witness BLP to the effect that he and his co-detainees agreed not to mention Rukundo in their statements.<sup>232</sup> Finally, Rukundo asserts that the Trial Chamber erred in not stating that the person accompanying Father Kayibanda when he took the survivors of the attack to the Kabgayi hospital was Witness SJD, as corroborated by Witness SJA.<sup>233</sup>

101. The Appeals Chamber finds no error in the Trial Chamber's finding that Witness SJA's evidence did not discredit the Prosecution evidence regarding Rukundo's presence at Saint Joseph's College when the Rudahungas were abducted. In this regard, it recalls that, in response to a question about where he was when he saw the attackers take the Rudahungas away, Witness SJA testified: "I saw them from the back when the group was about 40 or 50 metres from where I was standing, that is, towards the entrance."<sup>234</sup> Having seen the group from the back, it was reasonable for the Trial Chamber to conclude that he may not have been in a position to see Rukundo.

102. The Appeals Chamber notes that, although the Trial Chamber did not address the contradiction between the evidence of Witnesses BLP and SJD regarding the fact that Rukundo's name did not appear in the joint statement of detainees, it did address Witness BLP's evidence

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<sup>227</sup> Rukundo Notice of Appeal, para. 96; Rukundo Appeal Brief, para. 280.

<sup>228</sup> Rukundo Appeal Brief, paras. 279, 280.

<sup>229</sup> Rukundo Notice of Appeal, paras. 97-100; Rukundo Appeal Brief, paras. 281-299.

<sup>230</sup> Rukundo Appeal Brief, para. 281; Rukundo Reply Brief, paras. 118-121.

<sup>231</sup> Rukundo Appeal Brief, para. 282.

<sup>232</sup> Rukundo Appeal Brief, para. 283.

<sup>233</sup> Rukundo Appeal Brief, para. 284.

<sup>234</sup> T. 22 October 2007 p. 13.

regarding the joint statement in detail and was therefore seized of the issue.<sup>235</sup> In this regard, the Appeals Chamber recalls that a Trial Chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record.<sup>236</sup> Given that the Trial Chamber was seized of the issue, it is reasonable to assume that the Trial Chamber took Witness SJD's evidence in this regard into account.<sup>237</sup>

103. Finally, the Appeals Chamber dismisses Rukundo's assertion that the Trial Chamber erred in not stating that the person accompanying Father Kayibanda when he took the survivors of the attack to the Kabgayi hospital was Witness SJD, as corroborated by Witness SJA. The Appeals Chamber notes that the Trial Chamber referred to the relevant portion of Witness SJA's evidence on this matter, indicating that the Trial Chamber took it into account.<sup>238</sup>

(ii) Witness SJD

104. Rukundo asserts that the Trial Chamber erred in finding that Witness SJD's evidence carried little weight because he did not know Rukundo in 1994.<sup>239</sup> Rukundo further points to the fact that the Trial Chamber did not consider that Witness SJD contradicted Witness BLJ regarding Father Kayibanda's statement that "Father Emmanuel's car" was still in the vicinity of the Rudahunga home.<sup>240</sup> He notes that the evidence of Witnesses SJD and BLJ was consistent up until the attack, at which point their accounts diverge, calling into question Witness BLJ's credibility.<sup>241</sup>

105. The Appeals Chamber considers that, in light of the fact that Witness SJD did not know Rukundo in April 1994, it was reasonable for the Trial Chamber to find that his evidence that he did not see Rukundo at Saint Joseph's College carried little weight. Furthermore, the Appeals Chamber finds that the Trial Chamber's failure to explicitly consider that Witness SJD did not testify to having heard Father Kayibanda refer to "Father Emmanuel's car" does not undermine the reasonableness of its findings. The Trial Chamber does not have to refer to every piece of evidence on the trial record,<sup>242</sup> and its discussion of Witness SJD's evidence shows that it considered his

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<sup>235</sup> Trial Judgement, para. 144.

<sup>236</sup> *Nchamihigo* Appeal Judgement, para. 121; *Karera* Appeal Judgement, para. 20.

<sup>237</sup> See *Karera* Appeal Judgement, para. 20, citing *Kvo-ka et al.* Appeal Judgement, para. 23.

<sup>238</sup> Trial Judgement, n. 192.

<sup>239</sup> Rukundo Appeal Brief, paras. 285, 288; Rukundo Reply Brief, paras. 122-125.

<sup>240</sup> Rukundo Appeal Brief, para. 286.

<sup>241</sup> Rukundo Appeal Brief, paras. 287, 289.

<sup>242</sup> *Nchamihigo* Appeal Judgement, para. 121; *Karera* Appeal Judgement, para. 20.

evidence.<sup>243</sup> The fact that he did not mention hearing the reference to “Father Emmanuel’s car” does not necessarily cast doubt on Witness BLJ’s evidence to the contrary.

(iii) Witnesses SJC, SAE, and BCD

106. Rukundo submits that the Trial Chamber erred in failing to consider the evidence of Witnesses SJC, SAE, and BDC to the effect that they did not see him at the Kabgayi hospital during the period when Witness BLJ was being treated there.<sup>244</sup> He asserts that, had the Trial Chamber properly considered this evidence, it could not have concluded that Witness BLJ saw him at the hospital.<sup>245</sup>

107. The Trial Chamber considered Witness SJC’s evidence that he was at the Kabgayi hospital between 20 April 1994 and 1 May 1994 and that he did not see Rukundo during that period.<sup>246</sup> It did not explicitly consider the evidence of Witnesses SAE and BDC to the effect that they were also at the hospital at various times during the same period as Witness BLJ and did not see him.<sup>247</sup> Nonetheless, given the limited probative value of this kind of evidence, the Appeals Chamber finds no error in the Trial Chamber not having relied upon it.

(iv) Witnesses SLA and EVC

108. Rukundo submits that the Trial Chamber erred in finding that the evidence of Witnesses SLA and EVC did not discredit the Prosecution evidence because they were not present at Saint Joseph’s College at the time of the abductions.<sup>248</sup> In this respect he points to the fact that the Trial Chamber relied on the evidence of Witnesses BLC and CCH despite the fact that they were not present at the time of the abductions.<sup>249</sup>

109. The Trial Chamber considered the evidence of Witnesses SLA and EVC to the effect that they did not hear of Rukundo being involved in the attacks on the Rudahungas.<sup>250</sup> However, it also noted that neither of them was present at Saint Joseph’s College when the abductions occurred, and, as a result, considered that their evidence did not discredit the Prosecution evidence.<sup>251</sup> The Appeals Chamber considers that, in light of the limited probative value of this evidence, it was not

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<sup>243</sup> Trial Judgement, paras. 114-119, 160, 161, 170.

<sup>244</sup> Rukundo Appeal Brief, paras. 290-292.

<sup>245</sup> Rukundo Appeal Brief, para. 292.

<sup>246</sup> Trial Judgement, paras. 123-125.

<sup>247</sup> T. 20 September 2007 pp. 9-11 (Witness BDC); T. 24 September 2007 pp. 63-66 (Witness SAE).

<sup>248</sup> Rukundo Appeal Brief, paras. 293, 294.

<sup>249</sup> Rukundo Appeal Brief, paras. 293, 294.

<sup>250</sup> Trial Judgement, paras. 120, 127, 162, 163.

<sup>251</sup> Trial Judgement, para. 170.

unreasonable for the Trial Chamber to reach the conclusion it did. While the Trial Chamber relied on the evidence of Witnesses BLC and CCH who were also not present during the abductions and attacks, their testimony was directly related to what Rukundo said with respect to the attacks.<sup>252</sup> The Trial Chamber's different treatment of the evidence of these witnesses is therefore reasonable.

(v) Witnesses EVA, EVB, and ATT

110. Rukundo submits that the Trial Chamber erred in failing to consider the evidence of Witnesses EVA, EVB, and ATT in relation to the events at Saint Joseph's College. He asserts that Witness EVA contradicts the evidence of Witness BLJ because he testified that Father Kayibanda did not mention Rukundo.<sup>253</sup> He further contends that Witnesses EVA and EVB contradict the evidence of Witness CCH regarding the lists found at the Rudahunga home which were later used to identify refugees who were then abducted from Saint Joseph's College.<sup>254</sup> He asserts that Witness EVA testified that the soldiers with the list at Saint Joseph's College came from the prefecture and Witness EVB stated the soldiers came with Sub-Prefect Antoine Misago and that the lists were posted at the prefecture.<sup>255</sup> Rukundo submits that the involvement of authorities from the prefecture and his non-involvement was further corroborated by Witness ATT.<sup>256</sup> He states that Witness ATT also contradicts Witness BLP's evidence that the detainees at Gitarama prison who made the joint statement describing the attack on the Rudahunga family agreed not to mention Rukundo's name.<sup>257</sup>

111. The Trial Chamber did not refer to Witness EVA's evidence that Father Kayibanda did not mention Rukundo's name when he told Witness EVA about the attack on the Rudahunga family. Nor did it refer to Witness EVA's evidence that he did not hear Rukundo's name when the killing became public knowledge.<sup>258</sup> However, in light of the limited probative value of this evidence, the Appeals Chamber does not find that these omissions were unreasonable.

112. The Appeals Chamber also finds that the evidence of Witnesses EVA and EVB does not contradict that of Witness CCH regarding the lists of names found at the Rudahunga home. Witnesses EVA and EVB both stated that the lists were found at the Rudahunga home following the killing of Madame Rudahunga.<sup>259</sup> This is consistent with Witness CCH's evidence.<sup>260</sup> Witness EVB

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<sup>252</sup> Trial Judgement, paras. 167, 168.

<sup>253</sup> Rukundo Appeal Brief, para. 296.

<sup>254</sup> Rukundo Appeal Brief, para. 297.

<sup>255</sup> Rukundo Appeal Brief, para. 297.

<sup>256</sup> Rukundo Appeal Brief, para. 298.

<sup>257</sup> Rukundo Appeal Brief, para. 299.

<sup>258</sup> T. 19 July 2007 pp. 28-30.

<sup>259</sup> T. 19 July 2007 pp. 30, 31, 47, 48 (Witness EVA); T. 20 July 2007 p. 17; T. 23 July 2007 p. 49 (Witness EVB).

<sup>260</sup> Trial Judgement, para. 109.

stated that after the lists were found they were turned over to the prefecture.<sup>261</sup> Witness EVA further testified that the soldiers brought the list with them when they arrived at the Saint Léon Minor Seminary from the prefecture<sup>262</sup> and Witness EVB stated that the soldiers who came to the seminary were accompanied by Sub-Prefect Misago.<sup>263</sup> None of this is inconsistent with Witness CCH's evidence, as it does not indicate who found the lists in the Rudahunga home. Similarly, Witness CCH's evidence did not indicate what happened to the lists after they were found, as Rukundo only told her of having found them.<sup>264</sup> Additionally, Witness ATT's evidence is consistent with Prosecution evidence, as he testified that the Rudahunga family was abducted by soldiers.<sup>265</sup> Moreover, while he made reference to the involvement of authorities from the prefecture in attacks on refugees in Kabgayi, he did not link them to the killing of the Rudahunga family specifically, contrary to Rukundo's suggestion.<sup>266</sup>

113. With respect to Witness ATT's evidence that Witness BLP did not mention Rukundo's name in the *Gacaca* sessions, the Appeals Chamber recalls that the Trial Chamber considered that Witness BLP had previously not implicated Rukundo in the events at Saint Joseph's College and that this was one of the factors which led it to treat his evidence with caution.<sup>267</sup> Accordingly, while the Trial Chamber did not refer to Witness ATT's evidence specifically on this point, it was seized of the issue.

114. For the foregoing reasons, the Appeals Chamber finds that Rukundo has failed to demonstrate an error on the part of the Trial Chamber in its consideration of the Defence evidence relating to the events at Saint Joseph's College.

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<sup>261</sup> T. 20 July 2007 p. 17.

<sup>262</sup> T. 19 July 2007 pp. 47, 48.

<sup>263</sup> T. 20 July 2007 pp. 17, 18.

<sup>264</sup> See Trial Judgement, para. 109.

<sup>265</sup> T. 18 July 2007 p. 18.

<sup>266</sup> T. 18 July 2007 pp. 5-7.

<sup>267</sup> Trial Judgement, paras. 144-146. The Appeals Chamber recalls that it dismissed Rukundo's request to admit documents from Witness BLP's judicial dossier in Rwanda. See Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal, 4 June 2010 ("Decision of 4 June 2010"), para. 16. In reaching this decision, it observed that Rukundo did not demonstrate due diligence in obtaining this material at trial and thus considered whether the exclusion of this evidence *would* result in a miscarriage of justice. Decision of 4 June 2010, paras. 14, 15. After the decision, the Prosecution filed a submission indicating that it came into possession of the relevant material shortly after Witness BLP appeared but did not disclose it to Rukundo. See Prosecutor's Submission Following the Appeals Chamber's Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal Pursuant to Rule 115 of the Rules of Procedure and Evidence, 9 June 2010. Rukundo did not respond to this submission or seek reconsideration of the decision. The Appeals Chamber does not consider that the fact that the Prosecution was in possession of Witness BLP's judicial record during the trial would alter its fundamental conclusion denying the admission of the additional evidence in the Decision of 4 June 2010. See Decision of 4 June 2010, paras. 10-16.

### 3. Conclusion

115. Accordingly, the Appeals Chamber finds that Rukundo failed to demonstrate that the Trial Chamber committed any error in the assessment of the evidence which would occasion a miscarriage of justice. It also finds no errors of law in respect of the events at Saint Joseph's College. Accordingly, the Appeals Chamber dismisses Rukundo's Second Ground of Appeal in its entirety. Nonetheless, the Appeals Chamber recalls its finding that commission was not pleaded as a mode of liability in relation to these events. The Appeals Chamber concludes that Rukundo's acts are properly characterized as aiding and abetting the murder of Madame Rudahunga and causing serious bodily harm to two of her children and two other Tutsi civilians. The Appeals Chamber thus finds that Rukundo aided and abetted genocide and murder as a crime against humanity in relation to these events.

### **C. Alleged Error Relating to the Exclusion of Witness BLJ's Evidence (Ground 3)**

116. The Trial Chamber convicted Rukundo of committing genocide based, in part, on his role in the killing of Madame Rudahunga and the beating of her two children and two other Tutsi civilians, all of whom were abducted from Saint Joseph's College at Kabgayi in Gitarama Prefecture.<sup>268</sup> It also convicted him of committing murder as a crime against humanity for the killing of Madame Rudahunga.<sup>269</sup> In making these findings, it relied in part on Prosecution Witness BLJ, one of the victims abducted from Saint Joseph's College, who testified that Madame Rudahunga was taken from Saint Joseph's College by four soldiers.<sup>270</sup> She testified that, about 30 minutes later, the same four soldiers returned and took her and three other Tutsi civilians to the Rudahunga home, where Madame Rudahunga had been killed, and that the soldiers then attacked Witness BLJ and another person.<sup>271</sup> Witness BLJ fell unconscious.<sup>272</sup> When she awoke and went in search of help, a neighbour advised her to be careful because "the car, that same car that brought you here, is still around."<sup>273</sup> A short while later, Father Alfred Kayibanda warned her that "Father Emmanuel's car was still around" and then drove her to Kabgayi hospital.<sup>274</sup> Witness BLJ further testified that, about one week after she was admitted to the hospital, she saw Rukundo accompanied by two of the same soldiers and that they walked through the hospital threatening Tutsi patients.<sup>275</sup>

117. The Trial Chamber excluded the portion of Witness BLJ's testimony relating to the intimidation and abduction of Tutsi patients at Kabgayi hospital, which occurred after her abduction, on the basis that these actions were not pleaded in the Indictment.<sup>276</sup> However, the Trial Chamber relied on other parts of her testimony, including her evidence that she saw Rukundo at the Kabgayi hospital a week after the abduction at which point she made the link between Rukundo and Father Kayibanda's earlier warning that "Father Emmanuel's car" was still in the vicinity of Madame Rudahunga's house shortly after the attack.<sup>277</sup>

118. Rukundo argues that the Trial Chamber erred in law by only excluding the part of Witness BLJ's evidence concerning the intimidation and abduction of Tutsi patients at Kabgayi hospital

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<sup>268</sup> Trial Judgement, paras. 568, 569, 591.

<sup>269</sup> Trial Judgement, paras. 585, 591.

<sup>270</sup> Trial Judgement, para. 147.

<sup>271</sup> Trial Judgement, para. 147.

<sup>272</sup> Trial Judgement, para. 147.

<sup>273</sup> Trial Judgement, para. 147.

<sup>274</sup> Trial Judgement, para. 147.

<sup>275</sup> Trial Judgement, para. 148.

<sup>276</sup> Trial Judgement, para. 152.

whereas it should have excluded all of her testimony relating to the hospital.<sup>278</sup> He submits that, when Trial Chambers exclude evidence about an event, they always exclude evidence about that event in its entirety.<sup>279</sup> He states that the events at Kabgayi hospital, which occurred after the abductions, were not pleaded in the Indictment and that this defect in the Indictment was not cured by subsequent disclosures by the Prosecution.<sup>280</sup> Rukundo also argues that Witness BLJ's evidence regarding the presence of Rukundo's vehicle near Madame Rudahunga's house should also be excluded as it was not referred to in the Indictment.<sup>281</sup>

119. The Appeals Chamber recalls that decisions by Trial Chambers on the admission of evidence are discretionary decisions to which the Appeals Chamber must accord deference.<sup>282</sup> When the Defence is of the view that the Prosecution introduces evidence of material facts of which it had no notice, it can make an objection to the admission of such evidence for lack of notice.<sup>283</sup> If the Trial Chamber agrees with the Defence that insufficient notice was given, the Trial Chamber may exclude the challenged evidence in relation to the unpleaded material facts, require the Prosecution to amend the indictment, grant an adjournment to allow the Defence adequate time to respond to the additional allegations, or take other measures to preserve the rights of the accused to a fair trial.<sup>284</sup> With respect to this last measure, the Appeals Chamber recalls that a Trial Chamber can also find the particular evidence inadmissible to prove a material fact of which the accused was not on notice, but admissible with respect to other allegations sufficiently pleaded.<sup>285</sup>

120. In excluding Witness BLJ's evidence regarding the intimidation of Tutsi patients at Kabgayi hospital and the abduction of some of these patients, the Trial Chamber noted that this "constitutes a

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<sup>277</sup> Trial Judgement, para. 166.

<sup>278</sup> Rukundo Notice of Appeal, para. 23; Rukundo Appeal Brief, paras. 35, 36, 38; Rukundo Reply Brief, paras. 13-16, 18.

<sup>279</sup> Rukundo Appeal Brief, para. 35.

<sup>280</sup> Rukundo Appeal Brief, paras. 36, 37.

<sup>281</sup> Rukundo Notice of Appeal, para. 24; Rukundo Reply Brief, para. 17.

<sup>282</sup> See, e.g., *Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-AR73.2, Decision on Gaspard Kanyarukiga's Interlocutory Appeal of a Decision on the Exclusion of Evidence, 23 March 2010 ("*Kanyarukiga* Appeal Decision"), para. 7; *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR73.17, Decision on Joseph Nzirorera's Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts, 29 May 2009, para. 7.

<sup>283</sup> *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 ("*Bagosora et al.* Appeal Decision"), para. 18. See also *Furund'ija* Appeal Judgement, para. 61.

<sup>284</sup> *Bagosora et al.* Appeal Decision, para. 18.

<sup>285</sup> *Arsène Shalom Ntahobali & Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-97-21-AR73, Decision of the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 2 July 2004, para. 15 ("FAġlthough on the basis of the present indictment it is not possible to convict Nyiramasuhuko in respect of her presence at the installation of Ndayambaje, evidence of this meeting can be admitted to the extent that it may be relevant to the proof of any allegation pleaded in the Indictment."). See also *Kanyarukiga* Appeal Decision, para. 11; *Bagosora et al.* Appeal Decision, n. 40.

new allegation of criminal conduct on the part of [Rukundo], which the Prosecution did not specifically plead in the Indictment.”<sup>286</sup> It then excluded her evidence regarding Rukundo’s intimidation and abduction of Tutsis from the hospital, but not the evidence of his presence at the hospital.<sup>287</sup>

121. In relying on Witness BLJ’s evidence, the Trial Chamber noted that it was when she saw Rukundo at the hospital after the attacks, in the presence of two of the four soldiers who had earlier abducted her, Madame Rudahunga, and the three others, that she made the link between Father Kayibanda’s comment about the presence of “Father Emmanuel’s car”, the pick-up truck that she saw close to Madame Rudahunga’s house after the attack – the same vehicle used in both abductions – and the soldiers and Rukundo.<sup>288</sup> Therefore, the evidence of Rukundo’s presence at the hospital created a connection between Rukundo and the attack. The Trial Chamber did not convict Rukundo based on this evidence but instead reasonably relied on it as further support of the material facts concerning his role in the crimes against Madame Rudahunga and the four others, which are pleaded in the Indictment. Accordingly, the Appeals Chamber finds that the Trial Chamber did not abuse its discretion in the admission of this evidence.

122. The Appeals Chamber also dismisses Rukundo’s request to exclude Witness BLJ’s evidence regarding the presence of Rukundo’s vehicle near Madame Rudahunga’s house. In considering whether to exclude this evidence, the Trial Chamber noted that the charge against Rukundo was that he brought soldiers to Saint Joseph’s College to search for Tutsi refugees who purportedly had links with the *Inkotanyi* and participated in the killing of Madame Rudahunga at her house and the subsequent beating of her two children and two other Tutsi civilians.<sup>289</sup> It concluded that Witness BLJ’s evidence regarding the presence of Rukundo’s car was evidence in support of this charge.<sup>290</sup> The Appeals Chamber finds no error in this regard.

123. For the foregoing reasons, the Appeal Chamber dismisses Rukundo’s Third Ground of Appeal.

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<sup>286</sup> Trial Judgement, para. 152.

