



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

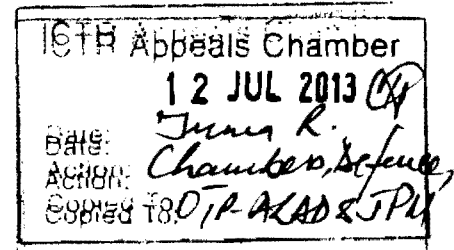
ICTR-98-42-A

12th July 2013{9363/H – 9353/H}**IN THE APPEALS CHAMBER**

Before: Judge Fausto Pocar, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Carmel Agius
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. Bongani Majola

Decision of: 12 July 2013

**THE PROSECUTOR**

v.

**Pauline NYIRAMASUHUKO
Arsène Shalom NTAHOBALI
Sylvain NSABIMANA
Alphonse NTEZIRYAYO
Joseph KANYABASHI
Élie NDAYAMBAJE**

Case No. ICTR-98-42-A

**DECISION ON NTEZIRYAYO'S MOTION FOR RECONSIDERATION
AND ON PROSECUTION'S MOTION FOR CLARIFICATION
OF THE 8 MAY 2013 DECISION**

Counsel for Pauline Nyiramasuhuko

Nicole Bergevin and Guy Poupert

Counsel for Arsène Shalom Ntahobali

Normand Marquis and Mylène Dimitri

Counsel for Sylvain Nsabimana

Josette Kadji and Pierre Tientcheu Weledji

Counsel for Alphonse NteziryayoFrédéric Titinga Pacéré and
Gershom Otachi Bw'Omanwa**Counsel for Joseph Kanyabashi**

Michel Marchand and Alexandra Marciel

Counsel for Élie Ndayambaje

Pierre Boulé and Claver Sindayigaya

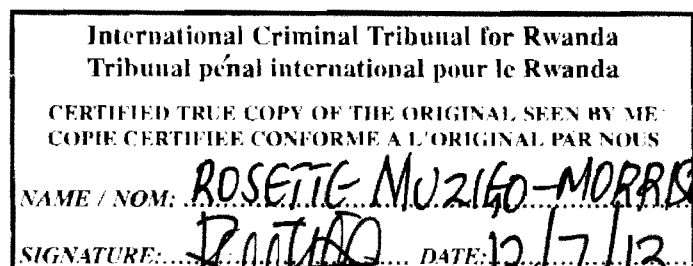
Office of the Prosecutor

Hassan Bubacar Jallow

James J. Arguin

Deborah Wilkinson

Tajesh Adhihetty



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: (i) a motion filed by Alphonse Nteziryayo (“Nteziryayo”) on 23 May 2013 seeking reconsideration of the Decision on Nteziryayo’s Motion to Amend his Notice of Appeal and on Prosecution’s Motion to Strike Nteziryayo’s New Appeal Grounds issued by the Appeals Chamber on 8 May 2013 (“8 May 2013 Decision”);¹ and (ii) a motion filed by the Prosecution on 3 June 2013 requesting clarification of the 8 May 2013 Decision.² The Prosecution filed its response on 3 June 2013, opposing the Nteziryayo Motion for Reconsideration,³ and Nteziryayo replied on 7 June 2013.⁴ Nteziryayo filed its response on 10 June 2013, opposing the Prosecution Motion for Clarification,⁵ and the Prosecution filed its reply on 13 June 2013.⁶

A. Procedural Background

2. On 24 June 2011, Trial Chamber II of the Tribunal (“Trial Chamber”) convicted Nteziryayo of direct and public incitement to commit genocide.⁷ The Trial Chamber sentenced him to 30 years of imprisonment.⁸

3. On 26 April 2012, Nteziryayo filed his notice of appeal.⁹ On 26 March 2013, Nteziryayo filed a motion seeking leave to amend his Notice of Appeal.¹⁰ On 8 April 2013, Nteziryayo filed his

¹ Nteziryayo’s Motion for Reconsideration of the Decision of 8 May 2013, 23 May 2013 (“Nteziryayo Motion for Reconsideration”), paras. 1, 25, 32 *as corrected by* Corrigenda to (a) Nteziryayo’s Motion for Reconsideration of the Decision of 8 May 2013 and (b) Nteziryayo’s Reply: Motion for Reconsideration of the Decision of 8 May 2013, 3 July 2013 (“Corrigendum”).

