ICTR-97-31-A
01 APRIL 2011
(1865/H - 1672)

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UNITED NATIONS
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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

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

Registrar: **Mr. Adama Dieng**

Judgement of: **1 April 2011**

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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Tharcisse RENZAHO

v.

THE PROSECUTOR

Case No. ICTR-97-31-A

JUDGEMENT

Counsel for the Appellant

Mr. François Cantier
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Mr. Hassan Bubacar Jallow
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ICTR Appeals Chamber
Date: 01 April 2011
Action:
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I. INTRODUCTION

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 an appeal by Tharcisse Renzaho ("Renzaho") against the Judgement rendered on 14 July 2009 in the case of *The Prosecutor v. Tharcisse Renzaho* ("Trial Judgement") by Trial Chamber I of the Tribunal ("Trial Chamber").[1]

A. Background

2. Renzaho was born on 17 July 1944 in the Kabare-1 sector, Kigarama commune, Kibungo prefecture, Rwanda.[2] A Rwandan army officer, he was promoted to the rank of Colonel in July 1992.[3] In 1994, he was Prefect of Kigali-Ville prefecture, a position he had held since October 1990.[4] Renzaho left Rwanda in early July 1994 and was arrested in the Democratic Republic of the Congo on 29 September 2002.[5] He was charged before the Tribunal with genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.[6]

3. On 14 July 2009, the Trial Chamber convicted Renzaho pursuant to Article 6(1) of the Statute of the Tribunal ("Statute") of genocide (Count 1);[7] murder as a crime against humanity

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[1] *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, 14 July 2009. The written judgement was filed on 14 August 2009, after the completion of the editorial process. *See* Trial Judgement, fn. 1, para. 852. For ease of reference, two annexes are appended to this Judgement: Annex A – Procedural History and Annex B – Cited Materials and Defined Terms.

[2] Trial Judgement, para. 79.

[3] Trial Judgement, paras. 79-81.

[4] Trial Judgement, para. 80.

[5] Trial Judgement, para. 83.

[6] The indictment against Renzaho underwent a series of amendments before the commencement of his trial. *See The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Indictment, 23 October 2002 ("Initial Indictment"); *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-DP, Amendment of the Indictment against Tharcisse Renzaho dated 23 October 2002, 12 November 2002; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Order Confirming Indictment and for Nondisclosure of Identifying Information in Witness Statements, 15 November 2002; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Decision on the Prosecutor's Motion for Leave to Amend the Indictment, 18 March 2005; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Amended Indictment, 1 April 2005; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Decision on the Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50(A) of the Rules of Procedure and Evidence, 13 February 2006; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Second Amended Indictment, 16 February 2006 ("Indictment").

[7] Trial Judgement, paras. 766 (killing of Tutsi civilians at roadblocks), 770 (killing of Tutsis at CELA), 773 (killing of Tutsi refugees at Sainte Famille). The Trial Chamber also found Renzaho liable as a superior for each of these events. *See* Trial Judgement, paras. 767, 770, 773. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).

(Count 3);[8] and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 5).[9] In addition, the Trial Chamber convicted Renzaho pursuant to Article 6(3) of the Statute of genocide (Count 1);[10] murder as a crime against humanity (Count 3);[11] rape as a crime against humanity (Count 4);[12] and rape as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 6).[13] The Trial Chamber imposed a single sentence of imprisonment for the remainder of Renzaho's life.[14]

B. The Appeal

4. Renzaho presents thirteen Grounds of Appeal challenging his convictions and sentence.[15] He requests that the Appeals Chamber overturn the Trial Judgement, enter acquittals on all Counts of the Indictment, and order his immediate release.[16] In the alternative, Renzaho requests that the Appeals Chamber impose a sentence that reflects his true level of responsibility.[17]

5. The Prosecution responds by requesting that the Appeals Chamber dismiss all of Renzaho's Grounds of Appeal and affirm the sentence imposed by the Trial Chamber.[18]

6. The Appeals Chamber heard oral submissions regarding this appeal on 16 June 2010.

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[8] Trial Judgement, para. 789 (killing of Charles, Wilson, and Déglote Rwanga). The Trial Chamber also found Renzaho liable as a superior for these murders. *See* Trial Judgement, para. 789. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[9] Trial Judgement, para. 807 (killing of Tutsi men at Sainte Famille). The Trial Chamber also found Renzaho liable as a superior for this event. *See* Trial Judgement, para. 807. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[10] Trial Judgement, para. 779 (rapes of Witnesses AWO and AWN, and Witness AWN's sister).
[11] Trial Judgement, para. 789 (killing of Tutsis removed from CELA). *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[12] Trial Judgement, para. 794 (rapes of Witnesses AWO and AWN, and Witness AWN's sister).
[13] Trial Judgement, para. 811 (rapes of Witnesses AWO and AWN, and Witness AWN's sister).
[14] Trial Judgement, para. 826.
[15] *Acte d'Appel*, 2 October 2009 ("Notice of Appeal"). *See also Mémoire d'Appel*, 2 March 2010 (confidential) ("Appellant's Brief").
[16] Notice of Appeal, p. 20.
[17] Notice of Appeal, p. 20; *Réponse à la demande de la Chambre d'appel du 14 octobre 2009*, 23 October 2009 ("Sentencing Submissions").
[18] Prosecutor's Respondent's Brief, 12 April 2010 ("Respondent's Brief"), paras. 312, 313.

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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 only reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[19]

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.[20]

9. Where the Appeals Chamber finds an error of law in a trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly. 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.[21]

10. Regarding errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by a 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.[22]

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 the intervention of the Appeals Chamber.[23] Arguments which do not have the potential to cause the

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[19] *Kalimanzira* Appeal Judgement, para. 6; *Nchamihigo* Appeal Judgement, para. 7; *Zigiranyirazo* Appeal Judgement, para. 8; *Karera* Appeal Judgement, para. 7. *See also D. Milošević* Appeal Judgement, para. 12.
[20] *Kalimanzira* Appeal Judgement, para. 7, *referring to Ntakirutimana* Appeal Judgement, para. 11 *and Nchamihigo* Appeal Judgement, para. 8.
[21] *Kalimanzira* Appeal Judgement, para. 8; *Nchamihigo* Appeal Judgement, para. 9; *Zigiranyirazo* Appeal Judgement, para. 10; *Karera* Appeal Judgement, para. 9.
[22] *Kalimanzira* Appeal Judgement, para. 9, *referring to Krstić* Appeal Judgement, para. 40, *Nchamihigo* Appeal Judgement, para. 10, *and Zigiranyirazo* Appeal Judgement, para. 11.
[23] *Kalimanzira* Appeal Judgement, para. 10; *Nchamihigo* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 12; *Karera* Appeal Judgement, para. 11. *See also D. Milošević* Appeal Judgement, para. 17.

impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[24]

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.[25] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, vague, or suffer from other formal and obvious insufficiencies.[26] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[27]

[24] *Kalimanzira* Appeal Judgement, para. 10; *Nchamihigo* Appeal Judgement, para. 11; *Zigiranyirazo* Appeal Judgement, para. 12; *Karera* Appeal Judgement, para. 11. *See also Orić* Appeal Judgement, para. 13.
[25] Practice Direction on Formal Requirements for Appeals from Judgement, 15 June 2007, para. 4(b). *See also Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13.
[26] *Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12. *See also D. Milošević* Appeal Judgement, para. 16.
[27] *Kalimanzira* Appeal Judgement, para. 11; *Nchamihigo* Appeal Judgement, para. 12; *Zigiranyirazo* Appeal Judgement, para. 13; *Karera* Appeal Judgement, para. 12. *See also D. Milošević* Appeal Judgement, para. 16.

III. ALLEGED BIAS (GROUND OF APPEAL 2)

13. As a preliminary matter, the Appeals Chamber will consider Renzaho's allegations of bias.

A. Submissions

14. Renzaho submits that evidence incriminating him was presented during the *Karera* and *Bagosora et al.* trials, which were adjudicated by all or some of the Judges who tried him.[28] He contends that only after the *Karera* and *Bagosora et al.* Trial Judgements were rendered did he recognize a risk that the Judges on his trial would be negatively influenced by such evidence.[29] Renzaho notes that he was cited seven times in the *Karera* Trial Judgement and 33 times in the *Bagosora et al.* Trial Judgement,[30] and points to evidence relating to the removal of corpses, radio broadcasts, civil defence, *Inyenzi*, weapons, and *Interahamwe*.[31] Renzaho submits that the Judges in his case were aware of the scope of incriminating evidence against him in the other cases and should therefore have recused themselves from his trial or, alternatively, allowed him the opportunity to attend the hearings of witnesses testifying against him in the other cases.[32] He maintains that their failure to do so violated his right to a fair trial, thereby nullifying the Trial Judgement.[33]

15. The Appeals Chamber notes that the Trial Chambers in both the *Renzaho* and *Karera* cases were composed of the same Judges, namely Erik Møse, Sergei Alekseevich Egorov, and Florence Rita Arrey. Judges Møse and Egorov also sat on the *Bagosora et al.* trial.[34]

B. Preliminary Issue: Alleged Lack of Objection at Trial

16. The Prosecution requests that Renzaho's Second Ground of Appeal be summarily dismissed. It challenges Renzaho's claim that he only learned of the alleged conflicts when the *Karera* and *Bagosora et al.* Trial Judgements were issued and submits that the matter was apparent

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[28] Notice of Appeal, paras. 12, 13; Appellant's Brief, paras. 33, 34. *See also Réplique de l'appelant. Art. 113 RPP*, 5 May 2010 ("Brief in Reply"), paras. 6, 9-13; AT. 16 June 2010 pp. 16, 17.
[29] Notice of Appeal, paras. 12, 14-16; Appellant's Brief, para. 33.
[30] Appellant's Brief, para. 35. Renzaho does not, however, provide any references to support this assertion. *See also* AT. 16 June 2010 pp. 16-19.
[31] Appellant's Brief, paras. 38-54. In support of this contention, however, Renzaho only cites evidence from the *Bagosora et al.* trial.
[32] Notice of Appeal, paras. 17, 18; Appellant's Brief, para. 55.
[33] Notice of Appeal, para. 19; Appellant's Brief, para. 56; Brief in Reply, paras. 4, 5. Renzaho also contends that, considering the overlap in the *Karera*, *Renzaho*, *Setako*, and *Bagosora et al.* cases, the decision to assign Trial Chamber I to adjudicate them all was the result of an unfair, although admittedly practical, judicial strategy, which he suggests was developed as a concerted effort between the Office of the Prosecutor and the Presidency of the Tribunal. *See* Brief in Reply, paras. 7, 14, 16; AT. 16 June 2010 pp. 16, 17. The Appeals Chamber considers these contentions to be speculative and therefore declines to consider them.
[34] *Karera* Trial Judgement, p. 150; *Bagosora et al.* Trial Judgement, p. 575; Trial Judgement, p. 214.

at trial.[35] The Prosecution claims that Renzaho does not explain why he did not make an objection at the time but instead raises the issue on appeal only after adverse findings were made against him.[36]

17. Even if it could be determined that, contrary to his assertion, Renzaho was aware of the matter long before the *Karera* and *Bagosora et al.* Trial Judgements were rendered, the Appeals Chamber does not consider that his failure to object to this matter at trial constituted a waiver of his right to raise it on appeal. Renzaho's allegations of bias are premised not only on the fact that all or some of his Judges heard the *Karera* and *Bagosora et al.* cases, but also on the particular findings made in those cases,[37] which Renzaho could not have been aware of until after these judgements were rendered. In any event, because judicial impartiality is an integral component of the right to a fair trial,[38] the Appeals Chamber finds that it is appropriate to consider Renzaho's submissions.

18. Consequently, the Appeals Chamber rejects the Prosecution's request to summarily dismiss Renzaho's Second Ground of Appeal.

C. Alleged Bias and Violation of the Presumption of Innocence

19. In essence, Renzaho contends that as a consequence of their involvement in the *Karera* and *Bagosora et al.* cases, the Judges in his case lacked impartiality and should have recused themselves. He further argues that his presumption of innocence was violated.

1. Applicable Law

(a) Impartiality

20. In *Nahimana et al.*, the Appeals Chamber recalled that:

> The right of an accused to be tried before an impartial tribunal is an integral component of his right to a fair trial as provided in Articles 19 and 20 of the Statute. Furthermore, Article 12 of the Statute cites impartiality as one of the essential qualities of any Tribunal Judge, while Rule 14(A) of the Rules provides that, before taking up his duties, each Judge shall make a solemn declaration that he will perform his duties and exercise his powers "impartially and conscientiously". The requirement of impartiality is again recalled in Rule 15(A) of the Rules, which provides that "[a] judge may not sit in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality".[39]

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[35] The Prosecution submits that it disclosed the transcripts of Witnesses ALG's, GLJ's, UB's, and XXY's testimony in the *Karera* and *Bagosora et al.* cases to Renzaho before his trial began. *See* Respondent's Brief, para. 51.
[36] Respondent's Brief, para. 51. Renzaho did not address this submission in his Brief in Reply or at the Appeal Hearing.
[37] *See* Appellant's Brief, paras. 36-54. *See also* Brief in Reply, para. 5.
[38] *See Nahimana et al.* Appeal Judgement, para. 47.
[39] *Nahimana et al.* Appeal Judgement, para. 47.

21. The Appeals Chamber has previously held that a Judge should not only be subjectively free from bias, but there should also be nothing in the surrounding circumstances which objectively gives rise to an appearance or a reasonable apprehension of bias.[40] There is a presumption of impartiality which attaches to any Judge of the Tribunal and which cannot be easily rebutted.[41]

22. Judges of this Tribunal are sometimes involved in trials which, by their very nature, cover overlapping issues.[42] In this regard, the Appeals Chamber has previously held that:

> It is assumed, in the absence of evidence to the contrary, that, by virtue of their training and experience, the Judges will rule fairly on the issues before them, relying solely and exclusively on the evidence adduced in the particular case. The Appeals Chamber agrees with the ICTY Bureau that "a judge is not disqualified from hearing two or more criminal trials arising out of the same series of events, where he is exposed to evidence relating to these events in both cases".[43]

23. It is for the appealing party alleging bias to rebut the presumption of impartiality enjoyed by Judges of this Tribunal.[44] In this respect, the Appeals Chamber has consistently held that there is a high threshold to reach in order to rebut the presumption of impartiality that attaches to a Judge.[45] The Appeals Chamber also recalls that the appealing party must set forth the arguments in support of an allegation of bias in a precise manner and that the Appeals Chamber cannot entertain sweeping or abstract allegations that are neither substantiated nor detailed to rebut the presumption of impartiality.[46]

(b) Presumption of Innocence

24. Article 20(3) of the Statute guarantees that an accused person is presumed innocent until proven guilty. Rule 87(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") provides that a majority of the Trial Chamber must be satisfied beyond reasonable doubt that the accused is guilty before a verdict may be entered against him or her. The burden of proving the facts charged beyond reasonable doubt remains squarely on the shoulders of the Prosecution and

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[40] *See Rutaganda* Appeal Judgement, para. 39, *referring to Furundžija* Appeal Judgement, para. 189. *See also Čelebići* Appeal Judgement, para. 682.
[41] *Galić* Appeal Judgement, para. 41; *Kayishema and Ruzindana* Appeal Judgement, para. 55; *Akayesu* Appeal Judgement, para. 91; *Čelebići* Appeal Judgement, para. 707; *Furundžija* Appeal Judgement, paras. 196, 197.
[42] *Karera* Appeal Judgement, para. 378; *Nahimana et al.* Appeal Judgement, para. 78.
[43] *Karera* Appeal Judgement, para. 378, *referring to Nahimana et al.* Appeal Judgement, para. 78.
[44] *Karera* Appeal Judgement, para. 254; *Niyitegeka* Appeal Judgement, para. 45. *See also Rutaganda* Appeal Judgement, paras. 39-125.
[45] *Karera* Appeal Judgement, para. 254; *Nahimana et al.* Appeal Judgement, paras. 47-90; *Furundžija* Appeal Judgement, paras. 196, 197. *See also The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-AR73.8, Decision on Appeals Concerning the Engagement of a Chambers Consultant or Legal Officer, 17 December 2009, para. 10.
[46] *Rutaganda* Appeal Judgement, para. 43; *Ntagerura et al.* Appeal Judgement, para. 135.

never shifts to the Defence.[47] On appeal, however, the appellant bears the burden of showing that the Trial Chamber violated his or her presumption of innocence.[48]

2. Discussion

25. The fact that the Judges in Renzaho's case also heard the *Karera* and *Bagosora et al.* cases does not in itself demonstrate an appearance of bias,[49] a principle which Renzaho appears to accept.[50] However, Renzaho also submits that a closer review of the *Karera* and *Bagosora et al.* cases strongly suggests that they influenced his own.[51]

(a) Removal of Corpses

26. Based on Prosecution Witness UL's evidence, the Trial Chamber concluded that Renzaho, in a radio broadcast on 10 April 1994, directed government employees to report to the prefecture office, and that the following day, he chaired a meeting at his office ("11 April Meeting") and instructed those present, including employees of the Ministries of Public Works and of Public Health, to "clear bodies" from Kigali-Ville.[52] The Trial Chamber considered Witness UL's "first-hand, credible and detailed testimony"[53] to be partly corroborated by Defence Witness BDC who testified that the 11 April Meeting was not convened by Renzaho but by the Ministries of Public Works and of Public Health, and that the meeting was "constantly" announced on the radio.[54]

27. Renzaho submits that in the Trial Judgement, the Trial Chamber did not provide any reasons for preferring Witness UL's[55] evidence that the communiqué came from Renzaho over Witness

[47] *Niyitegeka* Appeal Judgement, para. 60; *Ntakirutimana* Appeal Judgement, para. 157.
[48] *Cf. Rutaganda* Appeal Judgement, para. 18.
[49] *See Karera* Appeal Judgement, para. 378.
[50] *See* Appellant's Brief, para. 36, *referring to Nahimana et al.* Appeal Judgement, para. 78.
[51] Appellant's Brief, para. 37. *See also* Brief in Reply, para. 5.
[52] Trial Judgement, para. 341; Witness UL, T. 9 January 2007 pp. 51, 52, 58-63 [closed session].
[53] Trial Judgement, para. 341.
[54] Trial Judgement, paras. 332, 333, 341; Witness BDC, T. 4 June 2007 pp. 10, 11. The Trial Chamber considered that Witnesses UB, GLJ, and PPG also corroborated the testimony of Witness UL. *See* Trial Judgement, para. 341. Prosecution Witness UB testified that Renzaho told him that the corpses would have to be buried, that Renzaho sent him a pickup truck for that purpose, and that Renzaho convened a meeting on 10 or 11 April 1994 at the prefecture office. *See* Witness UB, T. 23 January 2007 pp. 6, 8, 58, 59 [closed session]. *See also* Trial Judgement, para. 330. Prosecution Witness GLJ testified that on 10 April 1994, Renzaho gave him a truck belonging to the Ministry of Public Works and instructed him to remove bodies from the streets of Kigali-Ville and bury them in the cemetery. *See* Witness GLJ, T. 22 January 2007 pp. 16-18, 47 [closed session]. *See also* Trial Judgement, para. 331. Defence Witness PPG testified that on 19 April 1994, he heard a radio broadcast requesting certain civil servants, as well as employees of the Red Cross, to go to the prefecture office, and that the Red Cross had asked the Ministry of Public Health to assist in collecting corpses from the streets of Kigali-Ville. *See* Witness PPG, T. 18 June 2007 pp. 49, 51 [closed session]. *See also* Trial Judgement, para. 335.
[55] The Appeals Chamber notes that Renzaho refers to Witness "UI". *See* Appellant's Brief, para. 40. However, a review of the Trial Judgement and the Appellant's Brief demonstrates that he is referring to Prosecution Witness UL's testimony on the requisitioning of vehicles. *See* Trial Judgement, paras. 326-329; Appellant's Brief, paras. 291-296.

BDC's evidence that it emanated from the Ministries.[56] He points to Witness ZA's testimony as recounted in the *Bagosora et al.* Trial Judgement stating that a radio communiqué issued by Renzaho called for the removal of corpses in Kigali,[57] and contends that the Trial Chamber's preference for Witness UL's testimony in his own case can only be explained as having been influenced by the *Bagosora et al.* case.[58]

28. The Prosecution responds that the Trial Chamber heard sufficient evidence on Renzaho's direct involvement in operations to remove bodies from the streets of Kigali; that Defence witnesses testified to such operations; and that Renzaho himself acknowledged his participation.[59]

29. The Appeals Chamber considers that Witness UL's testimony that Renzaho announced the meeting over the radio does not contradict Witness BDC's more general testimony that the meeting was announced on the radio on behalf of the Ministries of Public Works and of Public Health. There is thus no support for the contention that the Trial Chamber preferred Witness UL's evidence over Witness BDC's on this specific point. In addition, although the Trial Chamber did not expressly consider the credibility of Witness BDC, the Appeals Chamber notes that Witness BDC testified that he was not present at the 11 April Meeting, but rather heard about it afterwards.[60] Consequently, the Appeals Chamber considers that it was reasonable for the Trial Chamber to prefer Witness UL's eyewitness account of the 11 April Meeting over Witness BDC's hearsay evidence.[61] The Appeals Chamber therefore finds that Renzaho has failed to demonstrate that the Trial Chamber was influenced by Witness ZA's testimony in the *Bagosora et al.* trial.

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[56] Appellant's Brief, para. 40. Renzaho also indicates that he has developed this argument elsewhere in his Appellant's Brief, but provides no references thereto ("The Appellant reiterates the submissions in this Brief by which he challenges the fact that the Chamber did not justify nor provide reasons for its preference of the statements of Witness [UL] (that the communiqué was issued by Renzaho) to those of Witness BDC (that the communiqué was issued by some Ministers), whereas it considered the latter to be credible."). *See also infra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section B (Alleged Errors in Assessing the Evidence), para. 404.

[57] Appellant's Brief, para. 39, *referring to Bagosora et al.* Trial Judgement, para. 1391, in which the Trial Chamber summarized a portion of Witness ZA's evidence as follows: "In mid-April, a radio communiqué issued by Prefect Renzaho requested that all dead bodies be removed from Kigali. After this message, trucks loaded with corpses arrived at the CHK, and the bodies were dumped in the same area of the hospital where the night killings occurred. According to the witness, the victims were Tutsis. Some of them were still alive, although seriously injured, and were treated at the hospital upon arrival. Soldiers abducted these injured patients at night and killed them with clubs at the same location where the other killings had occurred."

[58] Appellant's Brief, para. 41. *See also* AT. 16 June 2010 pp. 18, 22.

[59] Respondent's Brief, para. 58, *referring to* Trial Judgement, para. 183.

[60] Trial Judgement, para. 333; Witness BDC, T. 4 June 2007 pp. 5, 7.

[61] *See also infra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section B (Alleged Errors in Assessing the Evidence), para. 405.

(b) Civil Defence

30. Renzaho submits that in the *Bagosora et al.* Trial Judgement, the Trial Chamber referred to him in the context of its finding that a civil defence system existed in Kigali from 1990 to 1994.[62] He argues that this explains why the Trial Chamber held him responsible for implementing the civil defence system, despite the absence of any evidence on the record.[63]

31. The Prosecution responds that the Trial Chamber considered sufficient evidence, including documentary evidence, to support its conclusions with respect to Renzaho's direct and specific involvement in the establishment of the civil defence system in Kigali.[64]

32. The Appeals Chamber notes that, contrary to Renzaho's assertion, there was evidence before the Trial Chamber concerning Renzaho's involvement in establishing a civil defence system in Kigali. This evidence included his meeting with Déogratias Nsabimana and Colonel Félicien Muberuka on 29 March 1994 where the implementation of a civil defence plan was discussed[65] and documents from May 1994 clearly identifying Renzaho as a part of the chain of command over civil defence forces.[66] The Trial Chamber found that "the evidence does not conclusively show when and to what extent the civil defence structure was *formally* put into place" but that "the evidence related to plans for the civil defence in Kigali provides circumstantial corroboration that [Renzaho] would have played an important role in [complementary civilian] efforts [to defend Kigali at the relevant time]."[67] The circumstantial evidence corroborating Renzaho's role in creating the civil defence system included various broadcasts in which Renzaho referred to roadblocks in Kigali as providing security, the proliferation of roadblocks, and Renzaho's involvement in high-level meetings and other activities concerning the defence of Kigali, such as identifying civilian recruits.[68]

33. Thus, the Trial Chamber's finding that Renzaho played an important role in putting the civil defence structure into place is consonant with evidence admitted in the *Renzaho* trial. The Appeals Chamber finds that there is no indication that the Trial Chamber was influenced by evidence regarding the civil defence system presented in the *Bagosora et al.* trial.

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[62] Appellant's Brief, para. 45. Renzaho does not point to the relevant portion of the *Bagosora et al.* Trial Judgement to support his submission, but refers to the testimony of expert witness Alison Des Forges given on 18 and 25 September 2002 in the *Bagosora et al.* trial. A review of the *Bagosora et al.* Trial Judgement suggests that Renzaho may be referring to paragraphs 473 and 475.
[63] Appellant's Brief, paras. 46, 47, *referring to* Trial Judgement, paras. 177, 753. *See also* AT. 16 June 2010 p. 21.
[64] Respondent's Brief, para. 58, *referring to* Trial Judgement, para. 176, fns. 205-208.
[65] *See* Trial Judgement, para. 176, *referring to* Renzaho, T. 27 August 2007 p. 41 *and* Prosecution Exhibit 24.
[66] *See* Trial Judgement, para. 176, *referring to* Prosecution Exhibits 37 *and* 38.
[67] Trial Judgement, para. 177 (emphasis in original).
[68] Trial Judgement, paras. 165, 169-179.

(c) *Inyenzi*

34. Renzaho submits that in the *Bagosora et al.* case, the Judges heard Witness DBJ testify that, in a radio broadcast, Renzaho indicated that there were still *Inyenzi* hiding at the Centre Saint-André, which prompted soldiers to select, remove, and kill Tutsis who had sought refuge there.[69] He submits that although the existence of this broadcast was never alleged in his own trial, the Presiding Judge nonetheless questioned him on the use and meaning of the term *Inyenzi*.[70] Renzaho contends that by equating the term *Inyenzi* with non-combatant Tutsis, the Trial Chamber concluded that he had genocidal intent.[71]

35. The Prosecution responds that the Trial Chamber heard sufficient evidence to establish Renzaho's genocidal intent, without requiring resort to Witness DBJ's evidence in the *Bagosora et al.* trial.[72]

36. Renzaho's submissions on this point are vague and unsubstantiated. He refers to a transcript of his own testimony to support his assertion that the Presiding Judge questioned him on the use and meaning of *Inyenzi*.[73] However, a review of the cited portion of the transcript reveals that it was the Prosecution who put those questions to Renzaho. The only time the Presiding Judge put a question to Renzaho on the issue of the term *Inyenzi* was to repeat the Prosecution counsel's question when a portion of Renzaho's answer was inaudible in English for technical reasons.[74]

37. In any case, the Appeals Chamber notes that the term *Inyenzi* appeared in this case in Prosecution Exhibit 50[75] and was used by Prosecution Witnesses ACS,[76] ATQ,[77] AWE,[78] AWO,[79] BUO,[80] DBN,[81] SAF,[82] UB,[83] and UI,[84] as well as Defence Witnesses HIN[85] and WOW,[86] and even

[69] Appellant's Brief, para. 48, *referring to Bagosora et al.* Trial Judgement, para. 1593.
[70] Appellant's Brief, paras. 49, 50, *referring to* Renzaho, T. 30 August 2007 (French) pp. 59, 60. The corresponding pages in the English transcript are 54 and 55.
[71] Appellant's Brief, para. 51, *referring to* Trial Judgement, para. 252.
[72] Respondent's Brief, para. 58, *referring to* Trial Judgement, paras. 761, 765, 769.
[73] Appellant's Brief, paras. 49, 50, *referring to* Renzaho, T. 30 August 2007 (French) pp. 59, 60. The corresponding pages in the English transcript are 54 and 55.
[74] Renzaho, T. 30 August 2007 pp. 54, 55. The Appeals Chamber notes that the French transcript does not reveal a similar technical problem to have occurred in respect of the French interpreter, and that Renzaho's full answer was heard and interpreted in French. Renzaho, T. 30 August 2007 pp. 59, 60 (French). As such, in the French transcript the Presiding Judge's question does not appear to have been prompted by a need for repetition. As the Presiding Judge in this case (Erik Møse) communicated to the Parties in English, he would have relied on the English interpreter in court, and therefore the Appeals Chamber considers the English transcript as authoritative on the point of what prompted him to ask the question.
[75] Trial Judgement, paras. 173, 428, 557. Prosecution Exhibit 50 is a transcript of a 12 April 1994 Radio Rwanda interview with Renzaho.
[76] Trial Judgement, paras. 265, 379.
[77] Trial Judgement, para. 384.
[78] Trial Judgement, paras. 125, 168, 172.
[79] Trial Judgement, paras. 606, 649.
[80] Trial Judgement, paras. 522, 525, 554, 621, 645.
[81] Trial Judgement, para. 345.

Renzaho himself.[87] It was therefore open to the Trial Chamber to question the meaning and use of the term. Renzaho's submission is accordingly dismissed.

(d) Weapons

38. Renzaho submits that in the *Bagosora et al.* case, Witness AAA testified that he participated in a meeting led by Renzaho during which General Kabiligi promised to distribute weapons in collaboration with Renzaho.[88] He contends that this witness's testimony must have influenced the Judges in assessing the Prosecution's allegations against him.[89]

39. The Appeals Chamber considers Renzaho's submission on this point to be vague and speculative. In making this argument, he fails to identify which of the Prosecution's allegations against him he is referring to, or provide any reference to the Trial Judgement.