<sup>287</sup> Trial Judgement, para. 152.

<sup>288</sup> Trial Judgement, para. 166.

<sup>289</sup> Trial Judgement, para. 150.

<sup>290</sup> Trial Judgement, para. 150.

#### **D. Alleged Errors Relating to the Recantation of Witness BLP and the Haguma Report**

##### **(Ground 4)**

124. In November 2006, Prosecution Witness BLP testified to being an eyewitness to the abductions of Madame Rudahunga, her two children, and two other Tutsi civilians from Saint Joseph's College.<sup>291</sup> On 8 March 2007, Rukundo filed a confidential motion to recall Witness BLP based on a letter dated 8 February 2007 given to the Defence investigator, Mr. Leonidas Nshogoza, in which Witness BLP allegedly admitted to having given false testimony before the Trial Chamber.<sup>292</sup> Witness BLP was recalled on 2 July 2007 and testified that he did not wish to vary his earlier testimony.<sup>293</sup>

125. Following Witness BLP's appearance on 2 July 2007, the Trial Chamber ordered an independent investigation, pursuant to Rules 54 and 91 of the Rules, into Witness BLP's alleged false testimony and related issues, including the circumstances surrounding Witness BLP's meetings with Mr. Nshogoza and the possible violation of witness protection measures.<sup>294</sup> On 11 October 2007, Mr. Jean Haguma, who was appointed by the Registrar as an independent investigator into the matter, appeared before the Trial Chamber and presented the findings of his investigation.<sup>295</sup> His report ("Haguma Report") was admitted into evidence.<sup>296</sup>

126. According to the Haguma Report, after having testified in 2006, Witness BLP was influenced by Father Joseph Ndagijimana, a detainee at Gitarama Prison, to contact Mr. Nshogoza in order to "exculpate Father Rukundo."<sup>297</sup> As a result, Witness BLP met Mr. Nshogoza on several occasions between 30 December 2006 and 7 February 2007.<sup>298</sup> Mr. Nshogoza gave Witness BLP a letter dated 10 January 2007, which Witness BLP agreed to copy "in order to protect himself."<sup>299</sup> It also follows from the Haguma Report that a second letter dated 8 February 2007 was addressed to

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<sup>291</sup> See Trial Judgement, paras. 96-98.

<sup>292</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, *Requête ex parte en extrême urgence et confidentielle aux fins de rappeler le témoin du Procureur BLP aux fins d'être réentendu au vu des éléments nouveaux*, 8 March 2007 ("Motion to Recall Witness BLP"). See also Trial Judgement, para. 139.

<sup>293</sup> T. 2 July 2007 p. 42. See also Trial Judgement, para. 139.

<sup>294</sup> T. 2 July 2007 p. 43; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, Decision on the Motions Relating to the Scheduled Appearances of Witness BLP and the Defence Investigator, 4 July 2007 ("Decision of 4 July 2007"), p. 5. See also Trial Judgement, para. 140.

<sup>295</sup> T. 11 October 2007 pp. 37-50. See also Trial Judgement, para. 140.

<sup>296</sup> Trial Chamber Exhibit X1 (Haguma Report).

<sup>297</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 2.

<sup>298</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 3.

<sup>299</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 4.

Rukundo.<sup>300</sup> However, Witness BLP informed Mr. Haguma during the investigation that, while he had read the second letter, he had refused to recopy and sign it.<sup>301</sup>

127. The Trial Chamber accepted the Haguma Report and found that it established that Witness BLP's alleged recantation of his testimony given in November 2006 was due to pressure exerted upon him by Mr. Nshogoza and Father Ndagijimana.<sup>302</sup> Consequently, it concluded that Witness BLP did not intend to recant his testimony of November 2006.<sup>303</sup> Nonetheless, the Trial Chamber found that, given other issues affecting Witness BLP's credibility, it would treat his evidence with caution and only rely on it if it was corroborated by other reliable evidence.<sup>304</sup> It proceeded to rely on Witness BLP's evidence, along with that of three other Prosecution witnesses, to find Rukundo guilty of the abductions and attacks on Madame Rudahunga and the four other Tutsis taken from Saint Joseph's College.<sup>305</sup>

128. Rukundo submits that the Trial Chamber committed a number of errors in dealing with Witness BLP's alleged recantation and that it should have rejected his testimony in its entirety.<sup>306</sup> The Appeals Chamber will consider whether the Trial Chamber: (1) erred in not allowing Rukundo to cross-examine Witness BLP on his alleged recantation; (2) violated Rukundo's rights to cross-examine Mr. Haguma fully; (3) made findings on Witness BLP's alleged recantation prematurely; (4) erred in failing to have Mr. Nshogoza examined on the matter; and (5) erred in basing its assessment of Witness BLP on the Haguma Report.

#### 1. Cross-Examination of Witness BLP

129. In the decision recalling Witness BLP to be examined about his alleged recantation, the Trial Chamber stated that the parties would have the opportunity to cross-examine him.<sup>307</sup> When Witness BLP was recalled on 2 July 2007, the Presiding Judge indicated that he would put questions to the witness.<sup>308</sup> Nonetheless, he assured the parties that they would have an opportunity

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<sup>300</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 4.

<sup>301</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 2.

<sup>302</sup> Trial Judgement, para. 142. *See also The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, Decision on the Haguma Report (Rules 54 and 91 of the Rules of Procedure and Evidence), 14 December 2007 ("Decision of 14 December 2007"), para. 11.

<sup>303</sup> Trial Judgement, para. 142.

<sup>304</sup> Trial Judgement, para. 146.

<sup>305</sup> Trial Judgement, paras. 165-172, 569, 585. The Trial Chamber convicted Rukundo for committing genocide based, in part, on his role in the killing of Madame Rudahunga and the beating of two of her children and two other Tutsi civilians. It also convicted him for committing murder as a crime against humanity for the killing of Madame Rudahunga.

<sup>306</sup> Rukundo Notice of Appeal, paras. 46-52; Rukundo Appeal Brief, paras. 146-173; Rukundo Reply Brief, para. 78.

<sup>307</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, Decision on Defence Motion to Recall Prosecution Witness BLP, 30 April 2007 ("Decision of 30 April 2007"), para. 6.

<sup>308</sup> T. 2 July 2007 p. 41.

to examine the witness at some stage.<sup>309</sup> He asked Witness BLP whether he wished to vary his previous testimony and the witness replied that he did not.<sup>310</sup> The Presiding Judge then ordered an inquiry into the matter pursuant to Rules 54 and 91 of the Rules and excused the witness.<sup>311</sup> After considering the Haguma Report, the Trial Chamber issued a decision in which it found that, although additional information may have been enlightening, it was not necessary for the purposes of assessing Witness BLP's credibility.<sup>312</sup> Witness BLP was not recalled for further examination.

130. Rukundo submits that his right to cross-examine Witness BLP was violated.<sup>313</sup> He asserts that, in the absence of cross-examination of the witness, the Trial Chamber should not have given any weight to Witness BLP's evidence.<sup>314</sup> Furthermore, he observes that in ordering the investigation, the Trial Chamber made reference to some documents it had in its possession.<sup>315</sup> He asserts that the Trial Chamber should not have made a decision upon the matter based on documents which did not form part of the trial record.<sup>316</sup>

131. The Prosecution responds that Rukundo fails to demonstrate that the Trial Chamber violated his right to a fair trial by not allowing him to cross-examine Witness BLP on 2 July 2007.<sup>317</sup> It observes that the Trial Chamber based its decisions on materials forming part of the trial record.<sup>318</sup> Furthermore, the Prosecution asserts that Rukundo failed to object to not being allowed to cross-examine Witness BLP on 2 July 2007 or to any unofficial documents he claims the Trial Chamber relied upon.<sup>319</sup> It also notes that Rukundo did not seek to recall Witness BLP following the Decision of 14 December 2007 accepting the Haguma Report.<sup>320</sup>

132. The Appeals Chamber notes that Rukundo did not object when the Trial Chamber indicated on 2 July 2007, when Witness BLP reappeared before the Trial Chamber, that the parties would not have the opportunity to question Witness BLP until a later date.<sup>321</sup> However, in his submissions on

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<sup>309</sup> T. 2 July 2007 p. 41.

<sup>310</sup> T. 2 July 2007 p. 42.

<sup>311</sup> T. 2 July 2007 p. 43; Decision of 4 July 2007, p. 5.

<sup>312</sup> Decision of 14 December 2007, para. 7.

<sup>313</sup> Rukundo Appeal Brief, paras. 150, 151.

<sup>314</sup> Rukundo Appeal Brief, para. 151.

<sup>315</sup> Rukundo Appeal Brief, para. 149.

<sup>316</sup> Rukundo Appeal Brief, para. 149.

<sup>317</sup> Prosecution Response Brief, para. 97.

<sup>318</sup> Prosecution Response Brief, para. 95.

<sup>319</sup> Prosecution Response Brief, para. 97.

<sup>320</sup> Prosecution Response Brief, para. 98.

<sup>321</sup> T. 2 July 2007 pp. 41-43. Although Rukundo requested certification to appeal the Trial Chamber's decision not to examine Mr. Nshogoza until after the investigation, he made no such request in relation to the deferral of the cross-examination of Witness BLP. *See The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, Request for Certification to Appeal the Trial Chamber's Decision of 4 July 2007 (Rule 73 (B) ICTR R.P.E.), 11 July 2007 (confidential) ("Request for Certification of Trial Chamber's Decision of 4 July 2007").

the Haguma Report, he requested that Witness BLP be called for further examination<sup>322</sup> and reiterated the request in his response to the Prosecution's submissions on the Haguma Report.<sup>323</sup> Nonetheless, he did not seek certification to appeal the Trial Chamber's Decision of 14 December 2007 accepting the Haguma Report and deciding that further evidence on the matter was not required. Similarly, although he addressed the alleged recantation of Witness BLP and the Haguma Report in his Final Trial Brief, he did not raise the fact that he had not been permitted to cross-examine Witness BLP on the subject of the witness's alleged recantation.<sup>324</sup>

133. The Appeals Chamber recalls that the Trial Chamber "shall exercise control over the mode and order of interrogating witnesses"<sup>325</sup> and that it therefore enjoys considerable discretion in setting the parameters of cross-examination.<sup>326</sup> Nonetheless, Article 20(4) of the Statute does provide the right to cross-examine a witness.

134. While Rukundo had the opportunity to cross-examine Witness BLP when he first gave testimony at trial, he was given no such opportunity to examine him upon the issue of his alleged recantation. The Appeals Chamber considers that, in light of the serious implications of recantation of testimony, the parties should have been given the opportunity to cross-examine Witness BLP on the issue of his alleged recantation. In this regard, the Appeals Chamber has previously noted the particular usefulness of cross-examination as a tool for discerning whether a witness's testimony has been improperly influenced.<sup>327</sup> Furthermore, the Appeals Chamber recalls that the Trial Chamber indicated on a number of occasions that the parties would be given the opportunity to cross-examine Witness BLP, but ultimately no opportunity was afforded to them. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in law in failing to allow Rukundo the opportunity to cross-examine Witness BLP upon the issue of his recantation.

135. Nonetheless, the Appeals Chamber is not convinced that the Trial Chamber's error invalidates the Trial Judgement. Mr. Haguma questioned Witness BLP in the course of his

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<sup>322</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, *Conclusions de la défense sur le rapport d'enquête de Monsieur Haguma*, filed confidentially on 23 October 2007 ("Rukundo's Submissions on Haguma Report"), para. 120, p. 19.

<sup>323</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, Defence Submissions in Rejoinder to the Prosecutor's Comments on Mr. Haguma's Report, filed in French on 1 November 2007 and in English on 4 March 2008 ("Rukundo's Response to the Prosecution's Submissions on the Haguma Report"), paras. 35, 37.

<sup>324</sup> See Rukundo Final Trial Brief, paras. 1591-1599.

<sup>325</sup> Rule 90(F) of the Rules.

<sup>326</sup> See *Nahimana et al.* Appeal Judgement, para. 182; *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.* Appeal Decision of 4 July 2006"), p. 3.

<sup>327</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.8, Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007, para. 13.

investigation into the matter, and Rukundo had the opportunity to examine Mr. Haguma and make submissions on the Haguma Report to the Trial Chamber.<sup>328</sup> While this does not fully remedy the violation of his right to examine Witness BLP, it does mitigate it. Furthermore, in assessing Witness BLP's credibility in the Trial Judgement, the Trial Chamber considered the circumstances of Witness BLP's alleged recantation in detail,<sup>329</sup> demonstrating that it did not take the matter lightly. While the Trial Chamber accepted Witness BLP's assertion that he did not wish to recant his testimony, it nonetheless treated his evidence with caution and only relied upon it to the extent that it was corroborated by other reliable evidence.<sup>330</sup>

136. The Appeals Chamber also finds that Rukundo has failed to demonstrate that the Trial Chamber made the decision to order the investigation into Witness BLP's alleged recantation on the basis of documents that did not form part of the trial record. While the Trial Chamber referred to being "in possession of certain documents" when ordering the investigation,<sup>331</sup> there is no evidence of what those documents were. At no time did Rukundo seek to ascertain to what documents the Trial Chamber referred. Furthermore, in light of the fact that Rukundo himself requested the investigation,<sup>332</sup> and the fact that the Trial Chamber ordered the investigation following the testimony of Witness BLP that he did not wish to vary his testimony, the Appeals Chamber is not convinced that the Trial Chamber erred by ordering an investigation into the matter on the basis of unidentified documents.

## 2. Examination of Mr. Haguma

137. On 11 October 2007, Mr. Haguma appeared before the Trial Chamber to present the findings of his investigation and his report of the same date.<sup>333</sup> At that time, Rukundo raised the fact that the Haguma Report had only been disclosed to him about one hour before Mr. Haguma took the stand and the fact that he had not received all the annexes to the report.<sup>334</sup> Following questions put to Mr. Haguma by the Presiding Judge, Rukundo's Lead Counsel cross-examined him until she indicated that she had finished her questioning.<sup>335</sup> The Trial Chamber then permitted Rukundo's

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<sup>328</sup> See *infra* Section III.D.2 (Examination of Mr. Haguma).

<sup>329</sup> Trial Judgement, paras. 139-142.

<sup>330</sup> Trial Judgement, paras. 142, 146.

<sup>331</sup> T. 2 July 2007 p. 43.

<sup>332</sup> T. 2 July 2007 pp. 5, 12, 43; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, *Requête strictement confidentielle en extrême urgence aux fins d'ordonner la conduite d'une enquête indépendante (Article 54 du Règlement de procédure et de preuve)*, 29 June 2007, p. 6.

<sup>333</sup> T. 11 October 2007 pp. 37-50; Trial Chamber Exhibit X1 (Haguma Report).

<sup>334</sup> T. 11 October 2007 pp. 44, 48, 49.

<sup>335</sup> T. 11 October 2007 pp. 42-47.

Co-Counsel to question Mr. Haguma further but ended the examination before she indicated that she had finished.<sup>336</sup>

138. Rukundo submits that his right to cross-examine Mr. Haguma on his report was violated because he did not have adequate time to prepare for the examination, and because the Presiding Judge prematurely put an end to his cross-examination of Mr. Haguma.<sup>337</sup> He asserts that he did not have adequate time to prepare because he only received the Haguma Report “about an hour” before Mr. Haguma’s testimony and did not receive the annexes to the report until after his examination.<sup>338</sup> He contends that because of the limited time they had to prepare for the examination of Mr. Haguma, both his Lead Counsel and Co-Counsel had questions for the witness; however, the Presiding Judge ended his Co-Counsel’s cross-examination of Mr. Haguma without justification.<sup>339</sup>

139. The Appeals Chamber recalls that the Trial Chamber is best placed to determine both the modalities of disclosure and also what time is sufficient for an accused to prepare his defence based on the timing of such disclosure.<sup>340</sup> Furthermore, it observes that the Haguma Report is only five pages long,<sup>341</sup> excluding the annexes, and that the cross-examination of Mr. Haguma by the Lead Counsel and the Co-Counsel shows that they were both familiar with its contents.<sup>342</sup> Following Mr. Haguma’s testimony, the Trial Chamber agreed that if there were any further questions for Mr. Haguma, they could be directed to him in writing via the Registry.<sup>343</sup> It also gave the parties ten days in which to file further submissions regarding the Haguma Report,<sup>344</sup> which Rukundo did.<sup>345</sup> Accordingly, in these circumstances, the Appeals Chamber is not convinced that the late disclosure of the Haguma Report and its annexes prejudiced Rukundo.

140. Similarly, the Appeals Chamber is not convinced that the Trial Chamber unfairly restricted Rukundo’s cross-examination of Mr. Haguma. The Trial Chamber permitted Rukundo’s Lead Counsel to cross-examine Mr. Haguma until she indicated that she had finished her questioning.<sup>346</sup> Rukundo’s Co-Counsel then indicated that she had further questions for Mr. Haguma, noting that

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<sup>336</sup> T. 11 October 2007 pp. 48-50.

<sup>337</sup> Rukundo Appeal Brief, paras. 152-160.

<sup>338</sup> Rukundo Appeal Brief, paras. 153-155.

<sup>339</sup> Rukundo Appeal Brief, paras. 157-159.

<sup>340</sup> *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-1-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal’s Rules of Procedure and Evidence, 25 September 2006, para. 12.

<sup>341</sup> Trial Chamber Exhibit X1 (Haguma Report), pp. 1-5.

<sup>342</sup> T. 11 October 2007 pp. 42-50.

<sup>343</sup> T. 11 October 2007 p. 50.

<sup>344</sup> T. 11 October 2007 p. 50.

<sup>345</sup> Rukundo’s Submissions on Haguma Report.

<sup>346</sup> T. 11 October 2007 pp. 42-47.

they had only received the Haguma Report an hour before the hearing.<sup>347</sup> Although the Trial Chamber noted that Rukundo's Lead Counsel had already questioned Mr. Haguma and that they formed part of the same Defence team, it nonetheless permitted the Co-Counsel to question Mr. Haguma.<sup>348</sup> The Appeals Chamber does not find that the Trial Chamber abused its discretion to determine the modalities of the examination of the witness<sup>349</sup> in this regard, particularly in view of the fact that it invited further submissions and left open the possibility of submitting written questions to Mr. Haguma, as mentioned above.

### 3. Premature Findings on Witness BLP's Alleged Recantation

141. Following Rukundo's Lead Counsel's examination of Mr. Haguma, the Presiding Judge stated:

That will be – we will study the report and then make an observation on that. But as a general observation, I must say this type of conduct from – conduct – conduct of contacting prosecution witnesses is now becoming a habit in this Tribunal. So, something has to be done to stop this kind of thing, otherwise, every time a thing like this happen[s], it will be swept under the carpet and nothing done. So, I think we must bring an end to this type of situation and in that direction, I will be directing the Registrar to take action having studied the report of this – report of this person. The report is admitted. I will place it on record as marked X1.<sup>350</sup>

142. Rukundo submits that by so stating, the Presiding Judge prematurely made findings on the matter before having heard all the evidence.<sup>351</sup>

143. The Appeals Chamber does not consider that the Presiding Judge was making a finding upon the Haguma Report in the above statement. Rather, he made a general observation and stated that the Trial Chamber would consider the Haguma Report and then make a finding upon it. Accordingly, the Appeals Chamber dismisses this argument.

### 4. Examination of Mr. Nshogoza

144. In its Decision of 30 April 2007 recalling Witness BLP to be examined about his alleged recantation, the Trial Chamber stated that the parties would have the opportunity to examine Mr. Nshogoza.<sup>352</sup> Having considered “the importance of hearing Mr. Nshogoza's testimony on the [...] issue”, the Trial Chamber reiterated its intention to hear Mr. Nshogoza in its *proprio motu*

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<sup>347</sup> T. 11 October 2007 pp. 47, 48.

<sup>348</sup> T. 11 October 2007 p. 48.

<sup>349</sup> See Rule 90(F) of the Rules. See also *Nahimana et al.* Appeal Judgement, para. 182.

<sup>350</sup> T. 11 October 2007 p. 47.

<sup>351</sup> Rukundo Appeal Brief, para. 162.

<sup>352</sup> Decision of 30 April 2007, para. 6.

Order of 28 June 2007.<sup>353</sup> However, after hearing Witness BLP's testimony that he did not wish to vary his prior evidence, the Trial Chamber decided that, pending the outcome of Mr. Haguma's investigation into the matter, it did not need to hear Mr. Nshogoza's evidence.<sup>354</sup> After considering the Haguma Report, the Trial Chamber issued a decision in which it found that, although additional information may have been enlightening, it was not necessary for the purposes of assessing Witness BLP's credibility.<sup>355</sup> Accordingly, Mr. Nshogoza was not called for examination.

145. Rukundo submits that the Trial Chamber erred by not allowing Mr. Nshogoza to be examined.<sup>356</sup> He asserts that, given the damning findings the Trial Chamber made about Mr. Nshogoza based upon the Haguma Report, he should have been given the opportunity to explain himself and to deprive him of this was a violation of the *audi alteram partem* rule (no person should be condemned unheard).<sup>357</sup>

146. The Appeals Chamber notes that Rukundo's submissions appear to be aimed in part at defending Mr. Nshogoza's actions. However, it recalls that the investigation into the alleged recantation of Witness BLP was concerned with establishing whether he had indeed recanted. It was not aimed at establishing the guilt or innocence of Mr. Nshogoza. Therefore, in that respect, Mr. Nshogoza had no right to be heard.