² Prosecution Motion for Clarification of the Appeals Chamber’s 8 May 2013 Decision, 3 June 2013 (“Prosecution Motion for Clarification”), paras. 1, 4.

³ Prosecution Response to Nteziryayo’s Motion for Reconsideration, 3 June 2013 (“Prosecution Response”), paras. 3, 19.

⁴ Nteziryayo’s Reply: Motion for Reconsideration of the Decision of 8 May 2013, 7 June 2013 (“Nteziryayo Reply”) *as corrected by* Corrigendum. The Appeals Chamber notes that the Corrigendum was filed 41 days after the filing of the Nteziryayo Motion for Reconsideration and 26 days after the filing of the Nteziryayo Reply. The Appeals Chamber recalls that “the repeated filing of corrigenda slows down the work of the Appeals Chamber which scrutinises any amendment made so as to ensure the regularity of the proceedings and the procedure”. See AT. 10 May 2013 p. 11. The Appeals Chamber therefore instructs Nteziryayo’s Counsel to exercise greater diligence and care in the drafting of their submissions to avoid the filing of corrigenda.

⁵ Nteziryayo’s Response to the Prosecution’s Motion for Clarification of the Decision of 8 May 2013, 10 June 2013 (“Nteziryayo Response”), para. 5.

⁶ Reply to Nteziryayo’s Response to the Prosecution Motion for Clarification of the Appeals Chamber’s 8 May 2013 Decision, 13 June 2013 (“Prosecution Reply”).

⁷ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, pronounced on 24 June 2011, issued in writing on 14 July 2011 (“Trial Judgement”), para. 6186. See also *ibid.*, para. 6234.

⁸ Trial Judgement, para. 6271.

⁹ Alphonse Nteziryayo’s Notice of Appeal, 26 April 2012 (“Notice of Appeal”).

¹⁰ Nteziryayo’s Urgent Motion for Leave to Amend the Notice of Appeal, 26 March 2013 (“Nteziryayo Motion to Amend Notice of Appeal”).

appeal brief.¹¹ On 18 April 2013, the Prosecution filed a motion requesting the Appeals Chamber to strike 24 grounds of appeal from Nteziryayo's Appeal Brief that were allegedly not listed or identified in his Notice of Appeal.¹²

4. On 8 May 2013, the Appeals Chamber granted in part the Nteziryayo Motion to Amend Notice of Appeal and the Prosecution Motion to Strike and ordered Nteziryayo to file revised versions of his Notice of Appeal and Appeal Brief by 13 May 2013.¹³ On 13 May 2013, Nteziryayo filed an amended notice of appeal¹⁴ and an amended appeal brief.¹⁵ On 14 June 2013, Nteziryayo filed both a confidential version and a public redacted version of a corrected amended appeal brief.¹⁶ The Appeals Chamber considers the Corrected Amended Appeal Brief as Nteziryayo's operative appeal brief.

B. Preliminary Issue

5. The Appeals Chamber notes that, while Nteziryayo filed the public redacted version of his Corrected Amended Appeal Brief with two annexes containing the index of authorities and source materials, he failed to append the relevant annexes to the confidential version of his Corrected Amended Appeal Brief. Nteziryayo had likewise failed to append the relevant annexes to his Amended Appeal Brief. The Appeals Chamber considers that a public redacted version of a confidential filing cannot contain more source materials than the original confidential filing. However, given that the two annexes were originally appended to the Appeal Brief and in light of the need for expeditious appellate proceedings, the Appeals Chamber will consider the public redacted version of the Corrected Amended Appeal Brief as validly filed. Nonetheless, Nteziryayo is instructed to file the relevant missing annexes as an *addendum* to the confidential version of his Corrected Amended Appeal Brief and to exercise greater diligence in the future in filing his submissions.

C. Nteziryayo Motion for Reconsideration

6. The Appeals Chamber recalls that, in its 8 May 2013 Decision, it found that "any further variation of the scope of Nteziryayo's appeal through the Appeal Brief [was] an unacceptable

¹¹ Confidential Appeal Brief on Behalf of Alphonse Nteziryayo, 8 April 2013 (confidential) ("Appeal Brief").

¹² Prosecution Motion to Strike Nteziryayo's New Appeal Grounds, 18 April 2013 ("Prosecution Motion to Strike").

¹³ 8 May 2013 Decision, para. 74.

