



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

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**IN THE APPEALS CHAMBER**

ICR-01-68-A  
2nd May 2013  
(514/A - 506/A)

**Before:** Judge Theodor Meron, Presiding  
Judge William H. Sekule  
Judge Arlette Ramaroson  
Judge Carmel Agius  
Judge Khalida Rachid Khan

**Registrar:** Mr. Bongani Majola

**Decision of:** 2 May 2013

**Grégoire NDAHIMANA**

v.

**THE PROSECUTOR**

*Case No. ICTR-01-68-A*

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**DECISION ON GRÉGOIRE NDAHIMANA'S MOTION FOR ADMISSION OF  
ADDITIONAL EVIDENCE ON APPEAL**

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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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of the motion filed by Grégoire Ndahimana ("Ndahimana") on 7 March 2013, seeking admission of additional evidence on appeal pursuant to Rule 115 of the Rules of Procedure and Evidence of the Tribunal ("Rules").<sup>1</sup>

#### A. Background

2. Trial Chamber II of the Tribunal ("Trial Chamber") pronounced its Judgement in the present case on 17 November 2011.<sup>2</sup> The Trial Chamber found Ndahimana guilty of genocide and extermination as a crime against humanity pursuant to Article 6(3) of the Statute of the Tribunal ("Statute") for failing to punish his subordinates from the communal police for the killings perpetrated on 15 April 1994 at Nyange Church, and pursuant to Article 6(1) of the Statute for aiding and abetting by tacit approval the killings perpetrated at Nyange Church on 16 April 1994.<sup>3</sup> Ndahimana was sentenced to 15 years of imprisonment.<sup>4</sup>

3. Both Ndahimana and the Prosecution have appealed against the Trial Judgement.<sup>5</sup> As part of his appeal, Ndahimana submits that the Trial Chamber violated his right to present material evidence by, *inter alia*, refusing his requests to reinstate Defence Witnesses ND26 and ND27 on the Defence witness list, and hear the evidence of Defence Witness FB1 via video link.<sup>6</sup> The hearing of the appeals in this case is scheduled for 6 May 2013.<sup>7</sup>

4. On 7 March 2013, Ndahimana filed the Rule 115 Motion, to which the Prosecution responded on 8 April 2013.<sup>8</sup> Ndahimana filed his reply on 22 April 2013.<sup>9</sup>

<sup>1</sup> Ndahimana's Motion for Leave to Present Additional Evidence, confidential, 7 March 2013 ("Rule 115 Motion").

<sup>2</sup> *The Prosecutor v. Grégoire Ndahimana*, Case No. ICTR-01-68-T, Judgement and Sentence, delivered in public on 17 November 2011, signed on 30 December 2011, filed in writing on 18 January 2012 ("Trial Judgement").

<sup>3</sup> Trial Judgement, paras. 767, 832, 843, 847.

<sup>4</sup> Trial Judgement, para. 872.

<sup>5</sup> Notice of Appeal of Grégoire Ndahimana, 17 February 2012 ("Ndahimana Notice of Appeal"); Appellant's Brief, 12 December 2012 ("Ndahimana Appeal Brief"); Prosecutor's Notice of Appeal, 17 February 2012; Prosecutor's Appellant's Brief, 2 May 2012.

<sup>6</sup> See Ndahimana Notice of Appeal, Ground 1, p. 3; Ndahimana Appeal Brief, paras. 20-40. See also Appellant's Brief in Reply, 5 February 2013, paras. 5-48.

<sup>7</sup> *Grégoire Ndahimana v. The Prosecutor*, Case No. ICTR-01-68-A, Scheduling Order, 9 April 2013, p. 1.

<sup>8</sup> Prosecutor's Response to Grégoire Ndahimana's Motion for Leave to Present Additional Evidence, 8 April 2013 ("Response").