147. The Appeals Chamber recalls that decisions relating to the general conduct of trial proceedings are matters within the discretion of Trial Chambers<sup>358</sup> and that they exercise control over the mode and order of interrogating witnesses.<sup>359</sup> Nonetheless, as noted above, the Trial Chamber indicated on a number of occasions that it would hear Mr. Nshogoza's testimony and that, as the person who allegedly met with Witness BLP about his recantation, his evidence was highly relevant to the issue. In addition, Rukundo requested Mr. Nshogoza's testimony on the matter on a number of occasions. Prior to Mr. Haguma's investigation, Rukundo requested that the examination of Mr. Nshogoza take place at the same time as Witness BLP's testimony.<sup>360</sup> When this request was

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<sup>353</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, *Proprio Motu* Order for the Transfer of a Detained Witness (Rules 54 and 90bis of the Rules of Procedure and Evidence), 28 June 2007, p. 2.

<sup>354</sup> Decision of 4 July 2007, para. 8.

<sup>355</sup> Decision of 14 December 2007, para. 7.

<sup>356</sup> Rukundo Notice of Appeal, para. 50; Rukundo Appeal Brief, para. 164.

<sup>357</sup> Rukundo Appeal Brief, para. 164.

<sup>358</sup> *Prli} et al.* Appeal Decision of 4 July 2006, p. 3.

<sup>359</sup> Rule 90(F) of the Rules.

<sup>360</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T, *Requête strictement confidentielle en extrême urgence aux fins d'ordonner l'audition concomitante de BLP et de M. Nshogoza et d'obtenir la communication de l'intégralité du dossier judiciaire des deux témoins (Article 54 du Règlement de procédure et de preuve)*, filed confidentially on 29 June 2007, para. 8, p. 4.

denied,<sup>361</sup> he sought certification to appeal the decision.<sup>362</sup> In his submissions on the Haguma Report, he renewed his request to have Mr. Nshogoza testify on the matter.<sup>363</sup> In view of this, the Trial Chamber ought to have allowed Mr. Nshogoza to be heard upon the issue of Witness BLP's alleged recantation to him.

148. Nonetheless, the Appeals Chamber does not find that the Trial Chamber's decision not to hear Mr. Nshogoza was so unfair or unreasonable as to constitute an abuse of its discretion. In this regard, the Appeals Chamber notes that Rukundo appended an affidavit by Mr. Nshogoza to his initial request to have Witness BLP recalled in which Mr. Nshogoza set out his account of the events, including an annex containing a contemporaneous electronic mail between Mr. Nshogoza and Rukundo's Lead Counsel asking for direction following the first meeting with Witness BLP.<sup>364</sup> Furthermore, Mr. Nshogoza was also interviewed by Mr. Haguma and again gave his account of the events.<sup>365</sup> The Appeals Chamber considers that, while the Trial Chamber should have heard Mr. Nshogoza's testimony on the events leading up to Witness BLP's alleged recantation, the fact that his version of the events was put before the Trial Chamber on two occasions mitigates the fact that he was not called to testify.

149. Furthermore, as recalled above, the Trial Chamber considered the circumstances of Witness BLP's alleged recantation carefully.<sup>366</sup> While the Trial Chamber accepted Witness BLP's assertion that he did not wish to recant his testimony, it nonetheless treated his evidence with caution and only relied upon it to the extent that it was corroborated by other reliable evidence.<sup>367</sup> Accordingly, the Appeals Chamber dismisses this argument.

## 5. Reliance on the Haguma Report

150. Rukundo submits that the Trial Chamber erred in relying on the Haguma Report and that, by doing so, it transferred its duty to assess Witness BLP's credibility to an independent investigator.<sup>368</sup> In this regard, he asserts that the Trial Chamber should not have relied on statements gathered outside the trial process to assess Witness BLP's credibility.<sup>369</sup> Furthermore, he contends that the Trial Chamber could not have relied on the Haguma Report given that it was "full of

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<sup>361</sup> Decision of 4 July 2007, para. 8.

<sup>362</sup> Request for Certification of Trial Chamber's Decision of 4 July 2007, paras. 48, 49.

<sup>363</sup> Rukundo's Submissions on Haguma Report, para. 120, p. 19. *See also* Rukundo's Response to the Prosecution's Submissions on the Haguma Report, paras. 33, 36, 37.

<sup>364</sup> Motion to Recall Witness BLP.

<sup>365</sup> Trial Chamber Exhibit X1 (Haguma Report), p. 3, and annexed notes from interview with Mr. Nshogoza.

<sup>366</sup> Trial Judgement, paras. 139-142.

<sup>367</sup> Trial Judgement, paras. 142, 146.

<sup>368</sup> Rukundo Appeal Brief, para. 172.

gaps”.<sup>370</sup> In support of this, he points to the fact that Mr. Haguma accepted Witness BLP’s testimony without having a handwriting expert verify whether the letters dated 10 January 2007 and 8 February 2007 were written by different people as claimed by Witness BLP.<sup>371</sup>

151. The Appeals Chamber notes that Rukundo has already raised the alleged shortcomings of the Haguma Report, including the fact that there was no handwriting analysis of the letters, in his submissions on the report.<sup>372</sup> The Trial Chamber considered his submissions regarding these shortcomings but found no reason to exclude the Haguma Report.<sup>373</sup> The Appeals Chamber recalls that Rule 89 of the Rules grants Trial Chambers a broad discretion in assessing admissibility of evidence they deem relevant.<sup>374</sup> Rukundo merely raises the same argument on appeal as he did at trial and fails to demonstrate that the Trial Chamber committed a discernible error. Accordingly, the Appeals Chamber dismisses this argument.

152. The Appeals Chamber also dismisses Rukundo’s argument that the Trial Chamber improperly transferred its duty to assess Witness BLP’s credibility to Mr. Haguma. In its Decision of 14 December 2007, the Trial Chamber accepted the Haguma Report and stated that “[t]he weight to be accorded to the report will be decided at a later stage after the Chamber assesses the totality of the evidence.”<sup>375</sup> In the Trial Judgement, the Trial Chamber considered the Haguma Report in assessing Witness BLP’s alleged recantation along with a number of other factors affecting his credibility.<sup>376</sup> Accordingly, Rukundo has not shown that the Trial Chamber transferred its duty to assess Witness BLP’s credibility to Mr. Haguma.

## 6. Conclusion

153. For the foregoing reasons, the Appeals Chamber dismisses Rukundo’s Fourth Ground of Appeal in its entirety.

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<sup>369</sup> Rukundo Appeal Brief, para. 170.

<sup>370</sup> Rukundo Appeal Brief, paras. 165-167.

<sup>371</sup> Rukundo Appeal Brief, para. 165.

<sup>372</sup> Rukundo’s Submissions on Haguma Report, paras. 52-56. *See also ibid*, paras. 21-85.

<sup>373</sup> Decision of 14 December 2007, paras. 7, 11.

<sup>374</sup> *Prosecutor v. Jadranko Prli} et al.*, Case No. IT-04-74-AR73.13, Decision on Jadranko Prli}’s Consolidated Interlocutory Appeal Against the Trial Chamber’s Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009, para. 15.

<sup>375</sup> Decision of 14 December 2007, para. 11.

<sup>376</sup> Trial Judgement, paras. 139-146.

#### **E. Alleged Error Relating to the Pleading of Paragraph 12 of the Indictment (Ground 5)**

154. The Trial Chamber convicted Rukundo for committing genocide based, in part, on his role in the abductions and killings of Tutsi refugees taken from the Saint Léon Minor Seminary.<sup>377</sup> It also convicted him of extermination as a crime against humanity based on these events.<sup>378</sup> The Trial Chamber based these convictions on an allegation contained in paragraph 12 of the Indictment.<sup>379</sup>

Paragraph 12 of the Indictment alleges:

During the months of April and May 1994, Emmanuel RUKUNDO visited the Saint Léon Minor Seminary, and identified Tutsi refugees, who were then taken away by soldiers and killed, and on one such occasion he had a list of names of Tutsi refugees to be killed, which list was used by soldiers and *interahamwe* who had accompanied him, to remove and kill the victims. By so doing, Emmanuel RUKUNDO ordered, instigated, or aided and abetted the killing of Tutsis at this location.

155. In his Final Trial Brief, Rukundo argued that this paragraph was impermissibly vague because it did not specify the identity of the victims or the specific dates related to his acts.<sup>380</sup> The Trial Chamber disagreed and found that the paragraph provided him with a clear time-frame for his alleged actions and reasonably identified the victims.<sup>381</sup> Based on paragraph 12 of the Indictment, the Trial Chamber found that, on at least four occasions during April and May 1994, Rukundo visited the Saint Léon Minor Seminary, accompanied by soldiers and *Interahamwe*, where he identified Tutsi refugees with a list and then left.<sup>382</sup> Shortly after his departure, soldiers and *Interahamwe* took the identified Tutsi refugees from the seminary to an unknown location, where they were killed.<sup>383</sup>

156. Rukundo submits that the Trial Chamber erred in law in convicting him for these events because the Indictment was insufficiently precise.<sup>384</sup> The Prosecution responds that the Trial Chamber addressed these arguments and that Rukundo has failed to demonstrate that the Trial Chamber erred in this regard.<sup>385</sup>

157. Bearing in mind the previously articulated principles of notice,<sup>386</sup> the Appeals Chamber will consider whether there was a defect in the Indictment in relation to (1) the identity of the victims;

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<sup>377</sup> Trial Judgement, para. 573.

<sup>378</sup> Trial Judgement, para. 590.

<sup>379</sup> Trial Judgement, paras. 276, 337.

<sup>380</sup> Rukundo Final Trial Brief, paras. 841-848. *See also* Trial Judgement, para. 332.

<sup>381</sup> Trial Judgement, para. 332.

<sup>382</sup> Trial Judgement, para. 364.

<sup>383</sup> Trial Judgement, para. 364.

<sup>384</sup> Rukundo Notice of Appeal, paras. 19-21; Rukundo Appeal Brief, paras. 23-32; Rukundo Reply Brief, para. 12.

<sup>385</sup> Prosecution Response Brief, para. 28.

<sup>386</sup> *See supra* Section III.A (Ground 1: Alleged Errors Relating to the Pleading of Commission).

(2) the dates of the abductions and killings; (3) the date on which Rukundo arrived with a list of names; and (4) who accompanied Rukundo.

### 1. Identity of the Victims

158. Rukundo submits that the identity of the people abducted should have been pleaded.<sup>387</sup>

159. At trial, the Trial Chamber explicitly considered and rejected this argument, as follows:

The Chamber notes that in respect of the victims' identity, paragraph 12 of the Indictment clearly states that once Rukundo had identified the refugees, soldiers and *Interahamwe* took away and killed Tutsi refugees from the [Saint] Léon Minor Seminary. [...] The Chamber recalls that in cases where the Prosecution alleges specific criminal acts, such as the murder of a named individual, the indictment should set forth material facts such as "the identity of the victim, the time and place of the events and the means by which the acts were committed." However, such detail need not be pleaded where the sheer scale of the alleged crimes makes it impracticable to require the same degree of specificity. The Chamber finds that the reference to "Tutsi refugees", certainly of a large number, is sufficiently specific in this instance. The Chamber is therefore satisfied that the Indictment provided the Accused with sufficient notice to enable him to adequately prepare his defence.<sup>388</sup>

160. As the Trial Chamber correctly observed, where the number of victims is large, each and every victim need not be identified in the indictment.<sup>389</sup> While the Trial Chamber noted that there was no evidence adduced regarding the specific number of deaths resulting from the abductions from the Saint Léon Minor Seminary, the repetitive nature of the abductions and the fact that at least one bus was used to remove the identified refugees suggests that there was a significant number of victims.<sup>390</sup> In this context, the Appeals Chamber considers that the identification of the victims as Tutsi refugees taken from the Saint Léon Minor Seminary was sufficiently precise to allow Rukundo to prepare his defence.

### 2. Dates of the Alleged Abductions and Killings

161. Rukundo also submits that the Indictment was insufficiently precise with respect to the dates of the abductions and killings of the refugees from the Saint Léon Minor Seminary.<sup>391</sup>

162. As noted above, the Indictment alleged that Rukundo participated in the abductions and killings of refugees from the Saint Léon Minor Seminary "[d]uring the months of April and May

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<sup>387</sup> Rukundo Notice of Appeal, para. 20; Rukundo Appeal Brief, para. 26.

<sup>388</sup> Trial Judgement, para. 332, citing *Kupreškić et al.* Appeal Judgement, para. 89; *Ntakirutimana* Appeal Judgement, para. 25.

<sup>389</sup> *Kupreškić et al.* Appeal Judgement, para. 90.

<sup>390</sup> See Trial Judgement, para. 589.

<sup>391</sup> Rukundo Notice of Appeal, para. 20; Rukundo Appeal Brief, para. 26.

1994”.<sup>392</sup> The Trial Chamber found that on at least four occasions during April and May 1994, Rukundo was involved in the abductions and killings of refugees from the Saint Léon Minor Seminary.<sup>393</sup>

163. The Appeals Chamber considers that a broad date range, in and of itself, does not invalidate a paragraph of an indictment.<sup>394</sup> In light of the Trial Chamber’s finding that abductions were recurring and that Rukundo was involved on “at least four occasions”,<sup>395</sup> and given that the evidence indicates that his involvement in the abductions did essentially span this period, the Appeals Chamber does not consider that the date range of April and May 1994 was unreasonably broad. In this regard, the Appeals Chamber notes that Witness CSF’s evidence, upon which the Trial Chamber relied in making its findings, was that Rukundo was involved in the abduction of refugees from the Saint Léon Minor Seminary on four occasions starting on 20 or 21 April 1994 and occurring in fairly regular intervals until mid-May 1994.<sup>396</sup> Accordingly, the Appeals Chamber finds that the Indictment was not vague in this respect.

### 3. List of Names

164. Rukundo submits that, because the Indictment only alleged that he had a list of names which the soldiers and *Interahamwe* used to select the Tutsi refugees to be abducted on one occasion, the Indictment should have specified the date on which he had the list.<sup>397</sup> Furthermore, he asserts that the Prosecution evidence is inconsistent with the Indictment because the evidence was that he had a list on each occasion, which was not pleaded in the Indictment.<sup>398</sup>

165. The Appeals Chamber agrees that there is a discrepancy between paragraph 12 of the Indictment and the evidence concerning the number of times when Rukundo was in possession of a list. The Indictment mentions only one occasion whereas the evidence reflects that he had a list on each occasion.<sup>399</sup> However, the Appeals Chamber is not convinced that this variance is significant in the context of this case. In any event, even if this were a material defect, a review of the record does not show that Rukundo objected to this aspect of the pleading at trial. The Appeals Chamber

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<sup>392</sup> Indictment, para. 12.

<sup>393</sup> Trial Judgement, paras. 364, 570.

<sup>394</sup> See, e.g., *Muvunyi* Appeal Judgement, para. 58 (in which the Appeals Chamber found that a paragraph of the indictment which gave a date range of mid-April to June 1994 was not defective).

<sup>395</sup> Trial Judgement, paras. 364, 570.

<sup>396</sup> Trial Judgement, paras. 279-282, 339-343. The Trial Chamber also found that “[w]hile Witness CSF testified that he saw [Rukundo] at the Seminary on only four occasions, other visits, attested to by Witness CSG, are not to be excluded.” According to Witness CSG, Rukundo visited the St. Léon Minor Seminary on “numerous occasions”, sometimes twice a day during April and May 1994. Trial Judgement, para. 350.

<sup>397</sup> Rukundo Notice of Appeal, para. 20; Rukundo Appeal Brief, paras. 27, 28.

<sup>398</sup> Rukundo Appeal Brief, para. 29.

further notes that in the summary of expected evidence of each witness, which was disclosed to Rukundo on 30 October 2006,<sup>400</sup> the summary of Witness CSG's expected testimony clearly indicates that each time Rukundo came to the Saint Léon Minor Seminary, he had a list with him.<sup>401</sup> Accordingly, the Appeals Chamber considers that Rukundo's ability to prepare his defence was not prejudiced.

#### 4. Soldiers and *Interahamwe* Accompanying Rukundo

166. Rukundo submits that the Indictment alleges that when he visited the Saint Léon Minor Seminary he was accompanied by soldiers and that only on the occasion when he had the list was he accompanied by soldiers and *Interahamwe*.<sup>402</sup> He asserts the evidence was that he was accompanied by soldiers and *Interahamwe* on each occasion.<sup>403</sup> He submits that the evidence was therefore inconsistent with the Indictment.<sup>404</sup>

167. The Appeals Chamber considers that the discrepancy between the pleading and the evidence which Rukundo has identified is so minor that it could not have prejudiced his ability to prepare his case. Paragraph 12 of the Indictment does make reference to the involvement of both soldiers and *Interahamwe* and, in finding that both soldiers and *Interahamwe* were involved in the abductions, the Trial Chamber took into account Witness CSF's evidence that it was difficult to distinguish soldiers and *Interahamwe*.<sup>405</sup> Even if the alleged discrepancy were sufficient to render the Indictment defective, the Appeals Chamber observes that Rukundo did not object to this issue at trial. Furthermore, the Summary of Expected Witness Testimony indicates that both Witnesses CSF and CSG were expected to testify about the involvement of both soldiers and *Interahamwe* in the abductions and killings.<sup>406</sup> Consequently, the Appeals Chamber is not convinced that Rukundo suffered any prejudice in the preparation of his defence.

#### 5. Conclusion

168. For the foregoing reasons, the Appeals Chamber dismisses Rukundo's Fifth Ground of Appeal.

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<sup>399</sup> Trial Judgement, paras. 279-282, 288.

<sup>400</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-I, Summary of the Facts on Which Each Witness Will Testify, Rule 73bis (B)(iv)(b), 30 October 2006 (confidential) ("Summary of Expected Witness Testimony"). The Summary of Expected Evidence was filed two weeks after the Prosecution Pre-Trial Brief and is what is normally attached as an annex to the pre-trial brief. The trial started on 15 November 2006. *See* Trial Judgement, para. 8.

<sup>401</sup> Summary of Expected Witness Testimony, pp. 1, 2.

<sup>402</sup> Rukundo Appeal Brief, para. 29.

<sup>403</sup> Rukundo Appeal Brief, para. 29.

<sup>404</sup> Rukundo Appeal Brief, para. 29.

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<sup>405</sup> Trial Judgement, para. 351.

<sup>406</sup> Summary of Expected Witness Testimony, pp. 1, 2, 6, 7.

## **F. Alleged Errors Relating to the Events at the Saint Léon Minor Seminary (Ground 6)**

169. The Trial Chamber convicted Rukundo of committing genocide, in part, and extermination as a crime against humanity based on his role in the abductions and killings of Tutsi refugees from the Saint Léon Minor Seminary at Kabgayi in Gitarama Prefecture.<sup>407</sup> In particular, the Trial Chamber determined that, on at least four occasions between mid-April and the end of May 1994, Rukundo used a list to identify Tutsi refugees to the soldiers and *Interahamwe* who accompanied him.<sup>408</sup> The Trial Chamber found that, after Rukundo left the seminary, the soldiers and *Interahamwe* removed the identified refugees and killed them at an unknown location.<sup>409</sup>

170. Rukundo submits that the Trial Chamber erred in convicting him of these crimes.<sup>410</sup> In this section, the Appeals Chamber considers whether the Trial Chamber erred in its assessment of (1) the legal elements of the crimes; and (2) the evidence.

### **1. Legal Elements of the Crimes**

171. Rukundo submits that the Trial Chamber erred in convicting him of genocide and extermination as a crime against humanity based on his role in the abductions and killings of Tutsis from the Saint Léon Minor Seminary.<sup>411</sup> The Appeals Chamber considers whether the Trial Chamber erred in finding that: (a) he substantially contributed to the crimes; (b) the evidence met the requirements for genocide; and (c) the evidence met the requirements for extermination as a crime against humanity.

#### **(a) Rukundo's Role in Committing the Crimes**

172. In convicting Rukundo of genocide, the Trial Chamber considered that his role in identifying Tutsi refugees from a list to the soldiers and *Interahamwe* was “as much an integral part of the crimes as the abductions of Tutsi refugees from the [Saint] Léon Minor Seminary and the subsequent killing[s] that [it] enabled.”<sup>412</sup> The Trial Chamber did not specify his form of

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<sup>407</sup> Trial Judgement, paras. 573, 590, 591.

<sup>408</sup> Trial Judgement, paras. 364, 570.

<sup>409</sup> Trial Judgement, para. 364.

<sup>410</sup> Rukundo Notice of Appeal, paras. 27-31, 36-39, 44, 45, 53, 54, 56, 62-64, 71, 73-79, 84-86, 90-94, 96, 100, 101, 103, 104; Rukundo Appeal Brief, paras. 80-92, 108, 109, 115-117, 121-132, 145, 180-182, 197-211, 231-247, 256-258, 261, 262-266, 270-273, 279, 280, 301-305.

<sup>411</sup> Rukundo Appeal Brief, paras. 80-92, 108, 109, 115-117, 270-273.

<sup>412</sup> Trial Judgement, para. 571, *citing* Trial Judgement, paras. 361, 364.

responsibility under Article 6(1) of the Statute for his conviction for extermination as a crime against humanity based on this incident.<sup>413</sup>

173. Rukundo argues that, in relation to his conviction for extermination as a crime against humanity, the Trial Chamber failed to specify the relevant form of responsibility under Article 6(1) of the Statute for his participation in the attack.<sup>414</sup> He also argues that the evidence does not demonstrate that he played a role in the abductions and killings and points to various accounts by witnesses attributing these crimes to other persons.<sup>415</sup>

174. The Appeals Chamber considers that the Trial Chamber's failure to mention the specific form of liability relating to Rukundo's conviction for extermination as a crime against humanity does not invalidate the verdict. This conviction is based on the same underlying conduct which forms the basis of his genocide conviction. In the legal findings on genocide, the Trial Chamber clearly described Rukundo's role in the killings as committing.<sup>416</sup> This is also clearly the form of responsibility under Article 6(1) of the Statute which the Trial Chamber implicitly relied on in finding Rukundo responsible for extermination in connection with the killings of refugees from the Saint Léon Minor Seminary.

