



UNITED NATIONS  
NATIONS UNIES

Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

3216/H  
ICTR-00-56-A  
11<sup>th</sup> June 2012  
{3216/H - 3209/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Patrick Robinson  
Judge Liu Daqun  
Judge Andrézia Vaz  
Judge Khalida Rachid Khan

ICTR Appeals Chamber  
Date: 11<sup>th</sup> June 2012  
Action: R. J. J. J.  
Copied To: All concerned  
[Signature]

**Registrar:** Mr. Adama Dieng

**Decision of:** 11 June 2012

Augustin NDINDILYIMANA  
Augustin BIZIMUNGU  
François-Xavier NZUWONEMEYE  
Innocent SAGAHUTU

v.

**THE PROSECUTOR**

Case No. ICTR-00-56-A

**DECISION ON AUGUSTIN BIZIMUNGU'S RULE 92BIS MOTION AND ON HIS RULE 115 MOTION FOR ADMISSION OF ADDITIONAL EVIDENCE**

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Charles A. Taku and Beth S. Lyons for François-Xavier Nzuwonemeye  
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SIGNATURE: [Signature] DATE: 11/06/2012

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 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) is seised of two motions filed confidentially by Augustin Bizimungu on 1 and 20 February 2012, respectively, seeking the admission of additional evidence on appeal pursuant to Rules 92bis and 115 of the Rules of Procedure and Evidence of the Tribunal (“Rules”).<sup>1</sup>

#### A. Procedural Background

2. On 17 May 2011, Trial Chamber II of the Tribunal (“Trial Chamber”) convicted Mr. Bizimungu of genocide as well as murder, extermination, and rape as crimes against humanity and murder and rape as violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and sentenced him to 30 years’ imprisonment.<sup>2</sup>

3. Mr. Bizimungu filed a notice of appeal against the Trial Judgement on 20 July 2011 and an amended notice of appeal on 19 January 2012.<sup>3</sup> On 23 January 2012, Mr. Bizimungu filed his Appellant’s brief.<sup>4</sup> The Prosecution responded to his appeal on 5 March 2012.<sup>5</sup> Mr. Bizimungu filed

<sup>1</sup> *Requête strictement confidentielle de la défense du Général Augustin Bizimungu afin que soient admis en preuve les transcriptions du témoignage du témoin GAP dans l’affaire Procureur [sic] c. Ephrem Setako du 25, 26, 27 et 28 août 2008 ainsi que les pièces à conviction produites durant ce témoignage*, 1 February 2012 (strictly confidential) (“Rule 92bis Motion”); *Requête confidentielle de la défense du Général Augustin Bizimungu en admission de moyens de preuve supplémentaires* (en vertu de l’article 115 du Règlement de [p]rocédure et de [p]reuve) et en désistement de sa requête pendante intitulée « *Requête strictement confidentielle de la défense du Général Augustin Bizimungu afin que soient admis en preuve les transcriptions du témoignage du témoin GAP dans l’affaire Procureur [sic] c. Ephrem Setako du 25, 26, 27 et 28 août 2008 ainsi que les pièces à conviction produites durant ce témoignage* », 20 February 2012 (confidential) (“Rule 115 Motion”) (the English translation of the Rule 115 Motion was filed on 27 March 2012).

<sup>2</sup> T. 17 May 2011 pp. 24, 26. See also *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, Judgement and Sentence, dated 17 May 2011 and filed on 17 June 2011 (“Trial Judgement”), paras. 73, 2106, 2120, 2128, 2153, 2162, 2163, 2266 (the French translation of the Trial Judgement was filed on 14 December 2011).

<sup>3</sup> *Acte d’appel en vertu de l’appel [sic] 24 du Statut et 108 du Règlement de procédure et de preuve*, 20 July 2011; *Acte d’appel amendé en vertu de l’article 24 du Statut et de l’article 108 du Règlement de procédure et de preuve*, 21 November 2011 (filed as an annex to *Requête du Général Augustin Bizimungu en autorisation d’amender son acte d’appel conformément à l’article 108 du Règlement de procédure et de preuve*, 21 November 2011) (“Amended Notice of Appeal”) (the English translation of the Amended Notice of Appeal was filed on 28 May 2012). See also Decision on Augustin Bizimungu’s Motion for Leave to Amend his Notice of Appeal, 19 January 2012, para. 10 (accepting the Amended Notice of Appeal as the operative notice of appeal).