40. This argument is accordingly dismissed.

(e) *Interahamwe*

41. Renzaho submits that both the *Bagosora et al.* and *Renzaho* Trial Chambers believed Prosecution Witness XXY's testimony, given during both trials, on the training of *Interahamwe*.[90] He contends that under the circumstances, the *Renzaho* Trial Chamber should have either recused itself, or invited him to attend Witness XXY's testimony in the *Bagosora et al.* trial and given him a chance to respond.[91] Renzaho further contends that Witness XXY's testimony in the *Bagosora et al.* trial was prejudicial to him and violated the presumption of innocence.[92]

42. The Prosecution responds that the Trial Chamber in this case heard sufficient evidence to find Witness XXY's testimony regarding Renzaho's involvement in encouraging and supporting

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[82] Trial Judgement, para. 669.
[83] Trial Judgement, paras. 168, 172.
[84] Trial Judgement, para. 373.
[85] Trial Judgement, paras. 274, 275.
[86] Trial Judgement, para. 401.
[87] Trial Judgement, para. 139.
[88] Appellant's Brief, para. 52.
[89] Appellant's Brief, para. 53.
[90] Appellant's Brief, para. 54, *referring to* Trial Judgement, paras. 87, 89, 108 *and Bagosora et al.* Trial Judgement, para. 467, fn. 518.
[91] Appellant's Brief, para. 55. The Appeals Chamber notes that Renzaho's language is somewhat broader in that he appears to assert that he should have been called to attend the hearings of *any* witness incriminating him in other trials ("*ces témoins l'incriminant*"). However, as his specific reference is limited to Witness XXY in the present section, the Appeals Chamber will only consider his arguments in relation to this witness.
[92] Appellant's Brief, para. 55.

the training of *Interahamwe* "generally coherent and credible", despite Renzaho's challenges to the witness's credibility and the evidence of Defence witnesses on the same issue.[93]

43. Renzaho provides no support for his assertion that a Judge, hearing two cases, must recuse himself or herself when a witness in the first case gives evidence against the accused in the second case. Renzaho similarly fails to support the proposition that the accused in the second case must be given a chance to respond to the witness's evidence in the first case. The Appeals Chamber recalls that the principles of fair trial require that both the prosecution and accused have knowledge of and the opportunity to comment on the evidence adduced by the other party.[94] However, this does not entail an accused's right to participate in any other proceedings in which his or her name may be mentioned. Moreover, the Appeals Chamber recalls that Judges are not disqualified from hearing two or more cases arising out of the same series of events and involving similar evidence.[95] Consequently, Judges hearing similar evidence may hear the same witnesses in more than one trial. As previously recalled, in the absence of evidence to the contrary, Judges are presumed to be impartial when ruling on the issues before them, relying solely and exclusively on the evidence adduced in each particular case.[96]

44. The Appeals Chamber notes that the *Bagosora et al.* Trial Chamber did not make any adverse findings against Renzaho on the basis of Witness XXY's testimony about the training of *Interahamwe*. Rather, the *Bagosora et al.* Trial Chamber merely recalled the Prosecution's evidence of military and civilian authorities providing training and weapons to civilians from 1992 through April 1994,[97] without evaluating Witness XXY's reliability on this issue. The Appeals Chamber further notes that with respect to most of the other issues that Witness XXY testified to, the *Bagosora et al.* Trial Chamber found his credibility to be questionable and his evidence unreliable.[98] In the *Renzaho* trial, however, the Trial Chamber considered Witness XXY's evidence to be "generally coherent and credible",[99] and relied on it to find that Renzaho permitted and encouraged *Interahamwe* to receive military training in 1993.[100] The Trial Chamber specified,

[93] Respondent's Brief, para. 58, *referring to* Trial Judgement, paras. 108, 113, 115.
[94] *Cf. Nahimana et al.* Appeal Judgement, para. 181.
[95] *Karera* Appeal Judgement, para. 378, *referring to Nahimana et al.* Appeal Judgement, para. 78.
[96] *Karera* Appeal Judgement, para. 378, *referring to Nahimana et al.* Appeal Judgement, para. 78. This principle would allow reliance on judicially noticed facts and facts not in dispute.
[97] *Bagosora et al.* Trial Judgement, para. 467, fn. 518.
[98] *Bagosora et al.* Trial Judgement, paras. 1773 (killings at the Kabgayi Religious Center), 1845, 1846 (prevention of humanitarian aid to Tutsis), 1895-1898 (sighting of Kabiligi, August).
[99] Trial Judgement, para. 108.
[100] Trial Judgement, paras. 107-115.

however, that supporting a youth organization does not in itself constitute a crime under the Statute.[101]

45. The Appeals Chamber considers that the treatment of Witness XXY's testimony was particular to the case in which it was given. There is no indication that the Trial Chamber in this case was influenced by Witness XXY's testimony in the *Bagosora et al.* trial. Accordingly, the Appeals Chamber finds that Renzaho has failed to demonstrate that Witness XXY's testimony in the *Bagosora et al.* trial was prejudicial to him or violated his presumption of innocence.

(f) Radio Broadcasts

46. The Trial Chamber found that Renzaho "made public pleas to re-establish order and for killings to come to an end."[102] It also considered, however, that: (1) these broadcasts appeared to be intended to restore the government's public image rather than constituting a genuine attempt to control the ethnically targeted killings; (2) Renzaho's instructions appeared to be intended to halt killings where they targeted the population that was sympathetic to the government and that Renzaho sought to mobilise against the "enemy"; and (3) "Renzaho was capable of giving precise instructions when there were specific segments of the population for which he had concern."[103] The Trial Chamber further noted that "none of Renzaho's pleas called for an end to the attacks on and killings of *Tutsi civilians* who he knew were dying en masse."[104]

47. Renzaho submits that the Trial Chamber contradicted itself in finding that none of his pleas over the radio called for an end to the attacks on and killings of Tutsi civilians, despite having recognized that "[he] had made public pleas to re-establish order and for killings to come to an end".[105] He contends that no reasonable trier of fact could have reached these conclusions in view of the fact that Hutu moderates were also killed and that his messages were addressed to all Rwandan citizens.[106] He concludes that the Trial Chamber's manifestly unfavourable interpretation violated the presumption of innocence and demonstrated bias.[107]

[101] Trial Judgement, para. 115.
[102] Trial Judgement, para. 184.
[103] Trial Judgement, para. 184.
[104] Trial Judgement, para. 184 (emphasis added).
[105] Appellant's Brief, para. 42, *referring to* Trial Judgement, para. 184.
[106] Appellant's Brief, paras. 42-44.
[107] Appellant's Brief, para. 44. The Appeals Chamber notes that Renzaho's allegations of bias in respect of the Trial Chamber's findings on radio broadcasts are not specifically linked to evidence presented in the *Bagosora et al.* or *Karera* cases.

48. The Prosecution responds that the Trial Chamber heard sufficient evidence to find that the true aim of Renzaho's broadcasts was to restore the government's public image.[108] It submits that Renzaho does not show that this finding is unreasonable on the evidence heard in this case.[109]

49. The Appeals Chamber sees no contradiction in the Trial Chamber's findings. That these conclusions were unfavourable to Renzaho does not in itself demonstrate bias or a violation of the presumption of innocence.

D. Conclusion

50. For the foregoing reasons, the Appeals Chamber dismisses Renzaho's Second Ground of Appeal.

[108] Respondent's Brief, para. 58, *referring to* Trial Judgement, para. 184.
[109] Respondent's Brief, para. 58.

IV. ALLEGED LACK OF NOTICE (GROUND OF APPEAL 1; GROUNDS OF APPEAL 5, 6, 10, 11, AND 12 IN PART)

51. At trial, Renzaho raised several objections regarding the form of and defects in the Indictment.[110] The Trial Chamber considered them and concluded that the Indictment was not defective, that Renzaho had reasonable notice of all material facts underpinning his convictions, and that the Defence's "conduct during the course of the trial and in their final submissions reflect that they have a complete understanding of the case."[111]

52. Renzaho submits that the Trial Chamber erred in law in convicting him despite a number of defects, including vagueness, in the Indictment.[112] He argues that the Indictment was insufficiently precise in relation to his superior responsibility, and that he thus lacked notice of the events at *Centre d'Étude de Langues Africaines* ("CELA"), the events at Sainte Famille, the civil defence system, roadblocks, the distribution of weapons, rapes, and the killings which formed the basis for his conviction for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

A. Applicable Law

53. The Appeals Chamber recalls that the charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment in order to provide notice to an accused.[113] Whether a fact is "material" depends on the nature of the Prosecution's case.[114] The Appeals Chamber has previously held that where it is alleged that the accused planned, instigated, ordered, or aided and abetted the planning, preparation, or execution of

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[110] *See* Trial Judgement, paras. 29-31. *See also The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, *Requ[ê]te en exception pr[é]judicielle pour vices de forme de l'acte d'accusation*, 31 March 2006 (confidential) ("Preliminary Motion"); *Mémoire final de la d[é]fense*, 15 November 2007 ("Defence Closing Brief"), paras. 70-204. The Initial Indictment in this case was issued on 23 October 2002, amended on 11 November 2002, amended again on 1 April 2005, and then amended once more on 16 February 2006, to give the operative Indictment. *See* Trial Judgement, Annex A: Procedural History, paras. 831, 832, 834, 835. *See also supra*, Chapter I (Introduction), fn. 6.

[111] *See* Trial Judgement, para. 32. *See also The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, *Décision sur la requête en exception préjudicielle pour vices de forme de l'acte d'accusation*, 5 September 2006 ("Decision on Preliminary Motion"); *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, *Décision relative à la demande aux fins de certification d'appel de la décision du 5 septembre 2006 en vertu de l'article 72(B)*, 25 October 2006 ("Decision on Certification of Decision on Preliminary Motion"). The Trial Chamber also noted that the Defence did not point to any contemporaneous objections made at trial that it lacked notice of any of the evidence which was presented or that the evidence fell outside the scope of the Indictment, and the Trial Chamber was unable to identify any such objections with respect to the events which formed a basis of Renzaho's convictions. *See* Trial Judgement, para. 31.

[112] Notice of Appeal, paras. 8-11; Appellant's Brief, para. 2; Brief in Reply, para. 2. *See also* AT. 16 June 2010 pp. 12-16.

[113] *Karera* Appeal Judgement, para. 292; *Muvunyi* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100. *See also Simba* Appeal Judgement, para. 63, *referring to Muhimana* Appeal Judgement, paras. 76, 167, 195 *and Gacumbitsi* Appeal Judgement, para. 49.

the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which form the basis for the charges in question.[115]

54. When an accused is charged on the basis of Article 6(3) of the Statute, the material facts which must be pleaded in the indictment are:

> (i) that the accused is the superior of sufficiently identified subordinates over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible;
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> (ii) the criminal acts committed by those others for whom the accused is alleged to be responsible;
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> (iii) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and
>
> (iv) the conduct of the accused by which he may be found to have failed to take necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[116]

As regards this last element, it will be sufficient in many cases to plead that the accused did not take any necessary and reasonable measure to prevent or punish the commission of criminal acts.[117]

55. An indictment which fails to set forth the specific material facts underpinning the charges against the accused is defective.[118] The defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.[119] However, a clear distinction must be drawn between vagueness in an indictment and an indictment omitting certain charges altogether.[120] Omitted charges can be incorporated into the indictment only by a formal amendment pursuant to Rule 50 of the Rules.[121]

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[114] *Karera* Appeal Judgement, para. 292; *Nahimana et al.* Appeal Judgement, para. 322; *Ndindabahizi* Appeal Judgement, para. 16; *Ntagerura et al.* Appeal Judgement, para. 23.
[115] *Karera* Appeal Judgement, para. 292; *Seromba* Appeal Judgement, para. 27, *referring to Ntagerura et al.* Appeal Judgement, para. 25.
[116] *Muvunyi* Appeal Judgement, para. 19. *See also Nahimana et al.* Appeal Judgement, para. 323; *Ntagerura et al.* Appeal Judgement, para. 26, *referring to Blaškić* Appeal Judgement, para. 218 *and Naletilić and Martinović* Appeal Judgement, para. 67.
[117] *Nahimana et al.* Appeal Judgement, para. 323.
[118] *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 22; *Niyitegeka* Appeal Judgement, para. 195; *Kupreškić et al.* Appeal Judgement, para. 114.
[119] *Karera* Appeal Judgement, para. 293; *Muvunyi* Appeal Judgement, para. 20, *referring to Seromba* Appeal Judgement, para. 100, *Simba* Appeal Judgement, para. 64, *Muhimana* Appeal Judgement, paras. 76, 195, 217, *and Gacumbitsi* Appeal Judgement, para. 49. *See also Ntagerura et al.* Appeal Judgement, paras. 28, 65.
[120] *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 32. *See also Muvunyi* Appeal Judgement, para. 20, *referring to 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.* Interlocutory Appeal on Questions of Law Decision"), para. 30.
[121] *Karera* Appeal Judgement, para. 293; *Ntagerura et al.* Appeal Judgement, para. 32. *See also Muvunyi* Appeal Judgement, para. 20, *referring to Bagosora et al.* Interlocutory Appeal on Questions of Law Decision, para. 30.

56. Objections based on lack of notice should be specific and timely.[122] Blanket objections that "the entire indictment is defective" are insufficiently specific.[123] When an appellant raises a defect in the indictment for the first time on appeal, he or she bears the burden of showing that his or her ability to prepare his or her defence was materially impaired.[124] When, however, an accused has previously raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecutor to prove on appeal that the ability of the accused to prepare his or her defence was not materially impaired.[125]

B. Preliminary Matter: Whether the Issue of Notice Was Exhausted at Trial

57. The Prosecution submits that Renzaho's arguments concerning defects in the Indictment were exhausted at trial and are simply repeated on appeal without showing any error warranting appellate intervention.[126]

58. Renzaho does not reply to this submission.

59. The Appeals Chamber recalls that a party cannot merely repeat arguments on appeal that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[127] 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.[128]

60. The Appeals Chamber notes that Renzaho refers several times to submissions that he made at trial.[129] While it is legitimate to make such references for the sake of demonstrating that arguments were already before the Trial Chamber, the Appeals Chamber will only entertain arguments demonstrating an error by the Trial Chamber. The Appeals Chamber is not persuaded, however, by the Prosecution's blanket assertion that Renzaho's arguments on appeal relating to

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[122] *Bagosora et al.* Interlocutory Appeal on Questions of Law Decision, para. 46.
[123] *Bagosora et al.* Interlocutory Appeal on Questions of Law Decision, para. 46.
[124] *Nahimana et al.* Appeal Judgement, para. 327.
[125] *Nahimana et al.* Appeal Judgement, para. 327.
[126] Respondent's Brief, paras. 23, 25, 26, *referring to* Preliminary Motion, Decision on Preliminary Motion *and* Defence Closing Brief, paras. 70-204. The Prosecution also submits that Renzaho generally contends in his Appellant's Brief that "the [Trial] Chamber erred in law in allowing an Indictment which had been varied several times", and that this issue was also dismissed at trial. Respondent's Brief, para. 24, *referring to* Appellant's Brief, paras. 3, 31, 32 *and* Trial Judgement, paras. 33, 34. However, a review of the relevant portions of the Appellant's Brief does not suggest that Renzaho is advancing this argument on appeal.
[127] *Karera* Appeal Judgement, para. 11, *referring to Muvunyi* Appeal Judgement, para. 11 *and Martić* Appeal Judgement, para. 14.
[128] *Karera* Appeal Judgement, para. 11, *referring to Muvunyi* Appeal Judgement, para. 11 *and Orić* Appeal Judgement, para. 13.
[129] *See* Appellant's Brief, paras. 8, 11, 15, 21, 25, *referring to* Defence Closing Brief, paras. 417, 473, 532, 575, 578, 580, 597-601, 654-656, 724-728, 934-936.

notice are limited to those he made at trial. Bearing in mind the aforementioned principles, the Appeals Chamber will examine each of Renzaho's contentions in turn.

C. Superior Responsibility

61. At trial, Renzaho argued that the Indictment was insufficiently precise in outlining the perpetrators over whom he allegedly had authority.[130] In this respect, the Trial Chamber found that:

> The Indictment identifies Renzaho's subordinates by general category and contains additional specificity in the relevant paragraphs referring to the crimes by providing specific names and further geographical and temporal limitations for broader categories of assailants such as militiamen. In the context of this case, and given the nature of the attacks, the Chamber is not convinced that the Prosecution could have provided more specific identification, in particular in relation to the vast network of roadblocks throughout Kigali. Accordingly, the Chamber is satisfied that the Indictment provides reasonable notice of the individuals alleged to be Renzaho's subordinates.[131]
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> [...]
>
> The Chamber is satisfied that Renzaho exercised effective control and was a superior over the local officials within his prefecture, including sub-prefects, *bourgmestres*, *conseillers*, *responsables de cellule* and *Nyumba Kumi* (ten-house leaders) as well as prefecture and commune employees such as the urban police. In reaching this conclusion, the Chamber has considered that, by virtue of his position as prefect and with his high military rank, Renzaho was clearly an important and influential authority of the Rwandan government entrusted with the administration of a key strategic location during a time of war. [...] [There was also] strong circumstantial evidence, confirmed by what followed, that in the wake of war all resources of local administration would be effectively placed under the authority of the prefect and local military commanders at least with respect to the government's efforts to combat the "enemy".[132]

62. On appeal, Renzaho submits that the Trial Chamber erred in law when it considered that the Indictment was sufficiently precise as to the individuals alleged to be his subordinates, even though it found him to exercise effective control over a much narrower category of persons.[133] He argues that this demonstrates that, like the Defence, the Trial Chamber was unable to precisely identify his subordinates on the basis of the Indictment alone.[134] He contends that these defects in the Indictment prevented him from adequately investigating the alleged superior-subordinate relationships, and permitted the Prosecution to change its case in relation to material elements such as roadblocks, rapes, and murders at Sainte Famille.[135]

63. The Prosecution responds that Renzaho's contentions are unfounded, and that Renzaho repeats submissions made at trial, which should be dismissed.[136] It submits that in the context of this case and given the nature of the attacks, the Trial Chamber properly considered the level of

[130] Trial Judgement, para. 749.
[131] Trial Judgement, para. 751.
[132] Trial Judgement, para. 753.
[133] Appellant's Brief, para. 30, *referring to* Trial Judgement, paras. 751, 753.
[134] Appellant's Brief, para. 30.
[135] Appellant's Brief, paras. 30, 31.

specificity required to sufficiently identify Renzaho's alleged subordinates and properly determined that the Indictment provided reasonable notice of the identity of his alleged subordinates.[137] The Prosecution adds that Renzaho does not show that he did not receive sufficient notice of any of the material facts underpinning the charges against him, or of his responsibility for each of the crimes for which he was convicted.[138]

64. The Appeals Chamber recalls that when an accused is charged on the basis of Article 6(3) of the Statute, one of the material facts which must be pleaded in the indictment is "that the accused is the superior of *subordinates sufficiently identified*, over whom he had effective control [...] and for whose acts he is alleged to be responsible".[139] A superior need not necessarily know the exact identity of the subordinates who perpetrate crimes in order to incur liability under Article 6(3) of the Statute.[140] The Appeals Chamber has held that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.[141]

65. Paragraphs 2(A)(iii), (B), and (C) of the Indictment plead that at all times referred to in the Indictment, Renzaho had *de jure* and *de facto* control over: *bourgmestres*; *conseillers de secteur*; *responsables de cellule*; *Nyumba Kumi* (ten-house leaders); administrative personnel; *gendarmes*; communal police; *Interahamwe*; militias; armed civilians; and all armed forces under his command as Colonel in the *Forces Armées Rwandaises* ("FAR") and as a member of the crisis committee. Paragraphs 24, 48, 52, 59, and 61 of the Indictment, which form a *chapeau* pleading to the concise statements of facts concerning Renzaho's superior responsibility under each Count, also identify the following persons or categories of persons as his subordinates: the leaders and members of the FAR, including Major Nyirahakizimana; the Presidential Guard; *Interahamwe*, including Odette Nyirabagenzi, Angéline Mukandutiye, and Ngerageza; the Civil Defence Forces; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas Munyeshyaka and Bishop Samuel Musabyimana; and other unknown participants.[142] In addition, each paragraph relevant to a specific crime further identifies Renzaho's subordinates alleged to have perpetrated the crime.[143]

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[136] Respondent's Brief, paras. 27, 28, 34.
[137] Respondent's Brief, paras. 29-32.
[138] Respondent's Brief, para. 33.
[139] *Muvunyi* Appeal Judgement, para. 19 (emphasis added).
[140] *Muvunyi* Appeal Judgement, para. 55, *referring to Blagojević and Jokić* Appeal Judgement, para. 287.
[141] *See, e.g., Simba* Appeal Judgement, paras. 71, 72.
[142] Major Nyirahakizimana, Angéline Mukandutiye, Ngerageza, and Bishop Samuel Musabyimana are only specified at paragraph 24. Odette Nyirabagenzi is only specified at paragraphs 24, 48, and 61. Father Wenceslas Munyeshyaka is only specified at paragraphs 24, 48, 52, and 61.
[143] *See* Indictment, paras. 25-43, 49-51, 53-55, 60, 63-65.

66. The Appeals Chamber finds that the Indictment therefore clearly identified Renzaho's subordinates, including specific individuals and categories thereof. Renzaho essentially contends that the list of identified subordinates was too long, thus preventing him from adequately investigating all the alleged superior-subordinate relationships, in particular those on the basis of which he was ultimately convicted. This contention is unsubstantiated. Renzaho does not explain how he was prevented from efficiently investigating the specific events underlying the charges based on the evidence disclosed to him before the start of the trial. Renzaho's contention that the Prosecution was able to change its case in relation to certain alleged crimes is also unsubstantiated.

67. Renzaho's contentions in this respect are therefore without merit.

D. CELA

68. The Trial Chamber convicted Renzaho pursuant to Article 6(1) of the Statute of aiding and abetting and ordering genocide for the killing of approximately 40 Tutsi civilians at CELA around 22 April 1994.[144] It also found Renzaho guilty of murder as a crime against humanity pursuant to Article 6(1) of the Statute for aiding and abetting and ordering the killing of Charles, Wilson, and Déglote Rwanga, who were among the approximately 40 Tutsi civilians killed.[145] The Trial Chamber also found that the *Interahamwe* who killed these Tutsi civilians were Renzaho's subordinates at the time of the attack and therefore found Renzaho liable as a superior for these crimes.[146]

69. Renzaho contends that the vagueness of the Indictment in relation to the events at CELA prevented him from knowing exactly the Prosecution case against him.[147] Renzaho submits that the Trial Chamber erred in law by dismissing Prosecution Witness BUO's allegation that Renzaho committed crimes at CELA on 21 April 1994[148] on the sole basis of Witness BUO's lack of credibility, without finding that the Indictment was defective as to the date and the elements of the alleged crime.[149]

70. The Prosecution responds that the Indictment pleads dates and crime scenes with sufficient precision and provides the names of victims and perpetrators where it was reasonable to do so.[150]

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[144] Trial Judgement, paras. 770, 779.
[145] Trial Judgement, para. 789.
[146] Trial Judgement, paras. 770, 779, 789. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[147] Appellant's Brief, para. 8, *referring to* Defence Closing Brief, para. 473.
[148] Appellant's Brief, para. 9, *referring to* Indictment, paras. 20, 21, 38, 45.
[149] Appellant's Brief, para. 9, *referring to* Trial Judgement, para. 413 *and* Indictment, paras. 20, 21, 38, 45.
[150] Respondent's Brief, paras. 36, 38.

71. The Appeals Chamber notes that the Trial Chamber expressed "doubts as to whether the events [at CELA] on 21 April were charged in the Indictment",[151] and considered it to be incurably ambiguous in this respect.[152] The Trial Chamber nevertheless chose to consider Witness BUO's evidence about an attack at CELA on 21 April 1994 for contextual purposes, given its immediate temporal proximity to the 22 April 1994 attack at CELA.[153] It concluded that Witness BUO's allegations about the 21 April 1994 attack were not proven beyond reasonable doubt and dismissed them.[154] The Appeals Chamber recalls that evidence in support of material facts not pleaded in an indictment may not form the basis for a conviction, but may be admitted to the extent that it is relevant to the proof of other allegations pleaded in the indictment.[155] The Appeals Chamber therefore finds no error in the Trial Chamber's approach.

72. Renzaho further argues that the Trial Chamber erred in law in finding that Odette Nyirabagenzi, Angéline Mukandutiye, Father Munyeshyaka, soldiers, and *Interahamwe* were his subordinates, despite the lack of precision in the Indictment regarding the nature of Renzaho's relationships with them and the authority he could have had over them.[156]

73. The Appeals Chamber notes that the Trial Chamber found that Renzaho, "by his own actions and through the assistance of Ang[é]line Mukandutiye and Odette Nyirabagenzi, ordered *Interahamwe* to engage in a targeted selection of Tutsi men".[157] With respect to soldiers and Father Munyeshyaka, the Trial Chamber was unable to reach any definitive conclusions as to their participation in the events at CELA.[158] As found below, Renzaho's conviction for the killing of Tutsis at CELA was based on his authority over *Interahamwe*, not Angéline Mukandutiye, Odette Nyirabagenzi, Father Munyeshyaka, or soldiers.[159]

74. Paragraphs 2(A)(iii), (B), and (C) of the Indictment plead that Renzaho had *de jure* and *de facto* control over, *inter alia*, *conseillers de secteur*, *Interahamwe*, and armed forces, "in that he

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[151] Trial Judgement, para. 408.
[152] Trial Judgement, fn. 482.
[153] Trial Judgement, para. 408.
[154] Trial Judgement, paras. 413, 414.
[155] *See Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-97-21-AR73, Decision on 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 ("*Ntahobali and Nyiramasuhuko* Decision on Interlocutory Appeal on Admissibility"), para. 15.
[156] Appellant's Brief, paras. 9, 10, *referring to* Trial Judgement, para. 434.
[157] Trial Judgement, para. 434.
[158] *See* Trial Judgement, para. 424 (holding that "[t]he fundamental features of this evidence demonstrate that Renzaho held a position of authority, and at a minimum, oversaw *Interahamwe* and *possibly* soldiers and gendarmes, in executing this highly coordinated operation directed at separating Tutsi men from women and children.")(emphasis added). *See also* Trial Judgement, para. 435 (where the Trial Chamber had "doubts" about the role of Father Munyeshyaka: "Turning to other prominent individuals that allegedly were present, the Chamber has doubts about the nature and extent of Father Wenceslas Munyeshyaka's role.").

could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions". This was the nature of Renzaho's alleged relationship with and effective control over the *Interahamwe* for whose crimes at CELA he was held responsible. The Appeals Chamber finds no imprecision in the Indictment on these matters.

75. Renzaho's contention that he could not know the Prosecution case against him with respect to events at CELA therefore fails.

E. Sainte Famille

76. The Trial Chamber found Renzaho guilty of genocide and murder as a serious violation of Article 3 common to the Geneva Conventions under Article 6(1) of the Statute for ordering the killing of hundreds of Tutsi refugees, including the killing of at least 17 Tutsi men, at Sainte Famille church on 17 June 1994.[160] Renzaho was also found liable as a superior for these crimes.[161] More specifically, the Trial Chamber found that:

> *Interahamwe* attacked the Sainte Famille compound on 17 June 1994, starting some time before noon. Renzaho was present and ordered the *Interahamwe* to attack, and later, to stop the killings. The *Interahamwe* attackers obeyed his instructions. Several hundred Tutsi refugees were killed. The attack was conducted in revenge for the RPF operation the night before, in which a number of refugees were evacuated. Finally, the Chamber has no doubt that at least 17 Tutsi men were among those killed. That such individuals would be targeted is consistent with the fact that the attack was in retaliation to the RPF operation the preceding night. Furthermore, Witness ATQ noted that most of the survivors were women and children. Both she and Witness AWO testified that Renzaho told the survivors to clap when the attack had ended. It is telling that Witness AWO stated that this request was directed specifically to female survivors. The Chamber's finding is strengthened by the fact that during the attack on CELA on 22 April 1994, young men were singled out, taken away and killed.[162]

77. Renzaho submits that the Indictment is imprecise in relation to the 17 June 1994 events at Sainte Famille[163] and his role in those events.[164] He claims that the Trial Chamber erred in law by convicting him for those events.[165]

78. The Prosecution responds that the Trial Chamber's finding that there was insufficient notice in pleading the attacks on 17 June 1994 concerned events at Saint Paul, and not events at Sainte Famille, and that the Trial Chamber noted that the Prosecution pleaded these events separately.[166]

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[159] *See infra,* Chapter X (Alleged Errors Relating to the Events at CELA), Section A (Alleged Errors in the Assessment of the Evidence), para. 444, fn. 974; Trial Judgement, para. 770.
[160] Trial Judgement, paras. 773, 779, 805, 807.
[161] Trial Judgement, paras. 773, 779, 806, 807. *See also infra,* Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[162] Trial Judgement, para. 663. *See also* Trial Judgement, paras. 779, 807.
[163] Appellant's Brief, paras. 11-14, *referring to* Defence Closing Brief, para. 417 *and* Indictment, paras. 23, 40, 58.
[164] Appellant's Brief, paras. 13, 14. *See also* AT. 16 June 2010 pp. 14-16.
[165] Appellant's Brief, paras. 13, 14.
[166] Respondent's Brief, para. 39, *referring to* Trial Judgement, fn. 649.