175. The Appeals Chamber recalls, however, that it has found that the Trial Chamber erred in finding that Rukundo committed genocide and extermination as a crime against humanity based on the abductions and killings of Tutsi refugees from the Saint Léon Minor Seminary because this form of responsibility was not pleaded in the Indictment.<sup>417</sup> The Appeals Chamber will therefore consider whether Rukundo's acts, as found by the Trial Chamber, amounted to one of the other forms of liability pleaded in the Indictment. In the course of doing so, the Appeals Chamber will consider whether there was a sufficient nexus between Rukundo's acts, which he disputes under this ground of appeal, and the perpetration of the crimes as required by the relevant form of responsibility.

176. In determining Rukundo's role in the abductions and killings, the Trial Chamber found that, on at least four occasions, he was present at the Saint Léon Minor Seminary and identified Tutsi refugees to soldiers and *Interahamwe* who subsequently removed and then killed them.<sup>418</sup> The Trial

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<sup>413</sup> Trial Judgement, para. 590 ("Accordingly, the Chamber finds Rukundo guilty on Count 3 of the Indictment, under Article 6(1), for extermination as a crime against humanity for abductions and killings of Tutsi refugees from the [Saint] Léon Minor Seminary between April 1994 and the end of May 1994.").

<sup>414</sup> Rukundo Appeal Brief, para. 86.

<sup>415</sup> Rukundo Appeal Brief, paras. 90, 91.

<sup>416</sup> Trial Judgement, para. 573.

<sup>417</sup> See *supra* Section III.A (Ground 1: Alleged Error Relating to the Pleading of Commission).

<sup>418</sup> Trial Judgement, para. 364.

Chamber noted the proximity in time of Rukundo's actions in identifying individuals to the assailants and their subsequent removal and killing.<sup>419</sup> On the basis of these findings, the Appeals Chamber finds that this evidence demonstrates that Rukundo substantially assisted the subsequent killings.<sup>420</sup>

177. Bearing in mind the Trial Chamber's findings that the repeated attacks targeted Tutsis and formed part of a larger campaign of ethnic violence in the area and country,<sup>421</sup> the Appeals Chamber is convinced that the perpetrators acted with both genocidal intent and knowledge of the widespread and systematic attack against Tutsi civilians. In assisting the assailants identify their victims, Rukundo also would have been aware of his role in the crimes and the perpetrators' *mens rea*. Consequently, the Appeals Chamber finds that Rukundo's actions aided and abetted genocide and extermination as a crime against humanity.

178. In reaching this conclusion, the Appeals Chamber has considered Rukundo's contention that various witnesses, including Prosecution Witnesses BLC, CSG, and CCH and Defence Witnesses SLA and SDA, did not attribute the abductions and killings to him, but rather to other persons.<sup>422</sup> Rukundo's submissions fail to appreciate that, in convicting him of these crimes, the Trial Chamber relied principally on Witness CSF's eye-witness account.<sup>423</sup> Moreover, the account of Witness CSG, which was used as corroboration, placed Rukundo at the seminary using lists to identify Tutsi refugees to the assailants.<sup>424</sup> The Trial Chamber relied on Witness BLC to substantiate Rukundo's frequent presence at the seminary and the fact that Tutsi refugees were frightened of him.<sup>425</sup> Furthermore, the Trial Chamber did not specifically attribute the killings described by Witnesses BLC, CCH, SLA, and SDA to Rukundo. Instead, it relied on the evidence of a pattern of violence against the refugees there, together with other evidence, to support its inference that the refugees who were removed were ultimately killed.<sup>426</sup>

179. The Appeals Chamber notes that the basis of the Trial Chamber's finding of Rukundo's involvement in the crime is his identification of Tutsi refugees to be killed.<sup>427</sup> The Trial Chamber

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<sup>419</sup> See Trial Judgement, paras. 339-343.

<sup>420</sup> The elements of aiding and abetting are discussed in connection with the crimes committed at Saint Joseph's College. See Section III.B (Ground 2: Alleged Errors Relating to Saint Joseph's College).

<sup>421</sup> See Trial Judgement, paras. 362, 363.

<sup>422</sup> Rukundo Appeal Brief, paras. 90, 91.

<sup>423</sup> Trial Judgement, para. 338 ("The main Prosecution witness on this allegation is Witness CSF."), para. 361 ("Based on Witness CSF's testimony, corroborated by the evidence of Witness CSG and Witness BLC, the Chamber finds [...].").

<sup>424</sup> Trial Judgement, para. 350.

<sup>425</sup> Trial Judgement, para. 357.

<sup>426</sup> Trial Judgement, paras. 357, 362.

<sup>427</sup> Trial Judgement, para. 364.

did not find that he specifically abducted individuals or killed them. Therefore, the fact that some witnesses might not have stated that Rukundo was responsible for specific abductions or killings or that others also participated in these crimes at the seminary does not undermine the reasonableness of the Trial Chamber's conclusions with respect to Rukundo's involvement.

(b) Genocide

180. The Trial Chamber found that the refugees abducted from the Saint Léon Minor Seminary were Tutsis.<sup>428</sup> In reaching this conclusion, the Trial Chamber noted that Witness CSF, the main witness concerning the events, "was unable to positively identify the ethnicity of the refugees abducted from the [Saint] Léon Minor Seminary."<sup>429</sup>

181. Rukundo submits that the Trial Chamber erred in finding that the abductions and killings of refugees from the Saint Léon Minor Seminary constituted genocide.<sup>430</sup> In particular, he contends that the Trial Chamber failed to establish that the victims were Tutsis or that they were targeted on this basis.<sup>431</sup> Specifically, he points to evidence that there were both Hutus and Tutsis at the seminary and that the selection criteria was not ethnic, but rather social and physical.<sup>432</sup> He also argues that his purported references to the individuals as RPF supporters are insufficient to establish genocidal intent since the RPF would not qualify as a protected group.<sup>433</sup>

182. The Appeals Chamber can identify no error in the Trial Chamber's findings that the refugees at the Saint Léon Minor Seminary who were abducted and killed were Tutsis. Rukundo fails to appreciate that, as the Trial Chamber observed, the Tutsi and Hutu refugees were housed at different locations at the seminary.<sup>434</sup> Furthermore, as Witness CSF explained, "many of the refugees who were in hiding at the Seminary, particularly after the first abduction, were Tutsi[s]."<sup>435</sup> The Trial Chamber also expressly considered that the attacks occurred in the context of the widespread and systematic targeting of Tutsis throughout Gitarama Prefecture.<sup>436</sup> The fact that certain categories of Tutsis were selected first does not change the fundamental nature of the crime. Accordingly, Rukundo has not demonstrated that the Trial Chamber erred in finding that members of the Tutsi ethnic group were killed and that the perpetrators acted with genocidal intent. The Trial

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<sup>428</sup> Trial Judgement, paras. 361, 364, 570-573.

<sup>429</sup> Trial Judgement, para. 344. *See also* Trial Judgement, para. 338.

<sup>430</sup> Rukundo Appeal Brief, paras. 80-85, 115-117.

<sup>431</sup> Rukundo Appeal Brief, paras. 82-85, 115. *See also* Rukundo Reply Brief, paras. 28, 110-113.

<sup>432</sup> Rukundo Appeal Brief, para. 82.

<sup>433</sup> Rukundo Appeal Brief, para. 116. *See also* Rukundo Reply Brief, paras. 29, 30.

<sup>434</sup> Trial Judgement, para. 353.

<sup>435</sup> Trial Judgement, para. 344.

<sup>436</sup> Trial Judgement, para. 362.

Chamber therefore did not err in convicting Rukundo of genocide based on the abductions and killings at the Saint Léon Minor Seminary.

(c) Extermination as a Crime Against Humanity

183. Rukundo submits that the Trial Chamber erred in convicting him of extermination as a crime against humanity.<sup>437</sup> He argues that the evidence does not demonstrate that the crimes that formed the basis of that conviction were part of a widespread or systematic attack on national, political, ethnic, racial, or religious grounds because the ethnicity of the victims was never identified.<sup>438</sup> As a result, Rukundo argues that he could not have had the requisite *mens rea* for a crime against humanity.<sup>439</sup> He further contends that the crime of extermination requires the killing of “named or specifically described persons”.<sup>440</sup> In his view, “Tutsi refugees” does not fulfil this requirement.<sup>441</sup>

184. Rukundo further submits that the Trial Chamber erred in finding that a mass killing occurred and that he intended to participate in such a crime.<sup>442</sup> In this respect, he asserts that the Trial Chamber had an insufficient evidentiary basis to conclude that a bus was used to transport the refugees from the seminary since the Trial Chamber’s finding in this regard was based on hearsay and because the use of buses was attributed by some witnesses to individuals other than Rukundo.<sup>443</sup> Rukundo also asserts that the Trial Chamber had insufficient evidence to find, as the only reasonable inference, that the refugees were in fact killed since there is evidence that some of the persons removed did, in fact, return to the seminary.<sup>444</sup>

185. The Appeals Chamber recalls that the crime of extermination is the act of killing on a large scale.<sup>445</sup> The expression “on a large scale” does not, however, suggest a numerical minimum.<sup>446</sup> As a crime against humanity, the act of killing must occur within the context of a widespread or systematic attack against the civilian population on national, political, ethnic, racial, or religious grounds.<sup>447</sup>

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<sup>437</sup> Rukundo Appeal Brief, paras. 86-92.

<sup>438</sup> Rukundo Appeal Brief, para. 87.

<sup>439</sup> Rukundo Appeal Brief, para. 88. *See also* Rukundo Reply Brief, paras. 30, 31.

<sup>440</sup> Rukundo Appeal Brief, para. 89.

<sup>441</sup> Rukundo Appeal Brief, para. 89.

<sup>442</sup> Rukundo Appeal Brief, paras. 89, 90, 92.

<sup>443</sup> Rukundo Appeal Brief, para. 90.

<sup>444</sup> Rukundo Appeal Brief, para. 92.

<sup>445</sup> *Ntakirutimana* Appeal Judgement, para. 516.

<sup>446</sup> *Ntakirutimana* Appeal Judgement, para. 516.

<sup>447</sup> *Ntakirutimana* Appeal Judgement, para. 516.

186. The Appeals Chamber finds no merit in Rukundo's contention that the Trial Chamber erred in finding that the crimes were part of a widespread or systematic attack against a civilian population on ethnic grounds because the ethnicity of the victims was never identified. As discussed above, the Trial Chamber reasonably concluded that the victims were Tutsis and that the killings occurred in the context of a widespread attack on Tutsis in Rwanda.<sup>448</sup> Rukundo has not demonstrated any error on the part of the Trial Chamber in finding that the attack formed part of a widespread and systematic attack on ethnic grounds and that he was aware of this.<sup>449</sup> The Appeals Chamber is equally unconvinced by Rukundo's contention that the crime of extermination requires the killing of "named or specifically described persons". The Appeals Chamber has already rejected this as an element of the crime.<sup>450</sup>

187. With respect to the element of killing on a large scale, the Trial Chamber acknowledged that "no evidence was adduced before the Chamber regarding the specific number of deaths resulting from the abductions at the [Saint] Léon Minor Seminary".<sup>451</sup> Nonetheless, it found that this element was satisfied in view of the repetitive nature of the abductions as well as the fact that "at least one bus was used to remove the identified refugees".<sup>452</sup>

188. As Rukundo notes, Witness CSF's evidence concerning the use of buses was hearsay.<sup>453</sup> However, it is permissible to base a conviction on circumstantial evidence and hearsay, although caution is warranted in such circumstances.<sup>454</sup> The Appeals Chamber is satisfied that the Trial Chamber acted reasonably in this case. Contrary to Rukundo's suggestion, Witness CSG's testimony in fact corroborated Witness CSF's account of the use of at least one bus to remove the refugees.<sup>455</sup>

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<sup>448</sup> See *supra* para. 182.

<sup>449</sup> The Appeals Chamber also recalls that the individual victim's membership in a national, political, ethnic, racial or religious group is not required for a conviction for crimes against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population. See *supra* n. 121.

<sup>450</sup> See *Ntakirutimana* Appeal Judgement, para. 521 ("It is not an element of the crime of extermination that a precise identification of 'certain named or described persons' be established. It is sufficient that the Prosecution satisfy the Trial Chamber that mass killings occurred.").

<sup>451</sup> Trial Judgement, para. 589.

<sup>452</sup> Trial Judgement, para. 589.

<sup>453</sup> T. 13 February 2007 p. 30 ("I was not the only person who could go out. Other refugees went out, and they came back and told us that those who had been taken away had been put on board buses. At least one or two refugees would go out, and came back to tell us what had happened. The buses took away the refugees, and many others saw them.").

<sup>454</sup> *Muvunyi* Appeal Judgement, para. 70.

<sup>455</sup> T. 30 November 2006 p. 22 ("A. [...] Abducting people was routine. It was things that happened often. There were some other people who came and abducted people and on some occasion a bus was used in taking away people or to convey those who had been abducted. I think I should restrict myself to that, because you asked me to be brief in my answers. Q. [...] Who are these other people who came to abduct refugees? A. That was the *Interahamwe* group that I had referred to. Q. Which one, the one that followed Rukundo? A. Yes.").

189. Furthermore, a review of the record reflects that the Trial Chamber had a reasonable basis for concluding that killing on a large scale occurred. First, the evidence indicates that refugees were housed at the seminary in several buildings and that, as the number of refugees increased, there was no longer enough space for everyone and many refugees had to settle outside.<sup>456</sup> This demonstrates that the seminary hosted a large refugee population. Second, during the fourth abduction of refugees from the seminary, Witness CSF saw Rukundo with “a very long list of names of refugees to be taken away”.<sup>457</sup> Third, after the final round of abductions, “[o]nly a few young girls and boys as well as elderly people were left”.<sup>458</sup> This demonstrates that a large part of the refugee population was abducted from the seminary. Accordingly, the Appeals Chamber is not convinced that Rukundo has shown any error in the Trial Chamber’s findings concerning the large number of refugees abducted from the Saint Léon Minor Seminary.

190. Finally, although it had no first-hand evidence of the killings, the Trial Chamber stated:

In light of the general context of systematic targeting and killing of Tutsi in Gitarama, the overwhelming evidence of abductions and killings of Tutsi[s] from various places in Kabgayi, the observations by Witnesses CSF, CSG, BLC, CCH, SLA and SLD that the refugees were never seen again and the evidence that the *Interahamwe*, who abducted the refugees, returned to the Minor Seminary singing and boasting about the killing of the refugees, the Chamber finds that the only reasonable inference to be drawn from this evidence is that those abducted from the [Saint] Léon Minor Seminary were killed.<sup>459</sup>

191. In challenging the reasonableness of this inference, Rukundo relies on the evidence of Witness SLD that some of the refugees who had been abducted returned to the seminary.<sup>460</sup> Rukundo fails to appreciate that these individuals returned because they “managed to escape”,<sup>461</sup> not because the refugees were removed for some other purpose than their killing. That some of the refugees who were forcibly removed might have escaped and survived does not change the fundamental purpose of the abductions: to kill the Tutsi refugees. Accordingly, the Appeals

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<sup>456</sup> Trial Judgement, paras. 277, 293. *See also* T. 13 February 2007 pp. 2 (“[U]pon my arrival, I found a number of persons who had come from here and there, in particular from the regions that shared a border with Gitarama *préfecture*. The refugees continued to arrive in their numbers.”), 3 (“I found other refugees there, a few of them. But as the situation worsened, the number of refugees kept increasing.”), 4 (“I should point out to you that this time there were many refugees and a lot of them were taken away.”)(Witness CSF); T. 4 December 2006 p. 14 (“A. [...] Now, in the second part of April, the situation was no longer the same. At the beginning there were people who could live in the dormitories, but towards the end the more people – the more people came, the more you had people living in the compound. They could not – there was no more accommodation for them. Q. So people lived outside the rooms within the compound of the St Léon minor seminary; am I right? A. Yes, towards the end that was the situation, in the sense that those – those who came earlier had accommodation and they were living there, and those who came later on did not have any more accommodation and then they just settle wherever they could. If you find a little corner you stayed there and you lived there. That is your corner. But towards the end, there was really no space and people were all over the place.”)(Witness BLC).

<sup>457</sup> Trial Judgement, para. 282.

<sup>458</sup> Trial Judgement, para. 343. *See also* Trial Judgement, para. 282.

<sup>459</sup> Trial Judgement, para. 363 (internal citation omitted).

<sup>460</sup> Rukundo Appeal Brief, para. 92, *citing* Trial Judgement, para. 330.

Chamber is not convinced that it was unreasonable for the Trial Chamber to conclude that refugees taken from the seminary were killed. Therefore, the Trial Chamber did not err in convicting Rukundo of extermination as a crime against humanity based on the abductions and killings at the Saint Léon Minor Seminary.

## 2. Assessment of Evidence

192. In convicting Rukundo based on the abductions and killings in relation to the Saint Léon Minor Seminary, the Trial Chamber relied principally on the testimony of Witness CSF.<sup>462</sup> In addition, it considered that the evidence of Witnesses CSG and BLC corroborated his account.<sup>463</sup> The Trial Chamber also discussed the testimony of Witnesses CCH and CCG, who were at the Saint Léon Minor Seminary during this period, but relied only on Witness CCH in its deliberations to show that refugees who were abducted from the seminary were killed.<sup>464</sup> Finally, it also set forth in detail the evidence of Rukundo and Defence Witnesses SLA and SLD.<sup>465</sup> It did not discuss the credibility of Rukundo's testimony, but expressly found that the accounts of Witnesses SLA and SLD did not raise doubt in the Prosecution evidence.<sup>466</sup>

193. Rukundo submits that the Trial Chamber erred in its assessment of the evidence related to these events.<sup>467</sup> In this section, the Appeals Chamber considers whether the Trial Chamber erred in its assessment of: (a) the identification evidence; (b) corroboration; (c) the credibility of Prosecution witnesses; and (d) the exculpatory evidence.

### (a) Identification Evidence

194. Rukundo submits that the Trial Chamber erred in relying on Witnesses CSF and CSG to convict him based on these events because they lacked a sufficient basis of knowledge to identify him and their accounts are inconsistent with those of other witnesses who knew him previously.<sup>468</sup> In this respect, Rukundo emphasizes that Witnesses CSF, CSG, and BLC did not know him prior to the events and that their identification of him was based on hearsay from unidentified persons.<sup>469</sup>

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<sup>461</sup> Trial Judgement, para. 330.

<sup>462</sup> Trial Judgement, paras. 338, 361.

<sup>463</sup> Trial Judgement, paras. 338, 361.

<sup>464</sup> Trial Judgement, paras. 305-313, 362.

<sup>465</sup> Trial Judgement, paras. 314-331.

<sup>466</sup> Trial Judgement, paras. 359, 360.

<sup>467</sup> Rukundo Appeal Brief, paras. 121-132, 145, 180-182, 197-211, 231-247, 279, 280, 301-305. Rukundo also submits that the Trial Chamber erred in assessing Rukundo's authority in relation to this incident. *See* Rukundo Appeal Brief, paras. 256, 257, 261-266. The Appeals Chamber addresses these arguments in detail in Sections III.B (Alleged Errors Relating to Saint Joseph's College) and IV.A (Ground 9: Rukundo's Sentencing Appeal).

<sup>468</sup> Rukundo Appeal Brief, paras. 121-132, 145. *See also* Rukundo Reply Brief, paras. 60-69.

<sup>469</sup> Rukundo Appeal Brief, paras. 127-129.

According to Rukundo, Witness BLC's testimony is inconsistent with the accounts of Witnesses CSF and CSG in relation to his location during the abductions.<sup>470</sup> Finally, Rukundo acknowledged that Witnesses CCH and CCG did know him.<sup>471</sup> However, he contends that they would have heard about his role in any of the abductions, but did not mention it.<sup>472</sup>

195. The Appeals Chamber recalls that a Trial Chamber must take into account the difficulties associated with identification evidence in a given case and must carefully evaluate any such evidence before accepting it as the basis for sustaining a conviction.<sup>473</sup> The Trial Chamber relied principally on Witness CSF's account and considered the evidence of Witnesses CSG and BLC as corroboration.<sup>474</sup> Although in summarizing their evidence it noted that they did not previously know Rukundo and that the basis of their identification was hearsay,<sup>475</sup> it did not expressly discuss this issue in its deliberations. Trial Chambers are not required to refer to every piece of evidence on the trial record.<sup>476</sup> However, the Appeals Chamber considers that the Trial Chamber's failure to address these points amounts to a failure to provide a reasoned opinion.

196. Nonetheless, the Appeals Chamber is not convinced that this error invalidated the Trial Chamber's reliance on these witnesses' accounts. Specifically, Witness CSF testified that he learned of Rukundo's identity from religious personnel who knew him and attended his ordination.<sup>477</sup> Therefore, although hearsay from unidentified sources, this additional and specific detail provides greater indicia of reliability.

197. With respect to Witness BLC's identification of Rukundo, the Appeals Chamber recalls that, in addition to observing Rukundo's role in the abductions, the witness overheard him boast of killing Madame Rudahunga.<sup>478</sup> This claim is similar to what Witness CCH heard Rukundo say on another occasion in relation to that killing.<sup>479</sup> In view of the Trial Chamber's findings on Rukundo's role in Madame Rudahunga's death,<sup>480</sup> the Appeals Chamber considers that this provides a reasonable basis for his identification. The Appeals Chamber also observes that Witness BLC was a seminarian, spent time near the seminary's administration building, and saw Rukundo spending

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<sup>470</sup> Rukundo Appeal Brief, para. 131.

<sup>471</sup> Rukundo Appeal Brief, para. 132.

<sup>472</sup> Rukundo Appeal Brief, para. 132.

<sup>473</sup> *Limaj et al.* Appeal Judgement, para. 30; *Kamuhanda* Appeal Judgement, para. 234; *Kupre{ki} et al.* Appeal Judgement, para. 34.

<sup>474</sup> Trial Judgement, paras. 338, 361.