<sup>9</sup> The Appellant's Reply to the Prosecutor's Response to "Ndahimana's Motion for Leave to Present Additional Evidence", 22 April 2013 ("Reply").

5. Ndahimana seeks leave to call four additional witnesses on appeal: Defence Witnesses ND26, ND27, FB1, and ND20.<sup>10</sup> He also requests the Appeals Chamber to conduct a hearing pursuant to Rule 115(C) of the Rules.<sup>11</sup>

### B. Applicable Law

6. The Appeals Chamber recalls that 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>12</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 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>13</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>14</sup>

7. 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 establishes that its exclusion *would* amount to a miscarriage of justice.<sup>15</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>16</sup>

8. 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 is relevant, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon

<sup>10</sup> Rule 115 Motion, para. 12.

<sup>11</sup> Rule 115 Motion, p. 22.

<sup>12</sup> See, e.g., *Augustin Ndingiyimana et al. 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, 11 June 2012 ("*Bizimungu Decision*"), para. 8; *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 ("*Nsengiyumva Decision*"), para. 5; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Zigiranyirazo's Motion for Admission of Additional Evidence on Appeal, 16 September 2009 ("*Zigiranyirazo Decision*"), para. 5.

<sup>13</sup> See, e.g., *Bizimungu Decision*, para. 8; *Nsengiyumva 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.

<sup>14</sup> See, e.g., *Bizimungu Decision*, para. 9; *Nsengiyumva Decision*, para. 6; *Zigiranyirazo Decision*, para. 6.

<sup>15</sup> See, e.g., *Bizimungu Decision*, para. 10; *Nsengiyumva Decision*, para. 7; *Zigiranyirazo Decision*, para. 7.

<sup>16</sup> See, e.g., *Bizimungu Decision*, para. 10; *Nsengiyumva Decision*, para. 7; *Zigiranyirazo Decision*, para. 7.

the Trial Chamber's verdict. Where this burden is not met, the tendered material may be rejected without detailed consideration.<sup>17</sup>

9. 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>18</sup>

### C. Preliminary Matter: Request for Hearing

10. Ndahimana requests the Appeals Chamber to exercise its discretion under Rule 115(C) of the Rules to conduct a hearing.<sup>19</sup> The Prosecution responds that the record before the Appeals Chamber provides an adequate basis to enable the Appeals Chamber to consider and reach an informed decision on Ndahimana's Rule 115 Motion without a hearing.<sup>20</sup>

11. The Appeals Chamber notes that Rule 115(C) of the Rules provides that it may decide a motion for additional evidence "with or without an oral hearing." The Appeals Chamber emphasizes that the granting of an oral hearing under this provision is a matter within its discretion and that a hearing is not necessary when the information before the Appeals Chamber is sufficient to enable it to reach an informed decision.<sup>21</sup> In the present case, the Appeals Chamber is satisfied that the written submissions filed by the parties and the record before the Trial Chamber form an adequate basis for the consideration of the Rule 115 Motion, and are sufficient to allow the Appeals Chamber to reach an informed decision. Ndahimana's request for a hearing is therefore denied.

### D. Submissions

12. Ndahimana requests leave to call Witnesses ND26, ND27, FB1, and ND20 on appeal pursuant to Rule 115 of the Rules.<sup>22</sup> In support of his request, Ndahimana annexed to his Rule 115 Motion copies of investigation notes of meetings with Witnesses ND26, ND27, and ND20 and written statements of Witness FB1 ("Rule 115 Materials").<sup>23</sup>

<sup>17</sup> See, e.g., *Bizimungu* Decision, para. 11; *Nsengiyumva* Decision, para. 8; *Rukundo* Decision, para. 8.

<sup>18</sup> See, e.g., *Bizimungu* Decision, para. 12; *Nsengiyumva* Decision, para. 9; *Rukundo* Decision, para. 9.

<sup>19</sup> Rule 115 Motion, p. 22.

<sup>20</sup> Response, para. 29.