<sup>4</sup> *Mémoire d’appel du Général Augustin Bizimungu*, 23 January 2012 (“Appellant’s brief”) (the English translation of the Appellant’s brief was filed on 4 June 2012). Mr. Bizimungu previously sought and was granted an extension of time to file his Appellant’s brief no later than 40 days from the filing of the French translation of the Trial Judgement. See Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 11 July 2011, paras. 16, 21.

<sup>5</sup> Prosecution’s Respondent’s Brief in Response to Augustin Bizimungu’s Appellant’s Brief, 5 March 2012.

his brief in reply on 20 March 2012.<sup>6</sup> Augustin Ndingiyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu, and the Prosecution have also appealed against the Trial Judgement.<sup>7</sup>

4. On 1 February 2012, Mr. Bizimungu filed the Rule 92bis Motion, to which the Prosecution responded on 7 February 2012.<sup>8</sup> On 20 February 2012, Mr. Bizimungu filed the Rule 115 Motion. The Prosecution responded on 21 March 2012.<sup>9</sup> Mr. Bizimungu did not reply to the Prosecution's submissions.

### B. Rule 92bis Motion

5. In the Rule 92bis Motion, Mr. Bizimungu sought the admission on appeal of a number of transcripts and exhibits from the case of *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T ("*Setako case*"), pursuant to Rules 89 and 92bis of the Rules.<sup>10</sup> The Prosecution opposed the Rule 92bis Motion, *inter alia*, on the ground that it was brought through an incorrect procedural vehicle.<sup>11</sup> Thereafter, in his Rule 115 Motion, Mr. Bizimungu sought the admission of a portion of the material previously identified in the Rule 92bis Motion and informed the Appeals Chamber that he was withdrawing the Rule 92bis Motion.<sup>12</sup> The Appeals Chamber therefore declares that the Rule 92bis Motion has been withdrawn.<sup>13</sup>

<sup>6</sup> *Mémoire du Général Augustin Bizimungu en réplique au « Prosecution's Respondent's Brief in Response to Augustin Bizimungu's Appellant's Brief »*, 20 March 2012.

<sup>7</sup> Notice of Appeal on Behalf of Augustin Ndingiyimana, Pursuant to Rule 108, 20 July 2011; Notice of Appeal Pursuant to Article 24 of the ICTR Statute and Rule 108 of the Rules of Procedure and Evidence, 20 July 2011 (strictly confidential) (the public redacted version was filed on 9 August 2011); *Acte d'appel d'Innocent Sagahutu*, 13 January 2012 (the English translation of Mr. Sagahutu's notice of appeal was filed on 8 March 2012); Prosecutor's Notice of Appeal, 20 July 2011.

<sup>8</sup> Prosecution's Response to "*Requête strictement confidentielle de la défense du Général Augustin Bizimungu afin que soient admis en preuve les transcriptions du témoignage du témoin GAP dans l'affaire Procureur [sic] c. Ephrem Setako du 25, 26, 27 et 28 août 2008 ainsi que les pièces à conviction produites durant ce témoignage*", 7 February 2012 ("Response to Rule 92bis Motion").

<sup>9</sup> Prosecution's Response to "*Requête confidentielle de la défense du Général Augustin Bizimungu en admission de moyens de preuve supplémentaires (en vertu de l'article 115 du Règlement de [p]rocédure et de [p]reuve) et en désistement de sa requête pendante intitulée 'Requête strictement confidentielle de la défense du Général Augustin Bizimungu afin que soient admis en preuve les transcriptions du témoignage du témoin GAP dans l'affaire Procureur [sic] c. Ephrem Setako du 25, 26, 27 et 28 août 2008 ainsi que les pièces à conviction produites durant ce témoignage'*", 21 March 2012 ("Response to Rule 115 Motion"). The Prosecution submits that the Rule 115 Motion could have been filed publicly with separate confidential attachments. *See* Response to Rule 115 Motion, n. 1. In view of the principle that all decisions before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential, the Appeals Chamber considers that there is no information in the present decision that needs to be withheld from the public. Thus, it renders the decision publicly. *See, e.g., Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Motion to Lift Confidentiality, 2 March 2012 ("*Hategekimana Decision Lifting Confidentiality*"), p. 1.