<sup>475</sup> Trial Judgement, paras. 278, 286, 288, 295, 296.

<sup>476</sup> *Nchamihigo* Appeal Judgement, para. 121; *Kajelijeli* Appeal Judgement, paras. 59, 60; *Kvo-ka et al.* Appeal Judgement, para. 23.

<sup>477</sup> Trial Judgement, para. 278. *See also* T. 13 February 2007 pp. 3, 9, 17.

<sup>478</sup> Trial Judgement, paras. 106, 297.

<sup>479</sup> Trial Judgement, para. 109.

time with another priest, whom the witness knew.<sup>481</sup> Given this background, he would have also been better placed to verify Rukundo's identity.

198. Witness CSG heard other refugees say, “[y]ou have to flee because Emmanuel Rukundo [is] coming”, each time he arrived at the seminary.<sup>482</sup> When the witness first saw Rukundo, he specifically discussed with the other refugees why they referred to him as “Father Rukundo” given that he appeared to be a soldier.<sup>483</sup> The Appeals Chamber considers that, when taken together with the identification evidence of Witnesses CSF and BLC, it is clear that a number of refugees at the Saint Léon Minor Seminary were in a position to identify Rukundo.

199. The Appeals Chamber is not persuaded that the various differences between the accounts of Witnesses CSF, CSG, BLC, CCH, and CCG call into question the identification evidence of the main witnesses on this event. As discussed below, the Trial Chamber reasonably explained the discrepancies between the accounts of Witnesses CSF, CSG, and BLC. Although it did not expressly discuss the fact that Witnesses CCH and CCG did not mention Rukundo's role in the abductions, the Appeals Chamber observes that it is highly speculative to suggest that their failure to mention Rukundo's involvement meant that he had none, particularly because they only arrived at the seminary in the second half of May 1994.<sup>484</sup>

(b) Corroboration

200. Rukundo submits that the Trial Chamber erred in finding that Witness CSF's testimony was corroborated by the evidence of Witnesses CSG and BLC in light of the differences in their accounts related to the use of lists, the composition of the groups accompanying Rukundo who conducted the searches, Rukundo's location and active involvement during the searches, the frequency of his visits, and the timing of the abductions.<sup>485</sup>

201. The Appeals Chamber recalls that “corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.”<sup>486</sup> Although there are various differences between the accounts of Witnesses CSF, CSG, and BLC, as explained in the Trial Judgement, the Trial Chamber clearly expressed its preference for and relied principally

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<sup>480</sup> See *supra* Section III.B (Ground 2: Alleged Errors Relating to Saint Joseph College).

<sup>481</sup> Trial Judgement, paras. 291-293, 302, 357.

<sup>482</sup> Trial Judgement, para. 288.

<sup>483</sup> Trial Judgement, para. 288.

<sup>484</sup> Trial Judgement, paras. 306, 310.

<sup>485</sup> Rukundo Appeal Brief, paras. 180-182, 197-211. See also Rukundo Reply Brief, paras. 89-94.

on the “firsthand and largely consistent account of [Rukundo’s] four visits” provided by Witness CSF.<sup>487</sup> Moreover, it provided reasons for viewing the evidence of Witnesses CSG and BLC simply as corroboration. In reconciling the different descriptions of the events provided by Witnesses BLC and CSG, the Trial Chamber noted their varying vantage points and the impact of Witness CSG’s injury, her pregnancy at the time, and the desperate living conditions at the seminary.<sup>488</sup> Therefore, it follows from the Trial Chamber’s discussion that it accepted only the specific details of Witness CSF’s account and relied only on the fundamental features of the evidence of Witnesses CSG and BLC.<sup>489</sup> The Appeals Chamber can identify no error in this approach since there is no legal requirement for the corroboration of evidence.<sup>490</sup>

202. The Appeals Chamber also finds no merit in Rukundo’s suggestion that the Trial Chamber relied solely on Witness CSG to establish that Rukundo used lists to identify refugees notwithstanding its decision not to accept Witness CSG’s testimony absent corroboration.<sup>491</sup> It follows from Witness CSF’s testimony that Rukundo arrived with a list and handed it to soldiers, who then called the names of refugees.<sup>492</sup> Based on this evidence, the Appeals Chamber considers that it was reasonable for the Trial Chamber to determine that Rukundo identified refugees with a list. It is immaterial whether he personally called out the names or whether a soldier did.

203. Accordingly, the Appeals Chamber is not convinced that Rukundo has demonstrated that the Trial Chamber’s assessment was unreasonable.

(c) Credibility

204. Rukundo submits that the Trial Chamber unreasonably considered the evidence of Witnesses CSF, CSG, and BLC as credible despite numerous inconsistencies within their accounts as well as the likelihood of collusion between Witnesses CSF and CSG.<sup>493</sup> In particular, Rukundo argues that Witness CSF’s evidence is “implausible” because he testified that the four abductions occurred four days apart with the first around 20 April 1994 and the last around 2 June 1994.<sup>494</sup> In addition, Rukundo contends that Witness CSF provided no significant detail with respect to the

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<sup>486</sup> *Nahimana et al.* Appeal Judgement, para. 428. *See also Karera* Appeal Judgement, para. 173.

<sup>487</sup> Trial Judgement, para. 339. *See also* Trial Judgement, paras. 338, 361.

<sup>488</sup> Trial Judgement, paras. 349, 357.

<sup>489</sup> *See Simba* Appeal Judgement, para. 103 (“It is within the discretion of the Trial Chamber to evaluate any 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.”).

<sup>490</sup> *Nchamihigo* Appeal Judgement, para. 42; *Simba* Appeal Judgment, para. 121; *Rutaganda* Appeal Judgement, para. 504.

<sup>491</sup> Rukundo Appeal Brief, paras. 180-182, 201.

<sup>492</sup> Trial Judgement, paras. 279-281, 339-343.

<sup>493</sup> Rukundo Appeal Brief, paras. 231-247. *See also* Rukundo Reply Brief, paras. 96-99.

identity of the victims or the other refugees at the Saint Léon Minor Seminary, aside from four family members.<sup>495</sup> Rukundo also notes that Witness CSF was not aware of the presence of seminarians among the refugees or of how food was distributed, which was discussed by Witnesses BLC, CCG, SLA, and SLD.<sup>496</sup> Finally, he argues that the Trial Chamber erred in relying on the pattern of abductions at Saint Joseph's College to bolster Witness CSF's credibility.<sup>497</sup> According to Rukundo, the abductions were more like those at the Kabgayi Major Seminary for which he was acquitted.<sup>498</sup>

205. Rukundo submits that the Trial Chamber erred in relying on Witness CSG in view of the lack of detail in her evidence and the other credibility concerns which it identified in relation to her testimony.<sup>499</sup> He further argues that the Trial Chamber did not consider the numerous inconsistencies in the testimony of Witness BLC.<sup>500</sup>

206. Finally, Rukundo contends that, in dismissing the possibility of collusion between Witnesses CSF and CSG, the Trial Chamber failed to appreciate that they gave their statements to Tribunal investigators on the same day and at the same place.<sup>501</sup> Furthermore, according to Rukundo, they are the only witnesses to refer to Rukundo's use of a list, and their accounts also contain similar omissions related to their lack of knowledge about the presence of Hutu refugees from Nyacyonga and the police guard at the gate.<sup>502</sup>

207. The Appeals Chamber recalls that the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or amongst witnesses' testimonies.<sup>503</sup> 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.<sup>504</sup>

208. Witness CSF was the main witness underpinning Rukundo's conviction for this event.<sup>505</sup> The Trial Chamber extensively discussed his evidence both in isolation and in comparison with

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<sup>494</sup> Rukundo Appeal Brief, paras. 234, 235.

<sup>495</sup> Rukundo Appeal Brief, paras. 236, 237.

<sup>496</sup> Rukundo Appeal Brief, para. 236.

<sup>497</sup> Rukundo Appeal Brief, para. 237.

<sup>498</sup> Rukundo Appeal Brief, para. 237.

<sup>499</sup> Rukundo Appeal Brief, paras. 238-243.

<sup>500</sup> Rukundo Appeal Brief, paras. 231-233.

<sup>501</sup> Rukundo Appeal Brief, para. 244.

<sup>502</sup> Rukundo Appeal Brief, para. 245.

<sup>503</sup> *Simba* Appeal Judgement, para. 103.

<sup>504</sup> *Simba* Appeal Judgement, para. 103.

<sup>505</sup> Trial Judgement, paras. 338, 361.

other related evidence.<sup>506</sup> The Trial Chamber concluded that his “firsthand and *largely* consistent account” was credible.<sup>507</sup> Based on this formulation, it is clear that the Trial Chamber was aware of certain variances in the witness’s account in concluding that he was credible.

209. In particular, the Trial Chamber’s discussion of the four incidents when he saw Rukundo reflects that it was mindful of the possible discrepancy in the dates of the abductions.<sup>508</sup> The Trial Chamber specifically noted that Witness CSF clarified in his cross-examination that the last abduction occurred in mid-May 1994 rather than towards the end of the month closer to when Kabgayi fell to the RPF.<sup>509</sup> The Appeals Chamber is not convinced that it was unreasonable to accept Witness CSF’s evidence that these four incidents each occurred four days apart even though the time between the first and last was between four to six weeks. The variance is minor, and Rukundo fails to appreciate that the Trial Chamber noted that the four days between each event was an approximation.<sup>510</sup>

210. Furthermore, the Trial Chamber’s reliance on the pattern and practice of abductions at Saint Joseph’s College as corroboration for Rukundo’s role in this incident does not appear to have been a significant factor in its assessment of Witness CSF’s credibility.<sup>511</sup> In any case, beyond submitting that the Trial Chamber should have considered a different set of events as context, Rukundo has failed to identify any error in this respect.

211. The Appeals Chamber is also not convinced that Witness CSF’s testimony on the presence of seminarians and communal policemen, the distribution of food, and the identity of other refugees and victims undermines the Trial Chamber’s findings on his credibility. As Rukundo acknowledges, he raised many of these issues before the Trial Chamber.<sup>512</sup> The Trial Chamber was free to consider that Rukundo’s arguments in this regard did not suffice to impeach the fundamental features of Witness CSF’s evidence concerning his first-hand account of Rukundo’s role in the selection of refugees. Indeed, the Appeals Chamber considers that these matters are peripheral to the main allegations levelled against Rukundo by Witness CSF and that it is reasonable that there may be

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<sup>506</sup> Trial Judgement, paras. 338-364.

<sup>507</sup> Trial Judgement, para. 339 (emphasis added). *See also* Trial Judgement, para. 345.

<sup>508</sup> Trial Judgement, paras. 339-343.

<sup>509</sup> Trial Judgement, para. 343, n. 494. According to the evidence, Kabgayi fell around 2 June 1994. *See* Trial Judgement, para. 310.

<sup>510</sup> Trial Judgement, paras. 341, 342.

<sup>511</sup> Trial Judgement, para. 358. Notably, the Trial Chamber made its observation about a similar pattern between the abductions at Saint Léon Minor Seminary and Saint Joseph’s College at the end of its deliberations after it had accepted Witness CSF as credible. *See* Trial Judgement, paras. 338-345 (discussing Witness CSF’s credibility).

<sup>512</sup> Rukundo Appeal Brief, para. 234, *citing* Rukundo Final Trial Brief, paras. 963-965.

varying degrees of detail in the evidence on these matters, given the context of the events and the significant passage of time.

212. In the same vein, the Appeals Chamber is not convinced that Rukundo identified any errors in the assessment of the credibility of Witnesses CSG and BLC which would result in a miscarriage of justice. Notably, the Trial Chamber did not rely on the details of their accounts and instead preferred the first-hand evidence of Witness CSF.

213. Finally, the Appeals Chamber is not satisfied that Rukundo has demonstrated any collusion on the part of Witnesses CSF and CSG. The Trial Chamber expressly considered and rejected this argument at trial.<sup>513</sup> On appeal, Rukundo has pointed to no compelling evidence that the witnesses colluded. Therefore, this argument is simply speculation which does not call into question the reasonableness of the Trial Chamber's reliance on their accounts.

(d) Exculpatory Evidence

214. Rukundo submits that the Trial Chamber erred in assessing the exculpatory evidence which demonstrates that he did not play a role in these attacks.<sup>514</sup> In particular, he argues that the Trial Chamber erred in its rejection of the evidence of Defence Witness SLA, a priest, who claimed that others were responsible for the attacks and that he would have heard about Rukundo's role in the crimes in view of the witness's position and the nature of Rukundo's alleged acts.<sup>515</sup> According to Rukundo, the Trial Chamber also distorted the witness's evidence by discounting his testimony in view of his frequent absences from the Saint Léon Minor Seminary.<sup>516</sup> Specifically, Rukundo notes that Witness SLA stated that he was at the seminary every day during lunchtime, which corresponded to the time of Rukundo's second visit.<sup>517</sup>

215. In addition, Rukundo argues that the Trial Chamber did not consider the evidence of Prosecution Witness CCH and Defence Witness ATT.<sup>518</sup> He observes that Witness CCH did not implicate him in the abductions and instead referred to the role played by communal policemen.<sup>519</sup> Furthermore, Rukundo notes that Witness ATT, a local *Interahamwe* who participated in attacks at the Saint Léon Minor Seminary, had never heard of Rukundo at the time of the events.<sup>520</sup> Finally,

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<sup>513</sup> Trial Judgement, para. 346.

<sup>514</sup> Rukundo Appeal Brief, paras. 301-305.

<sup>515</sup> Rukundo Appeal Brief, paras. 301-303.

<sup>516</sup> Rukundo Appeal Brief, para. 301.

<sup>517</sup> Rukundo Appeal Brief, para. 301.

<sup>518</sup> Rukundo Appeal Brief, para. 304.

<sup>519</sup> Rukundo Appeal Brief, para. 304.

<sup>520</sup> Rukundo Appeal Brief, para. 304.

he argues that the Trial Chamber failed to explain why it did not consider his testimony to be credible.<sup>521</sup>

216. A review of Witness SLA's testimony reveals that he was frequently absent from the Saint Léon Minor Seminary during the day from 9.00 a.m. to 12.00 p.m. and again from 3.30 p.m. to 5.00 p.m.<sup>522</sup> This is a significant portion of the day. It is true that, according to Witness CSF, the second abduction occurred around 2.00 or 2.30 p.m., corresponding with when Witness SLA was not normally away from the seminary.<sup>523</sup> The Trial Chamber, however, did not make express findings on the exact time of day when the incidents occurred, which is reasonable given the significant passage of time since the events. Therefore, the fact that Witness SLA may have been present at the seminary during one of the incidents does not undermine the Trial Chamber's acceptance of Witness CSF's credible, first-hand account.

217. The Trial Chamber did not discuss the other aspects of Witness SLA's evidence in detail in its deliberations. It also did not specifically discuss Rukundo's testimony or the accounts of Witnesses CCH and ATT. This, however, does not mean that the Trial Chamber did not consider this evidence in the context of the events at the Saint Léon Minor Seminary. A Trial Chamber is not required to expressly reference and comment upon every piece of evidence admitted onto the record.<sup>524</sup> It is clear from the organization of the Trial Judgement that the Trial Chamber considered the accounts of Witnesses SLA and CCH as well as that of Rukundo in light of the totality of the evidence admitted at trial.<sup>525</sup> Rukundo has pointed to no error in the Trial Judgement's recounting of their evidence. Accordingly, in finding Witnesses CSF, CCG, and BLC credible, the Trial Chamber considered the account of events provided by Rukundo and Witnesses CCH and SLA. The Appeals Chamber recalls that when faced with competing versions of events, it is the duty of the Trial Chamber which heard the witnesses to determine which evidence it considers more probative.<sup>526</sup> The Trial Chamber did not mention Witness ATT's evidence of not hearing about Rukundo at the time of the events in the section of the Trial Judgement concerning Saint Léon Minor Seminary.<sup>527</sup> Nonetheless, the Appeals Chamber is not convinced that this omission results in a miscarriage of justice in view of the limited probative value of this type of evidence when weighed against credible eye-witness testimony.

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<sup>521</sup> Rukundo Appeal Brief, para. 305.

<sup>522</sup> Trial Judgement, para. 321.

<sup>523</sup> Trial Judgement, para. 341.

<sup>524</sup> *Muhimana* Appeal Judgement, para. 72.

<sup>525</sup> Trial Judgement, paras. 305-309, 314-327.

<sup>526</sup> *Muhimana* Appeal Judgement, para. 103; *Gacumbitsi* Appeal Judgement, para. 81; *Rutaganda* Appeal Judgement, para. 29.

### 3. Conclusion

218. For the foregoing reasons, the Appeals Chamber finds that Rukundo failed to demonstrate that the Trial Chamber committed any error in the assessment of the evidence which would occasion a miscarriage of justice. It also finds no errors of law in respect of the events at the Saint Léon Minor Seminary. Accordingly, the Appeals Chamber dismisses Rukundo's Sixth Ground of Appeal. Nonetheless, the Appeals Chamber recalls its finding in connection with Rukundo's First Ground of Appeal that commission was not pleaded as a form of responsibility in relation to these events. In light of this failure, the Appeals Chamber finds that Rukundo's acts are most properly characterized as aiding and abetting genocide and extermination as a crime against humanity.

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<sup>527</sup> The Trial Chamber did refer to other aspects of Witness ATT's testimony in another part of the Trial Judgement. *See* Trial Judgement, para. 80.

### **G. Alleged Error in Refusing to Hear Witness SLB by Video-Link (Ground 7)**

219. On 16 August 2007, Rukundo filed a motion requesting that a number of Defence witnesses, including Witness SLB, be heard by video-link.<sup>528</sup> On 11 September 2007, the Trial Chamber dismissed this request.<sup>529</sup> The Trial Chamber noted that Witness SLB was expected to refute allegations of Rukundo's involvement in the killings of Tutsi refugees at the Saint Léon Minor Seminary and the sexual assault of Witness CCH.<sup>530</sup> While the Trial Chamber recognised the importance of Witness SLB's potential evidence, it concluded that the Defence had failed to provide sufficient justification of the need for Witness SLB to testify by video-link.<sup>531</sup> On 3 October 2007, the Trial Chamber denied a second motion to hear this witness by video-link on the same grounds.<sup>532</sup> Witness SLB ultimately did not testify. The Trial Chamber convicted Rukundo of genocide and extermination as a crime against humanity for the abductions and killings of Tutsi refugees from the Saint Léon Minor Seminary.<sup>533</sup> It also convicted him of genocide for the sexual assault of Witness CCH.<sup>534</sup>

220. Rukundo submits that, by refusing to hear Witness SLB's testimony by video-link, the Trial Chamber erred in law and violated his right to a fair trial, resulting in serious prejudice.<sup>535</sup> In support of this, he recalls that the Trial Chamber recognised the importance of Witness SLB's testimony in both of its decisions denying Rukundo's request for a video-link.<sup>536</sup> He argues that the Trial Chamber could not have recognised the importance of Witness SLB's testimony and, at the same time, refused his request to have Witness SLB heard by video-link.<sup>537</sup> Rukundo submits that Witness SLB witnessed the abductions and was in a position to identify the abductors, and that, as one of Rukundo's parishioners, she was in a position to identify him.<sup>538</sup> He asserts that had the Trial Chamber heard Witness SLB, it would not have found the Prosecution witnesses on the events credible.<sup>539</sup>

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<sup>528</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, *Requête aux fins d'autoriser des témoins à décharge à déposer par voie de vidéoconférence (Article 71 du Règlement de Procédure et de Preuve)*, 16 August 2007.

<sup>529</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witnesses' Identifying Information, to Vary its Witness List and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions, 11 September 2007 ("Decision of 11 September 2007"), p. 7.

<sup>530</sup> Decision of 11 September 2007, para. 24.

<sup>531</sup> Decision of 11 September 2007, para. 24.

<sup>532</sup> *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion for Video-Link Testimony for Witness SLB, 3 October 2007 ("Decision of 3 October 2007"), para. 5.

<sup>533</sup> Trial Judgement, paras. 573, 590.

<sup>534</sup> Trial Judgement, para. 576.

<sup>535</sup> Rukundo Notice of Appeal, paras. 8, 11; Rukundo Appeal Brief, para. 8; Rukundo Reply Brief, paras. 1-3.

<sup>536</sup> Rukundo Notice of Appeal, para. 9; Rukundo Appeal Brief, para. 6.

<sup>537</sup> Rukundo Notice of Appeal, para. 10; Rukundo Appeal Brief, para. 8.

<sup>538</sup> Rukundo Notice of Appeal, para. 10; Rukundo Appeal Brief, para. 7.

<sup>539</sup> Rukundo Appeal Brief, para. 8.

221. In its Decision of 11 September 2007, the Trial Chamber recalled:

the general principle articulated in Rule 90(A) [is] that “witnesses shall [...] be heard directly by the Chamber.” Nonetheless, the Chamber has the discretion to hear testimony by video-link in lieu of physical appearance for purposes of witness protection under Rule 75, or where it is in the interests of justice to do so. In determining the interests of justice, the Chamber has to assess the importance of the testimony, the inability or unwillingness of the witness to travel to Arusha, and whether a good reason has been adduced for that inability and unwillingness. The burden of proof lies with the party making the request.<sup>540</sup>

The Trial Chamber also recalled this test in its Decision of 3 October 2007.<sup>541</sup> This standard is consistent with the approach taken by the Appeals Chamber.<sup>542</sup>

222. The Trial Chamber recognised the importance of Witness SLB’s potential testimony given that she was one of only two Defence witnesses<sup>543</sup> due to testify on the killings of Tutsi refugees at the Saint Léon Minor Seminary and the sexual assault of Witness CCH.<sup>544</sup> Accordingly, the Trial Chamber considered that the first requirement for granting video-link testimony was met.