¹⁴ Alphonse Nteziryayo's Amended Notice of Appeal, 13 May 2013 ("Amended Notice of Appeal").

¹⁵ Revised Confidential Appeal Brief on Behalf of Alphonse Nteziryayo, 13 May 2013 (confidential) ("Amended Appeal Brief").

¹⁶ Confidential Corrected Revised Appeal Brief on Behalf of Alphonse Nteziryayo, 14 June 2013 (confidential) and Public Corrected Revised Appeal Brief on Behalf of Alphonse Nteziryayo, 14 June 2013 (public redacted version) ("Corrected Amended Appeal Brief"). See also Public Redacted Appeal Brief on Behalf of Alphonse Nteziryayo and Corrigendum, 14 June 2013.

attempt to circumvent the procedural requirements applicable on appeal and an unauthorized expansion of the scope of his appeal” and, therefore, ordered that “any new allegation of error going beyond the scope of the Notice of Appeal [was] to be struck out from the Appeal Brief without consideration of any prejudice to the Prosecution or Nteziryayo’s generic submission that each new ground [was] of considerable importance to his appeal.”¹⁷ Accordingly, the Appeals Chamber struck out six allegations of error from the Appeal Brief – which were found to be distinct grounds of appeal exceeding the scope of the Notice of Appeal¹⁸ – including the alleged error of double-counting Nteziryayo’s leadership position in assessing the gravity of his offence and the aggravating sentencing factors.¹⁹

1. Submissions of the Parties

7. Nteziryayo requests that the Appeals Chamber reconsider two aspects of the 8 May 2013 Decision, namely: (i) the Appeals Chamber’s refusal to consider the lack of prejudice occasioned to the Prosecution by the addition of new allegations and their importance to Nteziryayo’s appeal (“First Impugned Finding”);²⁰ and (ii) the alleged characterisation by the Appeals Chamber of the argument on double-counting as a new ground of appeal (“Second Impugned Finding”).²¹ He adds that the First Impugned Finding amounts to an error of reasoning and causes an injustice.²²

8. With respect to the First Impugned Finding, Nteziryayo submits that, when disposing of motions to strike new grounds of appeal, the Appeals Chamber has consistently applied two cumulative criteria, namely: (i) whether the respondent is prejudiced by the addition of the new grounds of appeal; and (ii) whether these new grounds would be of substantial importance to the appeal such as to occasion a miscarriage of justice if excluded.²³ Nteziryayo argues that these two criteria are of a mandatory nature and must guide the exercise of the Appeals Chamber’s discretion in deciding on an appropriate sanction when a party has failed to comply with the requirements on appeal prescribed in paragraph 13 of the Practice Direction on Formal Requirements for Appeals from Judgement.²⁴ In Nteziryayo’s view, the Appeals Chamber therefore erred in failing to apply

¹⁷ 8 May 2013 Decision, para. 33.

¹⁸ 8 May 2013 Decision, paras. 47, 49, 51, 55, 58, 70, 72(iii), (iv), (vi).

¹⁹ 8 May 2013 Decision, paras. 70, 72.

²⁰ Nteziryayo Motion for Reconsideration, para. 2, referring to 8 May 2013 Decision, para. 33. See also Nteziryayo Motion for Reconsideration, paras. 6-25.

²¹ Nteziryayo Motion for Reconsideration, para. 3. See also *ibid.*, paras. 26-32.

²² Nteziryayo Motion for Reconsideration, paras. 6, 19, 24.

²³ Nteziryayo Motion for Reconsideration, paras. 7, 10-15, 20, referring to, *inter alia*, *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on the Prosecution’s Motion to Order Veselin Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in his Appeal Brief, 26 August 2008 (“*Mrkšić and Šljivančanin* Decision”), para. 35; Nteziryayo Reply, paras. 4, 5.