79. Contrary to Renzaho's assertion that the Indictment is imprecise in relation to the 17 June 1994 events at Sainte Famille, paragraphs 23 and 58 of the Indictment clearly allege that, on or about 17 June 1994, while in the company of Odette Nyirabagenzi and Angéline Mukandutiye, Renzaho ordered, instigated, or otherwise aided and abetted soldiers, militia, and communal police to attack Tutsi refugees at the Sainte Famille church, many of whom were killed.[167]

80. Renzaho further claims that the Trial Chamber erred in finding him responsible for the attack against Sainte Famille despite its finding that paragraphs 23 and 40 of the Indictment were insufficiently specific in relation to the nature and chronology of the attack.[168] In support of this claim, he asserts that the Trial Chamber concluded that there was in fact only one attack against the two sites, Saint Paul and Sainte Famille, which were contiguous.[169]

81. Contrary to Renzaho's contention, the Trial Chamber did not find that the Indictment was defective in respect of the 17 June 1994 attack at Sainte Famille. Rather, the Trial Chamber was not convinced that the notice provided in relation to the 17 June 1994 attack at Sainte Famille, which was pleaded at paragraphs 23 and 40 of the Indictment, was sufficient to also provide notice of the 17 June 1994 attack at Saint Paul.[170]

82. In addition, the Appeals Chamber finds no support for Renzaho's suggestion that the Trial Chamber inferred that the Saint Paul and Sainte Famille attacks were in fact one and the same.[171] While the Trial Chamber recognized the "immediate proximity" of the two sites, it considered that the attacks were pleaded separately, and it accordingly treated them as such.[172]

83. Renzaho's contentions are therefore without merit.

F. Civil Defence

84. The Trial Chamber found Renzaho guilty of genocide for aiding and abetting and ordering the killing of Tutsi civilians at roadblocks in Kigali by ordering the establishment of roadblocks, sanctioning the conduct at them, supporting the killing through the distribution of weapons, and

[167] *See also* Indictment, paras. 20, 36, 37, 40, 60.
[168] Appellant's Brief, paras. 12, 14, *referring to* Trial Judgement, para. 583, fn. 649. *See also* Brief in Reply, para. 3.
[169] Appellant's Brief, para. 12, *referring to* Trial Judgement, paras. 579-584, fn. 649.
[170] Trial Judgement, fn. 649 ("For the reasons set forth in relation to the April attack on Saint Paul, the Chamber has also doubts that Renzaho was provided sufficient notice of the attack there on 17 June 1994. Moreover, it is not convinced that the notice provided for the 17 June attack on Sainte Famille in paras. 23 and 40 of the Indictment is sufficient.").
[171] Appellant's Brief, para. 12, *referring to* Trial Judgement, para. 583, fn. 649.
[172] Trial Judgement, fn. 649 ("Notwithstanding Saint Paul's immediate proximity to Sainte Famille, the Prosecution chose to plead attacks at Saint Paul and Sainte Famille separately. Thus, there are serious concerns as to the consistency of the notice as the Indictment distinguishes attacks at both locations.").

ordering the killings.[173] Renzaho was also found liable as a superior for these crimes.[174] The Trial Chamber considered that evidence on the planning of Rwanda's civil defence system and Renzaho's participation therein lent "further corroboration" to the evidence that he ordered the establishment of roadblocks in Kigali.[175]

85. Regarding the civil defence system, Renzaho's alleged involvement therein, and its connection to the proliferation of roadblocks in Kigali, the Trial Chamber found that:

> the evidence does not conclusively show when and to what extent the civil defence structure was *formally* put into place. However, there are clear parallels between the planning and preparation of civil defence which occurred prior to 7 April and the proliferation of roadblocks in Kigali after that date. Furthermore, Renzaho's involvement in high level meetings and other activities, such as identifying civilian recruits, concerning the defence of Kigali just days before hostilities resumed between the government forces and the RPF is indicative of his extensive involvement and interest in matters related to complementary civilians [*sic*] efforts to defend the city at the relevant time. Notably, in the various broadcasts mentioned above, Renzaho referred to the roadblocks in Kigali as providing security. In the Chamber's view, the evidence related to plans for the civil defence in Kigali provides circumstantial corroboration that he would have played an important role in such efforts.[176]

86. With regard to Renzaho's effective control over civil defence assailants, the Trial Chamber stated:

> Turning to militiamen, again, the evidence concerning Rwanda's "civil defence" planning lends strong circumstantial support to the conclusion that Renzaho had authority over these assailants, in particular when they were operating as part of [...] Kigali's defensive efforts or engaged in operations under the authority of or in conju[n]ction with civilian authorities. Nevertheless, the Chamber is mindful of evidence suggesting that these forces were hastily assembled and were at times undisciplined. Although the material pertaining to Rwanda's civil defence system offers some guidance, there is limited evidence detailing the actual structure and chain of command governing these forces in all instances. The Chamber instead will assess the circumstances on the ground in order to determine whether Renzaho exercised effective control over them in the context of a given incident.[177]

87. Renzaho contends that the Trial Chamber erred in law when it considered that the evidence relating to the planning of the civil defence system and his participation therein corroborated his responsibility for the order to erect roadblocks, even though the allegation did not appear in the Indictment.[178] He argues that such corroboration is a result of the vagueness in the Indictment and falls outside the scope of the Prosecution's case.[179] He submits that the Prosecution accused him of being the chairman of, and therefore responsible for, the civil defence system in Kigali, without providing details regarding the establishment of the organization, its functioning, the crimes it

[173] Trial Judgement, paras. 766, 779.
[174] Trial Judgement, para. 767.
[175] Trial Judgement, paras. 165, 176.
[176] Trial Judgement, para. 177 (emphasis in original).
[177] Trial Judgement, para. 756.
[178] Appellant's Brief, para. 19, *referring to* Trial Judgement, para. 165.
[179] Appellant's Brief, para. 19.

committed, or the role he played.[180] Renzaho further argues that it was by error of law and as a result of the defects in the Indictment that the Trial Chamber concluded that he had authority over the attackers in the context of the civil defence system.[181]

88. The Prosecution responds that details of the establishment of the civil defence system and its operations are matters of evidence which did not need to be pleaded in the Indictment, and that it was open to the Trial Chamber to find that Renzaho's involvement in the civil defence system lent further corroboration to otherwise credible evidence that he ordered the erection of roadblocks.[182] The Prosecution also submits that the Indictment specifically alleges that Renzaho was the Chairman of the Civil Defence Committee for Kigali-Ville, that members of the civil defence forces were among his subordinates, and that he acted with them in a joint criminal enterprise.[183]

89. The Appeals Chamber notes that the Indictment pleads: the participation of, *inter alia*, civil defence forces, civilian militias, and *Interahamwe* in a joint criminal enterprise with Renzaho;[184] and the involvement of armed civilians, local citizens, militia, *Interahamwe*, and *Impuzamugambi* in specific crimes imputed to Renzaho.[185] The Indictment also pleads Renzaho's superior-subordinate relationship with and effective control over civil defence forces. Paragraph 2(A)(ii) of the Indictment alleges Renzaho's role as Chairman of the Civil Defence Committee for Kigali-Ville. Paragraphs 24, 48, 59, and 61 of the Indictment list, *inter alia*, Civil Defence Forces, civilian militias, and *Interahamwe* among Renzaho's subordinates.

90. The Trial Chamber did not convict Renzaho for his authority over people who committed crimes in relation to the civil defence system, but instead relied on evidence of his involvement in the planning thereof to support its findings on the proliferation of roadblocks and his authority over militiamen.[186] Renzaho correctly points out that the Indictment fails to plead the establishment or functioning of the civil defence system. However, it does not follow that the Trial Chamber was therefore precluded from considering any evidence related thereto. The Appeals Chamber recalls that evidence in support of material facts not pleaded in an indictment may not form the basis of a conviction, but may be admitted to the extent that it is relevant to prove other allegations pleaded in the indictment.[187] As such, the Appeals Chamber sees no error in the Trial Chamber's reliance on

[180] Appellant's Brief, para. 18, *referring to* Indictment, paras. 2, 6, 24 *and* Defence Closing Brief, para. 702.
[181] Appellant's Brief, para. 20, *referring to* Trial Judgement, para. 756.
[182] Respondent's Brief, paras. 46, 47.
[183] Respondent's Brief, para. 46, *referring to* Indictment, paras. 2(A)(ii), 6, 24, 44, 48, 52, 56, 59, 61.
[184] Indictment, paras. 6, 44, 56. *See also* Indictment, paras. 7-9, 11-13, 15, 16, 21-23, 45-47 (pleading the membership of militia, local citizens, *Interahamwe*, and *Impuzamugambi* in the joint criminal enterprise with Renzaho referred to at paragraphs 6 and 44 (and 56) of the Indictment).
[185] Indictment, paras. 7-9, 11-13, 15, 16, 18, 21-23, 28-30, 32, 37-43, 46, 47, 49-51, 53-55, 58, 60, 63-65.
[186] *See* Trial Judgement, paras. 165, 756.
[187] *See Ntahobali and Nyiramasuhuko* Decision on Interlocutory Appeal on Admissibility, para. 15.

evidence relating to the planning of the civil defence system as further corroboration for its findings that Renzaho ordered the erection of roadblocks and that he had authority over militiamen, as they were material facts which were pleaded in the Indictment.[188]

91. With respect to Renzaho's contention that the Trial Chamber erred in finding that he had authority "over the attackers in the context of the civil defence",[189] the Appeals Chamber considers this argument to be unclear. To the extent that Renzaho means that he was found to have authority over civil defence forces in general, the Appeals Chamber finds nothing in the Trial Judgement to support this assertion. In the portion of the Trial Judgement cited by Renzaho, the Trial Chamber clearly stated that it would determine his effective control over "these assailants" (*i.e.* militiamen) on a case-by-case basis.[190] It then did so with respect to the allegations of his involvement in the killings at roadblocks, and concluded that the local officials and civilian assailants who built, supervised, and manned the roadblocks were Renzaho's subordinates under his effective control.[191] Such conclusions fall well within the scope of the Indictment and the Appeals Chamber sees no error in the Trial Chamber's approach.

92. These allegations are accordingly dismissed.

G. Roadblocks

93. The Trial Chamber found Renzaho guilty of genocide for aiding and abetting the killing of Tutsi civilians at roadblocks in Kigali by ordering the establishment of roadblocks, sanctioning the conduct at them, and supporting killings at roadblocks through the distribution of weapons.[192] This conviction was based in part on the Trial Chamber's factual findings that, around 10 April 1994, in a meeting at the prefecture office ("10 April Meeting"),[193] Renzaho ordered local officials to establish roadblocks, which were used to identify and intentionally kill Tutsi civilians throughout Kigali. The Trial Chamber further found that Renzaho discussed and advocated the creation of

[188] Indictment, paras. 2(A)(iii), 7-10, 25-27.
[189] Appellant's Brief, para. 20.
[190] Trial Judgement, para. 756 ("Turning to militiamen, again, the evidence concerning Rwanda's 'civil defence' planning lends strong circumstantial support to the conclusion that Renzaho had authority over these assailants, in particular when they were operating as part of the Kigali's defensive efforts or engaged in operations under the authority of or in conjunction with civilian authorities. Nevertheless, the Chamber is mindful of evidence suggesting that these forces were hastily assembled and were at times undisciplined. Although the material pertaining to Rwanda's civil defence system offers some guidance, there is limited evidence detailing the actual structure and chain of command governing these forces in all instances. The Chamber instead will assess the circumstances on the ground in order to determine whether Renzaho exercised effective control over them in the context of a given incident.").
[191] Trial Judgement, para. 767.
[192] Trial Judgement, para. 766. Renzaho was also found to be liable as a superior for these crimes. *See* Trial Judgement, para. 767. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[193] Trial Judgement, paras. 164-169.

roadblocks in subsequent meetings and during various radio broadcasts.[194] The Trial Chamber also inferred that Renzaho ordered the killings at roadblocks.[195]

94. Renzaho claims that the Indictment was defective and that he lacked notice of the date of the meeting where the decision to erect roadblocks was allegedly made, the meeting's participants, and the locations of new roadblocks allegedly erected following other meetings.[196]

95. The Prosecution does not address these specific arguments.

96. Contrary to Renzaho's assertion that he lacked notice of the date and participants of the meeting where the decision to erect roadblocks was made, the Indictment specifically alleges that around 10 April 1994, Renzaho convened a meeting at the Kigali-Ville prefecture office where he ordered *conseillers de secteur* and *responsables de cellule* to set up roadblocks to identify and kill Tutsis.[197] As to Renzaho's claim that he lacked notice of the locations of new roadblocks allegedly erected following other meetings, the Appeals Chamber considers that such a degree of specificity was not required in view of the sheer scale of the alleged crimes.[198]

97. Renzaho argues that the Trial Chamber erred in law in failing to consider that he could not adequately rebut the Prosecution's allegations because he was simultaneously charged with holding the 10 April Meeting, and with acts committed at Kajagari, the distribution of weapons, and participation in an attack at an orphanage during the period of 9 to 11 April 1994.[199] Renzaho submits that he suffered prejudice from such vagueness because he was deprived of the possibility of raising an alibi.[200]

98. With respect to the 10 April Meeting, the Appeals Chamber notes that in assessing the evidence in relation to it, the Trial Chamber considered that "Renzaho provided a specific accounting for his days from 9 through 11 April, which did not include the meetings described by the Prosecution witnesses."[201] The Trial Chamber concluded that this did not raise doubt that Renzaho was at the meeting about roadblocks around 10 April 1994.[202] Thus, contrary to his

[194] Trial Judgement, paras. 165-185, 763-765.
[195] Trial Judgement, para. 764. The Trial Chamber specifically found that in view of his authority, his actions in support of roadblocks, their role in the "defence" of the city, their widespread and continuing operation, as well as his order to distribute weapons, it was convinced that Renzaho must have equally ordered the killings there.
[196] Appellant's Brief, para. 21, *referring to* Indictment, para. 7 *and* Defence Closing Brief, paras. 724-728. *See also* Notice of Appeal, para. 56; Appellant's Brief, paras. 202-207.
[197] *See* Indictment, paras. 9, 26.
[198] *See Muvunyi* Appeal Judgement, para. 58; *Muhimana* Appeal Judgement, para. 79; *Gacumbitsi* Appeal Judgement, para. 50; *Kupreškić et al.* Appeal Judgement, para. 89.
[199] Appellant's Brief, para. 21, *referring to* Trial Judgement, para. 179, Indictment, para. 15, *and* Witness AWO, T. 7 February 2007 pp. 4-6.
[200] Appellant's Brief, para. 22.
[201] Trial Judgement, para. 178, *referring to* Renzaho, T. 28 August 2007 pp. 43-47, T. 29 August 2007 pp. 59-60.
[202] Trial Judgement, paras. 178, 179.

assertion, Renzaho was not prevented from presenting an alibi. In addition, Renzaho fails to demonstrate how the fact that the Indictment charged him with multiple criminal acts that allegedly occurred during a period of three days (from 9 to 11 April 1994) could amount to vagueness in the Indictment.

99. Renzaho's submissions in this regard are therefore dismissed.

H. Weapons

100. The Trial Chamber found Renzaho guilty of genocide for aiding and abetting the killing of Tutsi civilians at roadblocks in Kigali by ordering the establishment of roadblocks, sanctioning the conduct at them, and supporting the killings through the distribution of weapons.[203] This conviction was based in part on the Trial Chamber's factual findings that, during a meeting at the Kigali-Ville prefecture office around 16 April 1994 ("16 April Meeting"), Renzaho instructed local administration officials, including *conseillers*, to collect weapons from the Ministry of Defence for distribution to select members of the population, knowing that the weapons would further the killing campaign against Tutsi civilians.[204]

101. Renzaho contends that the Trial Chamber erred in law in reaching these conclusions despite numerous defects in the Indictment.[205] He submits that the Indictment was defective with respect to: the date of the meeting; the identity of the participants who allegedly collected the weapons; the identity of the people to whom the weapons were ultimately delivered; the purpose of the weapons distribution; and their use.[206]

102. The Prosecution responds that Renzaho's contention that the Indictment did not provide sufficient details about the dates of alleged meetings, the names of participants, the recipients of weapons, and the purpose of distribution was already dismissed at trial.[207] It asserts that Renzaho was provided with sufficient detail to prepare his defence and that he failed to demonstrate otherwise in his appeal.[208]

103. The Appeals Chamber notes that paragraphs 16 and 33 of the Indictment allege, respectively, that:

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[203] Trial Judgement, paras. 766, 779. Renzaho was also found to be liable as a superior for these crimes. *See* Trial Judgement, para. 767. *See also infra,* Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[204] Trial Judgement, paras. 240-253, 764.
[205] Appellant's Brief, para. 24, *referring to* Trial Judgement, para. 247.
[206] Appellant's Brief, para. 23, *referring to* Indictment, paras. 12-16.
[207] Respondent's Brief, para. 35, *referring to* Decision on Preliminary Motion, paras. 29, 31, 32.
[208] Respondent's Brief, paras. 35-37.

> On or about 16 April 1994 at a meeting at the Kigali-*ville* prefectural headquarters, **Tharcisse RENZAHO** ordered *conseillers* to obtain firearms from the Ministry of Defence to be distributed at the *secteur* level. These weapons were used by *conseillers* and militia [...] to kill Tutsi, and by so distributing firearms **Tharcisse RENZAHO** planned, instigated, committed or otherwise aided and abetted genocide.
>
> On or about 16 April 1994 following a meeting at the Kigali-*ville* prefectural headquarters, *conseillers* under the effective control of **Tharcisse RENZAHO** obtained firearms from the Ministry of Defen[c]e to be distributed at the *secteur* level. These weapons were used to kill Tutsi and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

104. Thus, contrary to Renzaho's assertion, these paragraphs clearly plead the date of the meeting; the category of the participants who allegedly collected the weapons; the identity of the people to whom the weapons were ultimately delivered; the purpose of their distribution; and their use.[209]

105. Renzaho also claims that the Trial Chamber exceeded the scope of the Indictment by concluding that he knew that these weapons would further the killings of Tutsis and that their distribution showed the government's unequivocal support for the massacres of Tutsis.[210]

106. This contention is equally unfounded. Renzaho was convicted of genocide for aiding and abetting the killing of Tutsi civilians at roadblocks in Kigali. His genocidal intent was pleaded at the *chapeau* paragraph of Count 1 of the Indictment. His responsibility for aiding and abetting the killings of Tutsis was clearly pleaded at paragraph 16 of the Indictment. His knowledge of the use of the weapons, which is relevant to proving intent, and the finding that Renzaho's act of distributing weapons showed the government's position on the killings of Tutsis, which is relevant to proving his substantial contribution to these killings, were evidentiary matters which did not need to be pleaded in the Indictment.[211]

107. Finally, under his Sixth Ground of Appeal, Renzaho contends that the Trial Chamber expanded the charges pleaded in the Indictment by making findings concerning allegations not contained in the Indictment.[212] He specifically objects to the Trial Chamber's findings that: (1) "[i]n the circumstances, the only reasonable conclusion is that these weapons were intended to be a part of the war waged against a broad enemy, which included Tutsi civilians";[213] (2) Renzaho's instructions during the 16 April Meeting "were coupled with an additional order that they be provided to select members of the population";[214] and (3) the "distribution [of weapons] formed a

[209] *See* Appellant's Brief, para. 23, *referring to* Indictment, paras. 12-16.
[210] *See* Appellant's Brief, para. 24, *referring to* Trial Judgement, paras. 251-253.
[211] *Nahimana et al.* Appeal Judgement, para. 347.
[212] Appellant's Brief, paras. 249-260.
[213] Appellant's Brief, para. 252, *referring to* Trial Judgement, para. 249.
[214] Appellant's Brief, para. 253, *referring to* Trial Judgement, para. 251.

distinct part of a plan to mobilise and arm the civilians within their respective communities".[215] The Appeals Chamber considers that these conclusions fall well within the scope of the Indictment.

108. Renzaho therefore shows no error warranting appellate intervention.

I. Rapes

109. The Trial Chamber found Renzaho guilty of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(3) of the Statute based on his failure to prevent the rapes of Prosecution Witnesses AWO and AWN, as well as Witness AWN's sister.[216]

110. In particular, the Trial Chamber found that Witness AWO was repeatedly raped by *Interahamwe*, policemen, and soldiers after Renzaho stated that Tutsi women were "food for the militiamen",[217] and that Witness AWN and her sister were repeatedly raped by *Interahamwe* after Renzaho stated that it was "time to show Tutsi women that the Hutus are strong and can do whatever they wanted to do with them".[218]

111. Renzaho claims that the Indictment was defective, as it lacked detailed information on the dates, locations, and names of victims and perpetrators of rapes underlying the charges.[219] He contends that, in holding him responsible for the rapes committed in Rugenge sector, the Trial Chamber went beyond the charge of superior responsibility and convicted him on the basis of facts not pleaded in the Indictment, namely, that he incited or instigated the commission of rapes.[220] He argues that these facts support a theory of individual responsibility which the Prosecution chose not to pursue, likely because of lack of evidence.[221]

112. The Prosecution responds that the Indictment provided Renzaho with sufficient information alleging his responsibility as a superior for the rapes of Tutsi women in Kigali-Ville on various dates.[222] It submits that although Rugenge sector was not specifically mentioned, Renzaho admitted

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[215] Appellant's Brief, para. 254, *referring to* Trial Judgement, para. 253.
[216] Trial Judgement, paras. 779, 794, 811.
[217] Trial Judgement, para. 717. *See also* Trial Judgement, paras. 709, 712, 774.
[218] Trial Judgement, para. 718. *See also* Trial Judgement, para. 775. The Trial Chamber found that Witness AWN's Tutsi neighbour was also repeatedly raped (*see* Trial Judgement, para. 718), but does not appear to have convicted Renzaho for failing to prevent or punish this (*see* Trial Judgement, paras. 779, 794, 811).
[219] Appellant's Brief, para. 25, *referring to* Defence Closing Brief, paras. 934-936 *and* Indictment, paras. 41-43, 52-55, 61-66. *See also* Appellant's Brief, paras. 562-564; AT. 16 June 2010 pp. 12, 13.
[220] Appellant's Brief, paras. 560, 561, 565-567, 570. *See also* Appellant's Brief, paras. 26, 27, 668; AT. 16 June 2010 pp. 13, 58.
[221] Appellant's Brief, paras. 568, 569.
[222] Respondent's Brief, para. 42. *See also* AT. 16 June 2010 pp. 31, 32.

that it was one of Kigali-Ville's 19 sectors.[223] In addition, the Prosecution submits that the Indictment alleges that between 6 April and 17 July 1994, Tutsi women and girls were raped throughout Kigali-Ville by sufficiently identified subordinates who maintained Tutsi women at houses in central Kigali and compelled them to provide sexual pleasures in exchange for their safety.[224] It further submits that Renzaho received clear, consistent, and timely information detailing the factual basis underpinning the charges against him.[225] The Prosecution contends that Renzaho's arguments therefore lack merit and should be dismissed.[226]

113. In reply, Renzaho argues that the Indictment does not conform to the jurisprudence of the Tribunal, as it does not provide sufficient details on the identity of the victims and the circumstances of the crimes, including their time frame and location. He further contends that as the Prosecution Pre-Trial Brief was filed before the Indictment, it could not have cured the defects in the Indictment.[227]

114. The Appeals Chamber observes that the Trial Chamber did not specify which paragraphs of the Indictment underpin Renzaho's conviction for the rapes of Witness AWO, Witness AWN, and Witness AWN's sister. However, a review of the Trial Judgement suggests that paragraphs 43, 55, and 65 of the Indictment are pertinent.[228] These paragraphs provide:[229]

> *Interahamwe*, soldiers, and armed civilians under the effective control of **Tharcisse RENZAHO** maintained Tutsi women at houses in central Kigali, where they compelled the women [to] provide them with sexual pleasures in exchange for the women's safety on diverse unknown dates during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to prevent or to punish the perpetrators of these forced sexual acts.

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[223] Respondent's Brief, paras. 42, 44, *referring to The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, *Déclaration des admissions de la défense*, 21 October 2005, para. 4(a).
[224] Respondent's Brief, para. 42, *referring to* Indictment, paras. 41-43, 52-55, 65. *See also* AT. 16 June 2010 pp. 31-33.
[225] Respondent's Brief, paras. 22, 43, referring to summaries of anticipated testimony of Witnesses AWO and AWN annexed to the Prosecution Pre-Trial Brief. *See also* AT. 16 June 2010 pp. 32-34.
[226] Respondent's Brief, para. 45.
[227] Brief in Reply, para. 3.
[228] The Appeals Chamber notes that Renzaho was charged with two other allegations of sexual violence, both of which appear to have been considered and rejected by the Trial Chamber. Namely, paragraphs 41, 53, and 63 of the Indictment contain a general allegation that Renzaho was aware of rapes occurring in April, May, and June 1994 due to the receipt of reports about rapes from subordinates. The Trial Chamber declined to convict Renzaho on the basis of the receipt of reports, concluding that "the evidentiary situation about the reporting of rape is unclear" and finding that "the overall evidence of Renzaho's knowledge is insufficient to make a finding of criminal liability with respect to general evidence about rape and sexual violence in Kigali-Ville prefecture." Trial Judgement, paras. 734, 735. Further, paragraphs 42, 54, and 64 of the Indictment allege that subordinates of Renzaho compelled Tutsi women to provide them with sexual pleasures in exchange for safety at Sainte Famille in April, May, and June 1994. The Trial Chamber concluded that "it is not established that Renzaho was involved in this event, that those who committed the rapes were his subordinates, or that Renzaho had sufficient information to establish criminal liability for the crimes." Trial Judgement, para. 727.
[229] Paragraphs 43, 55, and 65 relate, respectively, to Count 1: genocide, Count IV: rape as a crime against humanity, and Count VI: rape as a violation of Article 3 common to the Geneva Conventions of 1949. These paragraphs are essentially identical, the only minor differences being typographical.

115. The Appeals Chamber notes that Renzaho was charged as a superior under Article 6(3) of the Statute with regard to the facts alleged in paragraphs 43, 55, and 65 of the Indictment.[230] When an accused is charged pursuant to Article 6(3) of the Statute, four categories of material facts must be pleaded in the Indictment:

> (i) that the accused is the superior of sufficiently identified subordinates over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible;
>
> (ii) the criminal acts committed by those others for whom the accused is alleged to be responsible;
>
> (iii) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and
>
> (iv) the conduct of the accused by which he may be found to have failed to take necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[231]

The Appeals Chamber considers that the Indictment adequately pleaded the material facts relating to three of these categories.

116. In relation to the first category, the Appeals Chamber recalls that a superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6(3) of the Statute.[232] The Appeals Chamber has held that the physical perpetrators of the crimes can be identified by category in relation to a particular crime site.[233] The Appeals Chamber considers that the perpetrators of the rapes of Witness AWO, Witness AWN, and Witness AWN's sister were adequately pleaded by category.[234]

117. In relation to the second category, the criminal act of rape was clearly pleaded.[235]

118. In relation to the fourth category, the Appeals Chamber recalls that it will be sufficient in many cases to plead that the accused did not take any necessary and reasonable measure to prevent

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[230] *See* Indictment, paras. 24, 52, 61.
[231] *Muvunyi* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323; *Ntagerura et al.* Appeal Judgement, para. 26, *referring to Naletilić and Martinović* Appeal Judgement, para. 67; *Blaškić* Appeal Judgement, para. 218.
[232] *Muvunyi* Appeal Judgement, para. 55, *referring to Blagojević and Jokić* Appeal Judgement, para. 287.
[233] *See, e.g., Simba* Appeal Judgement, paras. 71, 72.
[234] The Appeals Chamber recalls that Renzaho was convicted as a superior for the rapes of Witness AWN perpetrated by *Interahamwe*, and the rapes of Witness AWO perpetrated by *Interahamwe*, soldiers, and policemen. Paragraphs 41, 43, 53, 55, 63, and 65 of the Indictment plead Renzaho's superior responsibility for rapes perpetrated by *Interahamwe*, soldiers, armed civilians, and "other individuals" under his effective control. Paragraphs 2(A)(iii), 24, 52, and 59 plead, *inter alia*, policemen ("communal police") as among those "other individuals" who were Renzaho's subordinates and over whom he exercised effective control.
[235] The Appeals Chamber notes that paragraph 43 of the Indictment is listed under the title "sexual violence"; paragraph 55 of the Indictment relates to Count 4, rape as a crime against humanity; and paragraph 65 of the Indictment relates to Count 6, rape as a violation of Article 3 common to the Geneva Conventions and of Additional Article II.

or punish the commission of criminal acts.[236] The Appeals Chamber finds the Indictment sufficient in this respect.

119. However, in relation to the third category, the Appeals Chamber recalls that Renzaho was found by the Trial Chamber to have reason to know of the rapes due to his vocal encouragement of them.[237] The conduct by which Renzaho was found to have reason to know that the rapes were about to be committed was therefore not pleaded in the Indictment. The failure to include this material fact in the Indictment renders it defective. The Appeals Chamber will therefore consider whether this defect was cured by the provision of clear, consistent, and timely information by the Prosecution.

120. To support its contention that "post-indictment communications" provided Renzaho with clear, consistent, and timely notice, the Prosecution relies on its Pre-Trial Brief and two written statements disclosed in February 2005.[238] However, these documents were filed *before* the Second Amended Indictment came into force on 16 February 2006.[239]

121. Renzaho contends that the Prosecution Pre-Trial Brief cannot cure a defect in the Indictment, relying on the *Karera* Appeal Judgement.[240] The Appeals Chamber recalls that in the *Karera* case, the pre-trial brief, which was filed seven days before the amended indictment, was found to be incapable of curing a particular defect therein relating to a murder charge because, among other things, it was unclear which version of the indictment the pre-trial brief was referring to,[241] creating further confusion.[242]

122. In the present case, the Appeals Chamber notes that the proposed Second Amended Indictment was attached to the Motion to Amend filed on 19 October 2005.[243] On 31 October 2005, the Prosecution filed its Pre-Trial Brief, specifying that "references to the 'Indictment' herein are to the proposed Second Amended Indictment".[244] Further, the Prosecution Pre-Trial Brief and the

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[236] *Nahimana et al.* Appeal Judgement, para. 323.
[237] *See* Trial Judgement, paras. 709, 717, 718, 774, 775.
[238] Respondent's Brief, paras. 42, 43, *referring to The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Interoffice Memorandum, Subject: "Transmission of the unredacted statements for witnesses AWM-1, AWN-1 and AWO-1 as additional support of Amended Indictment in the Renzaho Case", 3 February 2005 (confidential) ("3 February 2005 Disclosure").
[239] "Second Amended Indictment", interchangeable with "Indictment".
[240] Appellant's Brief, para. 564.
[241] *Karera* Appeal Judgement, para. 368, fn. 838.
[242] *Karera* Appeal Judgement, paras. 367-369.
[243] *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, The Prosecutor's Application for Leave to Amend the Indictment pursuant to Rule 50(A) of the Rules of Procedure and Evidence, 19 October 2005 ("Motion to Amend").
[244] Prosecution Pre-Trial Brief, p. ii ("Preliminary Note"). *See also* Preliminary Note where the Prosecution indicated that "[g]iven that no decision has yet been made as to whether leave to amend will be granted, but also in view of the fact that no trial date has yet been set, the Prosecutor reserves the right to file an Amended Pre-Trial Brief and/or to amend the list of witnesses and/or the list of exhibits filed herein."

attached summaries of anticipated witness testimony were clear about which paragraphs of the proposed Second Amended Indictment they referred to.[245] Once the Trial Chamber accepted the Second Amended Indictment on 16 February 2006, nearly one year before the commencement of Renzaho's trial,[246] its link to the Prosecution Pre-Trial Brief was consolidated. Since there were no subsequent amendments to the Indictment or the Prosecution Pre-Trial Brief, the Appeals Chamber considers that the Prosecution Pre-Trial Brief in this case is capable of curing defects in the Indictment.