223. The Trial Chamber found, however, that the request failed with regard to whether a good reason had been adduced for Witness SLB’s inability or unwillingness to travel to Arusha to testify.<sup>545</sup> In its Decision of 11 September 2007, the Trial Chamber noted that the only justification provided for Witness SLB’s inability or unwillingness to testify was a statement from the Witness and Victim Support Section of the Tribunal indicating that Witness SLB was willing to testify via video-link.<sup>546</sup> It concluded that this was insufficient to warrant an order for hearing the testimony by video-link.<sup>547</sup>

224. Subsequently, in the Decision of 3 October 2007, the Trial Chamber considered additional material submitted by Rukundo indicating that Witness SLB was anxious about travelling as a victim to testify on behalf of an accused and that she could not leave her family for a long period of time.<sup>548</sup> However, it concluded that these concerns could be addressed by ordinary protective

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<sup>540</sup> Decision of 11 September 2007, para. 23 (internal citations omitted).

<sup>541</sup> Decision of 3 October 2007, para. 4.

<sup>542</sup> See *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Prosecution’s Request for Testimony by Video-Conference Link and Protective Measures, filed confidentially on 2 July 2004, p. 3 (“the Appeals Chamber will ‘only allow video-link testimony if certain criteria are met, namely that testimony of a witness is shown to be sufficiently important to make it unfair to proceed without it and that the witness is unable or unwilling to come to the International Tribunal’”).

<sup>543</sup> When the Decisions of 11 September 2007 and 3 October 2007 were issued, Defence Witnesses SLA and SLB were supposed to testify on the events at Saint Léon Minor Seminary. Ultimately, however, Defence Witnesses SLA and SLD testified on these events. See Trial Judgement, paras. 320-331, 370, 371.

<sup>544</sup> Decision of 11 September 2007, para. 24. See also Decision of 3 October 2007, para. 2.

<sup>545</sup> Decision of 11 September 2007, para. 24; Decision of 3 October 2007, para. 5.

<sup>546</sup> Decision of 11 September 2007, para. 24.

<sup>547</sup> Decision of 11 September 2007, para. 24.

<sup>548</sup> Decision of 3 October 2007, para. 5.

measures and appropriate planning and travel arrangements and did not warrant testimony via video-link.<sup>549</sup> The Appeals Chamber considers that Rukundo has failed to advance any argument to demonstrate that in so finding the Trial Chamber committed a discernible error.

225. Furthermore, Rukundo has not advanced any argument demonstrating that his inability to call Witness SLB as a witness via video-link materially prejudiced his defence and resulted in a miscarriage of justice. In this respect, the Appeals Chamber notes that Rukundo called two witnesses in relation to the events at the Saint Léon Minor Seminary: Witness SLA, via video-link, and Witness SLD. Witness SLA testified that, although he saw Rukundo at the Saint Léon Minor Seminary on at least two occasions, he did not see him being involved in the abductions, which Witness SLA attributed to Sub-Prefect Antoine Misago.<sup>550</sup> He further testified that Rukundo had a small room at the Saint Léon Minor Seminary, but that he never saw Rukundo using it.<sup>551</sup> Witness SLD testified that he knew Rukundo and never heard his name mentioned in connection with the crimes at the Saint Léon Minor Seminary.<sup>552</sup> Further, he specifically attributed the abductions to others.<sup>553</sup> Rukundo has not demonstrated how Witness SLB's testimony would have differed from that of the two witnesses who did testify and would have been more persuasive.

226. For the foregoing reasons, Rukundo has failed to demonstrate that the Trial Chamber committed a discernible error in exercising its discretion not to allow Witness SLB to testify by video-link. Accordingly, the Appeals Chamber dismisses Rukundo's Seventh Ground of Appeal.

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<sup>549</sup> Decision of 3 October 2007, para. 5.

<sup>550</sup> Trial Judgement, paras. 323-325.

<sup>551</sup> Trial Judgement, para. 371.

<sup>552</sup> Trial Judgement, para. 328.

<sup>553</sup> Trial Judgement, para. 330.

## **H. Alleged Errors Relating to the Sexual Assault of Witness CCH at the Saint Léon Minor Seminary (Ground 8)**

227. The Trial Chamber convicted Rukundo of committing genocide by causing serious mental harm to Witness CCH when he sexually assaulted her towards the end of May 1994 at the Saint Léon Minor Seminary.<sup>554</sup> The Trial Chamber found Witness CCH's account of the incident to be credible,<sup>555</sup> which it described in pertinent part as follows:

Witness CCH's testimony is that, in the later part of May 1994, Rukundo came to the [Saint] Léon Minor Seminary. Witness CCH greeted Rukundo, introduced herself and asked him if he could hide her. Rukundo responded that he could not help her. He said that her entire family had to be killed because her relative was an *Inyenzi*. Nevertheless, Witness CCH assisted him in carrying some items to his room, in the hope that he would change his mind and hide her. While in the room, Rukundo locked the door, placed his pistol on the table next to the bed and began to caress the witness. He forced her onto the bed, opened the zipper on his trousers and lay on top of her. He tried to spread her legs and have sexual intercourse, but she resisted. Following Witness CCH's continued resistance, Rukundo gave up trying to have intercourse, but rubbed himself against her until he ejaculated. Witness CCH said that she could not escape since he was on top of her, holding her down. He was also in a position of authority and had a gun.<sup>556</sup>

228. The Trial Chamber considered that Witness CCH's account was corroborated, in part, by Rukundo's admission of visiting the seminary on 21 May 1994 as well as Defence Witness SLA's testimony that Rukundo maintained a small room there for his personal items.<sup>557</sup>

229. Rukundo submits that the Trial Chamber erred in convicting him of this crime.<sup>558</sup> In this section, the Appeals Chamber need only consider whether the Trial Chamber erred in assessing the legal elements of the crime of genocide by causing serious mental harm.

230. Rukundo submits that, even if the Trial Chamber's findings on this incident were accepted, it erred in finding that his actions amounted to the commission of genocide by causing serious mental harm.<sup>559</sup> He argues that serious mental harm requires "grave and long-term disadvantage".<sup>560</sup> Rukundo submits that the Trial Chamber's findings on the harm suffered by Witness CCH were based exclusively on circumstantial evidence.<sup>561</sup> He points to several errors in its analysis, which, in his view, demonstrate that she did not suffer long-term psychological trauma.<sup>562</sup> Rukundo argues that Witness CCH's fear of death was not based on his conduct since she willingly followed him to

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<sup>554</sup> Trial Judgement, paras. 574, 576.

<sup>555</sup> Trial Judgement, para. 377.

<sup>556</sup> Trial Judgement, para. 373 (internal citations omitted).

<sup>557</sup> Trial Judgement, para. 377.

<sup>558</sup> Rukundo Notice of Appeal, paras. 40-43, 64, 71, 72, 85, 95, 101, 105; Rukundo Appeal Brief, paras. 93-107, 118-120, 248-253, 274-278, 305.

<sup>559</sup> Rukundo Appeal Brief, paras. 93-107. *See also* Rukundo Reply Brief, paras. 32-36.

<sup>560</sup> Rukundo Appeal Brief, para. 94.

<sup>561</sup> Rukundo Appeal Brief, para. 96.

<sup>562</sup> Rukundo Appeal Brief, paras. 97-99.

his room after his remarks and he did not use his gun to threaten her.<sup>563</sup> He contends that, at most, Witness CCH suffered only disappointment since he was not ultimately able to protect her.<sup>564</sup>

231. Rukundo further submits that the harm resulting from sexual abuse must be “inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim’s dignity”.<sup>565</sup> In this respect, he contends that “the sexual humiliation and degradation of the victim is a more pertinent factor than the gratification of the perpetrator, and it is this element that provides specificity to the offence.”<sup>566</sup> Rukundo argues that Witness CCH was not subjected to degrading or humiliating treatment as part of a campaign against Tutsis and that the incident was also insufficiently grave.<sup>567</sup> Rather, “he treated her with consideration, like a woman one is trying to seduce.”<sup>568</sup> To illustrate, Rukundo points to evidence that he first invited her to share a beer with him, told her that he would like to help her, but could not, then asked if he could make love to her, and immediately stopped when she resisted his advances.<sup>569</sup> He emphasizes that the incident occurred in private, that he did not touch her “private parts”, that she remained clothed, and that the two allegedly shared more beer before parting amicably.<sup>570</sup>

232. Finally, Rukundo argues that the Trial Chamber erred in finding that he intentionally inflicted serious harm with genocidal intent since, in the circumstances described above, it was unreasonable to find that he targeted Witness CCH based on her ethnicity or acted with knowledge that there was no consent on her part since she did not show her fear.<sup>571</sup> In Rukundo’s view, the Trial Chamber, in fact, did not examine the issue of his knowledge of her lack of consent, which is evident from the summary of Witness CCH’s testimony.<sup>572</sup>

233. The Prosecution responds that the Trial Chamber reasonably considered that Rukundo’s conduct resulted in serious mental harm and that he possessed genocidal intent.<sup>573</sup>

234. The Appeals Chamber recalls that genocidal intent may be inferred, *inter alia*, from evidence of other culpable acts systematically directed against the same group.<sup>574</sup> In this case, the

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<sup>563</sup> Rukundo Appeal Brief, paras. 97, 98.

<sup>564</sup> Rukundo Appeal Brief, para. 98.

<sup>565</sup> Rukundo Appeal Brief, para. 95.

<sup>566</sup> Rukundo Appeal Brief, para. 95, *quoting Milutinovi} et al.* Trial Judgement, para. 199.

<sup>567</sup> Rukundo Appeal Brief, paras. 100-104.

<sup>568</sup> Rukundo Appeal Brief, para. 100.

<sup>569</sup> Rukundo Appeal Brief, para. 101.

<sup>570</sup> Rukundo Appeal Brief, paras. 101, 102.

<sup>571</sup> Rukundo Appeal Brief, paras. 105, 106, 118-120, 276. *See* Rukundo Reply Brief, paras. 41, 42, 48, 58.

<sup>572</sup> Rukundo Appeal Brief, paras. 276-278.

<sup>573</sup> Prosecution Response Brief, paras. 52-68.

Trial Chamber found that Rukundo possessed genocidal intent in relation to the sexual assault of Witness CCH based on the “general context of mass violence” against Tutsis in Gitarama Prefecture as well as his assertion, prior to the incident, that Witness CCH’s “entire family had to be killed for assisting the *Inyenzi*”.<sup>575</sup>

235. Central to the Trial Chamber’s finding of genocidal intent was Rukundo’s assertion that Witness CCH’s family had to be killed because one of her relatives was assisting the “*Inyenzi*”. While evidence concerning the use of expressions such as “*Inyenzi*” can, in some circumstances, suffice to establish genocidal intent,<sup>576</sup> the Appeals Chamber recalls that inferences drawn from circumstantial evidence must be the only reasonable inference available.<sup>577</sup> In this particular context, the Appeals Chamber, Judge Pocar dissenting, considers that genocidal intent is not the only reasonable inference to be drawn from Rukundo’s assertion. In particular, the Appeals Chamber, Judge Pocar dissenting, observes that Rukundo’s language can plausibly be interpreted as expressing anger that a former friend was affiliated with the “*Inyenzi*”, without signifying a personal desire to destroy Tutsis.<sup>578</sup> This interpretation is supported by the fact that Rukundo’s statement did not frighten Witness CCH; according to her evidence, she only became frightened when Rukundo locked her in his room prior to assaulting her.<sup>579</sup> The Appeals Chamber also notes that, after they entered the room together, Rukundo told Witness CCH that if he could have hidden her, he would have done so.<sup>580</sup>

236. The Appeals Chamber, Judge Pocar dissenting, also considers that the “general context of mass violence” cited by the Trial Chamber is insufficient to justify a finding of genocidal intent with respect to this incident. The Appeals Chamber, Judge Pocar dissenting, observes that the crime

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<sup>574</sup> *Blagojević and Jokić* Appeal Judgement, para. 123; *Krstić* Appeal Judgement, para. 33. See also *Jelisić* Appeal Judgement, para. 47; *Semanza* Appeal Judgement, paras. 261, 262; *Kayishema and Ruzindana* Appeal Judgement, para. 159.

<sup>575</sup> Trial Judgement, para. 575.

<sup>576</sup> See *supra* Section III.B.1.d (Ground 2: Alleged Errors Relating to the Events at Saint Joseph’s College). See also *Nahimana et al.* Appeal Judgement, para. 739.

<sup>577</sup> *Ntagerura et al.* Appeal Judgement, para. 306.

<sup>578</sup> T. 13 February 2007 p. 58 (“I said hello to him, I introduced myself, and I told him that Father [...] was a relative of mine, and then I asked him for protection, I asked him to hide me. And he answered as follows: ‘If Father [...] is your relative, then you all have to die, because Father [...] was assisting *Inyenzi*. He was my friend, but when he started helping the *Inyenzi*, he is no longer my friend. We do not even talk to each other. He’s no longer my friend.’ He went on to say that they had found some documents at Louis Rudahunga’s place and who had to be killed, and that this document included a list of people who were making financial contributions to the *Inkotanyi*.”).

<sup>579</sup> See T. 14 February 2007 p. 19 (“If I told the Prosecutor that I was afraid, I was not afraid to carry the carton. I became afraid when I saw him lock the door with the key.”). The Appeals Chamber notes that Witness CCH testified that she assisted Rukundo by carrying drinks into his room, explaining that she hoped Rukundo would choose to help her. T. 13 February 2007 p. 61; T. 14 February 2007 p. 9 (“When he said those words, he did not seem to be annoyed. I believed that he just might change his mind and do something for me.”).

committed against Witness CCH was qualitatively different from the other acts of genocide perpetrated by Rukundo. In its analysis of events at Saint Joseph's College and the Saint Léon Minor Seminary, the Trial Chamber relied on the systematic, repeated searches for Tutsis on the basis of identity cards or lists, and the subsequent killing or assault of those individuals removed, to conclude that the perpetrators, including Rukundo, had genocidal intent.<sup>581</sup> By contrast, the Appeals Chamber, Judge Pocar dissenting, considers that Rukundo's sexual assault of Witness CCH appears to have been unplanned and spontaneous.<sup>582</sup> In this context, the Appeals Chamber, Judge Pocar dissenting, finds that his act could reasonably be construed as an opportunistic crime that was not accompanied by the specific intent to commit genocide. While this analysis does not alter the highly degrading and non-consensual nature of the act committed, the Appeals Chamber, Judge Pocar dissenting, considers that it supports the inference that Rukundo's sexual assault, while taking place during a genocide, was not necessarily a part of the genocide itself.<sup>583</sup>

237. In light of this equivocal evidence, the Appeals Chamber, Judge Pocar dissenting, finds that no reasonable trier of fact could find that the only reasonable inference available from the evidence was that Rukundo possessed genocidal intent in relation to the sexual assault of Witness CCH. Consequently, the Appeals Chamber does not need to address Rukundo's remaining arguments under this ground of appeal.

238. Accordingly, the Appeals Chamber, Judge Pocar dissenting, grants Rukundo's Eighth Ground of Appeal and reverses his conviction for genocide, in part, for causing serious mental harm to Witness CCH.

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<sup>580</sup> T. 13 February 2007 p. 59 ("he said, 'You have asked me to hide you, but unfortunately, I cannot do so. If I could, I would have done so. But, you know, things are very difficult outside. There are explosions and gunfire outside, so it is difficult outside.'"); T. 14 February 2007 p. 13.

<sup>581</sup> Trial Judgment, paras. 567, 568, 572.

<sup>582</sup> The Appeals Chamber notes that Witness CCH approached Rukundo seeking assistance. See T. 13 February 2005 pp. 57, 58; T. 14 February 2007 p. 7.

<sup>583</sup> Cf. *Blagojević and Jokić* Appeal Judgement, para. 123; *Ntagerura et al.* Trial Judgement, para. 693. The Appeals Chamber also recalls that "the existence of a plan or policy is not 'a legal ingredient' of the crime of genocide". See *Rutaganda* Appeal Judgement, para. 525.

## IV. SENTENCING APPEALS

239. The Trial Chamber sentenced Rukundo to a single sentence of 25 years of imprisonment for his convictions for genocide (Count 1), murder as a crime against humanity (Count 2), and extermination as a crime against humanity (Count 3).<sup>584</sup>

240. Rukundo and the Prosecution have both appealed this sentence. 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.<sup>585</sup> 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.<sup>586</sup>

### A. Rukundo's Sentencing Appeal (Ground 9)

241. Rukundo submits that the Trial Chamber erred in assessing his sentence and requests the Appeals Chamber to reduce it.<sup>587</sup> In this section, the Appeals Chamber considers whether the Trial Chamber erred in assessing: (1) the gravity of his offences; (2) the aggravating factors; and (3) the mitigating factors.

#### 1. Gravity of the Crimes

242. Rukundo argues that the Trial Chamber erred in fact in the assessment of the overall gravity of the crimes for which he was convicted and the actual role he allegedly played in them.<sup>588</sup> He submits that the Trial Chamber did not establish the number of victims who were removed from the Saint Léon Minor Seminary, although it would have been possible to do so.<sup>589</sup> He argues that “compared to all the other trials before the Tribunal in which the accused, who had killed thousands

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<sup>584</sup> Trial Judgement, para. 591.

<sup>585</sup> See *Nchamihigo* Appeal Judgement, para. 384; *Bikindi* Appeal Judgement, para. 141; *Karera* Appeal Judgement, para. 385.

<sup>586</sup> See *Nchamihigo* Appeal Judgement, para. 384; *Bikindi* Appeal Judgement, para. 141; *Karera* Appeal Judgement, para. 385.

<sup>587</sup> Rukundo Notice of Appeal, paras. 108-110; Rukundo Appeal Brief, paras. 308-340; Rukundo Reply Brief, para. 127.

<sup>588</sup> Rukundo Notice of Appeal, para. 110. Rukundo argues that the Trial Chamber accorded undue importance to his leadership role in the commission of the crimes and his abuse of authority which were not proven. However, as the Trial Chamber only considered his position of authority in its discussion of aggravating circumstances, it will be considered in that section. See Rukundo Appeal Brief, paras. 338-340.

<sup>589</sup> Rukundo Appeal Brief, paras. 335, 336.

of victims, had been sentenced to 25 years' imprisonment, the scale of the crimes for which he was convicted is far lower.”<sup>590</sup>

243. The Appeals Chamber recalls that the determination of the gravity of the crime requires consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crimes.<sup>591</sup> While the number of victims may be one of the factors taken into account in the assessment of the gravity of the crime, it is not the only consideration.

244. In another part of the Trial Judgement, the Trial Chamber noted that, although no evidence was adduced regarding the specific number of deaths resulting from the abductions at the Saint Léon Minor Seminary, it found that the abductions were of a repetitive nature and occurred on at least four occasions, and that at least one bus was used to remove the identified refugees.<sup>592</sup> Based on this, the Appeals Chamber considers that the Trial Chamber reasonably considered that mass killing occurred and thus took it into account in assessing the gravity of Rukundo's crimes.

245. Furthermore, the abductions from the Saint Léon Minor Seminary were not the only incidents for which Rukundo was convicted. In assessing the gravity of the crimes, the Trial Chamber also considered that he was convicted of the killing of Madame Rudahunga and of causing serious bodily harm to two of her children and two other Tutsi civilians.<sup>593</sup>

246. Accordingly, the Appeals Chamber finds that Rukundo has failed to demonstrate that the Trial Chamber committed a discernible error in assessing the gravity of his crimes.

## 2. Aggravating Factors

247. The Trial Chamber found as an aggravating factor that “Rukundo abused his moral authority and influence in order to promote the abduction and killing of Tutsi refugees and to sexually assault a Tutsi girl.”<sup>594</sup> In reaching this conclusion, it noted his position within society, finding that “[a]s a military chaplain, Rukundo was a well-known priest within the community and in the Rwandan military.”<sup>595</sup> It further accepted the evidence of Witnesses CCH and BUW that, “because of

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<sup>590</sup> Rukundo Appeal Brief, para. 337, referring to Rukundo Response Brief, paras. 68-79, 82-87, referring to *Kayishema and Ruzindana* Trial Judgement, paras. 568, 570, 571; *Kayishema and Ruzindana* Sentencing Judgement, pp. 5-7; *Simba* Trial Judgement, paras. 398-406, 415-419, 435; *Ntakirutimana* Appeal Judgement, paras. 506, 507, 536, 559, 560; *Ntakirutimana* Trial Judgement, para. 912; *Semanza* Trial Judgement, paras. 425-433, 580; *Semanza* Appeal Judgement, paras. 325, 326; *Kajelijeli* Appeal Judgement, paras. 320-324; *Nahimana et al.* Appeal Judgement, para. 1095.

<sup>591</sup> *Kordi* and *Čerkez* Appeal Judgement, para. 1061. See also *Nahimana et al.* Appeal Judgement, para. 1038.

<sup>592</sup> Trial Judgement, paras. 364, 589.

<sup>593</sup> Trial Judgement, para. 596.

<sup>594</sup> Trial Judgement, para. 599.

<sup>595</sup> Trial Judgement, para. 599.

Rukundo's position as a military chaplain, they trusted him and believed that he had a certain moral authority over the soldiers."<sup>596</sup>

248. Rukundo submits that the Trial Chamber erred in fact in finding as a "serious aggravating factor" that he abused his moral authority and influence in the commission of the crimes for which he was convicted.<sup>597</sup> He asserts that none of the Trial Chamber's findings in relation to the events at Saint Joseph's College supports a finding of abuse of moral authority or influence.<sup>598</sup>

249. Regarding the abductions from the Saint Léon Minor Seminary, Rukundo asserts that the Trial Chamber should not have relied on the perceptions of victims, but only on proof that he abused the status and influence which he actually exercised.<sup>599</sup> Furthermore, he asserts that the Trial Chamber could not rely on the evidence of Witness BUW in relation to the events at the Nyabikenke communal office as an aggravating factor in sentencing since he was acquitted with regard to those events.<sup>600</sup>

250. The Appeals Chamber recalls that it is settled jurisprudence of the Tribunal that the abuse of a position of influence and authority in society can be taken into account as an aggravating factor in sentencing.<sup>601</sup> The Appeals Chamber considers that Rukundo has not demonstrated that it was unreasonable for the Trial Chamber to conclude that, as a military chaplain and priest, he would be viewed as a person of influence. Furthermore, a review of the Trial Chamber's findings on this point reveals that it not only took into account Rukundo's influence but also the use to which he put that influence.