<sup>10</sup> Rule 92bis Motion, paras. 1, 13-21, 33. In particular, Mr. Bizimungu requested to have admitted on appeal transcripts of Prosecution Witness GAP's testimony from 25 to 28 August 2008 and the exhibits that were admitted during this testimony. *See* Rule 92bis Motion, paras. 1, 33.

<sup>11</sup> Response to Rule 92bis Motion, paras. 1, 2, 7-9, 12-14. *See also* Response to Rule 92bis Motion, paras. 4-6.

<sup>12</sup> Rule 115 Motion, paras. 1, 2, p. 9. The Prosecution has not objected to the withdrawal. *See* Response to Rule 115 Motion.

<sup>13</sup> *Cf. Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on the Withdrawal of Prosecution's 24 June 2010 Urgent Request for the Waiver of Confidentiality of Provisional Release Motions, 15 July 2010, p. 1;

### C. Rule 115 Motion

6. The Trial Chamber convicted Mr. Bizimungu for aiding and abetting genocide based on his involvement in the killings of Tutsis in Rwankeri Sector, Ruhengeri Prefecture, Rwanda.<sup>14</sup> In particular, the Trial Chamber found that Mr. Bizimungu attended a meeting at the house of Joseph Nzirorera's mother on the night of 6 to 7 April 1994 where he made a speech calling for the killings of Tutsis in Ruhengeri.<sup>15</sup> The Trial Chamber concluded that there was a direct link between the anti-Tutsi remarks made by Mr. Bizimungu and subsequent instructions to kill Tutsis issued by local authorities to the *Interahamwe* gathered at Byangabo market.<sup>16</sup> In making its findings on Mr. Bizimungu's participation in the meeting, the Trial Chamber relied on Prosecution Witness GAP's testimony.<sup>17</sup>

7. Mr. Bizimungu requests the admission of a transcript of Witness GAP's testimony on 27 August 2008 in the *Setako* case ("*Setako* Transcript").<sup>18</sup> According to Mr. Bizimungu, the *Setako* Transcript relates to the credibility of Witness GAP.<sup>19</sup>

#### 1. Applicable Law

8. Rule 115 of the Rules provides for the admission of additional evidence on appeal where a party is in possession of material that was not before the Trial Chamber and which represents additional evidence of a fact or issue litigated at trial.<sup>20</sup> The moving party must file its motion for admission of additional evidence no later than 30 days from the date of filing of the brief in reply unless good cause is shown for a delay.<sup>21</sup> According to Rule 115(A) of the Rules, a motion for admission of additional evidence shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. Rule 115(B) of the Rules

*Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR65.2, Decision on Notice of Withdrawal of Appeal, 24 January 2008, p. 2; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Decision on Prosecution's Motion for Clarification of the Appeals Chamber's Decision of 6 September 2006, 22 September 2006, pp. 1, 2.

<sup>14</sup> Trial Judgement, paras. 72, 73, 2163, 2177. See also T. 17 May 2011 pp. 5, 24.

<sup>15</sup> Trial Judgement, paras. 8, 910, 911, 924, 2177. See also Trial Judgement, para. 2065; T. 17 May 2011 p. 5.

<sup>16</sup> Trial Judgement, paras. 925, 926, 2177. See also Trial Judgement, paras. 8, 931; T. 17 May 2011 p. 5.

<sup>17</sup> See Trial Judgement, paras. 909-924.

<sup>18</sup> Rule 115 Motion, paras. 1, 27, p. 9. English and French versions of the *Setako* Transcript were filed as an annex to the Rule 115 Motion. See Rule 115 Motion, para. 1, p. 9, Annex.

<sup>19</sup> Rule 115 Motion, paras. 1, 23, 27.

<sup>20</sup> See, e.g., *Ildéphonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildéphonse Hategekimana's Motion for the Admission of Additional Evidence on Appeal, 8 December 2011 ("*Hategekimana* Decision"), para. 7 (the confidential status of this decision was lifted by the Appeals Chamber on 2 March 2012, see *Hategekimana* Decision Lifting Confidentiality, p. 1); *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motions for the Admission of Additional Evidence, 21 March 2011 ("*Bagosora et al.* Decision"), para. 5; *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-01-70-A, Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal, 4 June 2010 ("*Rukundo* Decision"), para. 5; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-73-A, Decision on Zigiranyirazo's Motion for Admission of Additional Evidence on Appeal, 16 September 2009 ("*Zigiranyirazo* Decision"), para. 5.