²⁴ Nteziryayo Motion for Reconsideration, paras. 8, 10, referring to Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005 (“Practice Direction”), para. 13; Nteziryayo Reply, paras. 3, 4, Annex A.

these two criteria.²⁵ Nteziryayo adds that the Appeals Chamber erred in refusing to consider that the Prosecution would not be prejudiced as a result of the inclusion of these additional grounds of appeal as the Prosecution was already granted an extension of time to file its response brief and, therefore, had adequate time to respond to these new arguments.²⁶ Nteziryayo also submits that “there is no logical connection” between the late filing of a motion to amend a notice of appeal and the refusal to consider prejudice in the context of a request to strike new grounds of appeal.²⁷ In addition, Nteziryayo contends that in refusing to assess the interests of justice and the importance of the new allegations to his appeal, the Appeals Chamber erred and precluded itself from considering any “submission adjudged not to have been argued in the Notice [of Appeal], no matter how critical it might have been to the appeal”.²⁸

9. Concerning the Second Impugned Finding, Nteziryayo claims that the Appeals Chamber failed to acknowledge that the allegation of double-counting was clearly pleaded in ground 11 of his Amended Notice of Appeal because of the specific reference to Nteziryayo’s role in the Civil Defence.²⁹ He adds that the striking of the paragraphs related to the allegation of double-counting from his Appeal Brief is of “limited practical consequence” since paragraphs 306(a) and 308 of the Amended Appeal Brief already refer to this issue.³⁰

10. The Prosecution responds that Nteziryayo Motion for Reconsideration should be dismissed as Nteziryayo fails to demonstrate a clear error of reasoning in the 8 May 2013 Decision or that reconsideration is necessary to prevent an injustice.³¹ In particular, the Prosecution submits that: (i) the striking of the unauthorised new grounds of appeal reflects a fair and even-handed exercise of the Appeals Chamber’s discretion under paragraph 13 of the Practice Direction;³² (ii) Nteziryayo’s allegation of an error of reasoning is not supported by the jurisprudence as the latter does not limit the Appeals Chamber’s discretionary power to strike new grounds of appeal to two exclusive criteria;³³ (iii) Nteziryayo’s generic reference to “the interests of justice” is insufficient to demonstrate that the Appeals Chamber committed a clear error of reasoning or that

²⁵ Nteziryayo Motion for Reconsideration, para. 16.

²⁶ Nteziryayo Motion for Reconsideration, paras. 17, 18, 19. *See also* Nteziryayo Reply, paras. 7, 8.

²⁷ Nteziryayo Motion for Reconsideration, para. 20. In support of his argument, Nteziryayo refers to two cases where the requested amendments were permitted in the interests of justice despite the late filing of the motions. *See idem*.

²⁸ Nteziryayo Motion for Reconsideration, para. 21. *See also ibid.*, paras. 6, 22-24; Nteziryayo Reply, para. 6.

²⁹ Nteziryayo Motion for Reconsideration, paras. 29, 30, *referring to* Amended Notice of Appeal, para. 73.

³⁰ Nteziryayo Motion for Reconsideration, para. 31.

³¹ Prosecution Response, paras. 3, 19.

³² Prosecution Response, paras. 4, 6.

³³ Prosecution Response, paras. 5, 9-11. The Prosecution further submits that, contrary to Nteziryayo’s argument, the Appeals Chamber’s discretion to consider the late filing of Nteziryayo Motion to Amend Notice of Appeal is supported by the jurisprudence. *See* Prosecution Response, paras. 7, 8.

reconsideration is necessary to prevent an injustice;³⁴ and (iv) the Appeals Chamber correctly held that double-counting is a distinct error not alleged in the Notice of Appeal.³⁵

11. In reply, Nteziryayo elaborates on, *inter alia*, how the striking of his new grounds of appeal occasioned a miscarriage of justice and how his additional grounds of appeal are of substantial importance to his appeal.³⁶

2. Analysis

12. The Appeals Chamber recalls that it may reconsider a previous non-final decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.³⁷

13. With respect to the First Impugned Finding, the Appeals Chamber recalls that it found that, by filing an appeal brief which was not in conformity with his Notice of Appeal or Proposed Amended Notice of Appeal, Nteziryayo was in violation of the procedural requirements applicable in appeal proceedings.³⁸ The Appeals Chamber further found that Nteziryayo's conduct was "disruptive to the appeal proceedings and threaten[ed] the efficient administration of justice"³⁹ and that the further variation of the scope of his appeal through his Appeal Brief was "an unacceptable attempt to circumvent the procedural requirements applicable on appeal and an unauthorized expansion of the scope of his appeal".⁴⁰ In these circumstances, the Appeals Chamber decided that "any new allegation of error going beyond the scope of the Notice of Appeal [was] to be struck out from the Appeal Brief without consideration of any prejudice to the Prosecution or Nteziryayo's generic submission that each new ground [was] of considerable importance to his appeal."⁴¹

14. The Appeals Chamber recalls that, as set out in paragraph 13 of the Practice Direction, where a party fails to comply with the requirements laid down in the Practice Direction, the Appeals Chamber may, *within its discretion*, decide upon an appropriate sanction, which can include an

³⁴ Prosecution Response, paras. 12-14, 18.