251. Moreover, Rukundo's abuse of his influence over soldiers was evidenced in other parts of the Trial Judgement. The Trial Chamber found that, prior to abducting Madame Rudahunga, the soldiers showed Rukundo documents taken from Saint Joseph's College<sup>602</sup> and that Rukundo identified refugees at the Saint Léon Minor Seminary to soldiers following which the refugees were abducted.<sup>603</sup>

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<sup>596</sup> Trial Judgement, para. 599.

<sup>597</sup> Rukundo Notice of Appeal, para. 108; Rukundo Appeal Brief, paras. 308, 319.

<sup>598</sup> Rukundo Appeal Brief, para. 309.

<sup>599</sup> Rukundo Notice of Appeal, para. 108; Rukundo Appeal Brief, paras. 315, 318.

<sup>600</sup> Rukundo Appeal Brief, para. 317.

<sup>601</sup> *Seromba* Appeal Judgement, para. 230; *Simba* Appeal Judgement, para. 284; *Ndindabahizi* Appeal Judgement, para. 136. *See also Dragomir Milošević* Appeal Judgement, para. 302.

<sup>602</sup> Trial Judgement, para. 172.

<sup>603</sup> Trial Judgement, para. 361.

252. In addition, the Appeals Chamber finds no error in the Trial Chamber's reference to Witness BUW's evidence that he believed Rukundo to be in a position of authority.<sup>604</sup> While Witness BUW's evidence related to the events at Nyabikenke communal office for which Rukundo was acquitted, the Appeals Chamber notes that Rukundo was acquitted of that charge because there was insufficient evidence to establish a causal link between Rukundo and the attack, not because it disbelieved Witness BUW.<sup>605</sup> In any event, Rukundo has not demonstrated that the Trial Chamber placed any decisive weight upon this evidence which was simply cited along with that of Witness CCH.<sup>606</sup>

253. Accordingly, the Appeals Chamber finds no discernible error in the Trial Chamber's findings concerning aggravating factors.

### 3. Mitigating Factors

254. Rukundo submits that the Trial Chamber erred in law by not considering as mitigating the fact that he did his utmost to save many Tutsis.<sup>607</sup> First, he argues that it erred in failing to consider evidence that he attempted to save Tutsis.<sup>608</sup> Second, Rukundo argues that the Trial Chamber erred by criticizing the Defence for not having raised this fact as a mitigating circumstance.<sup>609</sup> He asserts that he could not have made submissions on mitigating factors in his Final Trial Brief because it was incompatible with his position that he was not guilty.<sup>610</sup> He contends that it was incumbent on the Trial Chamber to consider this factor despite the fact that he did not raise it.<sup>611</sup> Third, he argues

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<sup>604</sup> Trial Judgement, para. 599, *referring to* T. 19 February 2007 p. 4 (“We asked for assistance from Father Rukundo. I was in fact the person who asked him to assist us, and that was because, in my opinion, the attackers would normally follow his advice since he had been their priest. In fact, I would like to point out that upon his arrival in the company of soldiers, they immediately stopped attacking the refugees. Furthermore, we felt that, as a priest, in addition to the fact that he was a military chaplain, we thought that he worked hand-in-hand with the soldiers. So we felt that he had a certain authority over those soldiers, and that he, as a military chaplain, was in a position to advise them. He could ask the soldiers to chase away the attackers who were killing us. And, moreover, the soldiers who were with him, as well as himself, they were armed. They had that power, and Father Rukundo also had moral authority over the soldiers.”).

<sup>605</sup> Trial Judgement, para. 218.

<sup>606</sup> Trial Judgement, para. 599, n. 876.

<sup>607</sup> Rukundo Notice of Appeal, para. 109.

<sup>608</sup> Rukundo Appeal Brief, paras. 321-323, *referring to* the evidence of Witnesses RUC, RUE, RUA, TMB, TMC, and MCC. In this regard, Rukundo also submits that this evidence shows that he did not have the specific intent for the crime of genocide. The Appeals Chamber notes that this submission does not relate to sentencing, but, in any event, considers that his efforts to save Tutsis do not call into question the reasonableness of the Trial Chamber's findings on his *mens rea* for genocide. *See Muhimana Appeal Judgement*, para. 32 (“In general, evidence of limited and selective assistance towards a few individuals does not preclude a trier of fact from reasonably finding the requisite intent to commit genocide.”).

<sup>609</sup> Rukundo Notice of Appeal, para. 109; Rukundo Appeal Brief, para. 324.

<sup>610</sup> Rukundo Appeal Brief, paras. 324, 328. *See also* Rukundo Response Brief, paras. 102, 103.

<sup>611</sup> Rukundo Appeal Brief, paras. 327, 329, 330.

that the Trial Chamber failed to determine the weight to be accorded to this evidence, thus depriving him of a possible reduction in the sentence, no matter how limited.<sup>612</sup>

255. Pursuant to Rule 101(B)(ii) of the Rules, a Trial Chamber is required to take into account any mitigating circumstances in determining a sentence.<sup>613</sup> However, the accused bears the burden of establishing mitigating factors by a preponderance of the evidence.<sup>614</sup> If an accused fails to put forward relevant information, the Appeals Chamber considers that, as a general rule, a Trial Chamber is not under an obligation to seek out information that counsel did not see fit to put before it at the appropriate time.<sup>615</sup> Rule 86(C) of the Rules clearly indicates that sentencing submissions shall be addressed during closing arguments, and it was therefore Rukundo's prerogative to identify any mitigating circumstances at the time. The Appeals Chamber notes that Rukundo made no sentencing submissions at trial.<sup>616</sup> This in itself would suffice for the Appeals Chamber to dismiss his argument.

256. In any event, despite the fact that Rukundo's submissions that he attempted to evacuate Tutsis were not made in relation to sentencing, the Trial Chamber did consider these submissions in its discussion of mitigating circumstances.<sup>617</sup> However, it concluded that "the assistance provided by Rukundo to a selected number of Tutsi carries only limited, if any, weight as a mitigating factor."<sup>618</sup> The Appeals Chamber finds that the Trial Chamber did not abuse its discretion in giving limited or no weight to Rukundo's selective assistance to Tutsis.<sup>619</sup>

#### 4. Conclusion

257. For the foregoing reasons, the Appeals Chamber dismisses Rukundo's Ninth Ground of Appeal.

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<sup>612</sup> Rukundo Notice of Appeal, para. 109; Rukundo Appeal Brief, paras. 331-333.

<sup>613</sup> See also *Nchamihigo* Appeal Judgement, para. 387; *Muhimana* Appeal Judgement, para. 231.

<sup>614</sup> *Muhimana* Appeal Judgement, para. 231; *Kajelijeli* Appeal Judgement, para. 294.

<sup>615</sup> *Muhimana* Appeal Judgement, para. 231; See also *Nahimana et al.* Appeal Judgement, para. 1103.

<sup>616</sup> Rukundo Final Trial Brief; T. 20 February 2008.

<sup>617</sup> Trial Judgement, paras. 601, 602.

<sup>618</sup> Trial Judgement, para. 602.

<sup>619</sup> See *Bikindi* Appeal Judgement, para. 163. See also *Nchamihigo* Appeal Judgement, para. 389; *Kajelijeli* Appeal Judgement, para. 311.

## **B. Prosecution's Sentencing Appeal**

258. The Prosecution submits that the Trial Chamber erred in law in its assessment of Rukundo's sentence and requests the Appeals Chamber to increase the sentence to life imprisonment or remand the matter to the Trial Chamber for further consideration.<sup>620</sup> In this section, the Appeals Chamber considers whether the Trial Chamber: (1) erred in relation to the sentencing practice of the Tribunal; and (2) gave sufficient weight to relevant considerations.

### **1. Alleged Error in Relation to the Tribunal's Sentencing Practice**

259. The Prosecution submits that the Trial Chamber erred in law in the assessment of the correct sentencing range.<sup>621</sup> It asserts that the Trial Chamber should have relied on the *Gacumbitsi* Appeal Judgement to the effect that "where an accused is convicted for genocide and his participation in that crime is that of a 'primary player' or a 'leader', F...g the sentence ought to be imprisonment for life, *but for where significant* mitigating circumstances are present."<sup>622</sup> It argues that a review of the Tribunal's cases supports the *Gacumbitsi* position.<sup>623</sup> It further submits that the Trial Chamber erred in limiting life sentences to certain senior authorities and lower level authorities who committed the crimes with particular zeal.<sup>624</sup> It also argues that the Trial Chamber erred in stating that "[s]econdary or indirect forms of participation have usually entailed a lower sentence."<sup>625</sup> Furthermore, it submits that the Trial Chamber should have considered the *Seromba* case which, the Prosecution argues, is the most pertinent case to the sentencing analysis in this case.<sup>626</sup>

260. The Appeals Chamber is not persuaded by the Prosecution's assertion that the *Gacumbitsi* Appeal Judgement stands for the proposition that where an accused is convicted for genocide and his participation is that of a primary perpetrator or a leader, the sentence ought to be imprisonment for life, except where there are significant mitigating circumstances. The *Gacumbitsi* Appeal Judgement merely noted that in most of the other cases in which those convicted for genocide have received less than a life sentence, there were significant mitigating circumstances.<sup>627</sup> It made no statement that this was a generalized rule to be followed. Rather, it recalled that the sentence should first and foremost be commensurate with the gravity of the offences and the degree of liability of

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<sup>620</sup> Prosecution Notice of Appeal, paras. 1-4; Prosecution Appeal Brief, paras. 1-91.

<sup>621</sup> Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras. 3, 11, 15.

<sup>622</sup> Prosecution Appeal Brief, para. 17, *referring to Gacumbitsi* Appeal Judgement, paras. 204-206, n. 446. *See also* Prosecution Appeal Brief, paras. 15, 16, 19, 21.

<sup>623</sup> Prosecution Appeal Brief, paras. 45-57.

<sup>624</sup> Prosecution Appeal Brief, paras. 25-30.

<sup>625</sup> Prosecution Appeal Brief, para. 31, *referring to* Trial Judgement, para. 605.

<sup>626</sup> Prosecution Appeal Brief, paras. 33-38.

<sup>627</sup> *Gacumbitsi* Appeal Judgement, para. 204.

the convicted person.<sup>628</sup> Just as there is no category of cases within the jurisdiction of the Tribunal where the imposition of life imprisonment is *per se* barred, there is also no category of cases where it is *per se* mandated. Each case remains to be examined on its own individual facts.

261. Furthermore, with respect to the Prosecution's submission that the Trial Chamber erred in limiting life sentences to certain senior authorities and lower level authorities who committed crimes with particular zeal, the Appeals Chamber considers that the Prosecution misconstrues the Trial Judgement. The Trial Chamber did not limit the imposition of life sentences to these two groups of perpetrators. It merely noted that these were instances in which life sentences had been imposed.<sup>629</sup>

262. The Appeals Chamber also dismisses the Prosecution's assertion that the Trial Chamber erred in stating that secondary or indirect forms of authority have usually entailed a lower sentence.<sup>630</sup> The Prosecution itself concedes that this statement is generally correct, and only challenges the cases the Trial Chamber cited in support of this statement.<sup>631</sup> Even if the cases upon which the Trial Chamber relied do not support the principle, it does not demonstrate that the Trial Chamber erred in so stating.

263. In addition, the Prosecution's comparison of the present case to other cases to support its contention that Rukundo should have been sentenced to life imprisonment fails to demonstrate that the Trial Chamber erred. The Appeals Chamber notes that drawing comparisons with other cases that have been subject to final determination is of limited assistance in challenging a sentence.<sup>632</sup> The Prosecution seeks to distinguish Rukundo's case from others where the Tribunal has not imposed a sentence of life imprisonment, rather than demonstrating that this case is comparable to other cases where life sentence was imposed.<sup>633</sup> Moreover, the Prosecution only touches on superficial similarities between Rukundo's case and others, rather than making any attempt to identify factual similarities with respect to the specific underlying criminal conduct.

264. The Prosecution does provide specific arguments as to why the Trial Chamber should have considered the *Seromba* case in its sentencing analysis.<sup>634</sup> Nonetheless, while there are similarities between the two cases, the Appeals Chamber is not convinced that the two cases are analogous.

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<sup>628</sup> *Gacumbitsi* Appeal Judgement, para. 204.

<sup>629</sup> Trial Judgement, para. 605.

<sup>630</sup> See *Gacumbitsi* Appeal Judgement, para. 201.

<sup>631</sup> Prosecution Appeal Brief, paras. 31, 32, referring to *Kajelijeli*, *Semanza*, *Ruzindana* and *Ntakirutimana* cases.

<sup>632</sup> See *Muhimana* Appeal Judgement, para. 232; *Dragomir Milo{evi}* Appeal Judgement, para. 326; *Blagojevi} and Joki}* Appeal Judgement, para. 333.

<sup>633</sup> Prosecution Appeal Brief, paras. 48-55.

<sup>634</sup> Prosecution Appeal Brief, paras. 33-38.

Both Rukundo and Seromba were priests convicted of genocide and extermination and in both cases the fact that they abused their authority and influence was found to be an aggravating factor.<sup>635</sup> However, the Appeals Chamber recalls that Seromba was ultimately convicted as a principal perpetrator.<sup>636</sup> As discussed in Rukundo's First, Second, and Sixth Grounds of Appeal, the Appeals Chamber has determined that Rukundo's actions are more appropriately described as aiding and abetting.

265. Accordingly, the Prosecution has not demonstrated a discernible error in this respect.

## 2. Alleged Failure to Give Sufficient Weight to Relevant Considerations

266. The Prosecution submits that the Trial Chamber failed to adequately consider and to give sufficient weight to the gravity of the offences, the totality of Rukundo's participation in the crimes, the existence of aggravating factors, and the absence of mitigating factors.<sup>637</sup> It asserts that in light of the Trial Chamber's failure to explicitly assess the very serious legal nature of the crimes committed, the direct, brutal, and systematic way in which the crimes were committed, and the vulnerability of the victims, the Trial Chamber misapprehended the gravity of the offence.<sup>638</sup> The Prosecution also contends that, while the Trial Chamber summarised the crimes for which Rukundo was convicted, it did not undertake a substantive discussion of his role in the commission of the offences and thus failed to properly consider this factor.<sup>639</sup> The Prosecution recalls that the Trial Chamber found Rukundo's abuse of authority and the fact that he was educated to be aggravating factors and asserts that having found his abuse of authority to be "highly aggravating", the Trial Chamber should have imposed the highest sentence upon him.<sup>640</sup> It further recalls that no significant mitigating factors were found in this case.<sup>641</sup>

267. The Appeals Chamber recalls that mere assertions that the Trial Chamber failed to give sufficient weight to certain evidence, or that it should have interpreted evidence in a particular manner, are liable to be summarily dismissed.<sup>642</sup> Furthermore, contrary to the Prosecution's submissions, the Trial Chamber did note the very serious legal nature of the crimes committed and Rukundo's role in the commission of the offences.<sup>643</sup> In the sentencing part of the Trial Judgment,

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<sup>635</sup> See Trial Judgement, paras. 591, 599; *Seromba* Appeal Judgement, paras. 230, 240.

<sup>636</sup> *Seromba* Appeal Judgement, paras. 182, 239.

<sup>637</sup> Prosecution Appeal Brief, paras. 58, 84, 85, 88, 89.

<sup>638</sup> Prosecution Appeal Brief, paras. 63-72.

<sup>639</sup> Prosecution Appeal Brief, paras. 73-84.

<sup>640</sup> Prosecution Appeal Brief, paras. 85-87.

<sup>641</sup> Prosecution Appeal Brief, para. 88.

<sup>642</sup> *Nchamihigo* Appeal Judgement, para. 157. See also *Marij* Appeal Judgement, para. 19.

<sup>643</sup> Trial Judgement, paras. 596, 597.

the Trial Chamber recalled, but did not elaborate on, the direct and systematic way in which the crimes were committed and the vulnerability of the victims. However, in other parts of the Trial Judgement, it made a number of findings in this respect which indicates that it was clearly apprised of these factors.<sup>644</sup> Accordingly, the Prosecution has failed to demonstrate that the Trial Chamber erred in the exercise of its discretion in determining Rukundo's sentence.

### 3. Conclusion

268. For the foregoing reasons, the Appeals Chamber dismisses the Prosecution's appeal.

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<sup>644</sup> Trial Judgement, paras. 171, 364, 387, 388, 568, 572, 589.

### **C. Impact of the Appeals Chamber's Findings on Rukundo's Sentence**

269. The Appeals Chamber recalls that it has set aside Rukundo's conviction for *committing* genocide and murder and extermination as crimes against humanity in relation to the killing of Madame Rudahunga and the beating of four other Tutsis taken from Saint Joseph's College and for the killing of Tutsi refugees abducted from the Saint Léon Minor Seminar and instead found him responsible for *aiding and abetting* these crimes. In addition, the Appeals Chamber, Judge Pocar dissenting, has reversed Rukundo's conviction for genocide in relation to the causing of serious mental harm to Prosecution Witness CCH. The change in Rukundo's form of responsibility for his crimes as well as the reversal of his conviction for causing serious mental harm result in a reduction in his culpability. Rukundo, however, remains convicted of very serious crimes. In the circumstances of this case, the Appeals Chamber, Judge Pocar dissenting, reduces Rukundo's sentence of 25 years of imprisonment to 23 years of imprisonment.

## V. DISPOSITION

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

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

**NOTING** the written submissions of the parties and their oral arguments presented at the hearing on 15 June 2010;

**SITTING** in open session;

**GRANTS**, in part, Rukundo's First Ground of Appeal, **SETS ASIDE** Rukundo's conviction for committing genocide and murder and extermination as crimes against humanity in relation to the killing of Madame Rudahunga and the beating of four other Tutsis taken from Saint Joseph's College and for the killings of Tutsi refugees abducted from the Saint Léon Minor Seminary, **FINDS** Rukundo responsible for aiding and abetting these crimes, and **AFFIRMS** his convictions for genocide and murder and extermination as crimes against humanity on this basis;

**GRANTS** Rukundo's Eighth Ground of Appeal, Judge Pocar dissenting, and **REVERSES** his conviction for genocide by causing serious mental harm;

**DISMISSES** Rukundo's Appeal in all other respects;

**DISMISSES** the Prosecution's Appeal in all respects;

**REDUCES**, Judge Pocar dissenting, the sentence of 25 years of imprisonment imposed on Rukundo by the Trial Chamber to 23 years of imprisonment to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 12 July 2001;

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

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

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

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Fausto Pocar  
Presiding Judge

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Mehmet Güney  
Judge

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Liu Daqun  
Judge

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Theodor Meron  
Judge

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Carmel Agius  
Judge

Judge Pocar appends a partially dissenting opinion.

Done this 20th day of October 2010 at Arusha, Tanzania.

**[Seal of the Tribunal]**

## VI. PARTIALLY DISSENTING OPINION OF JUDGE POCAR

1. In this Judgement, the Appeals Chamber allows Rukundo's Eighth Ground of Appeal and reverses the Trial Chamber's finding that he possessed genocidal intent in connection with the sexual assault of Prosecution Witness CCH at the Saint Léon Minor Seminary.<sup>1</sup> I respectfully disagree with both the reasoning and the conclusions of the Majority of the Appeals Chamber and its consequent reversal of Rukundo's conviction for genocide by causing serious mental harm to Witness CCH.

2. The Trial Chamber concluded that Rukundo possessed genocidal intent in connection with the sexual assault of Witness CCH by considering it in the context of the mass violence against Tutsis in Gitarama Prefecture and at Kabgayi, in particular, as well as his statement prior to the crime that the witness's "entire family had to be killed for assisting the *Inyenzi*".<sup>2</sup> The Majority finds this to be an insufficient basis from which to infer Rukundo's genocidal intent.<sup>3</sup> Specifically, it considers that "Rukundo's language can plausibly be interpreted as expressing anger that a former friend was affiliated with the *'Inyenzi'*, without signifying a personal desire to destroy Tutsis."<sup>4</sup> It bolstered this interpretation by noting that Rukundo's statement did not frighten the witness and that he suggested that he would have hidden her if he could.<sup>5</sup> Secondly, the Majority observes that "the crime committed against Witness CCH was qualitatively different from the other acts of genocide perpetrated by Rukundo."<sup>6</sup> The Majority concluded that "his act could reasonably be construed as an opportunistic crime that was not accompanied by the specific intent to commit genocide."<sup>7</sup>

3. In my view, the Majority's alternative explanation for Rukundo's utterances before the sexual assault is not reasonable. It is immaterial whether these statements frightened Witness CCH. Instead, the proper focus should have been on what Rukundo's words conveyed about his intention. In this respect, they clearly conveyed Rukundo's knowledge that his victim was Tutsi and that she and other members of her family should be killed for this reason alone. This is compelling evidence that Rukundo possessed genocidal intent at the time of the assault, which occurred moments later, in particular when coupled with the serious nature of his crime and the campaign of massive violence directed against Tutsis in the area in which he was found to have participated.

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<sup>1</sup> Appeal Judgement, para. 238.

<sup>2</sup> Trial Judgement, para. 575.

<sup>3</sup> Appeal Judgement, paras. 235-237.

<sup>4</sup> Appeal Judgement, para. 235.

<sup>5</sup> Appeal Judgement, para. 235.

<sup>6</sup> Appeal Judgement, para. 236.

<sup>7</sup> Appeal Judgement, para. 235.