<sup>21</sup> See, e.g., *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 9.

<sup>22</sup> Rule 115 Motion, paras. 6, 12.

<sup>23</sup> Rule 115 Motion, Annexes 4 (Investigation Note on Meeting with Witness ND26, dated 19 March 2010), 5 (Investigation Note on Meeting with Witness ND27, dated 9 April 2010), 6 (Written Declaration of Witness FB1, dated 5 April 2011 and Written Statement of Witness FB1, undated), 8 (Investigation Note on Meeting with Witness ND20, dated 30 November 2010).

13. Ndahimana submits that the “statements” are reliable,<sup>24</sup> and that the proffered evidence was available at trial and satisfies the criteria of relevancy and credibility.<sup>25</sup> In particular, he argues that the evidence is relevant in that it: (i) will help to establish the merits of grounds 2, 5, and 7 to 10 of his appeal; (ii) “strengthens” his alibi for 16 April 1994; and (iii) “discredits” the findings made by the Trial Chamber that he had reason to know about the participation of policemen in the crimes perpetrated on 15 April 1994 at Nyange Church and that he aided and abetted the crimes committed on 16 April 1994 by his presence during the destruction of the church.<sup>26</sup> Ndahimana also submits that Witness ND20’s anticipated testimony “will affect” the Trial Chamber’s finding that his assistance to save Tutsis was selective.<sup>27</sup>

14. Ndahimana submits that he intended to call Witnesses ND26 and ND27 to testify at trial, but removed them from his witness list “[d]ue to unwarranted pressure on the Defence” by the Trial Chamber.<sup>28</sup> He argues that by dismissing his subsequent request to reinstate Witnesses ND26 and ND27, the Trial Chamber violated his right to present a full defence.<sup>29</sup> Ndahimana contends that these witnesses were present at Nyange Church on 15 and 16 April 1994 and would give eyewitness evidence about the attacks on these days, specifically about Ndahimana’s absence and the non-involvement of policemen.<sup>30</sup>

15. With respect to Witness FB1, Ndahimana submits that the Trial Chamber deprived him of the crucial evidence of this witness by its refusal to hear the witness via video link.<sup>31</sup> According to Ndahimana, this witness would provide eyewitness evidence about Ndahimana’s absence during the attacks on Nyange Church on 15 and 16 April 1994 and the role played by policemen in these attacks.<sup>32</sup>

16. Ndahimana further argues that he was erroneously denied the opportunity to present the potential crucial evidence of Witness ND20 as a result of the Trial Chamber’s inaction in relation to the witness’s security concerns, which caused the witness to abscond.<sup>33</sup> Ndahimana submits that he

<sup>24</sup> Rule 115 Motion, para. 49.

<sup>25</sup> Rule 115 Motion, paras. 17, 49, 71. *See also* Reply, para. 7.

<sup>26</sup> Rule 115 Motion, para. 49. *See also ibid.*, paras. 18, 51-53, 55.

<sup>27</sup> Rule 115 Motion, para. 43.

<sup>28</sup> Rule 115 Motion, para. 29. *See also* Reply, para. 12.

<sup>29</sup> Rule 115 Motion, paras. 26, 29-34, referring to *The Prosecutor v. Grégoire Ndahimana*, Case No. ICTR-01-68-T, Decision on Defence Motion to Vary its Witness List and Request for Protective Measures for New Witnesses, confidential, 31 March 2011. *See also* Reply, paras. 12-16.

<sup>30</sup> Rule 115 Motion, paras. 58, 59.

<sup>31</sup> Rule 115 Motion, paras. 41, 42. *See also ibid.*, paras. 36-40, referring to *The Prosecutor v. Grégoire Ndahimana*, Case No. ICTR-01-68-T, Decision on Defence Motion to Hear the Testimony of Witnesses BX7 and FB1 via Video Link, 25 February 2011. *See also* Reply, para. 17.