³⁵ Prosecution Response, paras. 15-17.

³⁶ Nteziryayo Reply, paras. 10, 11.

³⁷ See, e.g., *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52B-R, Decision on Ferdinand Nahimana's Motion for Reconsideration of the Decision of 27 September 2011 and of his Sentence, 29 June 2012, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005, p. 2; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9.

³⁸ See 8 May 2013 Decision, paras. 24, 27, 28, 31, 32.

³⁹ 8 May 2013 Decision, para. 17.

⁴⁰ 8 May 2013 Decision, para. 33.

⁴¹ 8 May 2013 Decision, para. 33.

order for clarification or re-filing, or reject a filing or dismiss submissions therein.⁴² In the particular circumstances of the present case, *i.e.* Nteziryayo's clear violation of and deliberate attempt to circumvent the procedural requirements applicable on appeal, the Appeals Chamber considered that Nteziryayo's violation called for a strict application of Rule 108 of the Rules of Procedure and Evidence of the Tribunal and paragraphs 1 and 2 of the Practice Direction requiring that the grounds of appeal be set forth in the notice of appeal and not presented for the first time in the Appeal Brief.⁴³ Accordingly, the Appeals Chamber considers that its decision to strike from the Appeal Brief any new allegation of error exceeding the scope of the Notice of Appeal without considering the prejudice occasioned to the Prosecution by the addition of new allegations and their importance to Nteziryayo's appeal was within the ambit of the exercise of its discretion provided for in the Practice Direction.

15. Furthermore, as noted in its 8 May 2013 Decision,⁴⁴ when reaching its First Impugned Finding, the Appeals Chamber was mindful of Nteziryayo's argument that, in order to determine whether to strike part of his Appeal Brief, it was allegedly bound to apply the two considerations applied in the *Mrkšić and Šljivančanin* Decision – *i.e.* the prejudice occasioned to the Prosecution by the addition of new allegations and their importance to Nteziryayo's appeal. However, contrary to Nteziryayo's submissions, the Appeals Chamber does not consider that the exercise of its discretion pursuant to paragraph 13 of the Practice Direction is limited to the specific considerations relied upon in some particular cases, including those relied upon in the *Mrkšić and Šljivančanin* Decision. While in some instances the Appeals Chamber found it appropriate to use its discretion to develop criteria to frame the question for analysis in the context of those cases,⁴⁵ in some other cases it did not find it appropriate or necessary to rely on such criteria.⁴⁶ The Appeals Chamber therefore considers that Nteziryayo has failed to demonstrate any error of reasoning in this approach or that reconsideration of the First Impugned Finding is necessary to prevent an injustice.

16. Turning to the Second Impugned Finding, the Appeals Chamber recalls its conclusion that alleging that the Trial Chamber erred in finding that Nteziryayo had a leadership role in the Civil Defence, which resulted in an aggravation of the sentence, and alleging that the Trial Chamber erred in double-counting his leadership position in both the gravity of the offence and aggravating

⁴² Emphasis added. *See also Mrkšić and Šljivančanin* Decision, para. 35.

⁴³ *See* 8 May 2013 Decision, paras. 17, 27, 28, 31-33.

⁴⁴ *See* 8 May 2013 Decision, para. 30 and fn. 70, *referring to Mrkšić and Šljivančanin* Decision, para. 35.

⁴⁵ *See, e.g., Mrkšić and Šljivančanin* Decision, para. 35.

⁴⁶ *See, e.g., Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Decision on *Amicus Curiae* Prosecutor's Motion to Strike the Appellant's Brief and Urgent Motion for Stay of Deadline, 23 April 2012, paras. 14, 15; *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motions to Strike, 17 December 2009, paras 11-16.