4. Likewise, the Majority's attempts to differentiate Rukundo's sexual assault from other acts of genocide perpetrated by him is not reasonable. The core of the Majority's reasoning on this point indicates that it does not fully appreciate the seriousness of his crime, which, in my view, is not "qualitatively" different from the other killings or serious bodily injury for which he has been held responsible. To illustrate this point, it is useful to recount the context surrounding Rukundo's sexual assault of Witness CCH.

5. It follows from Witness CCH's testimony that she was a Tutsi refugee at the Saint Léon Minor Seminary fleeing violence in the surrounding area where Tutsis were being hunted down.<sup>8</sup> She was dirty and hungry, and her place of refuge was not safe, which is evident both from her testimony and the evidence concerning abductions at the seminary.<sup>9</sup>

6. In this context, she approached Rukundo because he was a priest who knew a member of her family and thus she trusted him.<sup>10</sup> He was armed, locked her in a small room, and forced her down onto the bed. Witness CCH testified that, "[a]fter [Rukundo] locked the door with a key, I became frightened";<sup>11</sup> "given that he was carrying a weapon, I said to myself that if I attempted to run he might shoot me down, so I had better sit down and pray and tell myself that in case he wanted to hurt me, he should fail."<sup>12</sup> According to the witness, "[Rukundo] simply forced me to lie down on that bed".<sup>13</sup>

7. Rukundo held the witness down and squeezed her hard, forcibly trying to remove her dress and spread her legs. Witness CCH recalled that "[Rukundo] put [the pistol] on the small table [, and he] tried to force me and to remove my skirt";<sup>14</sup> "[h]e wanted to pull it up forcefully, and I said no";<sup>15</sup> "he squeezed on me very hard";<sup>16</sup> "he was on top of me and he was holding me down with his two arms".<sup>17</sup>

8. After she resisted, he continued to touch her everywhere albeit not her sexual organs. He rubbed his body against her until he ejaculated. According to Witness CCH, "[h]e was lying on top

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<sup>8</sup> T. 13 February 2007 p. 56. *See also* Trial Judgement, para. 365.

<sup>9</sup> Trial Judgement, paras. 365, 366; T. 13 February 2007 p. 58. T. 14 February 2007 pp. 6, 7, 12. *See also* Section III.F (Ground 6: Alleged Errors Relating to the Events at the Saint Léon Minor Seminary).

<sup>10</sup> T. 14 February 2007 p. 7 ("I trusted him because he was a priest, I approached him and I thought that he could do something for me because he had been ordained on the same day as [one of her family members] was ordained [...] The place where I was, was not safe, and I trusted him because he was a priest."),

<sup>11</sup> T. 13 February 2007 p. 59.

<sup>12</sup> T. 14 February 2007 p. 7.

<sup>13</sup> T. 13 February 2007 p. 59.

<sup>14</sup> T. 13 February 2007 p. 60.

<sup>15</sup> T. 14 February 2007 p. 13.

<sup>16</sup> T. 13 February 2007 p. 60.

of me and he kissed me. He caressed my head. He tried to pull up my dress in order to touch my vagina, but I resisted. [...] but he went on to press down on me his entire body, and also to caress my head.”<sup>18</sup> She further testified:

He had an erection. He was very excited. I resisted. And when he tried to spread my legs, I resisted. But he had told me that he was very tired. I had the impression that he had spent the night at the front. And when I resisted, he gave up. And when he continued to rub himself against me [“touching me everywhere”], he quickly ejaculated.<sup>19</sup>

9. The jurisprudence of the Appeals Chamber is clear. In the *Kunarac et al.* Appeal Judgement, the Appeals Chamber held that “[s]exual violence necessarily gives rise to severe pain or suffering, whether physical or mental”.<sup>20</sup> In the circumstances of this case, I consider that the sexual assault of Witness CCH, although not itself rape, is of a similar gravity. The only aspect of this crime which separates it from rape is the lack of penetration. While this is significant, it does not alter the overall nature of the incident and the conclusion that this crime is of comparable gravity to rape, at least in terms of mental harm.

10. Furthermore, the Majority’s suggestion that Rukundo’s crime was merely “opportunistic”<sup>21</sup> does not fully appreciate the clear distinction between motive and intent, as discussed by the Trial Chamber.<sup>22</sup> The ICTY Appeals Chamber rejected this line of argument in the *Kunarac et al.* case by saying “even if the perpetrator’s motivation is entirely sexual, it does not follow that the perpetrator does not have the intent to commit an act of torture or that his conduct does not cause severe pain or suffering, whether physical or mental, since such pain or suffering is a likely and logical

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<sup>17</sup> T. 14 February 2007 p. 14.

<sup>18</sup> T. 14 February 2007 p. 14.

<sup>19</sup> T. 14 February 2007 p. 18.

<sup>20</sup> *Kunarac et al.* Appeal Judgement, para. 150. See also *Akayesu* Trial Judgement, para. 731 (“rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict *Esicġ* harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.”)(internal citation omitted); *Krstić* Trial Judgement, para. 513 (finding that sexual abuse is among the acts which may cause serious bodily or mental injury). The Appeals Chamber has also held that causing serious mental harm as genocide can result from rape and other acts. See, e.g., *Seromba* Appeal Judgement, para. 46 (“Indeed, nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings.”). See also *Seromba* Appeal Judgement, para. 48. In this respect, the Appeals Chamber noted Mikaeli Muhimana’s conviction on this basis for acts including rape. See *Seromba* Appeal Judgement, n. 116, citing *Muhimana* Trial Judgement, paras. 512, 513, 519. Moreover, the jurisprudence of the ICTY and ICTR also reflects that acts other than rape can result in serious mental harm, including deportation (*Akayesu* Trial Judgement, para. 503; *Krstić* Trial Judgement, para. 513), threats of death (*Staki* Trial Judgement, para. 516), use of human shields (*Blaski* Appeal Judgement, paras. 653, 654, 669), forced labor (*Blaski* Appeal Judgement, para. 597), and surviving genocide (*Krstić* Trial Judgement, para. 543).

<sup>21</sup> Appeal Judgement, para. 236.

<sup>22</sup> Trial Judgement, para. 557.

consequence of his conduct.”<sup>23</sup> The Appeals Chamber took the same approach in the *Gacumbitsi* case.<sup>24</sup>

11. In view of the foregoing, I have no doubt that Rukundo’s assault of Witness CCH is of similar gravity and fits squarely within larger context of violence targeting Tutsis in the area as well as his own pattern of genocidal conduct. Indeed, the jurisprudence does not require, as the Majority suggests,<sup>25</sup> that the crime fit into a pattern of identical criminal conduct. Rather, the Appeals Chamber has held that a Trial Chamber may infer a perpetrator’s genocidal intent, more generally, from “*other culpable acts* systematically directed against the same group”.<sup>26</sup> In a similar vein, the Appeals Chamber specifically rejected the notion that for a conviction for rape as a crime against humanity there need to be a showing that rape was widespread or systematic.<sup>27</sup>

12. In sum, Rukundo has not demonstrated that the Trial Chamber erred in finding that he had genocidal intent. Witness CCH was a Tutsi and sought refuge at the Saint Léon Minor Seminary fleeing violence against Tutsis in the surrounding area.<sup>28</sup> In the context of the prevailing violence in the area and at the seminary, she sought Rukundo’s assistance to hide her.<sup>29</sup> Rukundo knew the victim,<sup>30</sup> was aware that she was a refugee, and suggested that her entire family had to be killed because one of her relatives assisted the “*Inyenzi*”.<sup>31</sup> This evidence reasonably demonstrates Rukundo’s *mens rea*, in particular in the context of “mass violence against the Tutsi[s]” in the area<sup>32</sup> as well as the specific evidence of his role in the repeated abductions and killings of Tutsis from the Saint Léon Minor Seminary.<sup>33</sup> I cannot see any error in the conclusion reached by the Trial Chamber.

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<sup>23</sup> *Kunarac et al.* Appeal Judgement, para. 153.

<sup>24</sup> *Gacumbitsi* Appeal Judgement, para. 103.

<sup>25</sup> Appeal Judgement, para. 236 (“In its analysis of events at Saint Joseph’s College and the Saint Léon Minor Seminary, the Trial Chamber relied on the systematic, repeated searches for Tutsis on the basis of identity cards or lists, and the subsequent killing or assault of those individuals removed, to conclude that the perpetrators, including Rukundo, had genocidal intent. By contrast, the Appeals Chamber, Judge Pocar dissenting, considers that Rukundo’s sexual assault of Witness CCH appears to have been unplanned and spontaneous.”)(internal citations omitted).

<sup>26</sup> *Semanza* Appeal Judgement, para. 252 (emphasis added)(internal citation omitted).

<sup>27</sup> *Gacumbitsi* Appeal Judgement, para. 102 (“At the outset, it bears noting that it is not rape *per se* that must be shown to be widespread or systematic, but rather the attack itself (of which the rapes formed part). In the case at hand, the Trial Chamber reasonably concluded that there was a widespread and systematic attack against Tutsis in Rusumo Commune. Its further conclusion that the rapes formed part of this attack was also reasonable in light of the finding that ‘the victims of rape were chosen because of their Tutsi ethnic origin, or because of their relationship with a person of the Tutsi ethnic group’.”)(internal citations omitted).

<sup>28</sup> Trial Judgement, paras. 365, 373, 384, 388.

<sup>29</sup> Trial Judgement, paras. 373, 384, 388.

<sup>30</sup> Trial Judgement, paras. 365, 369.

<sup>31</sup> T. 13 February 2007 p. 58. See also Trial Judgement, paras. 365, 373, 388, 575.

<sup>32</sup> Trial Judgement, para. 575.

<sup>33</sup> See *supra* Section III.F (Ground 6: Alleged Errors Relating to the Events at the Saint Léon Minor Seminary).

13. As the Majority did not address Rukundo's remaining arguments under this ground of appeal, I have confined my dissenting opinion to the issue of *mens rea*. Nonetheless, after considering the totality of Rukundo's arguments, I would dismiss his Eighth Ground of Appeal in its entirety and affirm his conviction for genocide based on causing of serious mental harm to Witness CCH. In light of the above, I also dissent on the sentence decided by the Appeals Chamber. I would leave the sentence imposed by the Trial Chamber undisturbed.

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

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Judge Fausto Pocar

Done this 20<sup>th</sup> day of October 2010,  
At Arusha,  
Tanzania.

**FSeal of the Tribunal**

## VII. ANNEX A – PROCEDURAL HISTORY

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

### A. Notices of Appeal and Briefs

2. Trial Chamber II rendered the judgement in this case orally on 27 February 2009 and filed the written Trial Judgement on 13 March 2009.

#### 1. Rukundo’s Appeal

3. On 25 March 2009, the Pre-Appeal Judge granted a motion by Rukundo for an extension of time to file his appeal and ordered Rukundo to file his notice of appeal within 30 days of the filing of the French translation of the Trial Judgement, his Appellant’s brief within 30 or 75 days of filing his Notice of Appeal, depending on whether his appeal is limited solely to sentencing, and his Reply brief within 10 or 15 days of the filing of the French translation of the Prosecution’s Respondent’s brief.<sup>1</sup> It further ordered him to file his Respondent’s brief within 30 or 40 days of the filing of the French translation of the Prosecution’s Appellant’s brief.<sup>2</sup> On 20 October 2009, the Pre-Appeal Judge found a motion by Rukundo for clarification of the Decision on Motions for Extension of Time to be moot.<sup>3</sup>

4. Rukundo filed his Notice of Appeal on 6 November 2009<sup>4</sup> and his Appellant’s brief on 19 January 2010.<sup>5</sup> The Prosecution responded on 1 March 2010.<sup>6</sup>

5. On 22 April 2010, the Pre-Appeal Judge ordered Rukundo to file his Reply brief by 10 May 2010.<sup>7</sup> On 4 May 2010, the Pre-Appeal Judge denied Rukundo’s request to reconsider his Decision of 22 April 2010.<sup>8</sup> Rukundo filed his Reply brief on 10 May 2010.<sup>9</sup>

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<sup>1</sup> Decision on Motions for Extension of Time, 25 March 2009 (“Decision on Motions for Extension of Time”), p. 4. *See also* Corrigendum to Decision on Motions for Extension of Time, 3 April 2009; *Avis d’appel et requête aux fins de prorogation de délai pour le dépôt de l’acte d’appel et du mémoire en appel en application des articles 108, 111, 112, 113, et 116 du Règlement de Procédure et de Preuve*, filed in French on 19 March 2009.

<sup>2</sup> Decision on Motions for Extension of Time, p. 4.

<sup>3</sup> Decision on Motion for Extension of Time, 20 October 2009. *See also* Extremely Urgent Motion Requesting Clarification to the Decision on Motions for Extension of Time of 25 March 2009, 6 October 2009.

<sup>4</sup> Emmanuel Rukundo’s Notice of Appeal Against the Judgement of 27 February 2009, 6 November 2009.

<sup>5</sup> Defence Appellant’s Brief, 19 January 2010.

<sup>6</sup> Prosecutor’s Respondent’s Brief, 1 March 2010.

<sup>7</sup> Decision on the Filing of Emmanuel Rukundo’s Reply Brief, 22 April 2010.

<sup>8</sup> Decision on Reconsideration of the Decision on the Filing of Emmanuel Rukundo’s Reply Brief, 4 May 2010. *See also* *Requête en extrême urgence en reconsidération de la décision du 22 avril 2010*, 29 April 2010.

<sup>9</sup> Appellant’s Rejoinder, 10 May 2010.

## 2. Prosecution's Appeal

6. On 25 March 2009, the Pre-Appeal Judge granted a request by the Prosecution for an extension of time to file its Notice of Appeal and ordered it to file its notice of appeal no later than 13 April 2009.<sup>10</sup>

7. The Prosecution filed its Notice of Appeal on 14 April 2009<sup>11</sup> and its Appellant's brief on 14 May 2009.<sup>12</sup> On 13 October 2009, Rukundo filed his Respondent's brief.<sup>13</sup> The Prosecution filed its Reply brief on 22 October 2009.<sup>14</sup>

### **B. Assignment of Judges**

8. On 17 March 2009, the Presiding Judge of the Appeals Chamber assigned the following Judges to hear the appeal: Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Fausto Pocar, Judge Liu Daqun, and Judge Theodor Meron.<sup>15</sup> On 6 May 2009, the Presiding Judge of the Appeals Chamber assigned himself to replace Judge Mohamed Shahabuddeen and designated himself as the Presiding Judge on this case.<sup>16</sup> On 5 February 2010, the Presiding Judge of the Appeals Chamber replaced himself with Judge Carmel Agius.<sup>17</sup> The Bench then elected Judge Fausto Pocar as Presiding Judge in this case.

### **C. Motion Related to the Admission of Additional Evidence**

9. On 19 May 2010, Rukundo filed a motion to admit additional evidence on appeal, which requested, among other things, the admission of Prosecution Witness BLP's judicial record in Rwanda.<sup>18</sup> On 4 June 2010, the Appeals Chamber dismissed Rukundo's motion for additional evidence.<sup>19</sup> It decided the motion without awaiting a response from the Prosecution in view of the urgency of determining the matter prior to the hearing.<sup>20</sup> On 9 June 2010, the Prosecution filed submissions indicating that, contrary to the understanding of the Appeals Chamber in the Decision

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<sup>10</sup> Decision on Motion for Extension of Time, p. 3.

<sup>11</sup> Prosecutor's Notice of Appeal, 14 April 2009.

<sup>12</sup> Prosecutor's Appellant's Brief, 14 May 2009.

<sup>13</sup> Respondent Emmanuel Rukundo's Response to the Prosecutor's Appeal Against the Sentence Imposed in the Judgement of 27 February 2009, 13 October 2009.

<sup>14</sup> Prosecutor's Brief in Reply, 22 October 2009.

<sup>15</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 17 March 2009.

<sup>16</sup> Order Replacing a Judge in a Case Before the Appeals Chamber, 6 May 2009.

<sup>17</sup> Order Replacing a Judge in a Case Before the Appeals Chamber, 5 February 2009.

<sup>18</sup> *Requête aux fins d'admission de moyens de preuve supplémentaires en application de l'article 115 du règlement de Procédure et de Preuve*, 19 May 2010.

<sup>19</sup> Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal, 4 June 2010 ("Decision of 4 June 2010").

<sup>20</sup> Decision of 4 June 2010, para. 1.

of 4 June 2010, it was in fact in possession of Witness BLP's judicial record during the trial.<sup>21</sup> It intimated that the Appeals Chamber may therefore want to reconsider its prior decision.<sup>22</sup> However, it submitted that the outcome of the decision would remain the same.<sup>23</sup> Rukundo did not respond to the submission or seek to reconsider the Decision of 4 June 2010.<sup>24</sup>

#### **D. Hearing of the Appeals**

9. On 4 June 2010, the Pre-Appeal Judge denied Rukundo's motion to postpone the hearing based on the arrest of a counsel for an appellant in another case before the Tribunal by Rwandan authorities.<sup>25</sup> On 15 June 2010, the parties presented their oral arguments at a hearing held in Arusha, Tanzania, in accordance with the Scheduling Order of 19 May 2010.<sup>26</sup>

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<sup>21</sup> Prosecutor's Submission Following the Appeals Chamber's Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal Pursuant to Rule 115 of the Rules of Procedure and Evidence, 9 June 2010 ("Prosecution Submission of 9 June 2010").

<sup>22</sup> Prosecution Submission of 9 June 2010, paras. 2, 3.

<sup>23</sup> Prosecution Submission of 9 June 2010, paras. 4-10.

<sup>24</sup> The fact that the Prosecution was in possession of Witness BLP's judicial record during the trial would not alter the fundamental conclusion denying the admission of the additional evidence in the Decision of 4 June 2010. *See supra* n. 267.

<sup>25</sup> Decision on Rukundo's Request to Postpone the Appeal Hearing, 4 June 2010.

<sup>26</sup> Scheduling Order, 19 May 2010.

## VIII. ANNEX B – CITED MATERIALS AND DEFINED TERMS

### A. Jurisprudence

#### 1. ICTR

##### **AKAYESU**

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

##### **BIKINDI**

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

##### **GACUMBITSI**

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

##### **KAJELIJELI**

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

##### **KAMUHANDA**

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

##### **KARERA**

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

##### **KAYISHEMA and RUZINDANA**

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

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

##### **MUHIMANA**

*The Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-T, Judgement and Sentence, 28 April 2005 (“*Muhimana* Trial Judgement”).

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

## **MUSEMA**

*Alfred Musema v. The Prosecutor*, Case No. ICTR-96-13-A, Judgement, 6 November 2001 (“*Musema Appeal Judgement*”).

## **MUVUNYI**

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement, 29 August 2008 (“*Muvunyi Appeal Judgement*”).

## **NAHIMANA et al.**

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

## **NCHAMIHIGO**

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

## **NDINDABAHIZI**

*The Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-I, Judgement and Sentence, 15 July 2004 (“*Ndindabahizi Trial Judgement*”).

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

## **NIYITEGEKA**

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

## **NTAGERURA et al.**

*The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004 (“*Ntagerura et al. Trial Judgement*”).

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

## **NTAKIRUTIMANA**

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

## **RUTAGANDA**

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

## **SEMANZA**

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

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

### **SEROMBA**

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

### **SIMBA**

*The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005 (“*Simba Trial Judgement*”).

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

### **ZIGIRANYIRAZO**

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

## **2. ICTY**

### **ALEKSOVSKI**

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

### **BLAGOJEVI] and JOKI]**

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

### **BLA[KI]**

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

### **DELALI] et al.**

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

### **KRSTI]**

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 (“*Krstić Trial Judgement*”).

**KUPREŠKIĆ *et al.***

*Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”).

**KVOČKA *et al.***

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

**LIMAJ *et al.***

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

**MARTIĆ**

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

**DRAGOMIR MILOŠEVIĆ**

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

**MILUTINOVIJ *et al.***

*Prosecutor v. Milan Milutinović, Nikola [ainović], Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“*Milutinović et al.* Trial Judgement”).

**MRKŠIĆ and ŠLJIVANČANIN**

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

**ORić**

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

**BLAGOJE SIMIĆ**

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

**STAKIĆ**

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003 (“*Stakić Trial Judgement*”).



## **B. Defined Terms and Abbreviations**

### **ICTR**

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

### **ICTY**

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

### **Indictment**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-I, Amended Indictment Filed Pursuant to the Decision of Trial Chamber II of 28 September 2006, 6 October 2006

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### **p. (pp.)**

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### **Prosecution Appeal Brief**

Prosecutor's Appellant's Brief, 14 May 2009

### **Prosecution Final Trial Brief**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, The Prosecutor's Final Trial Brief, 14 January 2008

**Prosecution Notice of Appeal**

Prosecutor's Notice of Appeal, 14 April 2009

**Prosecution Pre-Trial Brief**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-I, The Prosecutor's Pre-Trial Brief Pursuant to Article 73 bis (B)(i) of the Rules of Procedure and Evidence, 16 October 2008

**Prosecution Reply Brief**

Prosecutor's Brief in Reply, 22 October 2009

**Prosecution Response Brief**

Prosecutor's Respondent's Brief, 1 March 2010

**RPF**

Rwandan Patriotic Front

**Rukundo Appeal Brief**

Defence Appellant's Brief, 19 January 2010

**Rukundo Final Trial Brief**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Defence Closing Brief, 14 January 2008

**Rukundo Notice of Appeal**

Emmanuel Rukundo's Notice of Appeal Against the Judgement of 27 February 2009, 6 November 2009

**Rukundo Reply Brief**

Appellant's Rejoinder, 10 May 2010

## **Rukundo Response Brief**

Respondent Emmanuel Rukundo's Response to the Prosecutor's Appeal Against the Sentence Imposed in the Judgement of 27 February 2009, 13 October 2009

### **Rules**

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

### **Statute**

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

### **T.**

Transcript

### **Trial Judgement**

*The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, 27 February 2009