<sup>32</sup> Rule 115 Motion, paras. 61, 62. *See also* Reply, para. 18.

<sup>33</sup> Rule 115 Motion, paras. 44-47. Ndahimana contends that Witness ND20 disappeared due to his fear of appearing in court and that the Defence could not locate him. Ndahimana argues that the Trial Chamber “did not bother to use its

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saved Witness ND20 and his family, and that the witness also observed what occurred at Nyange Church during the attack of 15 April 1994.<sup>34</sup>

17. Ndahimana contends that the “first hand and credible” evidence of Witnesses ND26, ND27, FB1, and ND20 “would” have affected the Trial Chamber’s conclusions on the participation of the communal policemen in the attack on 15 April 1994,<sup>35</sup> on his knowledge of their involvement,<sup>36</sup> on his presence at Nyange Church on 16 April 1994,<sup>37</sup> and on the selectivity of his assistance to Tutsis.<sup>38</sup> He argues that, had the evidence of Witnesses ND26, ND27, FB1, and ND20 been admitted at trial, it “could or would have affected the verdict”<sup>39</sup> and the sentence imposed.<sup>40</sup>

18. The Prosecution responds that the Rule 115 Motion should be dismissed in its entirety.<sup>41</sup> It submits that the proffered evidence was available at trial and that Ndahimana’s assertion that the Trial Chamber unfairly denied his right to present a full and fair defence is not supported by the record.<sup>42</sup> The Prosecution adds that the proffered evidence, due to its cumulative or irrelevant nature, neither could nor would have had an impact on the verdict.<sup>43</sup>

19. In reply, Ndahimana clarifies that he does not argue that the proffered evidence was not available at trial and notes that the “would” standard is applicable to the assessment of his request, namely that it would have had an impact on the verdict.<sup>44</sup> Ndahimana also submits that the evidence in question is not cumulative as “the evidence presented in this regard was not relied upon by the Trial Chamber” resulting in his convictions.<sup>45</sup>

**E. Analysis**

20. The Appeals Chamber recalls that “it has the authority to summon a witness, in appropriate circumstances, to testify before the Chamber so as to facilitate the effective conduct of appeal

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inherent power provided in article 54 of the Rules to secure the very important testimony of the witness but rather, ordered the Defence to drop this witness.” *See ibid.*, para. 45. *See also* Reply, paras. 19, 21.

<sup>34</sup> Rule 115 Motion, para. 60. *See also ibid.*, para. 43. In reply, Ndahimana, for the first time, submits that this witness would have also “testified in the favour of [Ndahimana] to challenge allegations of involvement of policemen” in the attack of 15 April 1994. *See* Reply, para. 21.

<sup>35</sup> Rule 115 Motion, para. 69.

<sup>36</sup> Rule 115 Motion, para. 66. *See also ibid.*, para. 73.

<sup>37</sup> Rule 115 Motion, para. 69.

<sup>38</sup> Rule 115 Motion, para. 43.

<sup>39</sup> Rule 115 Motion, para. 71. *See also ibid.*, paras. 69, 70, 73, 74.

<sup>40</sup> Rule 115 Motion, para. 74. Ndahimana also submits that the violations of his right to present material evidence occasioned by the Trial Chamber’s refusal to hear the impugned evidence should “be remedied at the Appeals stage as one of the alternative measures, allowing to hear these witnesses”. Ndahimana does not further develop his contention. *See ibid.*, para. 48. *See also* Reply, para. 5.

<sup>41</sup> Response, paras. 3, 28.

<sup>42</sup> Response, paras. 3, 5-18.

<sup>43</sup> Response, paras. 4, 19, 21-27.

<sup>44</sup> Reply, para. 7.