<sup>21</sup> Rule 115(A) of the Rules.

provides that the additional evidence must not have been available at trial in any form, or discoverable through the exercise of due diligence. The applicant must also show that the additional evidence is relevant and credible.<sup>22</sup>

9. When determining the availability of evidence at trial, the Appeals Chamber will consider whether the party tendering the evidence has shown that it sought to make “appropriate use of all mechanisms of protection and compulsion available under the Statute [of the Tribunal] and the Rules [...] to bring evidence [...] before the Trial Chamber”.<sup>23</sup> The applicant is therefore expected to apprise the Trial Chamber of all difficulties that he encountered in obtaining the evidence in question.<sup>24</sup> Once it has been determined that the additional evidence meets these conditions, the Appeals Chamber will determine in accordance with Rule 115(B) of the Rules whether it *could* have been a decisive factor in reaching the decision at trial.<sup>25</sup>

10. Furthermore, in accordance with established jurisprudence, where the evidence is relevant and credible, but was available at trial or could have been discovered through the exercise of due diligence, the Appeals Chamber may allow it to be admitted on appeal provided the moving party can establish that its exclusion *would* amount to a miscarriage of justice.<sup>26</sup> That is, it must be demonstrated that, had the additional evidence been adduced at trial, it *would* have had an impact on the verdict.<sup>27</sup>

11. In both cases, the applicant bears the burden of identifying with precision the specific finding of fact made by the Trial Chamber to which the additional evidence pertains, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon the Trial Chamber’s verdict. A party which fails to do so runs the risk that the tendered material will be rejected without detailed consideration.<sup>28</sup>

<sup>22</sup> See, e.g., *Hategekimana* Decision, para. 7; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Vujadin Popović’s Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 20 October 2011 (“*Popović et al.* Decision”), para. 8; *Bagosora et al.* Decision, para. 5.

<sup>23</sup> *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence, 10 December 2004, para. 9, quoting *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant’s Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998, para. 47. See also, e.g., *Hategekimana* Decision, para. 8; *Popović et al.* Decision, para. 7; *Bagosora et al.* Decision, para. 6; *Rukundo* Decision, para. 6; *Zigiranyirazo* Decision, para. 6.

<sup>24</sup> See, e.g., *Hategekimana* Decision, para. 8; *Popović et al.* Decision, para. 7; *Bagosora et al.* Decision, para. 6; *Rukundo* Appeal Decision, para. 6.

<sup>25</sup> See, e.g., *Hategekimana* Decision, para. 8; *Bagosora et al.* Decision, para. 6; *Rukundo* Decision, para. 6; *Zigiranyirazo* Decision, para. 6.

<sup>26</sup> See, e.g., *Hategekimana* Decision, para. 9; *Bagosora et al.* Decision, para. 7; *Rukundo* Decision, para. 7; *Zigiranyirazo* Decision, para. 7. See also *Popović et al.* Decision, para. 10.

<sup>27</sup> See, e.g., *Hategekimana* Decision, para. 9; *Bagosora et al.* Decision, para. 7; *Rukundo* Decision, para. 7; *Zigiranyirazo* Decision, para. 7.

<sup>28</sup> See, e.g., *Hategekimana* Decision, para. 10; *Popović et al.* Decision, para. 11; *Bagosora et al.* Decision, para. 8; *Rukundo* Decision, para. 8.

12. Finally, the Appeals Chamber has repeatedly recognized that the significance and potential impact of the tendered material is not to be assessed in isolation, but in the context of the evidence presented at trial.<sup>29</sup>

## 2. Submissions

13. Mr. Bizimungu submits that he could not use the *Setako* Transcript in his trial because Witness GAP appeared in the *Setako* case after the close of Mr. Bizimungu's defence case in December 2007, and the Prosecution only disclosed the *Setako* Transcript thereafter.<sup>30</sup> In these circumstances, Mr. Bizimungu contends that it was impossible for him to cross-examine Witness GAP on inconsistencies between his testimonies in the present case and in the *Setako* case.<sup>31</sup> Mr. Bizimungu stresses that he "could not have foreseen" that the Trial Chamber would have relied solely on Witness GAP's evidence to convict him of genocide and that he only realized the importance of the *Setako* Transcript while drafting his Appellant's brief.<sup>32</sup> Mr. Bizimungu adds that the proposed additional evidence satisfies the requirements of credibility and reliability within the meaning of Rule 115 of the Rules.<sup>33</sup>