123. Turning to whether the Prosecution's communications in fact cured the defect in the Indictment, the Appeals Chamber notes that the Prosecution Pre-Trial Brief emphasized that the receipt of reports of rapes from Renzaho's subordinates constituted his reason to know about the rapes.[247] Although the Prosecution Pre-Trial Brief also noted Renzaho's encouragement of rapes, it did so in respect of only two of the relevant Counts.[248] The Appeals Chamber further considers that this new element of the Prosecution's case was not highlighted in a manner sufficient to give clear notice to Renzaho that his encouragement now formed the basis for his criminal liability as a superior.[249] The Prosecution Pre-Trial Brief notably failed to clarify that the Prosecution was relying on Renzaho's acts of encouragement to infer his *mens rea*. Absent any indication that Renzaho's encouragement was the basis for his reason to know about particular rapes, it is difficult to conclude that the Defence would have understood that this material fact was the key element of the Prosecution's case.

124. Moreover, the Prosecution Pre-Trial Brief did not provide consistent notice that Renzaho's encouragement of rapes constituted his reason to know, as conceded by the Prosecution on appeal.[250] While the summaries of Witnesses AWO's and AWN's anticipated testimony annexed to

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[245] As indicated in the Preliminary Note, "'Indictment' paragraph numbers quoted refer [to the proposed Second Amended Indictment], but are followed, where applicable, by the paragraph number in the existing Amended Indictment in square brackets to assist both the Accused and the Trial Chamber."

[246] The trial in this case started on 8 January 2007. Trial Judgement, Annex A: Procedural History, para. 837.

[247] *See* Prosecution Pre-Trial Brief, paras. 114 ("*It is the Prosecution's case* that by virtue of the reports made to him by his *Bourgmestres* and *Conseillers*, the Accused knew or had reason to know that these acts of sexual violence were occurring.")(emphasis added), 141 ("The Prosecution asserts that the Accused knew or had reason to know that these acts were being carried out not only because these houses were notorious, but also because their existence was reported to him by his *Conseillers*."), 160 ("The Prosecution asserts that the Accused knew or had reason to know that women were being maintained in houses in Kigali-ville for the purpose of being raped and otherwise sexually abused because these houses were notorious, and also because their existence was reported to him by his *Conseillers*.").

[248] In relation to the charge of rape as a crime against humanity, the Prosecution stated "[t]he Accused actively encouraged the rape of Tutsi women, stating that they were 'food for the soldiers' or words to that effect." Prosecution Pre-Trial Brief, para. 139. In relation to the charge of rape as a violation of Article 3 common to the Geneva Conventions, the Prosecution stated "[t]he Accused actively encouraged the rape of Tutsi women, stating that they were 'food for the soldiers' or words to that effect." Prosecution Pre-Trial Brief, para. 159.

[249] The Appeals Chamber also notes that, at the Appeal Hearing, the Prosecution took the position that the Indictment did plead Renzaho's reason to know about the rapes, namely, that Renzaho's subordinates regularly informed him of the rapes of Tutsi women. *See* AT. 16 June 2010 pp. 31, 33.

[250] *See* AT. 16 June 2010 pp. 34, 35.

the Prosecution Pre-Trial Brief describe the circumstances of their rapes and those of Witness AWN's sister in detail, Witness AWN's summary attributed Renzaho's statement encouraging rapes to another individual.[251] It was only during her testimony that Witness AWN clarified that it was Renzaho who made the statement.[252] The Prosecution Pre-Trial Brief and the summary of Witness AWN's anticipated testimony therefore did not provide the "unambiguous information" required to cure a defect in the Indictment.[253] While the summary of Witness AWO's anticipated evidence did allege that Renzaho stated that Tutsi women were food for the soldiers,[254] given the ambiguity contained in the Prosecution Pre-Trial Brief concerning the import of Renzaho's encouragement, the Appeals Chamber finds this one witness statement insufficient to cure the defect in the Indictment.[255]

125. Consequently, Renzaho received neither clear nor consistent notice of the conduct by which he had reason to know of the rapes. The Appeals Chamber recalls that a defect in the Indictment, not cured by timely, clear, and consistent notice, constitutes a prejudice to the accused.[256] The defect may only be deemed harmless through a demonstration that the accused's ability to prepare his or her defence was not materially impaired.[257] When an appellant raises a defect in the indictment for the first time on appeal, the appellant bears the burden of showing that his or her ability to prepare his or her defence was materially impaired.[258] When, however, an accused has previously raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecution to prove on appeal that the ability of the accused to prepare his or her defence was not materially impaired. The Appeals Chamber therefore turns to consider this issue.

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[251] Prosecution Pre-Trial Brief, pp. 63, 64 ("Munanira said words to the effect that 'this is the time to show the Tutsi women that we can make them marry Hutu men against their will.'").

[252] Witness AWN, T. 5 February 2007 p. 37:

> Q. Was anything else said to you while you were at the *secteur* office?
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> A. At that point, I saw a vehicle arrive, and there were soldiers and the *préfet* of Kigali ville in that vehicle. The *préfet* was called Tharcisse Renzaho. So I saw this vehicle arrive with the *préfet* and those soldiers. I thought he came there to see what was happening because there were a lot of people at the *secteur* office. So he asked what was happening, and I explained to him that I refused to marry somebody. And he said that this is the time to show Tutsi women, and that the Hutus are strong and can do whatever they wanted to do with them. I don't know what he wanted to say. I don't know if he meant that they could rape them. But that is what I heard him say.

[253] *Cf. Kalimanzira* Appeal Judgement, para. 140.

[254] Prosecution Pre-Trial Brief, pp. 64, 65.

[255] *Ntakirutimana* Appeal Judgement, para. 27 ("As has been previously noted, 'mere service of witness statements by the [P]rosecution pursuant to the disclosure requirements' of the Rules does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial."). *See also Muhimana* Appeal Judgement, para. 224.

[256] *Ntagerura et al.* Appeal Judgement, para. 30.

[257] *Ntagerura et al.* Appeal Judgement, para. 30.

[258] *Nahimana et al.* Appeal Judgement, para. 327.

126. In the pre-trial stage, Renzaho challenged the Indictment on the basis of vagueness, a challenge that was dismissed by the Trial Chamber.[259] Although Renzaho did not object to Witnesses AWO's and AWN's evidence that he encouraged rapes upon the filing of the Prosecution Pre-Trial Brief or at the time of their testimony, the Appeals Chamber considers that Renzaho's confusion regarding the import of this evidence, discussed below, reasonably explains his failure to object. Further, in his Closing Brief, Renzaho renewed his challenge to the Indictment on the basis that it failed to plead the material facts necessary to establish his superior responsibility.[260] Renzaho also contended that the charges alleging his responsibility for sexual violence were impermissibly vague, and noted that the evidence that he made encouraging statements about rapes was not included in the Indictment.[261] The Appeals Chamber therefore finds that Renzaho raised an adequate objection to the failure to properly plead his reason to know.[262] Consequently, the Prosecution has the burden of establishing that Renzaho's defence was not materially impaired by the defect in the Indictment.[263]

127. The Appeals Chamber finds that the Prosecution has not met its burden. It notes that, when Witness AWN testified that it was Renzaho who encouraged rapes, rather than another individual, the Defence did not object to the introduction of the new material fact. At the Appeal Hearing, the Defence indicated that it failed to do so because it "did not make the link at that time"[264] and suffered prejudice from the introduction of this new material fact because it did not understand that this evidence was relevant to the charge under Article 6(3) of the Statute.[265] The strategy adopted at trial by the Defence and in particular the cross-examination of Witnesses AWO and AWN convinces the Appeals Chamber that Renzaho understood that he was to defend himself against

[259] *See* Preliminary Motion, paras. 38, 58-123, 158, 167, 173; Decision on Preliminary Motion. Renzaho requested certification to appeal the Decision on Preliminary Motion, which was dismissed by the Trial Chamber. *See* Decision on Certification of Decision on Preliminary Motion.
[260] Defence Closing Brief, paras. 86-144.
[261] Defence Closing Brief, paras. 179, 188, 194, 934, 936, 1136.
[262] *Cf. Muhimana* Appeal Judgement, para. 219; *Gacumbitsi* Appeal Judgement, para. 54.
[263] *See supra*, Chapter IV (Alleged Lack of Notice), Section A (Applicable Law), para. 56; *Niyitegeka* Appeal Judgement, para. 200.
[264] AT. 16 June 2010 p. 57 ("I think we [...] became aware of that [inconsistency] during the testimony of the witness. At that stage as well things proceeded very fast during testimony in-chief. We did not link this to what was said in the pre-trial brief and which was attributed to Mr. Munanira. We did not make the link at that time.").
[265] AT. 16 June 2010 p. 58 ("When the witness appeared before the Court, indeed, we immediately had the feeling that those utterances were incriminating. [...] But what we did not understand – and this is where we suffered prejudice – is that on the basis of this statement, the Prosecutor wanted to attribute responsibility to Mr. Renzaho on the basis of [Article] 6(3). [...] And, indeed, the Chamber pointed out that this fact failed [*sic*] under 6(1) and not 6(3). [...] We did not understand that that was the objective pursued. We cross-examined the witness with the limited information we had only as regards the materiality of the events.").

knowledge of rapes through receipt of reports as pleaded in the Indictment.[266] He was therefore prejudiced by the Prosecution's failure to cure the defect in the Indictment through adequate notice.

128. The Appeals Chamber also notes with concern that the relevant paragraphs of the Indictment are extremely broad, and fail to specify the dates and locations of the meetings at which Renzaho encouraged the rapes; the dates and locations of the rapes; and the names of the victims. The provision of these material facts only in post-indictment documents impacts upon the ability of the accused to know the case he or she has to meet and to prepare his or her defence,[267] and is particularly troubling when the Prosecution was in a position to include them in the Indictment.[268]

129. The Appeals Chamber therefore finds that Renzaho's reason to know of the rapes of Witness AWO, Witness AWN, and Witness AWN's sister was not pleaded in the Indictment, nor communicated by the Prosecution in a manner sufficient to give notice to Renzaho. Further, Renzaho was materially prejudiced by this defect. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in convicting Renzaho and reverses his convictions for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(3) of the Statute based on these rapes.

J. Murder as a Serious Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II

130. Under his Tenth and Twelfth Grounds of Appeal, Renzaho contests his conviction for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killing of 17 Tutsi men at Sainte Famille on 17 June 1994.[269] Because these Grounds of Appeal relate in substance to issues of alleged lack of notice, the Appeals Chamber considers it appropriate to address these allegations here.[270]

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[266] The Appeals Chamber recalls that this basis for Renzaho's knowledge of rapes committed by subordinates was pleaded in paragraphs 41, 53, and 63 of the Indictment.

[267] *Cf. Bagosora et al.* Interlocutory Appeal on Questions of Law Decision, para. 26; *The Prosecution v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para. 22; *Ntagerura et al.* Appeal Judgement, para. 114.

[268] The Appeals Chamber notes that the many of these details were included in the Prosecution Pre-Trial Brief, filed just 12 days after the Indictment. Although, at the time, the Prosecution assured the Trial Chamber that it had included as much detail as it was able in the Indictment, it concedes on appeal that it was in fact possible to include this information in the Indictment. *See The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, The Prosecutor's Response to the Accused's '*Requ*[*ê*]*te en exception pr*[*é*]*judicielle pour vices de forme de l'acte d'accusation*', 10 April 2006 (confidential), para. 12; AT. 16 June 2010 p. 31 ("Your Honours, it was actually possible for us to include in the indictment the specific evidence that the two witnesses would testify to [and] [...] in view of the fact that we already had this information before we gave our second amended indictment, it would have been desirable to actually include these statements in the indictment. However, [...] the Appellant was not prejudiced by the lack [...] of these statements in the indictment.").

[269] Appellant's Brief, paras. 504-509, 671-674.

[270] *See* Appellant's Brief, paras. 504-509, 671-674; Brief in Reply, paras. 172-177.

131. The Appeals Chamber recalls that Renzaho was convicted of genocide under Article 6(1) of the Statute, and found liable as a superior under Article 6(3) of the Statute, for the killings committed at Sainte Famille on 17 June 1994.[271] The Trial Chamber also found that at least 17 Tutsi men were among the hundreds of refugees killed at Sainte Famille.[272] It found that these intentional killings constituted murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(a) of the Statute,[273] and accordingly found Renzaho guilty thereof under Article 6(1) of the Statute.[274] The Trial Chamber also found Renzaho liable as a superior for these murders, and indicated that it would take this into account in sentencing.[275]

132. Renzaho claims that the Trial Chamber erred in relying on evidence of the killings of hundreds of Tutsis during the attack at Sainte Famille to find that he was also responsible for the murder of 17 Tutsi men. Renzaho contends that these specific murders were pleaded as separate acts to those pleaded under the Count of genocide.[276] In particular, he argues that paragraph 58 of the Indictment charged him with murder for ordering the *removal* of 17 Tutsi men from Sainte Famille so that they could be killed, and not for their killing within the context of the attack at Sainte Famille.[277] Renzaho submits that no evidence was presented at trial in respect of the *taking* of 17 Tutsi men from Sainte Famille by *Interahamwe* before they were murdered.[278] He contends that in convicting him for these killings, the Trial Chamber distorted and went beyond the scope of the allegations in the Indictment.[279]

133. The Prosecution responds that these arguments were not raised in Renzaho's Notice of Appeal and should be dismissed on that basis alone.[280] It further contends that Renzaho's claims are unsubstantiated, misconstrue the Prosecution's case as well as the legal requirements for proving murder under Article 4 of the Statute, and show no error.[281] The Prosecution submits that the threshold requirements for proving war crimes and the specific requirements for proving murder were met, and that the inference that at least 17 Tutsi men were among those killed at Sainte Famille on 17 June 1994 was reasonable on the evidence.[282] It argues that the Trial Chamber did not

[271] Trial Judgement, para. 779.
[272] Trial Judgement, paras. 663, 771.
[273] Trial Judgement, para. 805.
[274] Trial Judgement, para. 807.
[275] Trial Judgement, para. 807. *See also* Trial Judgement, para. 823.
[276] Appellant's Brief, paras. 504-507; Brief in Reply, paras. 174-176.
[277] Appellant's Brief, para. 507; Brief in Reply, para. 172.
[278] Appellant's Brief, paras. 504, 505; Brief in Reply, para. 173.
[279] Appellant's Brief, paras. 506, 508, 509; Brief in Reply, para. 174.
[280] Respondent's Brief, para. 216.
[281] Respondent's Brief, paras. 222, 223.
[282] Respondent's Brief, paras. 224-226.

depart from the charge pleaded in the Indictment and properly considered all the relevant evidence.[283]

134. The Appeals Chamber observes that the Prosecution is correct that Renzaho did not raise this issue under his Tenth Ground of Appeal in his Notice of Appeal, and that Renzaho fails to address the Prosecution's submission that his arguments in support thereof should therefore be dismissed in his Brief in Reply. The Appeals Chamber notes, however, that under his Twelfth Ground of Appeal in his Notice of Appeal, Renzaho indicated that he intended to challenge the Trial Chamber's legal findings on murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.[284] In his Appellant's Brief, Renzaho substantiated his challenge to his murder conviction for the killing of the 17 Tutsi men at Sainte Famille under his Tenth Ground of Appeal,[285] and reiterated his arguments under his Twelfth Ground of Appeal.[286] The Appeals Chamber therefore finds that the issue was raised in his Notice of Appeal and will accordingly consider Renzaho's arguments in support thereof.

135. Paragraph 58 of the Indictment pleads:

> Pursuant to the authority vested in **Tharcisse RENZAHO** as described in paragraph 2, and in retaliation for the actions of the RPF described in paragraph 57, **Tharcisse RENZAHO** on or about 17 June 1994 ordered, instigated or otherwise aided and abetted soldiers of the FAR and *Interahamwe* to take and kill at least seventeen non-combatant Tutsi men from Ste. Famille who had not been rescued by the RPF.[287]

136. The Appeals Chamber is not persuaded by Renzaho's interpretation of this paragraph of the Indictment, and finds his focus on the taking, as opposed to the killing, of the men to be unconvincing. In particular, the Appeals Chamber considers that, upon reading the Indictment as a whole, it is unreasonable to interpret the events pleaded at paragraph 58 as occurring outside of the context of the attack and killings at Sainte Famille on 17 June 1994 alleged at paragraphs 23 and 40 of the Indictment. In any event, any ambiguity or misunderstanding in this respect was clarified in the Prosecution Pre-Trial Brief, which specified that at least 17 non-combatant Tutsi men were killed at Sainte Famille on 17 June 1994 "in retaliation for the [RPF's] 'rescue' of the refugees from Saint Paul."[288]

137. The Appeals Chamber therefore finds no error with the Trial Chamber's findings in this regard and accordingly dismisses Renzaho's arguments.

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[283] Respondent's Brief, para. 227.
[284] Notice of Appeal, para. 132, *referring to* Trial Judgement, paras. 795-811.
[285] Appellant's Brief, paras. 504-509.
[286] Appellant's Brief, paras. 671-674.
[287] Paragraph 60 of the Indictment pleads the same event, but pursuant to Article 6(3) of the Statute.
[288] *See* Prosecution Pre-Trial Brief, para. 151.

K. Conclusion

138. The Appeals Chamber grants Renzaho's First Ground of Appeal in part, reversing his convictions for the rapes of Witnesses AWO and AWN, and Witness AWN's sister. The Appeals Chamber will consider the impact of this reversal, if any, on Renzaho's sentence in the appropriate section of this Judgement.[289]

[289] *See infra*, Section XIV (Sentencing).

V. ALLEGED VIOLATIONS OF THE RIGHT TO A FAIR TRIAL (GROUND OF APPEAL 3)

139. Renzaho claims that his trial was unfair. He submits that the Trial Chamber: (1) erred in the application of Rule 68 of the Rules;[290] (2) erred in the application of Rule 92*bis*(A) of the Rules;[291] (3) violated his right to equality of arms;[292] (4) violated his right to be tried in a reasonable time;[293] and (5) erred in failing to consider the cumulative impact of these errors on the fairness of his trial.[294]

140. The Appeals Chamber will examine Renzaho's allegations in turn. Before doing so, the Appeals Chamber recalls that where a party alleges on appeal that the right to a fair trial has been infringed, it must prove that: (1) provisions of the Statute and/or the Rules were violated; and (2) the violation caused prejudice or "unfairness" such as to amount to an error of law invalidating the trial judgement.[295]

A. Violation of Rule 68 of the Rules

141. At trial, Renzaho argued that the Prosecution violated its obligation pursuant to Rule 68(A) of the Rules to disclose exculpatory evidence throughout the trial.[296] The Trial Chamber found that the Prosecution failed to provide exculpatory material to the Defence in four instances, but determined that Renzaho did not suffer any prejudice as a result.[297]

142. On appeal, Renzaho submits that the Trial Chamber erred in its analysis of prejudice[298] in relation to: (1) the *pro justicia* statements of Astérie Nikuze[299] ("Nikuze *Pro Justicia* Statement") and Dieudonné Nkulikiyinka ("Nkulikiyinka *Pro Justicia* Statement") (collectively, "*Pro Justicia* Statements");[300] (2) evidence showing that General Gratien Kabiligi was not in Kigali at the

[290] Notice of Appeal, paras. 24-26; Appellant's Brief, paras. 60-68; Brief in Reply, paras. 17-23.
[291] Notice of Appeal, paras. 27, 28; Brief in Reply, paras. 17-25.
[292] Notice of Appeal, paras. 29-38; Appellant's Brief, paras. 69-114.
[293] Notice of Appeal, paras. 39, 40.
[294] Notice of Appeal, paras. 22, 23.
[295] *Krajišnik* Appeal Judgement, para. 28; *Kordić and Čerkez* Appeal Judgement, para. 119.
[296] Trial Judgement, para. 36; Defence Closing Brief, paras. 234-249.
[297] Trial Judgement, paras. 40-51. The Trial Chamber held that the Prosecution should have disclosed to the Defence: (1) the transcripts of Witness DAS's testimony in the *Bagosora et al.* proceedings and a copy of Théoneste Bagosora's passport; (2) the *pro justicia* statements of Astérie Nikuze and Dieudonné Nkulikiyinka; (3) two letters between Egyptian authorities and the Office of the Prosecutor in 2002; and (4) the indictment against Father Munyeshyaka and Witness AZB's statement.
[298] Notice of Appeal, para. 24; Appellant's Brief, paras. 60, 61; Brief in Reply, para. 19.
[299] Renzaho refers to Astérie "Nikoze" and "Nikuze". *See, e.g.*, Notice of Appeal, para. 25; Appellant's Brief, para. 62. The Appeals Chamber will adopt the spelling used by the Trial Chamber, that is, "Nikuze".
[300] Notice of Appeal, para. 25; Appellant's Brief, paras. 62-65; Brief in Reply, para. 21. Renzaho refers to Dieudonné "Nkulikiyinka", "Nkulikyinka", and "Nkurikiyinka". *See, e.g.*, Notice of Appeal, para. 25; Appellant's Brief, para. 62;

beginning of April 1994;[301] and (3) the indictment against Father Munyeshyaka and Witness AZB's statement.[302]

1. Applicable Law

143. Under Rule 68(A) of the Rules, the Prosecution is obliged to disclose, in good faith, exculpatory and other relevant material to an accused.[303] Decisions by Trial Chambers on disclosure are discretionary ones to which the Appeals Chamber must accord deference.[304] In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a discernible error resulting in prejudice to that party. The Appeals Chamber will only overturn a Trial Chamber's discretionary decision where it is found to be: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[305]

2. *Pro Justicia* Statements

144. At trial, Prosecution Witness ALG testified, *inter alia*, that Renzaho was present at an attack at Saint Paul on 14 June 1994. Witness ALG was of the opinion that Renzaho facilitated the killing of 40 refugees by *Interahamwe* there.[306] The Trial Chamber therefore found that the *Pro Justicia* Statements to Rwandan authorities from Astérie Nikuze and Dieudonné Nkulikiyinka concerning

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Brief in Reply, para. 21. The Appeals Chamber will adopt the spelling used by the Trial Chamber, that is, "Nkulikiyinka".

[301] Notice of Appeal, para. 26.

[302] Notice of Appeal, para. 26; Appellant's Brief, paras. 66-68; Brief in Reply, para. 22. The Appeals Chamber notes that Renzaho also raises the non-disclosure of Witness PO3's testimony from the *Bagosora et al.* proceedings. As Renzaho raised this contention for the first time in his Brief in Reply, and fails to explain his arguments in this regard, the Appeals Chamber declines to consider it. *See* Brief in Reply, para. 23.

[303] *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion", 14 May 2008 ("*Karemera et al.* Decision on Tenth Rule 68 Motion"), paras. 6, 12. *See also The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Disclosure of Defence Witness Statements in the Possession of the Prosecution Pursuant to Rule 68(A), 8 March 2006, para. 3; *Krstić* Appeal Judgement, para. 178.

[304] *Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-AR73, Decision on Kanyarukiga's Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents, 19 February 2010 ("*Kanyarukiga* Decision on Interlocutory Appeal"), para. 9; *Karemera et al.* Decision on Tenth Rule 68 Motion, para. 6; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008 ("*Karemera et al.* Decision on Appeal Concerning Disclosure Obligations"), para. 7.

[305] *Kanyarukiga* Decision on Interlocutory Appeal, para. 9; *Karemera et al.* Decision Tenth Rule 68 Motion, para. 6; *Karemera et al.* Decision on Appeal Concerning Disclosure Obligations, para. 7; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial, 5 October 2007, para. 7; *The Prosecutor v. Élie Ndayambaje et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007, para. 10.

[306] Trial Judgement, paras. 516-519; Witness ALG, T. 10 January 2007 pp. 69, 70 [closed session]; Witness ALG, T. 15 January 2007 pp. 24, 25 [closed session].

the attack at Saint Paul were relevant to Renzaho's defence and should have been disclosed by the Prosecution pursuant to Rule 68(A) of the Rules.[307]

145. In particular, the Trial Chamber considered that the Nikuze *Pro Justicia* Statement suggested that Witness ALG may have been involved in prompting an attack at Saint Paul.[308] The Trial Chamber further found that the Nkulikiyinka *Pro Justicia* Statement indicated that Witness ALG instructed *Interahamwe* to exterminate members of the population and also authorized the removal of several refugees from Saint Paul who were then murdered.[309] It also noted that the Nkulikiyinka *Pro Justicia* Statement suggests that Renzaho offered refuge and protection to persons at the prefecture office.[310]

146. The Trial Chamber found that the Nkulikiyinka *Pro Justicia* Statement was disclosed to the Defence on 30 October 2006, prior to the commencement of trial and Witness ALG's testimony in January 2007.[311] Further, the Trial Chamber noted that the Defence had summaries of statements from Astérie Nikuze and Dieudonné Nkulikiyinka which formed part of Witness ALG's Rwandan judicial records, and which the Defence used to cross-examine Witness ALG.[312] These summaries were entered into evidence as Defence Exhibit 4. The Trial Chamber held that there was no material difference between the *Pro Justicia* Statements and the substance of Defence Exhibit 4 in relation to Renzaho's ability to mount his defence against allegations of his involvement in the attack at Saint Paul.[313] The Trial Chamber further found that the information in the *Pro Justicia* Statements was hearsay and cumulative of other evidence on the record.[314] The Trial Chamber determined that "[g]iven the findings relating to the attack on Saint Paul pastoral centre [for which Renzaho was not held criminally responsible], the record fails to demonstrate that the Accused suffered actual prejudice."[315]

147. Renzaho submits that the Trial Chamber erred in finding that he did not suffer prejudice.[316] He argues that the *Pro Justicia* Statements were particularly important to his defence due to the nature of Astérie Nikuze's and Dieudonné Nkulikiyinka's positions and the fact that he was unable to call them to testify. Renzaho maintains that Astérie Nikuze, who once served as his personal

[307] Trial Judgement, para. 43.
[308] Trial Judgement, para. 42.
[309] Trial Judgement, para. 42.
[310] Trial Judgement, para. 42.
[311] Trial Judgement, para. 43.
[312] Trial Judgement, para. 43; Witness ALG, T. 15 January 2007 pp. 26-31 [closed session].
[313] Trial Judgement, para. 43.
[314] Trial Judgement, para. 43.
[315] Trial Judgement, para. 43.
[316] Appellant's Brief, paras. 61, 62.

secretary, has since passed away, and Dieudonné Nkulikiyinka, who was an employee of the Kigali-Ville prefecture office, has refused to testify due to intimidation.[317]

148. Renzaho further argues that the Trial Chamber erred in finding that the Nkulikiyinka *Pro Justicia* Statement was disclosed in October 2006. He claims that both statements were in fact disclosed on 16 January 2007, the day after the Defence's cross-examination of Witness ALG.[318] He also submits that the Trial Chamber erred in concluding that the *Pro Justicia* Statements only concerned the attack at Saint Paul on 14 June 1994,[319] asserting that they are also relevant to his control over *Bourgmestre* Bizimana, who in turn had authority over the *conseillers* of Nyarugenge commune.[320]

149. The Prosecution responds that Renzaho has failed to show the impact of any alleged error on his convictions or sentence and that therefore his arguments should be dismissed.[321]

150. A review of the Nikuze *Pro Justicia* Statement[322] demonstrates that it concerns attacks that took place at Saint Paul and *Bourgmestre* Bizimana's role in those attacks.[323] The Appeals Chamber accepts Renzaho's argument that it is therefore relevant to *Bourgmestre* Bizimana's control over assailants at Saint Paul.[324]

151. However, this is insufficient to demonstrate that Renzaho was prejudiced by the late disclosure of the Nikuze *Pro Justicia* Statement. Renzaho's argument is vague. To the extent that he asserts that the Nikuze *Pro Justicia* Statement raises doubt concerning Renzaho's effective control over *Bourgmestre* Bizimana, the Appeals Chamber notes that this statement neither mentions Renzaho, nor discusses *Bourgmestre* Bizimana's relationship to him. Moreover, the Appeals Chamber notes that the Trial Chamber found that it was not proven that *Bourgmestre* Bizimana committed crimes or, in turn, that Renzaho was criminally responsible as a superior for his conduct.[325] To the extent that Renzaho suggests that the Nikuze *Pro Justicia* Statement raises

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[317] Notice of Appeal, para. 30; Appellant's Brief, paras. 98, 100, 102. Renzaho's allegation that Nkulikiyinka was subject to interference is discussed below. *See infra*, Section C (Violation of the Right to Equality of Arms).
[318] Appellant's Brief, para. 63; Brief in Reply, paras. 20, 21.
[319] Appellant's Brief, paras. 64, 65; Brief in Reply, para. 20.
[320] Notice of Appeal, para. 25; Appellant's Brief, paras. 64, 65, 102; Brief in Reply, para. 20. In reply, Renzaho further asserts that the Nikuze *Pro Justicia* Statement is relevant to Renzaho's authority over the administrative structure of Kigali-Ville prefecture. *See* Brief in Reply, para. 20.
[321] Respondent's Brief, paras. 65-71.
[322] The Parties agree that the Nikuze *Pro Justicia* Statement was disclosed to the Defence on 16 January 2007. *See* Appellant's Brief, para. 63; Prosecutor's Submissions Regarding Date of Disclosure of Documents, 4 May 2010 ("Prosecution Disclosure Submissions"), para. 3, Annex 2.
[323] *See* Prosecution Disclosure Submissions, Annex 1; *M[é]moire en communication de pi[è]ces ordonn[ées] par la Chambre*, 4 May 2010 ("Defence Disclosure Submissions"), Index Nos. 995/A, 994/A.
[324] The Appeals Chamber notes in particular that the Nikuze *Pro Justicia* Statement states that the killers could not have removed people from Saint Paul without Bizimana's knowledge. *See* Prosecution Disclosure Submissions, Annex 1; Defence Disclosure Submissions, Index No. 994/A.
[325] *See* Trial Judgement, paras. 577-579, 584.

doubt regarding Renzaho's control over *conseillers*, other administrative officials, or other alleged subordinates,[326] the Appeals Chamber notes that the statement does not touch upon these issues. The Appeals Chamber therefore finds that Renzaho has not demonstrated that the Trial Chamber committed a discernible error by concluding that the late disclosure of the Nikuze *Pro Justicia* Statement did not prejudice him.