<sup>45</sup> Reply, para. 22.

proceedings, and especially Rule 115's power to admit additional evidence".<sup>46</sup> The Appeals Chamber determines whether calling a witness to testify on appeal is necessary on the basis of a statement or other documentation of the potential witness's proposed evidence, which the Appeals Chamber may admit as additional evidence pursuant to Rule 115 of the Rules.<sup>47</sup> The Appeals Chamber will therefore determine whether it is necessary to call Witnesses ND26, ND27, FB1, and ND20 to testify in person in these appeal proceedings after examining the Rule 115 Materials provided by Ndahimana.

21. The Appeals Chamber observes that the investigation notes relating to Witnesses ND26 and ND27 indicate that these witnesses were present during the attacks on Nyange Church on 15 and 16 April 1994, and did not see Ndahimana there.<sup>48</sup> The investigation notes concerning Witness ND20 relate to Ndahimana's efforts to save the witness's family.<sup>49</sup> The written statements of Witness FB1 reveal that the witness intended to testify, *inter alia*, that he was at Nyange Church on 15 and 16 April 1994 and that Ndahimana was not present at Nyange Parish during the attacks on either of these two days.<sup>50</sup> The Appeals Chamber therefore considers that the Rule 115 Materials are relevant to material issues at trial. The Appeals Chamber is also satisfied that the Rule 115 Materials bear sufficient indicia of credibility to be considered admissible as additional evidence on appeal.

22. Turning to the issue of availability, the Appeals Chamber observes that Ndahimana concedes that the proffered evidence was available at trial. The Appeals Chamber will therefore consider whether Ndahimana demonstrates that its exclusion *would* amount to a miscarriage of justice.

23. It follows from the Trial Judgement that the Trial Chamber accepted that Ndahimana was not at Nyange Parish before and during the attack on 15 April 1994, only returning to the parish in the evening.<sup>51</sup> The Trial Chamber nonetheless concluded that Ndahimana had reason to know that communal policemen were implicated in this attack.<sup>52</sup> With respect to 16 April 1994, the Trial Chamber found that Ndahimana attended the meeting at which the decision to destroy Nyange

<sup>46</sup> *Bernard Munyagishari v. The Prosecutor*, Case No. ICTR-05-89-AR11bis, Decision on Bernard Munyagishari's First and Second Motions for Admission of Additional Evidence, 25 February 2013 ("*Munyagishari Decision*"), para. 42; *Nsengiyumva Decision*, para. 31.

<sup>47</sup> *Munyagishari Decision*, para. 42; *Nsengiyumva Decision*, para. 31.

<sup>48</sup> See Rule 115 Motion, Annex 4 (Investigation Note on Meeting with Witness ND26, dated 19 March 2010), pp. 448/H, 447/H (Registry pagination); Annex 5 (Investigation Note on Meeting with Witness ND27, dated 9 April 2010), pp. 445/H, 444/H (Registry pagination).

<sup>49</sup> See Rule 115 Motion, Annex 8 (Investigation Note on Meeting with Witness ND20, dated 30 November 2010), p. 433/H (Registry pagination).

<sup>50</sup> See Rule 115 Motion, Annex 6 (Written Declaration of Witness FB1, dated 5 April 2011), pp. 442/H and (Written Statement of Witness FB1, undated) 441/H (Registry pagination).

<sup>51</sup> Trial Judgement, paras. 17, 526, 527, 529, 530, 564.

Church was taken and that he was present during the destruction of the church and the killings perpetrated that day.<sup>53</sup> The Trial Chamber rejected Ndahimana's alibi for 16 April 1994, in part because the evidence of the three Defence witnesses proffered in its support was vague and did not account for Ndahimana's whereabouts for most of the day.<sup>54</sup> In addition, the Trial Chamber considered and rejected the evidence of five other Defence witnesses, who testified that they did not see Ndahimana that day,<sup>55</sup> based on the chaotic nature of the events<sup>56</sup> and the fact that "none of [these witnesses] were in a good position to be able to monitor all events and persons at the parish carefully."<sup>57</sup> In mitigating Ndahimana's sentence, the Trial Chamber specifically referred to the Defence evidence that Ndahimana "personally assisted [several Tutsis] to reach a place of safety."<sup>58</sup>