14. Mr. Bizimungu further argues that the *Setako* Transcript, which contains the cross-examination of Witness GAP, supports his arguments at trial and on appeal that Witness GAP is not credible because of the witness's propensity to lie.<sup>34</sup> Mr. Bizimungu submits that this propensity was demonstrated during Witness GAP's cross-examination in the *Setako* case, when it was highlighted that, because the witness had not fully confessed his crimes before a *Gacaca* court in Rwanda, his guilty plea had been rejected and he had been sentenced to life imprisonment.<sup>35</sup> According to Mr. Bizimungu, this additional evidence, combined with existing evidence in the present case, demonstrates that the Trial Chamber erred in finding Witness GAP's uncorroborated evidence to be credible.<sup>36</sup> If admitted, Mr. Bizimungu argues, the *Setako* Transcript would impact the verdict since his conviction for genocide is based on Witness GAP's evidence.<sup>37</sup>

<sup>29</sup> See, e.g., *Hategekimana* Decision, para. 11; *Popović et al.* Decision, para. 12; *Bagosora et al.* Decision, para. 9; *Rukundo* Decision, para. 9.

<sup>30</sup> Rule 115 Motion, para. 18. Mr. Bizimungu asserts that Witness GAP testified in August 2008 in the *Setako* case and that the *Setako* Transcript was disclosed to him on 12 March 2010. See Rule 115 Motion, paras. 4-6, 18.

<sup>31</sup> Rule 115 Motion, para. 18.

<sup>32</sup> Rule 115 Motion, para. 19. See also Rule 115 Motion, para. 25.

<sup>33</sup> Rule 115 Motion, para. 24.

<sup>34</sup> Rule 115 Motion, paras. 22, 23, referring to Mr. Bizimungu's fourth ground of appeal set forth in his Appellant's brief.

<sup>35</sup> Rule 115 Motion, paras. 22, 23, referring to *Setako* Transcript, pp. 19-21 (French transcript).

<sup>36</sup> Rule 115 Motion, paras. 23, 27.

<sup>37</sup> Rule 115 Motion, para. 25, referring to Trial Judgement, paras. 191-194, 866-874, 903-927; T. 17 May 2011 pp. 19, 20. Mr. Bizimungu incorrectly refers to paragraphs 19 and 20 of the transcript of 17 May 2011.

15. The Prosecution responds that the Rule 115 Motion should be dismissed as Mr. Bizimungu fails to fulfil the requirements for the admission of additional evidence on appeal pursuant to Rule 115 of the Rules.<sup>38</sup> The Prosecution submits that the *Setako* Transcript was available at trial.<sup>39</sup> It further contends that Mr. Bizimungu has not demonstrated that, if admitted on appeal, this additional evidence would have any impact on the Trial Chamber's verdict.<sup>40</sup>

### 3. Discussion

16. With respect to the availability of the proposed additional evidence, the Appeals Chamber observes that, in his Closing brief at trial, Mr. Bizimungu referred to the same passage of the *Setako* Transcript which is highlighted in the Rule 115 Motion.<sup>41</sup> The Appeals Chamber further notes that the *Setako* Transcript was among several documents disclosed to Mr. Bizimungu on 12 March 2010,<sup>42</sup> more than a year before the Trial Judgement was pronounced,<sup>43</sup> and that, on 20 July 2010, Mr. Bizimungu requested the Trial Chamber to admit several of these documents into evidence in his case, including the transcript of Witness GAP's testimony in another trial before the Tribunal.<sup>44</sup> However, Mr. Bizimungu did not request the Trial Chamber to admit the *Setako* Transcript at that time.<sup>45</sup> Consequently, the Appeals Chamber finds that, for the purposes of Rule 115 of the Rules, the *Setako* Transcript was available at trial in the present case. Accordingly, the *Setako* Transcript can only be admitted as additional evidence on appeal if the Appeals Chamber

<sup>38</sup> Response to Rule 115 Motion, paras. 1, 3, 4.