152. With respect to the Nkulikiyinka *Pro Justicia* Statement, the Appeals Chamber notes that the Prosecution has provided documentation which demonstrates that it was disclosed to Renzaho on 30 October 2006, prior to the commencement of trial.[327] Absent any demonstration from Renzaho to the contrary, the Appeals Chamber finds that Renzaho has failed to substantiate his claim that the Trial Chamber erred in finding that the statement was disclosed on this date.[328]

153. The Nkulikiyinka *Pro Justicia* Statement[329] states that Renzaho offered protection to Dieudonné Nkulikiyinka at the Kigali-Ville prefecture office.[330] It also states that *Bourgmestre* Bizimana organized *Interahamwe* and told them where to kill people. It suggests that *Bourgmestre* Bizimana gave false information to Renzaho concerning where *Interahamwe* were exterminating people.[331] Further, it states that *Bourgmestre* Bizimana took advantage of Renzaho's absence to facilitate the abduction and killing of individuals at Saint Paul.[332] Consequently, the Appeals Chamber accepts that the Nkulikiyinka *Pro Justicia* Statement is relevant not only to the events at Saint Paul, but also to Renzaho's effective control over *Bourgmestre* Bizimana and *Interahamwe*.

154. However, the Appeals Chamber notes that Renzaho not only had a copy of the Nkulikiyinka *Pro Justicia* Statement prior to trial, but was also provided with Defence Exhibit 4 on 15 December 2006.[333] The Appeals Chamber finds that the Trial Chamber reasonably concluded that there was no material difference in the substance of Defence Exhibit 4 and the Nkulikiyinka *Pro Justicia* Statement in relation to Renzaho's ability to mount a defence.[334] Notably, Defence Exhibit 4 contains the allegation that *Bourgmestre* Bizimana misled Renzaho about the activities of *Interahamwe* and arranged for the removal of young men from Saint Paul in Renzaho's absence.[335]

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[326] *See* Brief in Reply, para. 20.
[327] *See* Prosecution Disclosure Submissions, Annex 4.
[328] The Appeals Chamber notes further that, in reply, Renzaho appears to concede that he received the Nkulikiyinka *Pro Justicia* Statement on 30 October 2006, but states that he did not find it. *See* Brief in Reply, para. 21.
[329] For its analysis, the Appeals Chamber has relied on the certified translation of the Nkulikiyinka *Pro Justicia* Statement, served by the Registry on 31 May 2010 ("Certified Translation of Nkulikiyinka *Pro Justicia* Statement").
[330] Certified Translation of Nkulikiyinka *Pro Justicia* Statement, p. 2.
[331] Certified Translation of Nkulikiyinka *Pro Justicia* Statement, p. 2.
[332] Certified Translation of Nkulikiyinka *Pro Justicia* Statement, p. 2.
[333] *See* Prosecution Disclosure Submissions, Annex 5.
[334] *See* Trial Judgement, para. 43.
[335] Defence Exhibit 4, p. 2.

As Renzaho cross-examined Witness ALG with Defence Exhibit 4,[336] and the exculpatory allegations contained therein were before the Trial Chamber,[337] the Appeals Chamber finds that Renzaho has not demonstrated that the Trial Chamber committed a discernible error by concluding that the late disclosure of the Nkulikiyinka *Pro Justicia* Statement did not prejudice him.

155. This argument is therefore dismissed.

3. Evidence in Relation to General Kabiligi

156. At trial, Prosecution Witness AFB gave evidence, *inter alia*, in relation to the Prosecution's allegation that Renzaho distributed weapons to members of *Interahamwe* and *Impuzamugambi*.[338] Witness AFB testified that a person identified to him as General Kabiligi was in Renzaho's presence while Renzaho distributed weapons on 7 and 12 April 1994.[339] The Trial Chamber therefore found that two letters between Egyptian authorities and the Prosecution ("Egyptian Letters"),[340] which suggest that General Kabiligi was not in Rwanda on 7 April 1994, should have been disclosed to the Defence.[341]

157. However, the Trial Chamber also found that Renzaho did not suffer any prejudice as a result of the Prosecution's failure to disclose the Egyptian Letters since he was not held criminally responsible for the distribution of weapons on 7 and 12 April 1994.[342]

158. Renzaho argues that the Trial Chamber erred in finding that he did not suffer prejudice from the non-disclosure of the Egyptian Letters.[343] In particular, he argues that the Egyptian Letters contradict the evidence of Witness AFB.[344] The Prosecution does not respond to this submission.

159. The Trial Chamber analysed the Defence's contention that the Prosecution's position regarding General Kabiligi's presence in Rwanda was inconsistent and found that this inconsistency gave rise to concerns about Witness AFB's evidence.[345] The Trial Chamber concluded that it would not rely on Witness AFB's testimony regarding this specific distribution of weapons without

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[336] *See* Witness ALG, T. 15 January 2007 pp. 26-31 [closed session]; Trial Judgement, para. 43.
[337] Notably, in its deliberations concerning Renzaho's knowledge of the killing of Tutsi civilians in relation to roadblocks, the Trial Chamber took into consideration the Defence's allegation that Renzaho was provided with misinformation concerning the activities of the *Interahamwe*. *See* Trial Judgement, para. 182.
[338] Trial Judgement, paras. 187-193, 226-236.
[339] Trial Judgement, paras. 189, 192; Witness AFB, T. 8 January 2007 p. 81, T. 9 January 2007 pp. 37-39.
[340] *See* Prosecution Disclosure Submissions, Annex 7; Defence Disclosure Submissions, Index Nos. 990/A, 989/A.
[341] Trial Judgement, para. 44.
[342] Trial Judgement, para. 45. *See also* Trial Judgement, para. 239.
[343] Notice of Appeal, para. 26.
[344] Notice of Appeal, para. 26.
[345] Trial Judgement, para. 231.

corroboration[346] and ultimately held that the Prosecution failed to prove that Renzaho was directly involved in the distribution of weapons to *Interahamwe* and *Impuzamugambi*.[347]

160. Consequently, it is clear that the Trial Chamber considered that Witness AFB's credibility was undermined by the contention that General Kabiligi was not in Rwanda, even absent the information contained in the Egyptian Letters. Ultimately, Renzaho was not convicted of the charges in which General Kabiligi featured. In such circumstances, the Appeals Chamber finds that Renzaho has failed to demonstrate that the Trial Chamber committed a discernible error in concluding that he was not prejudiced by the Prosecution's failure to disclose the Egyptian Letters.

161. This argument is therefore dismissed.

4. Indictment Against Father Munyeshyaka and Witness AZB's Statement

162. At trial, the Prosecution adduced evidence that Rose Rwanga's husband, Charles, and two of their sons, Wilson and Déglote, were separated from the women and children and killed at CELA on 22 April 1994 and that their daughter, Hyacinthe, was killed on 17 June 1994 at Sainte Famille.[348] The Trial Chamber found Renzaho guilty of, *inter alia*: genocide for ordering and aiding and abetting the killing of approximately 40 Tutsis civilians at CELA on 22 April 1994;[349] murder as a crime against humanity for ordering and aiding and abetting the killing of Charles, Wilson, and Déglote Rwanga, who had been removed from CELA on 22 April 1994;[350] genocide for ordering the killing of hundreds of Tutsi refugees at Sainte Famille on 17 June 1994;[351] and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for ordering the killing of at least 17 Tutsi men at Sainte Famille on 17 June 1994.[352]

163. During the trial, and pursuant to a request from the Defence, the Prosecution provided the indictment against Father Munyeshyaka on 27 August 2007 ("Munyeshyaka Indictment").[353] In the Munyeshyaka Indictment, the Prosecution alleges that two daughters and a son of Rose Rwanga were killed by Father Munyeshyaka on 13 April 1994 at Sainte Famille.[354] The supporting materials

[346] Trial Judgement, para. 234.
[347] Trial Judgement, para. 239. However, the Trial Chamber found that Renzaho was involved in another distribution of weapons, around 16 April 1994. *See* Trial Judgement, para. 251. Renzaho's claim that the Trial Chamber erred in so concluding, made under his Sixth Ground of Appeal, is considered below in Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section B (Alleged Errors Relating to the Distribution of Weapons).
[348] Trial Judgement, paras. 368, 377, 378, 380, 382, 388, 390, 405, 439, 615, 623. *See also* Trial Judgement, para. 49.
[349] Trial Judgement, para. 770.
[350] Trial Judgement, para. 789.
[351] Trial Judgement, para. 773.
[352] Trial Judgement, para. 807.
[353] Trial Judgement, para. 47, fn. 37.
[354] Trial Judgement, paras. 46, 49; T. 29 August 2007 pp. 57, 59; Defence Exhibit 105, paras. 13-15. *See also* Prosecution Disclosure Submissions, para. 12, Annex 8; Defence Disclosure Submissions, para. 17.

for the Munyeshyaka Indictment included a statement by Witness AZB, a witness in those proceedings, which alleges that Father Munyeshyaka killed two sons and a daughter of Rose Rwanga on 13 April 1994.[355] The Munyeshyaka Indictment was admitted as Defence Exhibit 105 during Renzaho's testimony.[356]

164. The Trial Chamber found that the Munyeshyaka Indictment and Witness AZB's statement reflected inconsistent positions on the part of the Prosecution and were therefore relevant to Renzaho's defence under Rule 68(A) of the Rules.[357] The Trial Chamber concluded, however, that the Prosecution's failure to disclose these documents prior to the request by the Defence did not cause prejudice to Renzaho.[358]

165. On appeal, Renzaho argues that the Trial Chamber erred in law by finding that he did not suffer prejudice.[359] He argues that these documents were crucial to the cross-examination of Prosecution Witness ACK,[360] who testified about the events at CELA and Sainte Famille.[361] Renzaho submits that the Trial Chamber manifestly erred in assuming that the Prosecution's evidence in the present proceedings was more credible than the Prosecution's allegations in the Munyeshyaka Indictment.[362]

166. The Prosecution responds that Renzaho has failed to demonstrate any error in the Trial Chamber's finding that he suffered no prejudice from the non-disclosure of the Munyeshyaka Indictment and Witness AZB's statement.[363]

167. The Appeals Chamber notes that Witness ACK testified that Wilson and Déglote Rwanga were removed from CELA on 22 April 1994,[364] and that Hyacinthe Rwanga was killed at Sainte Famille on 17 June 1994.[365] Given that the Munyeshyaka Indictment and Witness AZB's statement claim that Father Munyeshyaka killed Rose Rwanga's children at Sainte Famille on 13 April 1994, these statements are clearly relevant to Witness ACK's credibility.

168. The Trial Chamber concluded that Witness AZB's statement did not raise doubt about the reliability and credibility of Prosecution evidence concerning the circumstances of the Rwanga murders. It found that differences between Witness AZB's statement and Prosecution evidence at

[355] Prosecution Disclosure Submissions, Annex 8; Defence Disclosure Submissions, Index Nos. 988/A-983/A.
[356] Trial Judgement, para. 47; Renzaho, T. 30 August 2007 p. 41.
[357] Trial Judgement, para. 49.
[358] Trial Judgement, para. 50.
[359] Notice of Appeal, para. 26; Appellant's Brief, paras. 66-68; Brief in Reply, paras. 5, 14, 22.
[360] Notice of Appeal, para. 26; Appellant's Brief, para. 67.
[361] Trial Judgement, paras. 391, 392, 608-611.
[362] Notice of Appeal, para. 26; Appellant's Brief, para. 68.
[363] Respondent's Brief, paras. 67, 72, 74-77.
[364] Witness ACK, T. 5 March 2007 pp. 62 [closed session], 63, 64.

trial raised doubt about the reliability of Witness AZB's identification of the victims rather than the Prosecution evidence.[366] The Trial Chamber also found that Renzaho was not prejudiced by the delayed disclosure on the basis that Renzaho was able to cross-examine Witness ACK with similar allegations.[367] In particular, the Defence contended during its cross-examination that Wilson and Déglote were killed at Sainte Famille rather than after being removed from CELA.[368] Witness ACK rejected that contention, and the Trial Chamber found her explanation to be reasonable.[369] The Appeals Chamber finds that the Trial Chamber acted within the scope of its discretion in taking this into account in its assessment of prejudice.

169. The Appeals Chamber also notes that Renzaho received the Munyeshyaka Indictment and Witness AZB's statement during the presentation of the Defence case, albeit in the later stages.[370] Because the Munyeshyaka Indictment was tendered into evidence at trial, the Trial Chamber was able to consider the allegations contained therein.[371] Further, if Witness AZB's evidence was vital either to Renzaho's defence or the cross-examination of Witness ACK, it was open to Renzaho to seek a remedy such as calling Witness AZB, as noted by the Trial Chamber,[372] or moving the Trial Chamber to recall Witness ACK for further cross-examination on the basis of the Prosecution's late disclosure.[373] The Appeals Chamber considers that Renzaho's failure to seek a remedy at trial undermines his claim of prejudice.

170. Consequently, the Appeals Chamber finds that Renzaho has failed to demonstrate that the Trial Chamber committed a discernible error in finding that he was not prejudiced by the Prosecution's failure to disclose the Munyeshyaka Indictment and Witness AZB's statement.

171. This argument is therefore dismissed.

5. Conclusion

172. The Appeals Chamber notes that Renzaho also advances a general prejudice argument, namely, that his workload was increased and valuable time wasted by the Prosecution's failure to disclose exculpatory material.[374] However, he fails to demonstrate that his resources or ability to

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[365] Witness ACK, T. 5 March 2007 pp. 70, 71.
[366] Trial Judgement, para. 50.
[367] Trial Judgement, para. 50.
[368] Witness ACK, T. 6 March 2007 pp. 59, 60; Defence Exhibit 40.
[369] Trial Judgement, paras. 50, 438. *See also* Witness ACK, T. 6 March 2007 pp. 59, 60.
[370] *See* Renzaho, T. 29 August 2007 pp. 56-59; Prosecution Disclosure Submissions, para. 12, Annex 8; Defence Disclosure Submissions, para. 17.
[371] *See* Defence Exhibit 105.
[372] Trial Judgement, para. 50.
[373] The Appeals Chamber notes that Renzaho does not appear to have sought any specific remedy at trial. *See* Defence Closing Brief, para. 249.
[374] Notice of Appeal, para. 24.

mount a defence were materially affected. While the Appeals Chamber stresses that the disclosure of exculpatory material is fundamental to the fairness of proceedings before the Tribunal,[375] it finds that Renzaho was not prejudiced by the Prosecution's violation of Rule 68(A) of the Rules in the circumstances of this case.

173. Consequently, this argument is dismissed.

B. Violation of Rule 92*bis* of the Rules

174. Renzaho argues that the Trial Chamber erred in refusing to admit three statements pursuant to Rule 92*bis*(A) of the Rules: (1) the Nikuze *Pro Justicia* Statement; (2) the Nkulikiyinka *Pro Justicia* Statement; and (3) an interview of Sixbert Musangamfura dated 14 November 2001 and a summary of the interview dated 16 November 2001 ("Musangamfura Documents").[376] Renzaho submits that the Trial Chamber's error caused him substantial prejudice because Astérie Nikuze died before trial and both Dieudonné Nkulikiyinka and Sixbert Musangamfura refused to testify.[377]

1. Applicable Law

175. Rule 92*bis*(A) of the Rules provides for the admission of the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to the proof of a matter other than the acts and conduct of the accused as charged in the Indictment. Such a determination is a discretionary one to which the Appeals Chamber must accord deference.[378] As noted above, in order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber committed a discernible error resulting in prejudice to that party.[379]

2. Nikuze and Nkulikiyinka *Pro Justicia* Statements

176. During his testimony, Renzaho sought the admission of the *Pro Justicia* Statements, which was rejected by the Trial Chamber.[380] The Trial Chamber's reasoning suggests that the *Pro Justicia*

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[375] *Krstić* Appeal Judgement, para. 180.
[376] Notice of Appeal, para. 27, *referring to* Trial Judgement, paras. 52-56.
[377] Notice of Appeal, para. 28.
[378] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide Upon Evidence Tendered Pursuant to Rule 92 *bis*, 1 July 2010, para. 8; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, paras. 13, 17, 19.
[379] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section A (Violation of Rule 68 of the Rules), para. 143.
[380] Renzaho, T. 28 August 2007 pp. 27-34.

Statements were rejected because the Trial Chamber found that Renzaho was improperly attempting to impeach Witness ALG's testimony after his cross-examination.[381]

177. In the Defence Closing Brief, Renzaho argued that the Trial Chamber erred in this respect.[382] The Trial Chamber treated this as a request for reconsideration.[383] It found that the *Pro Justicia* Statements went to the proof of the acts and conduct of Renzaho and therefore could not be admitted pursuant to Rule 92*bis* of the Rules.[384] While it did not provide further reasoning in support of this finding, the Trial Chamber referred to one of its earlier decisions in which it found that "written statements seeking to contradict evidence that an accused carried out certain acts do not fall within the scope of Rule 92*bis* (A)."[385]

178. The Trial Chamber also found that the "primary purpose" of the *Pro Justicia* Statements was to impeach the testimony of Witness ALG.[386] It noted that the Defence could have put the Nkulikiyinka *Pro Justicia* Statement to Witness ALG during his cross-examination, or moved to recall Witness ALG in order to put both *Pro Justicia* Statements to him. The Trial Chamber concluded that "Rule 92 *bis* of the Rules is not a way around this obligation."[387]

179. Renzaho's arguments on appeal are unclear. He appears to argue that the Trial Chamber erred in refusing to admit the *Pro Justicia* Statements because they are relevant to *Bourgmestre* Bizimana's conduct, rather than his own. In particular, Renzaho asserts that the *Pro Justicia* Statements demonstrate that he was not criminally responsible as a superior of *Bourgmestre* Bizimana, as *Bourgmestre* Bizimana committed crimes without Renzaho's knowledge.[388]

180. As described above, the Nikuze *Pro Justicia* Statement primarily concerns *Bourgmestre* Bizimana's alleged conduct at Saint Paul, and the Appeals Chamber has found that it is relevant to *Bourgmestre* Bizimana's control over assailants there.[389] The Appeals Chamber recalls that the

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[381] Renzaho, T. 28 August 2007 pp. 30, 31 ("MR. PRESIDENT: Maître Cantier [...] the fact that you may have discovered [the documents] after the appearance of [Witness ALG] doesn't really change the situation. The fact that a witness has testified and that a document is being used to contradict his testimony being put to the Accused, letting him comment on that document and thereby getting it into the transcripts and hence part of the case file, is an indirect way of doing it, which is [...] not in conformity with the rules.").
[382] Defence Closing Brief, paras. 250-256, 262.
[383] Trial Judgement, para. 52.
[384] Trial Judgement, para. 55.
[385] Trial Judgement, para. 55, fn. 45, *referring to The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Decision on Defence Motion to Admit Documents, 12 February 2008, para. 4.
[386] Trial Judgement, para. 55.
[387] Trial Judgement, para. 55.
[388] Notice of Appeal, para. 25; Appellant's Brief, paras. 64, 102. *See also* Defence Closing Brief, para. 253 ("The Defence wanted to file these two documents as evidence to prove that the [*bourgmestre*], who was supposed to be under the *Préfet*, particularly with respect to issues concerning public order and security, had actually acted without his knowledge."); Renzaho, T. 28 August 2007 pp. 27-31.
[389] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section A (Violation of Rule 68 of the Rules), para. 150.

Trial Chamber did not find Renzaho criminally responsible for attacks at Saint Paul.[390] The Trial Chamber did not otherwise find that it was proven that *Bourgmestre* Bizimana committed crimes or, in turn, that Renzaho was responsible as a superior for *Bourgmestre* Bizimana's conduct.[391] Consequently, the Appeals Chamber finds that the admission of the Nikuze *Pro Justicia* Statement could have had no impact on Renzaho's convictions or sentence, and therefore dismisses his arguments in this respect.

181. With respect to the Nkulikiyinka *Pro Justicia* Statement, the Appeals Chamber recalls its finding that the potentially exculpatory statements contained therein were admitted into evidence through Defence Exhibit 4.[392] Consequently, the Appeals Chamber finds that the admission of the Nkulikiyinka *Pro Justicia* Statement pursuant to Rule 92*bis*(A) of the Rules could have had no impact on Renzaho's convictions or sentence, and therefore dismisses his arguments in this respect.

3. Musangamfura Documents

182. The Prosecution alleged that Renzaho participated in a joint criminal enterprise with Father Munyeshyaka.[393] In 2001, Sixbert Musangamfura was interviewed in connection with a French investigation concerning Father Munyeshyaka, the contents of which are recorded in the Musangamfura Documents.[394] Sixbert Musangamfura alleged that Father Munyeshyaka was falsely accused of committing crimes in Rwanda.[395]

183. Renzaho sought to admit the Musangamfura Documents during his testimony at trial. The Trial Chamber denied their admission on the basis that Renzaho was improperly trying to enter evidence through Rule 92*bis* of the Rules which should have been solicited from the witness.[396] The Trial Chamber also declined to reconsider that finding, noting that Father Munyeshyaka was an alleged member of Renzaho's joint criminal enterprise and was implicated in several criminal

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[390] Trial Judgement, paras. 579, 584.
[391] Trial Judgement, paras. 577-579, 584.
[392] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section A (Violation of Rule 68 of the Rules), para. 154.
[393] Indictment, paras. 6, 20, 21, 24, 36-38, 42, 52, 54, 61, 64.
[394] Defence Disclosure Submissions, Index No. 982/A. *See also* Defence Closing Brief, para. 258.
[395] Defence Disclosure Submissions, Index Nos. 982/A-972/A.
[396] Renzaho, T. 29 August 2007 pp. 49, 51 ("MR. PRESIDENT: [...] Isn't that tantamount to, at least, if you want to tender this document later, to try to circumvent Rule 92 *bis*, an unwilling witness's statement will then be part of the record instead of hearing him directly before this Court, which is the key of the objection? [...] Isn't this an indirect way to have testimony – admittedly only a statement – but what you would have expected the witness to come to say before this Court, and then without cross-examination of the witness, nor any declaration to tell the truth? [...] We are not going to allow a request to tender these two documents, based on the fact that these are documents from a witness which is not appearing before the Court. He should have been called.").

charges with him.[397] It therefore concluded that the Musangamfura Documents were relevant to Renzaho's conduct and thus were not admissible pursuant to Rule 92*bis*(A) of the Rules.[398]

184. Renzaho argues that the Trial Chamber erred in so finding.[399] Renzaho submits that, contrary to the Trial Chamber's reasoning, the Musangamfura Documents relate to the conduct of the Rwandan police and judicial authorities and not to Renzaho's acts and conduct.[400] However, he provides no further support for his contention.[401] The Prosecution has not responded.

185. The Appeals Chamber understands the thrust of Renzaho's argument to be that the Musangamfura Documents demonstrate that allegations in Rwanda against Father Munyeshyaka were politically motivated.[402] Such an argument fails to demonstrate any error on the part of the Trial Chamber, or, more notably, how the Musangamfura Documents are relevant to Renzaho's convictions or sentence. The Appeals Chamber notes that the Trial Chamber did not find that it was proven that Father Munyeshyaka committed crimes or, in turn, that Renzaho was responsible as a superior for his conduct.[403]

186. Consequently, Renzaho's arguments in this respect are dismissed.

C. Violation of the Right to Equality of Arms

187. Renzaho argues that his right to equality of arms was violated by: (1) the death of two witnesses;[404] and (2) witness fear and intimidation.[405]

1. Deceased Witnesses

188. Renzaho argues that due to the death of two potential witnesses before trial, namely, his secretary Astérie Nikuze and his driver Gaspard, he was unable to produce material evidence regarding his acts and conduct during the events alleged in the Indictment.[406] Renzaho also argues that the Trial Chamber's assumptions about the anticipated evidence of these witnesses constituted a miscarriage of justice.[407]

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[397] Trial Judgement, para. 56.
[398] Trial Judgement, para. 56.
[399] Notice of Appeal, para. 27.
[400] Notice of Appeal, para. 27.
[401] The Appeals Chamber notes that Renzaho did not address this argument further in either his Appellant's Brief or Brief in Reply.
[402] *See* Defence Closing Brief, paras. 261, 262.
[403] *See* Trial Judgement, paras. 435, 661, 662, 728.
[404] Notice of Appeal, paras. 30, 31; Appellant's Brief, paras. 98, 99.
[405] Notice of Appeal, paras. 32-38; Appellant's Brief, paras. 69-97, 100-114.
[406] Notice of Appeal, para. 30; Appellant's Brief, paras. 98, 99; Brief in Reply, para. 24. *See also* AT. 16 June 2010 p. 6.
[407] Notice of Appeal, para. 31.

189. The Prosecution responds that it is unclear what specific measures Renzaho expected the Trial Chamber to take in relation to the deceased witnesses.[408]

190. The Trial Chamber declined to consider Renzaho's argument concerning Gaspard on the basis that Renzaho had failed to particularise what evidence Gaspard was anticipated to give.[409] With respect to Astérie Nikuze's evidence, the Trial Chamber noted that she was anticipated to give evidence regarding two issues. First, Astérie Nikuze would have allegedly testified that Prosecution Witness ALG, rather than Renzaho, was culpable for the killings at Saint Paul. The Trial Chamber concluded that the absence of this aspect of her evidence was not prejudicial given that Renzaho was not found to be criminally responsible for these killings.[410] Second, Astérie Nikuze was anticipated to give evidence that Renzaho provided refuge to displaced persons at the Kigali-Ville prefecture office, which the Trial Chamber found was cumulative of other evidence on the record.[411] The Trial Chamber concluded that the proceedings were not rendered unfair by the absence of these two witnesses.[412]

191. The Appeals Chamber recalls that the principle of equality of arms obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case.[413] In the present case, Renzaho does not argue that he was disadvantaged *vis-à-vis* the Prosecution by his inability to call deceased witnesses, but rather that his ability to conduct his defence was prejudiced by the absence of these witnesses. However, the Appeals Chamber notes that Renzaho did not request any measures at trial to alleviate the alleged prejudice caused by his inability to call Astérie Nikuze or Gaspard, such as calling other witnesses in their stead, nor does he claim that the Trial Chamber should have taken steps to alleviate such prejudice. Although Renzaho sought the admission of the Nikuze *Pro Justicia* Statement pursuant to Rule 92*bis*(A) of the Rules, the Appeals Chamber observes that he did not do so in order to alleviate any prejudice caused by the absence of Astérie Nikuze's evidence.[414] Moreover, the Appeals Chamber recalls its finding that the admission of the Nikuze *Pro Justicia* Statement could have had no impact on Renzaho's convictions or sentence.[415]

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[408] Respondent's Brief, para. 82.
[409] Trial Judgement, para. 60.
[410] Trial Judgement, para. 61. *See also* Trial Judgement, paras. 559, 563, 579, 584.
[411] Trial Judgement, para. 61.
[412] Trial Judgement, para. 61.
[413] *Nahimana et al.* Appeal Judgement, paras. 173, 181; *Rutaganda* Appeal Judgement, para. 44; *Kayishema and Ruzindana* Appeal Judgement, para. 69.
[414] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section B (Violation of Rule 92*bis* of the Rules), paras. 176-178.
[415] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section B (Violation of Rule 92*bis* of the Rules), para. 180.

192. Further, and contrary to Renzaho's contention,[416] where it is alleged that the absence of a witness may compromise the accused's right to a fair trial, it is entirely proper for the Trial Chamber to consider the anticipated evidence of the witness to determine whether its absence caused any unfairness. The Trial Chamber considered Astérie Nikuze's and Gaspard's anticipated evidence for this purpose, and the Appeals Chamber finds no error in its approach. As Renzaho has failed to point to any error committed by the Trial Chamber, the Appeals Chamber dismisses his arguments.