factors constitute two distinct allegations of error.⁴⁷ The Appeals Chamber found that the issue of double-counting exceeded the scope of Nteziryayo's Notice of Appeal and that this new ground of appeal was to be struck out.⁴⁸ Contrary to Nteziryayo's submission, the Appeals Chamber does not consider that arguing that Nteziryayo's leadership position "result[ed] in an erroneous aggravation of sentence, in addition to unfairly impacting upon the gravity of the offence",⁴⁹ identifies with enough clarity an intention to plead a distinct error of double-counting in sentencing, but rather describes the effect of the alleged error concerning aggravating factors. Thus, the Appeals Chamber considers that Nteziryayo has not identified any error of reasoning in the 8 May 2013 Decision with regard to the finding that double-counting of his leadership position in both the gravity of the offence and aggravating factors amounted to an impermissible new ground of appeal nor has he demonstrated that reconsideration of the Second Impugned Finding is necessary to prevent an injustice. Thus, the Appeals Chamber clarifies that, contrary to Nteziryayo's submission, paragraphs 306(a) and 308 of the Corrected Amended Appeal Brief cannot – and will not – be understood as pleading double-counting.

3. Conclusion

17. In light of the above, the Appeals Chamber finds that Nteziryayo has failed to demonstrate that reconsideration of the 8 May 2013 Decision is warranted.

D. Prosecution Motion for Clarification

18. The Appeals Chamber recalls that, in its 8 May 2013 Decision, it found that the issues of collusion between Prosecution witnesses with respect to the meetings in the communes of Muganza and Muyaga raised under grounds 4 and 5 of the Appeal Brief were not raised in the Notice of Appeal and therefore exceeded its scope.⁵⁰ Accordingly, the Appeals Chamber ordered that paragraphs 161, 174(ix), 222, 223, and 224(e) be struck from the Appeal Brief.⁵¹ By contrast, the Appeals Chamber found that the allegation of collusion between Prosecution Witnesses FAK and QBU in relation to the Kibayi commune meeting raised under ground 6 of the Appeal Brief was substantially related to the Notice of Appeal and, as such, did not exceed its scope.⁵²

19. The Prosecution seeks clarification or, if appropriate, a corrigendum to the 8 May 2013 Decision, as to whether paragraphs 249 through 252 under ground 8 of the Amended Appeal Brief

⁴⁷ 8 May 2013 Decision, paras. 69, 70.

⁴⁸ 8 May 2013 Decision, para. 70.

⁴⁹ Amended Notice of Appeal, para. 73. *See also ibid.*, para. 74.

⁵⁰ 8 May 2013 Decision, paras. 51, 58.

⁵¹ 8 May 2013 Decision, paras. 72(iii), (iv).

⁵² 8 May 2013 Decision, para. 63.

(paragraphs 260 through 263 of the Appeal Brief), which allege collusion between Prosecution witnesses who testified with respect to the meetings in the communes of Muganza, Muyaga, and Kibayi, should be considered struck.⁵³ The Prosecution argues that, because the 8 May 2013 Decision struck five paragraphs of the Appeal Brief relating to Nteziryayo's argument alleging collusion with respect to the meetings in the communes of Muganza and Muyaga, clarification is required as to whether paragraphs 249 through 252 under ground 8 of the Amended Appeal Brief are also struck to the extent that they refer to witness collusion with respect to these two incidents.⁵⁴ The Prosecution submits that it had originally requested the Appeals Chamber to strike these paragraphs but that the Appeals Chamber did not address its request in the 8 May 2013 Decision.⁵⁵

20. Nteziryayo responds that the Prosecution Motion for Clarification is moot and should be summarily dismissed.⁵⁶ He argues that there is no need for clarification of the 8 May 2013 Decision as the Appeals Chamber "unequivocally ruled upon" these paragraphs by rejecting all of the Prosecution's other submissions.⁵⁷

21. The Prosecution replies that paragraphs 72(viii) and 74 of the 8 May 2013 Decision denying all of the Prosecution's other submissions are "irreconcilable" and in "internal contradiction" with paragraphs 51, 58, and 72(iii) and (iv) of the 8 May 2013 Decision striking Nteziryayo's argument alleging collusion with respect to the meetings in the communes of Muganza and Muyaga.⁵⁸

22. The Appeals Chamber notes that, in the Prosecution Motion to Strike, the Prosecution did not identify any unauthorised new allegation of error under ground 8 of the Appeal Brief, as it did with other grounds of appeal.⁵⁹ However, when it identified unauthorised new allegations of error under grounds 4, 5, and 6 of the Appeal Brief regarding collusion between Prosecution witnesses with respect to the meetings in Muganza, Muyaga, and Kibayi communes, the Prosecution added that Nteziryayo was advancing further arguments in support of these new allegations in paragraphs 260 through 263 of the Appeal Brief, which are part of ground 8 of the Appeal Brief.⁶⁰ Although the Appeals Chamber finds that the Prosecution's request to strike paragraphs 260 through 263 under ground 8 of the Appeal Brief should have been clearer and more explicit, the Appeals

⁵³ Prosecution Motion for Clarification, paras. 1, 4. *See also* Prosecution Reply, para. 4.