<sup>39</sup> Response to Rule 115 Motion, paras. 3, 5-9, 16. See also Response to Rule 115 Motion, para. 10.

<sup>40</sup> Response to Rule 115 Motion, paras. 3, 12-16.

<sup>41</sup> Compare *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, *Mémoire du Général Augustin Bizimungu déposé en conformité avec l'article 86B) du Règlement de procédure et de preuve*, 31 March 2009 (confidential) ("Closing brief") (the English translation of the Closing brief was filed confidentially on 10 June 2009), para. 325 ("In the *Setako* case in August 2008, [Witness GAP] had testified to having appeared before the *Gacaca* Courts for the first time in July 2005. [Witness] GAP had just been convicted of perjury by the Busogo *Gacaca* Court as adduced in evidence in the *Setako* case"), referring, *inter alia*, to *Setako* Transcript, pp. 19, 20 (French transcript), with Rule 115 Motion, para. 23 ("During the cross-examination of [Witness] GAP in the *Setako* case, the *Gacaca* Judgement which convicted him was produced and it was discovered therein that [Witness] GAP's guilty plea was rejected because he only 'partially confessed' and [Witness] GAP then admitted that he understood the reason for the rejection of his confessions" (internal citations omitted)), referring to *Setako* Transcript, pp. 19-21 (French transcript).

<sup>42</sup> See Rule 115 Motion, paras. 5, 6, 18; Response to Rule 115 Motion, paras. 7, 8.

<sup>43</sup> See *supra*, para. 2.

<sup>44</sup> See *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, *Requête de la défense du Général Augustin Bizimungu afin que soient admis en preuve les transcripts du témoignage du témoin GAP dans l'affaire Karemera et al. du 21, 25 et 26 janvier 2010 ainsi que des pièces produites lors dudit témoignage*, 20 July 2010, ("Request for Admission of Evidence"), paras. 3, 4. On 13 October 2010, the Trial Chamber granted the Request for Admission of Evidence. See *The Prosecutor v. Augustin Ndingiyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence for Bizimungu's Motion for the Admission into Evidence of Prosecution Witness GAP's Transcripts and Exhibits in the *Karemera et al.* Case, 13 October 2010, p. 4. See also Trial Judgement, Annex A: Procedural History, para. 136.

<sup>45</sup> See Request for Admission of Evidence.

finds that it is credible, relevant, and *would* have affected the verdict, had it had been before the Trial Chamber.<sup>46</sup>

17. The Appeals Chamber is satisfied that the *Setako* Transcript is relevant to the Trial Chamber's findings to the extent that it concerns the general credibility of Witness GAP. The Appeals Chamber also considers that the *Setako* Transcript bears sufficient indicia of credibility to be considered admissible as additional evidence on appeal.

18. Turning to the impact on the verdict, the Appeals Chamber observes that Witness GAP's credibility was highly contested at trial and that the Trial Chamber examined extensive evidence on this point.<sup>47</sup> Mr. Bizimungu has not demonstrated how the *Setako* Transcript would materially add to the evidence on the record. In light of the foregoing, the Appeals Chamber does not consider that, had this additional evidence been adduced at trial, it would have had an impact on the verdict. Its exclusion on appeal will not therefore result in a miscarriage of justice.


19. Accordingly, the Appeals Chamber denies the admission on appeal of the *Setako* Transcript. The Appeals Chamber emphasizes that the present conclusion pertains merely to the admissibility of the additional evidence and is in no way indicative of the Appeals Chamber's assessment of the merits of Mr. Bizimungu's appeal.

#### D. Disposition

20. For the foregoing reasons, the Appeals Chamber **DECLARES** that the Rule 92*bis* Motion has been withdrawn and **DENIES** the Rule 115 Motion.

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

Done this 11th day of June 2012,  
At The Hague,  
The Netherlands.

  
Judge Theodor Meron  
Presiding

[Seal of the Tribunal]



<sup>46</sup> See *supra*, para. 10.

<sup>47</sup> See T. 16 February 2005 pp. 3-64; T. 17 February 2005 pp. 2-63; T. 21 February 2005 pp. 3-73; T. 22 February 2005 pp. 2-18, 25-63; Closing brief, paras. 299-368, 454-503; Trial Judgement, paras. 171, 191-194, 907, 908, 912-918.