2. Witness Intimidation

193. At trial, Renzaho alleged that his right to a fair trial was infringed by his inability to call several witnesses due to intimidation and fear of reprisals.[417] He pointed in particular to the alleged interference of his former Defence investigator ("Defence Investigator") who discouraged witnesses from testifying.[418] Renzaho also maintained that other witnesses refused to testify due to safety concerns.[419] Renzaho further advanced a general argument that the political climate in Rwanda was such that he was prevented from calling Defence witnesses from Rwanda.[420]

194. The Trial Chamber analysed each of Renzaho's claims in turn, and found that Renzaho failed to exhaust the measures available to him under the Statute and the Rules to enable him to present this evidence.[421] The Trial Chamber also found that Renzaho did not suffer prejudice from the absence of certain witnesses.[422] Finally, the Trial Chamber held that it was not convinced that the proceedings against Renzaho were unfair.[423]

195. On appeal, Renzaho submits that the Trial Chamber committed numerous errors. First, Renzaho argues that the Trial Chamber erred in failing to ensure that an investigation concerning the Defence Investigator's alleged interference with witnesses was completed before the Trial Judgement was rendered.[424] He also argues that, as a result, the Trial Chamber erred in finding that he was not prejudiced by the refusal of several witnesses to testify.[425] Finally, Renzaho contends

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[416] Notice of Appeal, para. 31.
[417] Trial Judgement, paras. 57, 62-76. *See also* Defence Closing Brief, paras. 266-293.
[418] Trial Judgement, paras. 57, 69-74.
[419] Trial Judgement, paras. 62, 64.
[420] Trial Judgement, paras. 75, 76.
[421] Trial Judgement, para. 65.
[422] Trial Judgement, paras. 66-68, 72-74, 76.
[423] Trial Judgement, para. 76.
[424] Appellant's Brief, paras. 113, 114. Renzaho also requested an investigation and stay of proceedings, which were found to be invalid and struck from his Appellant's Brief. *See* Decision on Tharcisse Renzaho's Appellant's Brief, 16 March 2010.
[425] Appellant's Brief, paras. 97, 100, 101, 103, 104-111.

that the Trial Chamber erred in concluding that he was not prejudiced by the political climate in Rwanda and its impact upon his ability to mount a defence.[426]

(a) Applicable Law

196. When the Defence asserts that the trial was unfair because witnesses crucial to the Defence refused to testify due to interference, it is incumbent on the Defence to, first, demonstrate that such interference has in fact taken place and, second, exhaust all available measures to secure the taking of the witnesses' testimony.[427] When a party alleges on appeal that the right to a fair trial has been infringed, it must prove that the violation caused such prejudice as to amount to an error of law invalidating the judgement.[428] Thus, the element of prejudice is an essential aspect of the proof required of an appellant alleging a violation of his or her fair trial rights.[429]

(b) Investigation

(i) Background

197. In his opening statement in May 2007, lead counsel for Renzaho, François Cantier, stated that several potential witnesses decided not to testify on Renzaho's behalf due to fear of reprisals.[430] Several days later, François Cantier addressed a letter to the Registrar of the Tribunal ("Registrar"), informing him of fears expressed by potential Defence witnesses.[431] François Cantier specified that of eight potential witnesses residing in Rwanda, three refused to testify due to safety concerns, one had fled Rwanda, one requested additional protective measures, and another had been imprisoned.[432] He alleged that it was only after four of the witnesses' names were divulged that they refused to testify, and that all of the witnesses were intimidated and feared for their security.[433] François Cantier accordingly requested that the Registrar ask the United Nations Security Council to create a commission of inquiry to determine whether witnesses have reason to fear reprisals and to suggest effective protective measures for them.[434]

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[426] Notice of Appeal, paras. 32, 36, 38; Appellant's Brief, paras. 91, 95, 101, 105, 106, 108, 109, 111.
[427] *Simba* Appeal Judgement, para. 41. *See also Tadić* Appeal Judgement, para. 55.
[428] *Hadžihasanović and Kubura* Appeal Judgement, para. 130; *Galić* Appeal Judgement, para. 21; *Kordić and Čerkez* Appeal Judgement, para. 119.
[429] *Hadžihasanović and Kabura* Appeal Judgement, para. 130.
[430] T. 17 May 2007 pp. 12, 13.
[431] *Annexe confidentielle [à] la requête en demande d'enqu[ê]te*, 31 May 2010 (confidential) ("Confidential Annex to Investigation Motion"), Index Nos. 1159/A-1157/A (Letter dated 23 May 2007 from François Cantier to the Registrar) ("23 May 2007 Letter").
[432] 23 May 2007 Letter.
[433] 23 May 2007 Letter.
[434] 23 May 2007 Letter.

198. On 7 June 2007, François Cantier reiterated his request to the Registrar for an investigation.[435] François Cantier specified that Eugène Hatangigaba was one of the witnesses who refused to testify due to safety concerns.[436]

199. In June 2007, Witness NIB went to Arusha in order to testify on Renzaho's behalf. When meeting with Barnabé Nekuie, co-counsel for Renzaho, Witness NIB stated that his March 2007 written statement was false.[437] Witness NIB claimed that the Defence Investigator dictated in Kinyarwanda the responses he should give, contrary to the facts.[438] Witness NIB further claimed that a few days before his travel to Arusha, the Defence Investigator suggested that he confirm certain Prosecution allegations against Renzaho.[439] As a result, Barnabé Nekuie informed Witness NIB that he could not testify for the Defence.[440]

200. At the 19 June 2007 trial session, Barnabé Nekuie requested the Registrar to inform the Trial Chamber about the problems concerning Witness NIB.[441] The Parties and the Trial Chamber had an informal meeting after the trial session to discuss the issue.[442] The Trial Chamber apparently recommended that the Defence bring the matter to the attention of the Registrar,[443] which they did by letter dated 19 June 2007.[444] The Registry's subsequent involvement in the matter is unclear.[445] Witness NIB ultimately did not testify.

201. In July 2007, Defence Witness HIN testified that the Defence Investigator intimidated him in order to prevent him from giving evidence on Renzaho's behalf.[446] Witness HIN also testified

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[435] Confidential Annex to Investigation Motion, Index Nos. 1156/A-1155/A (Letter dated 7 June 2007 from François Cantier to the Registrar) ("7 June 2007 Letter").
[436] 7 June 2007 Letter.
[437] Confidential Annex to Investigation Motion, Index Nos. 1154/A-1153/A (Letter dated 19 June 2007 from Barnabé Nekuie to the Registrar) ("19 June 2007 Letter").
[438] 19 June 2007 Letter.
[439] 19 June 2007 Letter.
[440] 19 June 2007 Letter. *See also* Trial Judgement, para. 74.
[441] *See* T. 19 June 2007 p. 10 [closed session].
[442] T. 19 June 2007 pp. 10, 13, 14 [closed session]; Registrar's Submissions Under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar Dated 25 May 2010, 1 June 2010 ("Registrar's Submissions on Investigation"), paras. 15, 18; 19 June 2007 Letter.
[443] *See* Registrar's Submissions on Investigation, para. 15; 19 June 2007 Letter.
[444] 19 June 2007 Letter.
[445] The Appeals Chamber notes that the Registry apparently took the position that an order from the Trial Chamber was necessary before the Registry could investigate the Defence allegations concerning Witness NIB and the Defence Investigator. *See* Confidential Annex to Investigation Motion, Index No. 1152/A (E-mail dated 25 June 2007 from Stephane Wohlfahrt to François Cantier and Barnabé Nekuie); T. 14 February 2008 p. 34. However, the Trial Chamber appears to have been subsequently under the impression that the Registry was supposed to interview Witness NIB. *See* T. 3 July 2007 p. 51 (The Presiding Judge of the Trial Chamber stated "there has been another administrative matter pending for some time relating to Witness NIB. I understand that has been problematic. We have been in touch with the registry today and have indicated that the Chamber has, of course, no problems in sending that witness back if the registry is not in a position to carry out investigations as fast as possible. So that witness can, in the Chamber's view, be released, and it's then up to the Defence and the registry to decide how to approach that matter.").
[446] Witness HIN, T. 10 July 2007 p. 20 [closed session].

that the Defence Investigator had similarly intimidated other potential witnesses, including Dieudonné Nkulikiyinka.[447]

202. On 27 July 2007, Jean Haguma, the former President of the Rwandan Bar Association, was appointed by the Registrar as an *amicus curiae* to investigate the allegations of witness interference in both the *Renzaho* and *Rukundo* proceedings ("Renzaho Investigation", and "Rukundo Investigation", respectively).[448] With respect to the Renzaho Investigation, Jean Haguma's mandate was:

> 2. To cover an investigation ordered into interference with a witness pseudonym NIB by Trial Chamber I in the case of *Renzaho*.
>
> 3. To cover an investigation of any witness interference, or plan or arrangement to conduct such interference that affects, or has affected, any witness or potential witness before the ICTR.
>
> 4. To cover an investigation of matters closely connected to witness interference that may come to the consultant's notice as a result of his principal investigations referred to above.[449]

203. On 16 September 2007, Jean Haguma submitted a preliminary report to the Registrar.[450] On 10 October 2007, Jean Haguma submitted a report with respect to the Rukundo Investigation.[451] This report did not address the allegations of witness interference in the *Renzaho* proceedings.[452]

204. On 18 October 2007, François Cantier sent a letter to the Registrar stating that Eugène Hatangigaba had contacted him, claiming to have been recently contacted by the Defence Investigator who told him to testify against Renzaho.[453] François Cantier attached the letter received from Eugène Hatangigaba.[454] François Cantier also stated that he met with Jean Haguma on 11 October 2007, and informed him of this development.[455] On 23 October 2007, François Cantier

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[447] Witness HIN, T. 10 July 2007 pp. 20, 21 [closed session].
[448] Registrar's Submissions on Investigation, paras. 5, 6, 16; Confidential Annex to Investigation Motion, Index No. 1150/A (E-mail dated 27 July 2007 from Stephane Wohlfahrt to François Cantier and Barnabé Nekuie). *See also The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Registrar's Submissions under Rule 33 (B) of the Rules on the Final Report of Jean Haguma, 30 June 2009 ("Registrar's Submissions on Haguma Report"), para. 3.
[449] Confidential Annexes to the "Registrar's Submissions under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar dated 25 May 2010", 1 June 2010 (confidential) ("Confidential Annexes to Registrar's Submissions on Investigation"), Annex 1 (Terms of Reference for Consultancy, 27 July 2007). *See also* Confidential Annex to Investigation Motion, Index No. 1147/A (E-mail dated 28 July 2007 from Stephane Wohlfahrt to François Cantier).
[450] Registrar's Submissions on Investigation, para. 7. *See also* Confidential Annexes to Registrar's Submissions on Investigation, Annex 2 (Registrar's Submissions under Rule 33 (B), 4 October 2007), para. 7. It is unclear whether this preliminary report contained any information concerning the Renzaho Investigation.
[451] Registrar's Submissions on Investigation, para. 11; Confidential Annexes to Registrar's Submissions on Investigation, Annex 8 (E-mail from Mr. Haguma dated 10 October 2007); Confidential Annexes to Registrar's Submissions on Investigation, Annex 4 ("Final Report" of Mr. Jean Haguma dated 10 October 2007).
[452] Registrar's Submissions on Investigation, para. 11.
[453] Confidential Annex to Investigation Motion, Index No. 1144/A (Letter dated 18 October 2007 from François Cantier to the Registrar) ("18 October 2007 Letter").
[454] Confidential Annex to Investigation Motion, Index Nos. 1142/A-1141/A (Letter from Eugène Hatangigaba to François Cantier).
[455] 18 October 2007 Letter.

sent an email to the Registrar which suggested that Witness HIN had been recently threatened by the Defence Investigator.[456]

205. On 1 January 2008, François Cantier contacted the Registry requesting the results of the Renzaho Investigation.[457] On 18 January 2008, Jean Haguma produced a report which, although marked "final", indicated that he needed to undertake further actions with respect to the Renzaho Investigation.[458] François Cantier objected to the paucity of the 2008 Haguma Report in his closing submissions.[459] Subsequently, the Registrar made several requests to Jean Haguma for a final report.[460] On 30 June 2009, the Registrar filed submissions before the Trial Chamber which indicated that no final report had been received from Jean Haguma regarding the Renzaho Investigation.[461]

206. On 13 July 2010, the Appeals Chamber ordered Jean Haguma to submit a final report on the conduct and conclusions of the Renzaho Investigation undertaken to date.[462] On 22 July 2010, the Registry informed the Appeals Chamber that Jean Haguma passed away on 17 July 2010.[463]

(ii) Discussion

207. The Appeals Chamber is deeply concerned about the allegations that the Defence Investigator intimidated prospective Defence witnesses. It considers that witness intimidation undermines the fundamental objectives of the Tribunal, provided in Article 20(2) of the Statute, including the objective to ensure that trials are fair.[464]

208. Considering the gravity of the allegations under investigation, the Appeals Chamber is of the view that the Trial Chamber was obliged to ensure that the Renzaho Investigation was carried out diligently and, in particular, that it was completed. It is unacceptable that the matter appears to have been simply abandoned at some juncture, without explanation.

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[456] Confidential Annex to Investigation Motion, Index No. 1140/A (E-mail dated 23 October 2007 from François Cantier to the Registrar).
[457] Confidential Annexes to Registrar's Submissions on Investigation, Annex 9 (E-mail from François Cantier dated 1 January 2008).
[458] *Requête en demande d'enqu[ê]te*, 31 May 2010 (confidential), Annex 2 (*Rapport de Maître Jean Haguma 18 janvier 2008*) ("2008 Haguma Report").
[459] T. 14 February 2008 p. 34.
[460] Registrar's Submissions on Investigation, para. 12; Registrar's Submissions on Haguma Report, para. 5, Annex (E-mails dated 15 February 2008, 25 February 2008, 27 February 2008, 12 March 2008 between Stephane Wohlfahrt and Jean Haguma). *See also* Confidential Annexes to Registrar's Submissions on Investigation, Annex 11 (E-mail from Stephane Wohlfahrt dated 14 February 2008).
[461] Registrar's Submissions on Haguma Report, paras. 2, 5. *See also* Registrar's Report on Investigation, paras. 12, 13.
[462] Interim Order Regarding Renzaho's Motion for Investigation, 13 July 2010.
[463] *Observations du Greffier en vertu de l'Article 33 (B), relatives au décès de Maître Jean Haguma,* amicus curiae, 22 July 2010.
[464] *See Haradinaj et al.* Appeal Judgement, para. 35; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Oral Decision (Rule 115 and Contempt of False Testimony), 19 May 2005, p. 2.

209. Although the Appeals Chamber notes with concern the Defence's failure to bring a motion at any point seeking the assistance of the Trial Chamber to secure the attendance of witnesses or the completion of the Renzaho Investigation, it recalls that "Trial Chambers must counter witness intimidation by taking all measures that are reasonably open to them, both at the request of the parties and *proprio motu*."[465] In this particular instance, the Trial Chamber was obliged, at the very least, to ensure that a final report was received from Jean Haguma before delivering the Trial Judgement. By failing to do so, the Trial Chamber erred and brought into question Renzaho's right to a fair trial under Article 20(2) of the Statute.

210. Recalling that when a party alleges on appeal that the right to a fair trial has been infringed, it must prove that the violation caused such prejudice as to amount to an error of law invalidating the judgement,[466] the Appeals Chamber will consider whether the Trial Chamber's failure to ensure the timely completion of the Renzaho Investigation prior to the delivery of the Trial Judgement caused Renzaho prejudice of this gravity. Renzaho argues that he was unable to call Dieudonné Nkulikiyinka and Witness NIB due to the interference of the Defence Investigator.[467] The Appeals Chamber will examine these allegations in turn.

a. Dieudonné Nkulikiyinka

211. The Trial Chamber found that the evidentiary support for Renzaho's assertion that Dieudonné Nkulikiyinka refused to testify based on fear of reprisals was indirect and vague.[468] It considered that Witness HIN's basis for asserting that the Defence Investigator intimidated Dieudonné Nkulikiyinka was imprecise and therefore failed to demonstrate that intimidation occurred.[469] The Trial Chamber also found that the Defence failed to sufficiently exhaust the remedies available to it, such as a request for protective measures or for a subpoena.[470] The Trial Chamber concluded that on either basis, it could dismiss Renzaho's arguments.[471] However, the Trial Chamber also considered Dieudonné Nkulikiyinka's anticipated evidence and found that its absence from the proceedings did not cause material prejudice to Renzaho.[472]

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[465] *Haradinaj et al.* Appeal Judgement, para. 35.
[466] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section C (Violation of the Right to Equality of Arms), para. 196.
[467] Notice of Appeal, paras. 28, 33; Appellant's Brief, paras. 80, 100-104.
[468] Trial Judgement, para. 64.
[469] Trial Judgement, para. 64.
[470] Trial Judgement, para. 65.
[471] Trial Judgement, paras. 64, 65.
[472] Trial Judgement, paras. 66, 67.

212. Renzaho argues that the Trial Chamber erred in finding that he was not prejudiced by Dieudonné Nkulikiyinka's refusal to testify.[473] He submits that Dieudonné Nkulikiyinka's evidence was essential to determine Renzaho's effective control over *bourgmestres* and *conseillers*.[474] Renzaho also argues that the Trial Chamber did not allow him to sufficiently explore Witness HIN's evidence that the Defence Investigator intimidated Dieudonné Nkulikiyinka.[475]

213. The Prosecution responds that the Trial Chamber properly analysed Dieudonné Nkulikiyinka's anticipated evidence and correctly found that Renzaho did not suffer prejudice from the absence of his testimony.[476]

214. The Appeals Chamber notes that the allegations that Dieudonné Nkulikiyinka refused to testify because he was intimidated by the Defence Investigator were first made by Witness HIN during his evidence. When asked if he encountered difficulties in coming to Arusha to testify, Witness HIN replied that he agreed with the Defence Investigator to testify on Renzaho's behalf.[477] However, Witness HIN continued:

> in May when I was getting ready to come here, [the Defence Investigator] came to see me in my office on one occasion, and he told me what follows: "If you go to Arusha, you will have problems when you go back home and you might even get killed, so I advise you not to come."
>
> I did not say anything, and I told him I would think about it. In June, in early June, he called me on the telephone and he asked to meet me in order to have a drink. And he asked me whether I still intended to come and testify on -- on behalf of Renzaho. I asked him why he was asking me such a thing, and he told me that he was asking me such a thing because in Arusha, he was being asked for the names of the witnesses in order for the travel documents to be prepared. I told [the Defence Investigator] -- that I had already been informed of the problems I might encounter after my testimony, and I told him that I was no longer willing to go to Arusha, in order to have peace.
>
> Thereafter, after a meeting of the Defence counsel, [the Defence Investigator] came back to Kigali and told me that I should not come to Arusha, because I was going to encounter security problems upon my return. Furthermore, he told me that one of the investigators of Renzaho was a Rwandan refugee who would not be able to go back to Rwanda. So they told me not to go to Arusha and not to leave my family. So I told [the Defence Investigator] I no longer wished to come to Arusha.
>
> I do not know whether he tried to find me after my arrival here in Arusha. I know he knows my house. I do not know whether he went to see me. He tried to intimidate me. I know that other people were intimidated. Besides, many people were willing to come to testify, but [the Defence Investigator] dissuaded them from doing so. They are officials in Rwanda, and they are aware of many things. I should admit to you that [the Defence Investigator] met one of Renzaho's assistants called [Dieudonné] Nkulikiyinka, who was Renzaho's accountant. That person had accepted to come and testify.[478]

[473] Appellant's Brief, para. 104.
[474] Notice of Appeal, para. 30; Appellant's Brief, para. 102.
[475] Appellant's Brief, para. 103, *referring to* Witness HIN, T. 10 July 2007 pp. 20-22 [closed session].
[476] Respondent's Brief, para. 87.
[477] Witness HIN, T. 10 July 2007 pp. 19, 20 [closed session].
[478] Witness HIN, T. 10 July 2007 pp. 20, 21 [closed session].

The Trial Chamber then inquired whether more information was required from Witness HIN on the issue since an investigation into the Defence Investigator was underway.[479] The Defence replied that the information solicited was adequate.[480]

215. Although Renzaho has not argued that the Trial Chamber erred in finding that the intimidation of Dieudonné Nkulikiyinka had not been sufficiently demonstrated, the Appeals Chamber finds that the Trial Chamber erred in this respect. The Trial Chamber itself suggested to Renzaho that further evidence on the subject of Dieudonné Nkulikiyinka's intimidation was unnecessary due to the Renzaho Investigation.[481] Even absent such an instruction from the Trial Chamber, the Appeals Chamber finds that Renzaho was entitled to rely on the Renzaho Investigation to meet his obligation to establish witness interference. The pending Renzaho Investigation temporarily relieved Renzaho of his burden in this regard. Consequently, the Appeals Chamber finds that no reasonable trier of fact could expect Renzaho to establish witness intimidation while the Renzaho Investigation was ongoing.

216. However, the Appeals Chamber recalls that an accused is not only expected to establish witness interference, but also to exhaust all available measures to secure the taking of the witness's testimony.[482] While the Appeals Chamber emphasizes that Trial Chambers must do their utmost to ensure that trials are fair,[483] this does not relieve the parties of their parallel responsibility to seek assistance in securing the testimony of witnesses.

217. Renzaho argues that he deliberately did not seek the assistance of the Trial Chamber in this regard due to his concerns about witness safety.[484] He appears to suggest that, in the context of Rwanda, the Defence cannot be asked to exhaust such means when doing so could endanger a witness.[485] While the Appeals Chamber is sympathetic to Renzaho's concern for the well-being of witnesses, it finds his arguments unconvincing. The assessment of whether or not it is prudent to

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[479] Witness HIN, T. 10 July 2007 p. 21 [closed session] ("MR. PRESIDENT: The fact is that the witness is here, he has arrived safely. There is an investigation ongoing in relation to [the Defence Investigator]. That investigation has to take place not inside the courtroom, but elsewhere. Is there more this Chamber needs to know now here on record from this witness? Or is this something that can be pursued in connection with the more general issue concerning the behaviour or alleged behaviour of [the Defence Investigator]?").

[480] Witness HIN, T. 10 July 2007 p. 21 [closed session] ("MR. NEKUIE: Well, Mr. President, I was just asking the witness whether he had encountered any problems, and he insisted on the issues of intimidation and revealed something to us. But as far as I'm concerned, that is enough, and I was about to put to him my last question, which has nothing to do with this matter.").

[481] *See* Witness HIN, T. 10 July 2007 p. 21 [closed session].

[482] *See Simba* Appeal Judgement, para. 41.

[483] *Haradinaj et al.* Appeal Judgement, para. 35. *See also Tadić* Appeal Judgement, para. 52.

[484] Appellant's Brief, para. 110 ("That is the reason why the Defence did not want to make use of the legal means at its disposal to bring those witnesses to the Tribunal, especially as it was aware of the threats that had been made against several witnesses, evidence of which had been established."); Brief in Reply, para. 25.

[485] *See* Appellant's Brief, paras. 101, 107, 110; Brief in Reply, para. 25.

grant protective measures or to summon witnesses is a decision to be taken by the Trial Chamber.[486] Any party is, of course, free to refrain from applying for such measures. However, a party cannot circumvent its obligation to exhaust all available means to present its case by unilaterally determining that certain measures are unreasonable or futile.[487]

218. The Appeals Chamber also notes that Renzaho sought to admit the Nkulikiyinka *Pro Justicia* Statement pursuant to Rule 92*bis*(A) of the Rules.[488] However, he did not seek to do so in order to alleviate any prejudice caused by the absence of Dieudonné Nkulikiyinka's evidence,[489] and the Appeals Chamber has found that the admission of the Nkulikiyinka *Pro Justicia* Statement could have no impact on Renzaho's conviction or sentence.[490] Further, in light of the finding that the potentially exculpatory statements contained in the Nkulikiyinka *Pro Justicia* Statement were admitted into evidence,[491] the Appeals Chamber finds that the Trial Chamber did not err in concluding that Renzaho was not prejudiced by Dieudonné Nkulikiyinka's refusal to testify.

219. Consequently, the Appeals Chamber finds that Renzaho has not established that the Trial Chamber's failure to ensure the completion of the Renzaho Investigation prior to the delivery of the Trial Judgement caused him such prejudice as to amount to an error of law invalidating the Trial Judgement.

b. Witness NIB

220. Renzaho's assertion that Witness NIB refused to testify as a result of the Defence Investigator's interference is unsubstantiated. However, Jean Haguma was appointed to investigate allegations of witness interference in relation to this particular witness.[492] Consequently, for the reasons discussed above, the Appeals Chamber considers that Renzaho was entitled to rely on the Renzaho Investigation to meet his obligation to establish witness interference.

221. Witness NIB arrived in Arusha apparently prepared to testify, and it was the Defence who decided not to call him after he revealed that he had given a false statement.[493] Having chosen not

[486] *See* Rules 54, 69, and 75 of the Rules.
[487] The Appeals Chamber further recalls that "Counsel must at all times act in the best interests of the client and must put those interests before their own interests *or those of any other person*." Code of Professional Conduct for Defence Counsel, 14 March 2008, Article 9(1) (emphasis added).
[488] *See* Defence Closing Brief, paras. 252-256.
[489] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section B (Violation of Rule 92*bis* of the Rules), paras. 176-178.
[490] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section B (Violation of Rule 92*bis* of the Rules), para. 181.
[491] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section A (Violation of Rule 68 of the Rules), para. 154.
[492] Registrar's Submissions on Investigation, para. 6.
[493] *See* 19 June 2007 Letter. *See also* Trial Judgement, para. 74.

to present Witness NIB's evidence to the Trial Chamber, the Appeals Chamber finds that Renzaho has failed to meet his obligation to exhaust all available measures to secure the taking of Witness NIB's testimony.

222. Further, the Appeals Chamber notes that Renzaho has not advanced any arguments on appeal concerning the importance of this witness's testimony to his case, or suggesting that the Trial Chamber erred in concluding that he was not prejudiced by the absence of Witness NIB's evidence.[494] In such circumstances, the Appeals Chamber finds that Renzaho has not established that the Trial Chamber's failure to ensure the completion of the Renzaho Investigation prior to the delivery of the Trial Judgement caused him such prejudice as to amount to an error of law invalidating the Trial Judgement.

(c) General Contentions

223. Renzaho advances several other arguments with respect to the impact of alleged witness intimidation upon his fair trial rights. He alleges that the Trial Chamber failed to take into account Rwanda's political situation which impacts upon the ability of the parties to call witnesses,[495] and erred in concluding that his trial was not rendered unfair by these circumstances.[496] Finally, Renzaho submits that one witness in particular, Alexis Bisanukuli, refused to testify due to fear of reprisals.[497]

(i) Political Situation in Rwanda

224. Renzaho argues that the Trial Chamber failed "to take into account Rwanda's internal political situation and the fact that it is impossible for witnesses living in Rwanda to testify objectively, either for the Prosecution or for the Defence".[498]

225. The Prosecution responds that there is no conclusive proof of intimidation, that the witnesses were reluctant to testify for such reasons, or that any perceived or actual intimidation of witnesses who appeared on behalf of Renzaho is related to their participating in this proceeding.[499] The Prosecution notes that Renzaho was able to call witnesses from Rwanda, whom he represented as being crucial.[500]

[494] *See* Trial Judgement, para. 74.
[495] Notice of Appeal, paras. 32, 36; Appellant's Brief, paras. 108, 109, 111.
[496] Notice of Appeal, paras. 36, 38; Appellant's Brief, paras. 91, 95, 97, 112.
[497] Notice of Appeal, para. 30; Appellant's Brief, paras. 100, 101, 105, 106.
[498] Notice of Appeal, para. 36. *See also* Appellant's Brief, paras. 108, 109.
[499] Respondent's Brief, para. 84.
[500] Respondent's Brief, para. 85.

226. The Trial Chamber noted that there was some evidence on the record which suggested that individuals would not testify on Renzaho's behalf because of feared and actual persecution in Rwanda.[501] However, the Trial Chamber concluded that "the record is equivocal as to whether any perceived or actual intimidation of witnesses who have appeared on behalf of [Renzaho] is in fact related to their participation in this proceeding."[502] The Trial Chamber further noted that Renzaho was able to mount a defence which involved the attendance of 27 witnesses, including five from Rwanda.[503] The Trial Chamber concluded that, based on an assessment of the entire record, it was not convinced that difficulties in calling witnesses from Rwanda rendered the proceedings unfair.[504]

227. Renzaho argues that the Trial Chamber erred in this conclusion. In particular, he asserts that the Trial Chamber erred in its calculation of how many Defence witnesses lived in Rwanda.[505] The Appeals Chamber notes that the Trial Chamber evidently arrived at this number based on submissions made by the Defence in its closing arguments.[506] In any event, although Witness MAI fled Rwanda before he testified in these proceedings,[507] and Witness HAL was imprisoned before his testimony,[508] the Trial Chamber noted those facts and concluded that it was equivocal whether any actual or perceived intimidation was in fact related to their participation in these proceedings.[509] Renzaho has not demonstrated how the number of Defence witnesses who came from Rwanda – four rather than five – undermines this finding made by the Trial Chamber, or any other on which his convictions or sentence rely.

228. Renzaho also appears to argue that the Trial Chamber erred in relying on the evidence of accomplice witnesses from Rwanda, due to the political climate.[510] Renzaho does not develop this argument with reference to specific findings made by the Trial Chamber. However, to the extent

[501] Trial Judgement, para. 76.
[502] Trial Judgement, para. 76.
[503] Trial Judgement, para. 76.
[504] Trial Judgement, para. 76.
[505] Notice of Appeal, para. 38.
[506] *See* T. 14 February 2008 p. 39 (The Presiding Judge of the Trial Chamber asked Lead Counsel for Renzaho, "isn't it true that some Defence witnesses came from Rwanda, from inside Rwanda?" François Cantier replied: "amongst our 28 witnesses [...] there was PPG and for the time being we have no problem with him. HAL is in prison. There is HIN. We asked for special protection measures for him and last October he was threatened, and we officially reported that. [...] There is MAI who was compelled to flee his country, as you have heard. There was also NIB, and this is the witness that we were not able to call, for reasons that you are aware of.").
[507] Witness MAI, T. 22 August 2007 pp. 20, 21 [closed session].
[508] Witness HAL, T. 18 June 2007 pp. 20, 21, 39-41 [closed session].
[509] Trial Judgement, para. 76, fn. 88.
[510] *See* Appellant's Brief, para. 111.

that his argument is relevant to other Grounds of Appeal, the Appeals Chamber will address these arguments where they arise.[511]

229. Renzaho does not otherwise substantiate his assertion that the particular political climate in Rwanda impacted the fairness of his trial by reference to his convictions, his sentence, or to specific findings made by the Trial Chamber. As such, the Appeals Chamber finds that Renzaho has failed to demonstrate any error committed by the Trial Chamber in this respect.

230. Renzaho's arguments are therefore dismissed.

(ii) Alexis Bisanukuli

231. Renzaho argues that he suffered substantial prejudice due to the absence of Alexis Bisanukuli's evidence.[512] He argues that Alexis Bisanukuli's testimony was crucially important to his defence since Alexis Bisanukuli was an employee of the Kigali-Ville prefecture, a secretary of the crisis committee, and attended all meetings held at the prefecture office.[513] Renzaho specifies that Alexis Bisanukuli's refusal to testify prevented him from adducing evidence relevant to decisions taken within the Kigali-Ville prefecture, including in relation to roadblocks and distribution of weapons, as well as Renzaho's relationship with *Interahamwe*, administrative authorities, and soldiers.[514]

232. Renzaho further asserts that Alexis Bisanukuli provided him with a very favourable statement which was not submitted into evidence for security reasons.[515] According to Renzaho, in the statement, Alexis Bisanukuli asserted that he was one of Renzaho's closest associates and that he assisted Renzaho in all of the meetings held at the Kigali-Ville prefecture office.[516]

233. The Prosecution submits that Renzaho failed to seek the admission of Alexis Bisanukuli's purported statement or to request the Trial Chamber to issue appropriate orders to secure his testimony.[517] Further, the Prosecution contends that Renzaho's arguments are insufficient to establish that this witness possessed exclusive information that Renzaho was not otherwise able to adduce at trial.[518]

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[511] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville); Chapter X (Alleged Errors Relating to the Events at CELA), Section A (Alleged Errors in the Assessment of the Evidence).
[512] Appellant's Brief, para. 106.
[513] Notice of Appeal, para. 30; Appellant's Brief, paras. 100, 105.
[514] Notice of Appeal, para. 30.
[515] Appellant's Brief, para. 105.
[516] Appellant's Brief, para. 105.
[517] Respondent's Brief, para. 88.
[518] Respondent's Brief, para. 88.