⁵⁴ Prosecution Reply, para. 1, *referring to* 8 May 2013 Decision, paras. 51, 58, 72(iii), (iv), *striking out* Appeal Brief, paras. 161, 174(ix), 222, 223, 224(e). *See also* Prosecution Reply, para. 3.

⁵⁵ Prosecution Motion for Clarification, paras. 1, 4. *See also ibid.*, para. 3, *referring to* Prosecution Motion to Strike, paras. 1-6, 34.

⁵⁶ Nteziryayo Response, para. 5.

⁵⁷ Nteziryayo Response, paras. 2-5, *referring to* 8 May 2013 Decision, paras. 72(viii), 74.

⁵⁸ Prosecution Reply, para. 2.

⁵⁹ *See* Prosecution Motion to Strike, p. 6.

⁶⁰ *See* Prosecution Motion to Strike, paras. 18, 23, 26.

Chamber recognises that it was seised of a request to strike these paragraphs,⁶¹ which it did not expressly address in its 8 May 2013 Decision.

23. The Appeals Chamber notes that, in paragraphs 260 through 263 of his Appeal Brief, Nteziryayo alleged collusion between Prosecution witnesses who testified with respect to the meetings in Muganza, Muyaga, and Kibayi communes. While the Appeals Chamber did not explicitly consider these paragraphs in its 8 May 2013 Decision, it clearly stated that no allegation of collusion among witnesses was raised in ground 8 of the Notice of Appeal.⁶² Accordingly, the Appeals Chamber clarifies that the arguments set forth in paragraphs 260 through 263 of the Appeal Brief exceed the scope of the Notice of Appeal. Hence, the Appeals Chamber clarifies that the arguments set forth in paragraphs 249 through 252 of the Corrected Appeal Brief – Nteziryayo’s operative appeal brief – exceed the scope of the Amended Notice of Appeal.

24. In the interests of expeditious proceedings, the Appeals Chamber does not find it appropriate to order that paragraphs 249 through 252 be struck from the Corrected Amended Appeal Brief and that Nteziryayo file a further amended appeal brief. However, the Appeals Chamber clarifies that the arguments developed under paragraphs 249 through 252 of Nteziryayo’s Corrected Amended Appeal Brief will not be entertained as they exceed the scope of Nteziryayo’s appeal.⁶³

E. Disposition

25. For the foregoing reasons, the Appeals Chamber:

ORDERS Nteziryayo to file the annexes that he failed to append to the confidential version of his Corrected Amended Appeal Brief as an *addendum* to the confidential version of his Corrected Amended Appeal Brief no later than **Tuesday, 16 July 2013**;

DENIES the Nteziryayo Motion for Reconsideration in its entirety;

GRANTS the Prosecution Motion for Clarification; and

⁶¹ See Prosecution Motion to Strike, paras. 18, 23, 26, 34.

⁶² See 8 May 2013 Decision, paras. 58 (“while paragraphs in ground 8 of the Notice of Appeal contend that the trial Chamber failed to exercise sufficient caution with incarcerated witnesses awaiting judgement or those convicted of crimes, collusion among these or other witnesses was not alleged.”), 63 (“The Appeals Chamber notes that the issue of collusion is not expressly addressed anywhere in the Notice of Appeal.”).

⁶³ The Appeals Chamber emphasises that this finding does not affect its prior conclusion that the arguments on collusion concerning the Kibayi commune meeting developed under paragraphs 230(viii), 248, and 249 of the Appeal Brief (paragraphs 218(viii), 236, and 237 of the Corrected Amended Appeal Brief) are substantially related to ground 6 of the Notice of Appeal. See 8 May 2013 Decision, para. 63.

CLARIFIES that the arguments on collusion developed in paragraphs 249 through 252 of the Corrected Amended Appeal Brief will not be entertained as they exceed the scope of Nteziryayo's appeal.

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

Done this twelfth day of July 2013,
at The Hague,
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar
Presiding