24. The Appeals Chamber notes that, according to the investigation notes for Witnesses ND26 and ND27 and the written statements of Witness FB1, these witnesses broadly purport that they did not see Ndahimana during the attacks on Nyange Church on 15 and 16 April 1994.<sup>59</sup> The investigation notes for Witness ND20 merely suggest that he remained at "the church", to which he and his family had been personally moved by Ndahimana a few days earlier, until the evening of 15 April 1994, but provides no information about this witness's observations of the attacks on that day.<sup>60</sup>

25. The Appeals Chamber considers that, on the whole, the proffered documentation is devoid of any information about the participation of the communal policemen in the attack on Nyange Church on 15 April 1994 or Ndahimana's knowledge thereof. Likewise, it contains no further alibi evidence for 16 April 1994, does not disclose any information on the witnesses' ability to monitor the events of 16 April 1994, as compared to other Defence witnesses, and does not shed any new light on the assistance to Tutsis provided by Ndahimana during the events. The Appeals Chamber therefore finds that, had the proposed evidence of Witnesses ND26, ND27, FB1, and ND20, as disclosed in the Rule 115 Materials, been adduced at trial, it would not have had any impact on the verdict or on the Trial Chamber's determination of Ndahimana's sentence.

<sup>52</sup> Trial Judgement, paras. 753-755.

<sup>53</sup> Trial Judgement, paras. 673, 675, 689, 806, 807.

<sup>54</sup> Trial Judgement, paras. 652, 656, 710.

<sup>55</sup> Trial Judgement, paras. 697-701.

<sup>56</sup> Trial Judgement, paras. 698, 700.

<sup>57</sup> Trial Judgement, para. 699. *See also ibid.*, para. 700.

<sup>58</sup> Trial Judgement, para. 864.

<sup>59</sup> *See* Rule 115 Motion, Annex 4 (Investigation Note on Meeting with Witness ND26, dated 19 March 2010), p. 447/H (Registry pagination); Annex 5 (Investigation Note on Meeting with Witness ND27, dated 9 April 2010), p. 444/H (Registry pagination); Annex 6 (Written Declaration of Witness FB1, dated 5 April 2011), pp. 442/H *and* (Written Statement of Witness FB1, undated) 441/H (Registry pagination). Witness FB1 was also expected to testify that he heard that in the evening of 15 April 1994 "the bourgmestre passed by the church, [and that] he was explained how people were killed". *See ibid.*, Annex 6 (Written Statement of Witness FB1, undated), p. 441/H (Registry pagination).

<sup>60</sup> Rule 115 Motion, Annex 8 (Investigation Note on Meeting with Witness ND20, dated 30 November 2010), p. 433/H (Registry pagination).



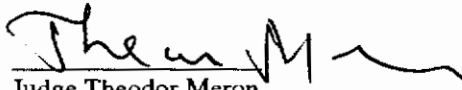
26. Accordingly, the Appeals Chamber finds that the Rule 115 Materials do not satisfy the requirements for admission as additional evidence on appeal. The Appeals Chamber further finds that, on the basis of the Rule 115 Materials, Ndahimana has failed to demonstrate that it is necessary to call Witnesses ND26, ND27, FB1, and ND20 to testify on appeal.

#### **F. Conclusion**

27. For the foregoing reasons, the Appeals Chamber **DENIES** the Rule 115 Motion. The Appeals Chamber emphasizes that the present conclusions pertain merely to the admissibility of the proffered material and Ndahimana's request to call Witnesses ND26, ND27, FB1, and ND20 on appeal and is in no way indicative of the Appeals Chamber's considerations of the merits of Ndahimana's appeal.

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

Done this 2<sup>nd</sup> day of May 2013,  
At Arusha,  
Tanzania.

  
Judge Theodor Meron  
Presiding