234. The Trial Chamber found that evidentiary support for Renzaho's assertion that Alexis Bisanukuli refused to testify based on fear of reprisals was indirect and vague.[519] It further found that, by having failed to seek assistance from the Trial Chamber to ensure the presentation of Alexis Bisanukuli's evidence, Renzaho had not exhausted the remedies available to him.[520] The Trial Chamber stated that it could dismiss Renzaho's arguments on either basis.[521] The Trial Chamber finally considered Alexis Bisanukuli's anticipated evidence and concluded that Renzaho did not suffer prejudice from its absence.[522]

235. The Appeals Chamber notes that Renzaho fails to allege any error with respect to the Trial Chamber's findings that the intimidation of Alexis Bisanukuli had not been established, and that Renzaho failed to use all available means to secure his testimony. The Appeals Chamber considers that Renzaho has failed to substantiate his assertion that Alexis Bisanukuli refused to testify due to security concerns.[523] Renzaho does not detail any efforts he made to contact Alexis Bisanukuli, specify his security situation, or explain the nature of the alleged threats against him. Notably, Renzaho does not allege that Alexis Bisanukuli was the subject of any intimidation by the Defence Investigator. Finally, although Renzaho asserts that he was prejudiced from the absence of Alexis Bisanukuli's evidence, he does not point to any error in the Trial Chamber's finding otherwise. The Appeals Chamber therefore finds that Renzaho has not demonstrated that the Trial Chamber committed an error.

236. Renzaho's arguments are accordingly dismissed.

D. Violation of the Right to Be Tried in a Reasonable Amount of Time

237. Renzaho was arrested on 29 September 2002, and his trial commenced on 8 January 2007.[524] Closing arguments were heard on 14 and 15 February 2008, and the Trial Judgement was pronounced on 14 July 2009, and delivered in writing on 14 August 2009.[525] Renzaho argues that the seven-year period between his arrest and the delivery of the Trial Judgement demonstrates that his right to be tried promptly was violated.[526] Renzaho further argues that the one and a half year period between the close of the case and the delivery of the Trial

[519] Trial Judgement, para. 64.
[520] Trial Judgement, para. 65.
[521] Trial Judgement, paras. 64, 65.
[522] Trial Judgement, para. 68.
[523] *See* Appellant's Brief, para. 105; Defence Closing Brief, para. 1270.
[524] Trial Judgement, Annex A: Procedural History, paras. 830, 837.
[525] Trial Judgement, Annex A: Procedural History, paras. 849, 852.
[526] Notice of Appeal, para. 39.

Judgement constituted undue delay which affected his right to a fair trial.[527] The Prosecution has not responded to Renzaho's arguments.

238. The right to be tried without undue delay is enshrined in Article 20(4)(c) of the Statute. The Appeals Chamber recalls that this right only protects the accused against *undue* delay, which is determined on a case-by-case basis.[528] A number of factors are relevant to this assessment, including: the length of the delay; the complexity of the proceedings (the number of counts, the number of accused, the number of witnesses, the quantity of evidence, the complexity of the facts and of the law); the conduct of the parties; the conduct of the authorities involved; and the prejudice to the accused, if any.[529]

239. The Appeals Chamber notes that Renzaho does not allege that undue delay was attributable to any Party or the Tribunal, or that he was prejudiced by the length of the proceedings. He points only to the length of his proceedings to support his assertion that he was denied the right to an expeditious trial. While the proceedings have been lengthy, the Appeals Chamber notes that the case against Renzaho was complex. With respect to the pre-trial phase, the Indictment was amended three times, altering the scope of the case.[530] Renzaho does not point to any error in this regard.

240. Further, the Indictment charged direct and superior responsibility under six Counts, including genocide, complicity in genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. Renzaho was charged with criminal conduct at several locations, over an extended period of time, including multiple killings and rapes. Although the Appeals Chamber accepts that preparing such a case for trial can reasonably require a lengthy period of time, it emphasizes that every effort should be made to bring cases to trial as expeditiously as possible.[531]

241. Turning to the trial phase, the Appeals Chamber notes that it lasted for thirteen months.[532] There is no assertion that the trial itself was unduly long, and the Appeals Chamber cannot find that

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[527] Notice of Appeal, para. 40.
[528] *Nahimana et al.* Appeal Judgement, para. 1074. *See also The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, Decision on Defence Motion for Stay of Proceedings, 3 June 2005, paras. 19 *et seq.*
[529] *Nahimana et al.* Appeal Judgement, para. 1074. *See also André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007, para. 13.
[530] *See* Trial Judgement, Annex A: Procedural History, paras. 832, 834, 835. *See also supra*, Chapter I (Introduction), fn. 6.
[531] *See Nahimana et al.* Appeal Judgement, para. 1076 (stating that "because of the Tribunal's mandate and of the inherent complexity of the cases before the Tribunal, it is not unreasonable to expect that the judicial process will not always be as expeditious as before domestic courts").
[532] The Prosecution's case was conducted in two trial sessions, from 8 January to 7 February 2007 and from 2 to 6 March 2007. This constituted 21 trial days, during which the Trial Chamber heard 26 witnesses and admitted 118 exhibits. The Defence case was also conducted in two trial sessions, conducted from 17 May to 10 July 2007 and from 22 August to 6 September 2007. This constituted 28 trial days, which included 27 witnesses and 113 exhibits. *See* Trial Judgement, Annex A: Procedural History, paras. 837, 842.

this period was unreasonable. With respect to the delivery of the Trial Judgement, the Appeals Chamber notes that it was delivered one and a half years after the close of trial. In the context of this case, such a delay is concerning. The Appeals Chamber underscores that lengthy delays can give rise to serious questions regarding fairness to the accused. However, in view of the complexity of this case, including the number of charges and the volume of evidence produced by the Parties, Renzaho has not demonstrated that the delivery of the Trial Judgement was unduly delayed.

242. The Appeals Chamber is mindful that the right enshrined in Article 20(4)(c) of the Statute is fundamental. While the Appeals Chamber is concerned by the length of the proceedings as a whole, in the particular circumstances of this case, the Appeals Chamber finds that Renzaho has failed to demonstrate that his right to be tried without undue delay has been violated.

243. Renzaho's arguments are therefore dismissed.

E. Cumulative Effect of Fair Trial Factors

244. Although Renzaho asserts that the Trial Chamber failed to consider the cumulative impact of the factors discussed above on the fairness of his trial,[533] he fails to substantiate this claim.[534] In particular, he fails to explain how the cumulative effect of the Trial Chamber's alleged errors undermined the fairness of his trial in a manner different than each individual factor. As Renzaho has failed to demonstrate that the Trial Chamber committed an error invalidating the Trial Judgement, the Appeals Chamber will not consider this argument further.

F. Conclusion

245. The Appeals Chamber dismisses Renzaho's Third Ground of Appeal.

[533] Notice of Appeal, paras. 22, 23.
[534] The Appeals Chamber notes that this argument was not developed in the Appellant's Brief or Brief in Reply.

VI. ALLEGED ERRORS RELATING TO TRAINING *INTERAHAMWE* (GROUND OF APPEAL 4)

246. The Trial Chamber found that Renzaho encouraged students in Kanombe to join the *Interahamwe* in May 1993, and that he encouraged and permitted *Interahamwe* to meet at his house in late 1993 for the purpose of receiving military training.[535] However, the Trial Chamber concluded that support of *Interahamwe* does not in itself constitute a crime under the Statute and that the Prosecution had not established that the purpose of the training was to kill Tutsis.[536]

247. Renzaho claims that the Trial Chamber erred in law and in fact in reaching the conclusion that he encouraged the recruitment and training of *Interahamwe* in 1993.[537] Renzaho submits that the Trial Chamber erred in its assessment of the evidence of several Prosecution and Defence witnesses.[538] He further argues that the Trial Chamber erred in admitting evidence relating to these facts as they fall outside the Tribunal's temporal jurisdiction.[539]

248. The Prosecution responds that since Renzaho was not held criminally responsible for any crime on the basis of his support of *Interahamwe* in 1993, this Ground of Appeal amounts to an abuse of process and should be summarily dismissed.[540]

249. Renzaho replies that the Trial Chamber relied on the finding that he encouraged and supported *Interahamwe* in 1993 in sentencing him.[541] In particular, he refers to the Trial Chamber's statements that it considered his "background and individual circumstances" and "all the relevant circumstances" and asserts that these considerations obviously included his support for *Interahamwe* in 1993.[542]

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[535] Trial Judgement, para. 115. *See also* Trial Judgement, para. 4. The Prosecution alleged that between mid-1993 and 17 July 1994, Renzaho permitted and encouraged the training of *Interahamwe* and *Impuzamugambi*, who killed and/or caused serious bodily or mental harm to Tutsis between 6 April and 17 July 1994. The Prosecution alleged that, in so doing, Renzaho planned, instigated, committed, or otherwise aided and abetted genocide. The Prosecution further alleged that Renzaho had effective control over *Interahamwe* and *Impuzamugambi*, and failed or refused to take the necessary or reasonable measures to prevent their criminal acts, or to punish the perpetrators thereof. *See* Indictment, paras. 11, 28.

[536] Trial Judgement, para. 115. The Trial Chamber also concluded that there was no evidence showing that Renzaho was involved in planning the genocide. *See* Trial Judgement, para. 4.

[537] Notice of Appeal, paras. 41-48; Appellant's Brief, paras. 116-144.

[538] Notice of Appeal, paras. 41-47; Appellant's Brief, paras. 117-124, 130-137; Brief in Reply, paras. 37-43. *See also* Appellant's Brief, paras. 125-129.

[539] Notice of Appeal, para. 48; Appellant's Brief, paras. 138-144.

[540] Respondent's Brief, paras. 94, 97, 102. *See also* Respondent's Brief, paras. 95, 96, 98-101.

[541] Brief in Reply, para. 35.

[542] Brief in Reply, para. 34, *referring to* Trial Judgement, paras. 824, 825. The Appeals Chamber notes that Renzaho evidently intended to refer to paragraphs 824 and 826 of the Trial Judgement.

250. The Appeals Chamber finds Renzaho's argument that the Trial Chamber took these findings into account in sentencing to be without merit. The Trial Chamber's consideration of his background and circumstances was clearly in reference to his aggravating and mitigating circumstances, and in particular to the submissions Renzaho made regarding his character.[543] The Appeals Chamber further notes that, in sentencing Renzaho to life imprisonment, the Trial Chamber stated that it had taken into account all of the relevant circumstances "discussed above".[544] In so stating, the Trial Chamber was evidently referring to its sentencing deliberations, not Renzaho's support for *Interahamwe* in 1993.

251. The Appeals Chamber recalls that, as a general rule, it declines to discuss alleged errors which have no impact on the conviction or sentence.[545] As the Trial Chamber did not find that Renzaho was individually criminally responsible for supporting or training *Interahamwe*, and as Renzaho has not demonstrated how the Trial Chamber's findings impact upon his convictions or his sentence, the Appeals Chamber will not consider Renzaho's arguments further.

252. Renzaho's Fourth Ground of Appeal is therefore dismissed.

[543] *See* Trial Judgement, paras. 816, 824.
[544] Trial Judgement, para. 826.
[545] *Krajišnik* Appeal Judgement, para. 20; *Martić* Appeal Judgement, para. 17; *Strugar* Appeal Judgement, para. 19; *Brđanin* Appeal Judgement, paras. 19, 21. *Cf. Nchamihigo* Appeal Judgement, paras. 102, 112.

VII. ALLEGED ERRORS RELATING TO KILLINGS AT ROADBLOCKS AND DISTRIBUTION OF WEAPONS IN KIGALI-VILLE (GROUNDS OF APPEAL 5 AND 6)

253. The Trial Chamber found that, at the 10 April Meeting, Renzaho ordered local officials to establish roadblocks, which were used to identify and intentionally kill Tutsi civilians throughout Kigali.[546] The Trial Chamber also found that Renzaho reaffirmed his support for roadblocks in subsequent meetings and during various radio broadcasts.[547] Further, at the 16 April Meeting, Renzaho instructed local administration officials, including *conseillers*, to collect weapons from the Ministry of Defence for distribution to select members of the population, knowing that the weapons would further the killing campaign against Tutsi civilians.[548] The Trial Chamber also inferred that Renzaho ordered the killings at roadblocks.[549]

254. These findings are based primarily on the testimony of Prosecution Witnesses UB, AWE, GLJ, and ALG.[550] With respect to the establishment of roadblocks, the Trial Chamber also relied upon Renzaho's radio broadcasts and his involvement in the civil defence system as circumstantial evidence supporting witness testimony.[551] With respect to the distribution of weapons, the Trial Chamber also relied upon a Rwandan army report[552] and Renzaho's radio broadcasts.[553]

255. The Trial Chamber convicted Renzaho of genocide for ordering the killing of Tutsi civilians at roadblocks in Kigali and for aiding and abetting killings at roadblocks by ordering the establishment of roadblocks, sanctioning the conduct at them, and providing continued support for the killings through the distribution of weapons.[554]

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[546] Trial Judgement, paras. 164-169, 763. The Appeals Chamber notes that the Trial Chamber found that the meeting at issue occurred "*around* 10 April 1994"; however, for ease of reference, the Appeals Chamber will refer to it as the 10 April Meeting. *See* Trial Judgement, para. 169 (emphasis added).
[547] Trial Judgement, paras. 165-185, 763-765. The Trial Chamber specified that, at the 10 April Meeting, Renzaho ordered the local officials to erect roadblocks with the knowledge that Tutsi civilians were being killed. *See* Trial Judgement, para. 763.
[548] Trial Judgement, paras. 240-253, 764. The Trial Chamber also found that around 16 April 1994, Renzaho facilitated the acquisition of weapons by local officials for distribution amongst the civilian population. *See* Trial Judgement, para. 764.
[549] Trial Judgement, paras. 182, 183, 763-766. The Trial Chamber found that in view of his authority, his actions in support of roadblocks, their role in the "defence" of the city, their widespread and continuing operation, as well as his order to distribute weapons, Renzaho must have equally ordered killings at roadblocks.
[550] *See* Trial Judgement, paras. 165, 240.
[551] *See* Trial Judgement, paras. 170-179.
[552] Trial Judgement, para. 244.
[553] Trial Judgement, para. 250.
[554] Trial Judgement, para. 766.

256. Renzaho challenges these findings under his Fifth and Sixth Grounds of Appeal,[555] claiming that the Trial Chamber made numerous errors of fact and law in finding him responsible for the killings at roadblocks.[556]

A. Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville

257. Renzaho alleges that the Trial Chamber erred: (1) in assessing Prosecution evidence;[557] (2) in assessing Defence evidence;[558] (3) by finding that he gave orders to kill Tutsis;[559] (4) in relation to the control of roadblocks;[560] (5) by finding a link existed between the orders to erect roadblocks and the killing of Tutsis;[561] (6) in finding that his orders to erect roadblocks substantially contributed to the killings;[562] and (7) in finding that he exercised effective control over roadblocks throughout Kigali.[563]

258. In addition, Renzaho advances several unsubstantiated, unsupported, or vague arguments in his Notice of Appeal. The Appeals Chamber declines to consider them as they do not meet the standard for appellate review.[564] These include his allegations that the Trial Chamber erred by: (1) relying on circumstantial evidence to find that Renzaho had a predetermined plan;[565] (2) finding that Renzaho knew the consequences of his actions;[566] (3) failing to properly assess the evidence with regard to its finding that Renzaho encouraged killings;[567] (4) failing to find that "some" Prosecution witnesses were not credible in the face of "documentary evidence";[568] and (5) failing to properly consider the presence of the United Nations Assistance Mission for Rwanda ("UNAMIR") at the 10 April Meeting.[569] These arguments were not developed in his Appellant's Brief or in his Brief in Reply.

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[555] Notice of Appeal, paras. 49-83; Appellant's Brief, paras. 145-260. *See also* Brief in Reply, paras. 44-96; AT. 16 June 2010 pp. 21-25.
[556] It is not disputed that roadblocks were erected in Kigali-Ville in April 1994 and that Tutsis were targeted and killed at those roadblocks. Renzaho instead focuses his appeal on challenging legal and factual findings concerning his responsibility for those roadblocks. *See generally* Notice of Appeal, paras. 53, 66.
[557] Appellant's Brief, paras. 148-201.
[558] Notice of Appeal, paras. 58-63. *See also* Appellant's Brief, paras. 208-211.
[559] Notice of Appeal, para. 75.
[560] Notice of Appeal, paras. 51, 52, 76.
[561] Notice of Appeal, paras. 68, 71.
[562] AT. 16 June 2010 pp. 23-25.
[563] Appellant's Brief, paras. 590-595. *See also* Notice of Appeal para. 56 *and* Appellant's Brief, paras. 21, 201-207, where Renzaho's argues that he lacked notice of the allegations underlying the Trial Chamber's findings. Renzaho's arguments in this respect are addressed above. *See supra*, Chapter IV (Alleged Lack of Notice), Section G (Roadblocks).
[564] *See supra*, Chapter II (Standards of Appellate Review), para. 12.
[565] Notice of Appeal, para. 54.
[566] Notice of Appeal, para. 67.
[567] Notice of Appeal, para. 70.
[568] Notice of Appeal, para. 61.
[569] Notice of Appeal, para. 63.

1. Alleged Errors Relating to Prosecution Evidence

259. Renzaho submits that the Trial Chamber failed to properly assess the Prosecution's evidence relating to the 10 April Meeting by relying on: (a) the testimony of Prosecution Witnesses UB, AWE, and ALG;[570] (b) the radio broadcast evidence for corroboration;[571] (c) Alison Des Forges's testimony;[572] and (d) the civil defence system evidence for corroboration.[573] The Appeals Chamber will address each of these arguments in turn.

(a) Witnesses UB, AWE, and ALG

260. The Trial Chamber accepted the testimony of Witnesses UB, AWE, and ALG in relation to the 10 April Meeting. It found that they all described the same meeting and considered that any differences between their evidence were not material.[574] Renzaho argues that the Trial Chamber erred by: (i) failing to apply proper caution to the assessment of the testimony of Witnesses UB, AWE, and ALG considering that they were accomplices;[575] (ii) finding their evidence corroborative with respect to the date of the meeting;[576] and (iii) failing to properly assess the risk of collusion between Witnesses UB and AWE.[577]

(i) Caution

261. Renzaho submits that the Trial Chamber failed to apply the proper standard of caution in its assessment of accomplice Witnesses UB, AWE, and ALG.[578]

262. The Prosecution responds that the Trial Chamber treated the testimony of accomplice witnesses with caution, in accordance with established jurisprudence, and that this was evidenced by the fact that it carefully considered their accounts.[579]

263. The Appeals Chamber recalls that nothing in the Statute or the Rules prohibits a Trial Chamber from relying upon the testimony of accomplice witnesses.[580] However, such evidence is to be treated with caution, "the main question being to assess whether the witness concerned might

[570] Appellant's Brief, paras. 148-165.
[571] Appellant's Brief, paras. 166-175.
[572] Appellant's Brief, paras. 176-188.
[573] Appellant's Brief, paras. 189-201.
[574] Trial Judgement, paras. 165-169.
[575] Appellant's Brief, paras. 148-150, 158. *See also* Brief in Reply, paras. 47-55.
[576] Appellant's Brief, paras. 151-156.
[577] Appellant's Brief, paras. 159-165.
[578] Notice of Appeal, para. 55; Appellant's Brief, paras. 148-150. *See also* Brief in Reply, paras. 47-50.
[579] Respondent's Brief, para. 109.
[580] *Nchamihigo* Appeal Judgement, para. 42; *Niyitegeka* Appeal Judgement, para. 98.

have motives or incentives to implicate the accused".[581] Nevertheless, a Trial Chamber may rely on uncorroborated, but otherwise credible, accomplice witness testimony.[582]

264. The Trial Chamber duly noted the accomplice status of Witnesses UB, AWE, and ALG and explicitly stated that it "view[ed] the evidence of these witnesses with appropriate caution."[583] Furthermore, it expressly considered the possibility of collusion between them resulting from their detention in the same prison at the time of their testimony.[584]

265. The Appeals Chamber finds that the Trial Chamber applied appropriate caution to the testimony of Witnesses UB, AWE, and ALG. This is evidenced by the Trial Chamber's careful analysis concerning differences in these witnesses' accounts, which it ultimately found to be immaterial.[585] The Trial Chamber found that Witnesses UB, AWE, and ALG gave credible accounts of Renzaho's order to erect roadblocks, particularly when viewed in the context of circumstantial evidence.[586] The Appeals Chamber therefore finds that Renzaho has failed to demonstrate that the Trial Chamber erred in exercising caution.

266. Accordingly, this argument is dismissed.

(ii) Date of the 10 April Meeting

267. Renzaho submits that no reasonable trier of fact could be convinced beyond reasonable doubt that Witnesses UB and AWE were referring to the same meeting due to the discrepancies in their testimony.[587] Further, Renzaho claims that Witness ALG's hearsay testimony cannot be relied upon because the source of the hearsay is uncertain.[588] Renzaho also contends that the Trial Chamber's subsequent statement that "it is unclear if these witnesses were referring to the same meetings" supports his argument that no reasonable trier of fact could find that Witnesses UB, AWE, and ALG were all referring to the same meeting on 10 April 1994.[589]

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[581] *Nchamihigo* Appeal Judgement, para. 42, *referring to Nahimana et al.* Appeal Judgement, para. 439, *Ntagerura et al.* Appeal Judgement, paras. 203-206, *Niyitegeka* Appeal Judgement, para. 98.
[582] *Nchamihigo* Appeal Judgement, para. 42; *Muvunyi* Appeal Judgement, para. 128. *See also Karera* Appeal Judgement, para. 46.
[583] Trial Judgement, para. 166.
[584] *See* Trial Judgement, para. 166, fn. 192, *referring to* Prosecution Exhibits 69 *and* 80. *See also infra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), para. 276.
[585] *See* Trial Judgement, paras. 167, 168.
[586] *See* Trial Judgement, para. 169.
[587] Appellant's Brief, paras. 151-156.
[588] Brief in Reply, para. 52. *See also* Appellant's Brief, para. 157.
[589] Appellant's Brief, paras. 155, 156, *referring to* Trial Judgement, para. 175.

268. The Prosecution responds that the Trial Chamber reasonably concluded that the main elements of the evidence of these witnesses were compatible.[590]

269. The Appeals Chamber recalls that as the primary trier of fact, the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or amongst witness testimony.[591] It is within the discretion of the Trial Chamber to evaluate any inconsistencies it finds, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the "fundamental features" of the evidence.[592]

270. The Appeals Chamber notes that, based on the slight differences in the testimony, the date of the meeting was found to be "*around* 10 April 1994".[593] The Trial Chamber carefully considered the discrepancies in the testimony concerning the date of the 10 April Meeting.[594] It noted that Witness AWE believed that the meeting was on 9 April 1994 and that his testimony accorded with the hearsay testimony of Witness ALG.[595] It further noted that while Witness UB placed the meeting later, on 10 or 11 April 1994, he also explained that it coincided with the swearing-in of the interim government, which occurred on 9 April 1994.[596] The Trial Chamber concluded that the "main features" of the evidence regarding the date of the meeting were compatible.[597] Renzaho has failed to demonstrate that no reasonable trier of fact could have reached this conclusion.

271. Additionally, the Appeals Chamber rejects Renzaho's assertion that Witness ALG's hearsay testimony was based on uncertain information. The trial record makes clear that Witness ALG heard about the existence of the 10 April Meeting from many different sources, including Witnesses AWE and UB.[598] Lastly, the Trial Chamber's statement that it was unclear if the witnesses were referring to the same meeting was in relation to evidence concerning a different meeting, namely, Witness ALG's testimony that he attended three or four meetings after 12 April 1994 and Witness GLJ's evidence about a meeting in the prefecture office around 16 or 17 April 1994.[599] As the Trial Chamber was discussing another meeting, the uncertainty about when this other meeting occurred does not undermine the Trial Chamber's finding concerning the 10 April Meeting.

272. Accordingly, this argument is dismissed.

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[590] Respondent's Brief, paras. 110, 111, 114.
[591] *Simba* Appeal Judgement, para. 103.
[592] *Simba* Appeal Judgement, para. 103. *See also Muvunyi* Appeal Judgement, para. 144; *Muhimana* Appeal Judgement, para. 135.
[593] Trial Judgement, para. 169 (emphasis added).
[594] *See* Trial Judgement, para. 167.
[595] Trial Judgement, para. 167.
[596] Trial Judgement, para. 167, *referring to* Witness UB, T. 23 January 2007 p. 8 [closed session] *and* Prosecution Exhibit 94 (Expert Report of Alison Des Forges "Genocide in Kigali-City"), p. 11.
[597] Trial Judgement, para. 167.

(iii) Risk of Collusion Between Witnesses UB and AWE

273. Renzaho submits that the Trial Chamber did not fully take into account the possible collusion between Witnesses UB and AWE.[600] He claims that the possibility of collusion is supported by the fact that their testimony matches with respect to Renzaho's "utterances", but not with respect to the circumstances in which he made those utterances.[601] Additionally, Renzaho notes that the Trial Chamber acknowledged that both witnesses had reasons to lie.[602]

274. The Prosecution responds that the Trial Chamber exercised appropriate caution in examining the testimony in question, and did so after fully considering the totality of the circumstances.[603]

275. The Appeals Chamber recalls that collusion can be defined as an agreement, usually secret, between two or more persons for a fraudulent, unlawful, or deceitful purpose.[604] If an agreement between witnesses for the purpose of untruthfully incriminating an accused were indeed established, the evidence would be excluded pursuant to Rule 95 of the Rules.[605]

276. The Appeals Chamber again recalls that the Trial Chamber noted the possibility of collusion between Witnesses UB and AWE resulting from their detention in the same prison at the time of their testimony.[606] Contrary to Renzaho's assertion, the simple fact that their testimony was corroborative on the main aspects of Renzaho's actions but diverged on some details does not suffice to prove collusion. These differences may also demonstrate that collusion has *not* occurred.[607] For these reasons, the Appeals Chamber finds that Renzaho has not established that the Trial Chamber erred in failing to fully take into account the possible collusion between Witnesses UB and AWE.

277. Accordingly, this argument is rejected.

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[598] *See* Witness ALG, T. 11 January 2007 p. 31 [closed session].
[599] Trial Judgement, para. 175.
[600] Appellant's Brief, paras. 159-165.
[601] Appellant's Brief, paras. 162, 163.
[602] Appellant's Brief, para. 164.
[603] Respondent's Brief, para. 115.
[604] *Karera* Appeal Judgement, para. 234.
[605] *Karera* Appeal Judgement, para. 234. Rule 95 of the Rules states: "No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings."
[606] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), para. 264. *See also* Trial Judgement, para. 166, fn. 192, *referring to* Prosecution Exhibits 69 *and* 80.
[607] *See, e.g.*, *Karera* Appeal Judgement, para. 234.

(b) Radio Broadcast Evidence

278. The Trial Chamber found that statements made by Renzaho in radio broadcasts around the time of the 10 April Meeting corroborated the testimony of Witnesses UB, AWE, and ALG that Renzaho organized this meeting and instructed local authorities to erect roadblocks in Kigali.[608]

279. Renzaho contends that as "there is nothing in the transcripts [of the radio broadcasts] to suggest that Renzaho ordered the erection of the roadblocks", the Trial Chamber's finding that he gave this order was not the only reasonable inference available from the evidence.[609] He states that, to the contrary, he made statements condemning the roadblocks and urging an end to the massacres occurring at the time.[610] Additionally, Renzaho claims that the Trial Chamber erred in finding that his inculpatory statements were credible, while also finding, with respect to the same radio broadcast, that his exculpatory statements were not credible.[611] Renzaho also claims that the Trial Chamber failed to address the radio communiqués of 7 and 10 April 1994,[612] or any of those presented by the Defence, and that it considered excerpts from the broadcasts out of context.[613]

280. The Prosecution responds that the Trial Chamber was free to conclude that the positive messages broadcast by Renzaho during the day were motivated by a desire to improve the image of the country internationally, while also concluding that his messages broadcast at night were direct evidence of his orders to erect roadblocks.[614]

281. The Appeals Chamber notes that the Trial Chamber relied on the radio broadcasts as corroborative evidence.[615] In particular, the Trial Chamber found that "the radio broadcast and Renzaho's explanation corroborate the first-hand testimonies of Witnesses UB and AWE that he gave orders to local authorities to collaborate with residents in erecting roadblocks to intercept *Inkotanyi* or *Inyenzi*, which also included Tutsi civilians."[616] The Trial Chamber explained that it "reache[d] this conclusion notwithstanding instructions in the same broadcast to dismantle

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[608] Trial Judgement, paras. 170-175, 185.
[609] Appellant's Brief, paras. 166-174. Renzaho does not specify which particular transcripts are the focus of this alleged error.
[610] Appellant's Brief, paras. 171-174; Brief in Reply, paras. 56-71.
[611] Notice of Appeal, para. 65; Appellant's Brief, paras. 181-188; Brief in Reply, paras. 56-70. Renzaho claims that the Trial Chamber contradicted itself by alternately dismissing and relying upon the same speech made by Renzaho on Radio Rwanda. Specifically, he asserts that the Trial Chamber dismissed some of his statements as having been motivated by the international scrutiny being paid to Rwanda at the time, while in other places relying upon the statement to show that Renzaho encouraged people to build roadblocks at night. *See* Appellant's Brief, paras. 184-187. The Appeals Chamber dismisses summarily Renzaho's argument concerning the Trial Chamber's use of the phrase "appears to be" as this argument is vague and unsubstantiated. *See* Appellant's Brief, para. 183.
[612] Renzaho appears to be referring to Prosecution Exhibits 48 *and* 49 (Radio Rwanda Transcript of 7 April 1994 and Radio Rwanda communiqué dated 10 April 1994, respectively).
[613] Notice of Appeal, paras. 56, 59, 69.
[614] Respondent's Brief, para. 122. *See also* AT. 16 June 2010 p. 54.
[615] *See* Trial Judgement, paras. 169-172.

roadblocks during the day, as well as Renzaho's statement broadcast on 7 April [1994], 'appealing to people not to attack each other'."[617] It also noted that in his radio broadcast on 7 April 1994, Renzaho "encouraged civilians to cooperate with 'forces of law', to 'remain vigilant' and ensure 'their homes are well protected and thereby prevent infiltration'."[618]

282. Thus, the Trial Chamber was fully aware that, with regard to the 10 April 1994 radio broadcast, it was relying, on the one hand, on Renzaho's statements about the use of roadblocks, while, on the other hand, dismissing Renzaho's statements about the dismantling of roadblocks.[619] It explained that it reached this conclusion "*notwithstanding instructions in the same broadcast* to dismantle roadblocks during the day"[620] and provided a thorough analysis detailing its reasons for accepting part of this broadcast while rejecting another part.[621] The Appeals Chamber considers that the Trial Chamber's reasoning was sufficient and that Renzaho has not demonstrated that no reasonable trier of fact could have reached the conclusion that the evidence on Renzaho's radio broadcasts corroborated the testimony of Witnesses UB, AWE, and ALG that Renzaho organized the 10 April Meeting and instructed local authorities to erect roadblocks in Kigali. Finally, contrary to Renzaho's claim, the Trial Chamber did address the radio communiqués of 7 and 10 April 1994, presented by the Defence.[622]

283. Renzaho's arguments concerning the Trial Chamber's assessment of the radio broadcasts are therefore dismissed.

(c) Alison Des Forges's Testimony

284. Alison Des Forges appeared in court as an expert witness. The scope of her testimony was limited to providing a historical background of the Rwandan conflict.[623]

285. Renzaho submits that the testimony of Alison Des Forges was inadmissible because she usurped the function of the Trial Chamber by opining on an issue that was determinative of his innocence or guilt.[624]

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[616] Trial Judgement, para. 172.
[617] Trial Judgement, para. 172.
[618] Trial Judgement, para. 172.
[619] Trial Judgement, para. 172.
[620] Trial Judgement, para. 172 (emphasis added).
[621] *See* Trial Judgement, paras. 172, 184.
[622] *See* Trial Judgement, para. 172, fn. 199 (addressing the 7 April 1994 broadcast), para. 170, fn. 197 (addressing the 10 April 1994 broadcast).
[623] *See* Des Forges, T. 2 March 2007 pp. 52-56, T. 5 March 2007 pp. 1-57. *See also* Prosecution Exhibit 94 (Expert Report of Alison Des Forges "Genocide in Kigali-City").
[624] Appellant's Brief, paras. 177-180. *See also* AT. 16 June 2010 p. 61.

286. The Prosecution responds that the testimony of Alison Des Forges was properly admitted as part of the overall trial record, and that the Trial Chamber correctly considered her testimony.[625]

287. The Appeals Chamber recalls that the evidence of an expert witness is meant to provide specialized knowledge – be it a skill or knowledge acquired through training[626] – that may assist the factfinder to understand the evidence presented.[627] Expert witnesses are ordinarily afforded significant latitude to offer opinions within their expertise; their views need not be based upon first-hand knowledge or experience.[628] Indeed, in general, the expert witness lacks personal familiarity with the particular case, but instead offers a view based on his or her specialized knowledge regarding a technical, scientific, or otherwise discrete set of ideas or concepts that is expected to lie outside the lay person's ken.[629]

288. Thus, while the report and testimony of an expert witness may be based on facts narrated by ordinary witnesses or facts from other evidence, an expert witness cannot, in principle, testify himself or herself on the acts and conduct of accused persons[630] without having also been called to testify as a factual witness and without his or her statement having been disclosed in accordance with the applicable rules concerning factual witnesses.[631] An expert witness cannot pronounce on the criminal responsibility of the accused.[632] The Appeals Chamber recalls that the role of expert witnesses is to assist the Trial Chamber in its assessment of the evidence before it, and not to testify on disputed facts as an ordinary witness.[633]

289. The Appeals Chamber also recalls that it is for the Trial Chamber to accept or reject, in whole or in part, the contribution of an expert witness. A Trial Chamber's decision with respect to the evaluation of evidence received pursuant to Rule 94*bis* of the Rules is a discretionary one.[634] When assessing an expert's report, a Trial Chamber generally evaluates whether it contains sufficient information as to the sources used in support of its conclusions and whether those conclusions were drawn independently and impartially.[635]

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[625] Respondent's Brief, para. 121.
[626] *Nahimana et al.* Appeal Judgement, para. 198.
[627] *Nahimana et al.* Appeal Judgement, para. 198.
[628] *Nahimana et al.* Appeal Judgement, para. 198, *referring to Semanza* Appeal Judgement, para. 303.
[629] *Nahimana et al.* Appeal Judgement, para. 198, *referring to Semanza* Appeal Judgement, para. 303.
[630] *Nahimana et al.* Appeal Judgement, para. 212.
[631] In this regard, see Rules 66(A)(ii), 73*bis* (B)(iv)(b), and 73*ter* (B)(iii)(b) of the Rules.
[632] *See Nahimana et al.* Appeal Judgement, fn. 511.
[633] *Nahimana et al.* Appeal Judgement, para. 509.
[634] *Strugar* Appeal Judgement, para. 58. *See also Stakić* Appeal Judgement, para. 164; *Semanza* Appeal Judgement, para. 304.
[635] *Strugar* Appeal Judgement, para. 58. *See also Nahimana et al.* Appeal Judgement, paras. 198, 199.

290. At trial, Alison Des Forges opined upon the nature of Renzaho's appeals to the Rwandan population over Radio Rwanda.[636] She stated her belief that Renzaho was capable of giving precise instructions when he wanted to, and that this was in contrast to those times when he gave generalized instructions for caution at the roadblocks, surmising that the latter were prompted by increased international attention to the conflict in Rwanda.[637]

291. The Trial Chamber performed its own analysis of Renzaho's statements over the radio. At no point did the Trial Chamber rely on Alison Des Forges's testimony to enter a finding. Instead, it referenced transcripts of Renzaho's radio broadcasts admitted into evidence which demonstrated Renzaho's concern with the country's image internationally.[638] In support of this evidence, the Trial Chamber also pointed to the testimony of Witness UB which tended to confirm its finding that Renzaho was using double language.[639] The Trial Chamber stated that, "[g]iven the record before the Chamber, such broadcasts appear to be motivated by a need to restore the government's public image rather than a genuine attempt to control the ethnically targeted killing".[640] Thus, the Trial Chamber's reference to Alison Des Forges's testimony appears simply as corroboration of the Trial Chamber's own analysis based on the available evidence. The Appeals Chamber therefore finds that the Trial Chamber, having reached its own conclusion on the evidence, only referred to Alison Des Forges's testimony to point out that she was of the same opinion.

292. Considering the totality of the record before the Trial Chamber, the Appeals Chamber finds that there was no error in the use of Alison Des Forges's expert testimony. As stated above, there is evidence which supports the Trial Chamber's finding that Renzaho's pleas over the radio to stop the killing were motivated by increased international scrutiny as opposed to a genuine desire to end the violence. Alison Des Forges properly provided expert testimony with reference to the evidence in the case, pointing to some aspects which the Trial Chamber itself found significant and did not usurp the role of the Trial Chamber.

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[636] Des Forges also testified to the general historical context of the conflict in Rwanda. *See* Trial Judgement, paras. 134-136.
[637] T. 5 March 2007 p. 47. *See also* Prosecution Exhibit 94 pp. 13, 14.
[638] *See* Trial Judgement, para. 184, fn. 227, *referring to* Prosecution Exhibit 51 (Transcript of Radio Rwanda Broadcast of 14 April 1994) p. 11 ("I will add that our country needs to have a good image. During this time when the international community seems having forgotten us, I think it is not good to continue to commit unclear, inexplicable actions because those acts make our government to [*sic*] lose their credibility [...] So do not let [the international community] laugh at us"), *and* Prosecution Exhibit 63 (Transcript of Radio Rwanda Broadcast of 18 June 1994) p. 6 ("Our image abroad has been tarnished. We are called killers, I don't know what else! But who are the authors of such killings? Is it not the *Inyenzi-Inkotanyi*?").
[639] Trial Judgement, para. 184, fn. 228, *referring to* Witness UB, T. 24 January 2007 pp. 9, 10.
[640] Trial Judgement, para. 184.

293. The Appeals Chamber finds that Renzaho has failed to demonstrate that the Trial Chamber erred in its reliance upon Alison Des Forges's testimony concerning radio broadcasts. Thus, this argument is rejected.

(d) Civil Defence System

294. Renzaho submits that the Trial Chamber improperly relied on his general "involvement" in the civil defence system without making a finding as to the specific extent of his involvement.[641] He argues that using this evidence as corroboration was therefore an error, pointing to the Trial Chamber's acknowledgement that "nobody knew when or how the civil defence system was put in place".[642]

295. The Prosecution responds that the Trial Chamber did not err and properly relied on this evidence as corroboration.[643]

296. A Trial Chamber has discretion to decide whether to refer to corroborative evidence.[644] The Trial Chamber found that "clear parallels" existed between the preparation for the civil defence system and the proliferation of roadblocks.[645] Additionally, the Trial Chamber found that Renzaho had "extensive involvement" in matters related to civilian efforts to defend the city, roadblocks being one such effort.[646]

297. The Trial Chamber considered the evidence concerning the civil defence system as "circumstantial corroboration" of Renzaho's important role in defence efforts, including roadblocks.[647] As such, the evidence did not need to be specific to any particular degree so long as it was compatible regarding the set of facts which it sought to corroborate.[648] At any rate, contrary to Renzaho's suggestion, the Trial Chamber did in fact make specific findings as to his involvement in the civil defence system, including his attendance at meetings with army staff to discuss the implementation of the system, his provision of a list of names of "reliable citizens" who would assist soldiers, and his position within the chain of command over civil defence forces.[649] As these facts were relevant to Renzaho's role with respect to roadblocks in Kigali, the Appeals Chamber finds no error in the Trial Chamber's decision to rely on them as corroboration.

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[641] Appellant's Brief, paras. 192, 193; Brief in Reply, paras. 72, 73.
[642] Appellant's Brief, paras. 189, 194, 195. *See also* AT. 16 June 2010 pp. 21-23.
[643] Respondent's Brief, para. 123. *See also* AT. 16 June 2010 pp. 41, 42.
[644] *Bagilishema* Appeal Judgement, para. 79.
[645] Trial Judgement, para. 177.
[646] Trial Judgement, para. 177.
[647] Trial Judgement, para. 177.
[648] *See Nahimana et al.* Appeal Judgement, para. 428.
[649] Trial Judgement, para. 176.

298. With respect to Renzaho's argument concerning the lack of findings relating to the exact date or method of implementation of the civil defence system, the Appeals Chamber notes the Trial Chamber's findings, based on "[u]ndisputed evidence", that on 29 March 1994, Renzaho met with the army chief of staff to discuss implementation of the defence system, and that documentary evidence clearly established Renzaho as "part of the chain of command over civil defence forces."[650] The Trial Chamber took note of the fact that "the evidence does not conclusively show when and to what extent the civil defence structure was *formally* put into place", but further noted the coincidence of the preparations for civil defence and the proliferation of roadblocks.[651] Additionally, the Trial Chamber noted that Renzaho considered roadblocks to "provide security" in Kigali.[652] Because these findings were used as circumstantial corroborative evidence tending to show that Renzaho gave orders to erect roadblocks,[653] the Appeals Chamber finds that the exact date or method of implementation of the civil defence system were not key factors. Rather, it is the coincidence of civil defence planning and proliferation of roadblocks which is significant. Considering the purpose for which it was used, the Appeals Chamber finds that the Trial Chamber properly considered the evidence.

299. Accordingly, Renzaho's arguments concerning the civil defence system are rejected.

2. Alleged Errors Relating to Defence Evidence

300. Renzaho claims that the Trial Chamber failed to properly consider Defence evidence.[654] He claims that the Trial Chamber made errors concerning: (a) his alibi; and (b) his own testimony.

(a) Alibi

301. The Trial Chamber found that Renzaho's testimony concerning his whereabouts from 9 to 11 April 1994 did not "raise doubt that a meeting about roadblocks took place around 10 April."[655] Renzaho argues that the Trial Chamber implicitly acknowledged that this was an alibi, and that as a

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[650] Trial Judgement, para. 176, *referring to* Prosecution Exhibits 24 (Letter from Army Chief of Staff Déogratias Nsabimana, copied to Renzaho, about civil defence, dated 30 March 1994), *and* 25 (Letter from Renzaho to Army Chief of Staff Déogratias Nsabimana with list of persons chosen for civil defence, dated 31 March 1994).
[651] Trial Judgement, para. 177 (emphasis in original).
[652] Trial Judgement, para. 177.
[653] *See* Trial Judgement, paras. 169, 176.
[654] Notice of Appeal, paras. 58-63. The Appeals Chamber notes that these arguments are raised only in Renzaho's Notice of Appeal and are not revisited in his Appellant's Brief. For this reason, the Prosecution declined to respond to these particular arguments. *See* Respondent's Brief, para. 106, fn. 177.
[655] Trial Judgement, para. 178.

result the Prosecution was required to rebut that evidence, which it failed to do.[656] Renzaho submits that this constituted an error of law by shifting the burden of proof.[657]

302. The Prosecution responds that the Trial Chamber considered the evidence on this point and correctly found that no doubt was raised by Renzaho's testimony.[658]

303. The Appeals Chamber recalls that, by raising an alibi, an accused is simply stating that he was not in a position to commit the crime charged.[659] To properly raise an alibi, an accused must produce evidence "tending to show that he was not present at the time of the alleged crime."[660] This evidence need not prove his alibi beyond reasonable doubt; rather, if the alibi is reasonably possibly true, then it must be accepted.[661] When this occurs, the Prosecution bears the burden of proving beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.[662]

304. Renzaho testified that on 9 April 1994 he was negotiating with a utility company for water treatment and meeting refugees at the embassy of Zaire, and later, meeting his family.[663] He also testified that on 10 April 1994, he worked in his office and attended a meeting with the International Committee of the Red Cross ("ICRC"), eventually returning back to Kigali prefecture.[664] On 11 April 1994, Renzaho claims that he attended another meeting with the ICRC concerning public health in Kigali, and in the evening went to various hotels to check on refugees housed there.[665]

305. The Trial Chamber considered Renzaho's account of his whereabouts from 9 to 11 April 1994, noting that his account did not include the 10 April Meeting.[666] It then considered evidence, including Renzaho's own testimony and that of Defence Witness AIA, to the effect that meetings with *conseillers* and *bourgemestres* continued to take place in the days following 8 April 1994, and one of Renzaho's radio broadcasts of 14 April 1994 indicating that a meeting had

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[656] Appellant's Brief, paras. 208-211. *See also* AT. 16 June 2010 pp. 60, 61.
[657] Appellant's Brief, para. 211. The Appeals Chamber notes that Renzaho did not give notice of his alibi as prescribed by Rule 67(A)(ii) of the Rules; however, according to Rule 67(B) of the Rules, failure to do so does not limit Renzaho's ability to raise an alibi at any other point in the trial.
[658] Respondent's Brief, paras. 126-128, *referring to* Trial Judgement, para. 178.
[659] *Nchamihigo* Appeal Judgement, para. 92; *Zigiranyirazo* Appeal Judgement, para. 17; *Ndindabahizi* Appeal Judgement, para. 66.
[660] *Nchamihigo* Appeal Judgement, para. 92, *referring to Zigiranyirazo* Appeal Judgement, para. 17. *See also Musema* Appeal Judgement, para. 202.
[661] *Nchamihigo* Appeal Judgement, para. 92; *Zigiranyirazo* Appeal Judgement, para. 17, *referring to Nahimana et al.* Appeal Judgement, para. 414.
[662] *Nchamihigo* Appeal Judgement, para. 93; *Zigiranyirazo* Appeal Judgement, para. 18.
[663] Renzaho, T. 28 August 2007 pp. 43, 44.
[664] Renzaho, T. 28 August 2007 pp. 44, 45.
[665] Renzaho, T. 28 August 2007 pp. 45-47.
[666] Trial Judgement, para. 178, *referring to* Renzaho, T. 28 August 2007 pp. 43-47, T. 29 August 2007 pp. 59, 60.

recently taken place.[667] The Trial Chamber concluded that the Defence evidence did not raise doubt as to the existence of a meeting about roadblocks around 10 April 1994.[668]

306. While the Trial Chamber should have provided clearer reasoning, the Appeals Chamber finds that the evidence established beyond reasonable doubt that Renzaho participated in the 10 April Meeting, despite his own account of his whereabouts from 9 to 11 April 1994. Witnesses UB and AWE provided first-hand accounts of a meeting convened at the prefecture office around 10 April 1994.[669] Both stated that Renzaho was present at this meeting and gave orders to erect roadblocks to confront Tutsis.[670] Witness ALG heard about a similar meeting occurring around the same time.[671] Additionally, the Trial Chamber took into account circumstantial evidence about radio broadcasts[672] and the civil defence system,[673] which tended to corroborate the fact that this meeting occurred and that orders to erect roadblocks were given there.

307. Furthermore, the Appeals Chamber finds that the Trial Chamber did not reverse the burden of proof with respect to the alibi. By concluding that the Defence evidence did not "raise doubt" that the 10 April Meeting took place in Renzaho's presence, the Trial Chamber merely expressed its view that the Defence evidence was not sufficient to cast doubt on the Prosecution's case; that is to say, in spite of the Defence evidence, the Prosecution proved its case beyond reasonable doubt.

308. Accordingly, this argument is rejected.

(b) Renzaho's Testimony

309. Renzaho claims that the Trial Chamber failed to properly assess his testimony, arguing that statements may have been ascribed to him which he did not make.[674] The Prosecution declined to respond to this argument.[675]

310. The Trial Chamber found that Renzaho made statements to the effect that Tutsis were accomplices of the enemy, *Inyenzi*, or *Inkotanyi*.[676] While it accepted "that instructions to erect roadblocks in order to fight the *Inyenzi*, or *Inkotanyi* were made with the intent [to] mobilise the population against an invading rebel force aimed at deposing the pre-existing regime", it considered

[667] Trial Judgement, para. 178.
[668] Trial Judgement, para. 178.
[669] Witness AWE, T. 31 January 2007, pp. 13, 14, 35-39 [closed session]; Witness UB, T. 23 January 2009 pp. 8-12 [closed session].
[670] Witness AWE, T. 31 January 2007 p. 14 [closed session]; Witness UB, T. 23 January 2007 p. 12 [closed session].
[671] Witness ALG, T. 11 January 2007 pp. 29, 30 [closed session], T. 12 January 2007 pp. 28-30 [closed session].
[672] Trial Judgement, paras. 170-175.
[673] Trial Judgement, paras. 176, 177.
[674] Notice of Appeal, para. 62, *referring to* Trial Judgement, para. 180.
[675] Respondent's Brief, para. 106, fn. 177.

that "Renzaho defined the enemy broadly, including Tutsi civilians among them."[677] It concluded "that Renzaho intended Tutsi civilians to fall within the definition of the enemy or that his message was interpreted to include them."[678]

311. In reaching this conclusion, the Trial Chamber noted Renzaho's "testimony that Tutsis generally were viewed as accomplices to the RPF" and considered that "his concession that his use of the terms *Inyenzi* and *Inkotanyi* on the radio included reference to Tutsi civilians offers strong circumstantial support for these conclusions."[679] It indicated that it had "also considered Defence evidence portraying Renzaho as against the killing of Tutsis at roadblocks and distraught or frustrated by the occurrences at them."[680] The Trial Chamber found that this evidence was "mostly anecdotal" and that it failed to raise doubt "that Renzaho intended the roadblocks to target Tutsi civilians."[681]

312. The Trial Chamber thoroughly analysed Renzaho's own testimony with respect to roadblocks.[682] It is clear from an examination of the Trial Judgement that the Trial Chamber did not ascribe statements to Renzaho that he did not make. Rather, the Trial Chamber's conclusions are based on credible witness testimony and on circumstantial evidence.[683]

313. Accordingly, this argument is dismissed.

3. Orders to Kill Tutsis

314. Renzaho submits that the Trial Chamber erred in finding that he ordered the killings of Tutsis at roadblocks. He argues that there is no "explicit evidence" to that effect[684] and that the Trial Chamber's language shows that this conclusion remained uncertain.[685] The Prosecution responds that the only reasonable inference on the evidence is that Renzaho ordered the killings at roadblocks.[686]

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[676] Trial Judgement, para. 180.
[677] Trial Judgement, para. 180.
[678] Trial Judgement, para. 180.
[679] Trial Judgement, para. 180.
[680] Trial Judgement, para. 180.
[681] Trial Judgement, para. 180.
[682] *See, e.g.*, Trial Judgement, paras. 137-141, 171, 178, 183, 185.
[683] Trial Judgement, para. 180, fns. 213, 214.
[684] Notice of Appeal, para. 75. This argument was not developed in the Appellant's Brief and the Prosecution declined to respond to it. *See* Respondent's Brief, para. 106, fn. 177. Upon request of the Appeals Chamber, the Parties addressed this issue at the Appeal Hearing. *See* AT. 16 June 2010 pp. 22-25 (Renzaho) and AT. 16 June 2010 pp. 41-46 (Prosecution).
[685] Notice of Appeal, para. 75 ("The use of the word 'must' proves that the Chamber was not convinced beyond a reasonable doubt").
[686] AT. 16 June 2010 pp. 42, 46. *See also* AT. 16 June 2010 pp. 43-45.

315. The Appeals Chamber recalls that a person in a position of authority may incur responsibility for ordering another person to commit an offence if the order has a direct and substantial effect on the commission of the illegal act.[687] Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently by the person who received the order.[688] A person who orders an act with such awareness has the requisite *mens rea* for establishing liability under Article 6(1) of the Statute pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.[689] No formal superior-subordinate relationship between the accused and the perpetrator is required.[690]

316. The Appeals Chamber recalls that the Trial Chamber found that at the 10 April Meeting, Renzaho ordered local officials to establish roadblocks in Kigali.[691] It further found that, at the 16 April Meeting, Renzaho facilitated the acquisition of weapons by local officials for distribution to the civilian population.[692] Based on Renzaho's orders to establish roadblocks, his sanctioning the conduct at them, and his continued material support for the killings through the distribution of weapons, the Trial Chamber found Renzaho guilty of aiding and abetting genocide.[693]

317. The Trial Chamber noted that there was no explicit evidence that Renzaho ordered the killing of Tutsis at roadblocks.[694] Nonetheless, it found, based on circumstantial evidence, that Renzaho "must have equally" ordered the killings at roadblocks.[695] On this basis, the Trial Chamber found that, in addition to aiding and abetting, Renzaho was "also liable under Article 6(1) of the Statute for ordering the killings"[696] and convicted him accordingly.

318. Renzaho does not specify whether he contends that, by law, no conviction could be entered against him for ordering the killing of Tutsis unless based on direct evidence or whether he challenges the Trial Chamber's findings themselves. To the extent that Renzaho challenges the Trial Chamber's reliance on circumstantial evidence for a conviction, the Appeals Chamber recalls

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[687] *Kamuhanda* Appeal Judgement, paras. 75, 76.
[688] *Nahimana et al.* Appeal Judgement, para. 481, and citations therein.
[689] *Blaškić* Appeal Judgement, para. 42.
[690] *Nahimana et al.* Appeal Judgement, fn. 1162; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.
[691] Trial Judgement, para. 763.
[692] Trial Judgement, para. 764.
[693] Trial Judgement, para. 766.
[694] Trial Judgement, para. 764.
[695] Trial Judgement, para. 764.
[696] Trial Judgement, para. 766.

that ordering, as a mode of responsibility, can be inferred from circumstantial evidence, so long as it is the only reasonable inference.[697] The Trial Chamber was fully aware of this standard.[698]

319. The Appeals Chamber considers, however, that in finding that Renzaho gave a distinct order to kill Tutsis at roadblocks, the Trial Chamber failed to explain how this was the only reasonable inference that could be drawn from the evidence. The Trial Chamber enumerated the factors that it took into account: Renzaho's "authority, his actions in support of roadblocks, their role in the 'defence' of the city, their widespread and continuous operation, as well as his order to distribute weapons".[699] However, no explanation is provided to show how the combination of these factors necessarily leads to the conclusion that Renzaho ordered killings. Even if all of these factors consistently show that Renzaho's actions were aimed at the killing of Tutsis at roadblocks or that he was aware of the risk that Tutsis would be killed at roadblocks, there is an insufficient basis to make the factual finding that Renzaho "ordered" such killings. Judge Güney and Judge Pocar dissent on this point.

320. The Appeals Chamber further notes that the conclusion that Renzaho gave an order to kill at roadblocks is, standing alone, an insufficient basis to find that Renzaho is criminally responsible under Article 6(1) of the Statute for ordering any such killings. In the present case, the Trial Chamber made no findings concerning when or where Renzaho gave the order,[700] to whom or to what category of perpetrators he gave the order,[701] and whether Renzaho was in a position of authority *vis-à-vis* the recipient.[702] The Appeals Chamber recalls that a Trial Chamber is required to provide clear, reasoned findings of fact as to each element of the crime charged.[703] Taken together, the paucity of findings in relation to the conclusion that Renzaho ordered killings at roadblocks convinces the Appeals Chamber, Judge Pocar dissenting, that the Trial Chamber erred in failing to provide a reasoned opinion.

321. Accordingly, the Appeals Chamber, Judge Güney and Judge Pocar dissenting, quashes Renzaho's conviction for genocide for ordering killings at roadblocks.

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[697] *See D. Milošević* Appeal Judgement, para. 265 ("the *actus reus* and the *mens rea* of ordering can be established through inferences from circumstantial evidence, provided that those inferences are the only reasonable ones"). *See also Kamuhanda* Appeal Judgement, para. 76; *Galić* Appeal Judgement, para. 178.
[698] *See* Trial Judgement, para. 764, fn. 855, *referring to Galić* Appeal Judgement, paras. 177, 178, 389.
[699] Trial Judgement, para. 764.
[700] *Cf. D. Milošević* Appeal Judgement, para. 267.
[701] *Cf. Boškoski and Tarčulovski* Appeal Judgement, para. 75.
[702] *See Kamuhanda* Appeal Judgement, para. 75.
[703] *Kajelijeli* Appeal Judgement, para. 60; *Kordić and Čerkez* Appeal Judgement, para. 383.

4. Alleged Errors in Relation to the Control of Roadblocks

322. Renzaho submits that the Trial Chamber improperly relied upon Witness AFB's testimony concerning the situation at roadblocks and who was present at them, after questioning his credibility.[704] Renzaho also argues that it was improper to rely on Corinne Dufka's testimony regarding the presence of local officials at the roadblocks.[705] Renzaho finally claims that the Trial Chamber erred by contradicting itself in finding that he did not supervise all the roadblocks but that he was nevertheless responsible for them.[706] The Prosecution declined to respond to these arguments.[707]

323. Renzaho's arguments are largely unsubstantiated. He does not point to any finding of the Trial Chamber regarding his actions at roadblocks. In any event, as the Trial Chamber had concerns "about aspects of [Witness AFB's] uncorroborated testimony concerning [the distribution] of weapons", it decided to consider his evidence with caution.[708] With regard to Renzaho's activities at roadblocks, the Trial Chamber declined to rely on Witness AFB's testimony if not corroborated.[709] The Trial Chamber accepted Witness AFB's general observations about "who was manning roadblocks and the state of affairs at them".[710] It further found that "his evidence about the existence of roadblocks manned by heavily armed *Interahamwe* near the Gitega sector office [is supported] both in Corinne Dufka's photographs as well as witness testimony."[711]

324. Renzaho does not explain how the Trial Chamber abused its discretion in so finding. The Appeals Chamber notes Corinne Dufka's testimony that, between 18 to 20 or 21 May 1994, access to Sainte Famille was guarded by a roadblock manned by eight to 10 men in civilian clothes and that within a relatively short distance there were several other roadblocks.[712] At a checkpoint in Kigali, she saw a militiaman in a white doctor's coat splattered with blood and others carrying nail-studded clubs still bearing flesh and hair.[713] At the largest roadblocks, manned by around 30 persons, she met Robert Kajuga, whom Father Munyeshyaka introduced as the militia leader.[714] As such, the Appeals Chamber considers Corinne Dufka's testimony indeed supported Witness AFB's general observations.

[704] Notice of Appeal, para. 51. Renzaho did not develop this argument in his Appellant's Brief.
[705] Notice of Appeal, para. 52. Renzaho did not develop this argument in his Appellant's Brief.
[706] Notice of Appeal, para. 76.
[707] Respondent's Brief, para. 106, fn. 177.
[708] Trial Judgement, para. 162, *referring to* Chapter II.3 of the Trial Judgement on "Distribution of Weapons".
[709] Trial Judgement, para. 162.
[710] Trial Judgement, para. 163.
[711] Trial Judgement, para. 163.
[712] Dufka, T. 30 January 2007 pp. 4, 11-23.
[713] Dufka, T. 30 January 2007 pp. 3-5.
[714] Dufka, T. 30 January 2007 pp. 11-13.

325. Since Renzaho fails to identify any error, these arguments are dismissed.

5. Link between Renzaho's Orders to Erect Roadblocks and the Killings of Tutsis

326. Renzaho submits that the Trial Chamber erred by failing to: (a) properly assess the population's response to his radio appeals;[715] and (b) properly take into account the level of indiscipline at roadblocks.[716]

(a) Response to Radio Appeals

327. Renzaho argues that the Trial Chamber failed to properly take into account Defence evidence before finding that the population responded to his appeals over the radio.[717] He claims that the Trial Chamber did not support its finding with any evidence, "and for good reason: there was none".[718] The Prosecution declined to respond to these arguments.[719]

328. Renzaho does not point to any specific Defence evidence that the Trial Chamber purportedly failed to consider. To the extent that he challenges the existence of evidence establishing the effectiveness of Renzaho's radio appeals to the population, it is clear that the Trial Chamber considered the relevant Prosecution evidence and concluded that "people responded to calls by the prefect to, for example, return to work".[720] The related claim that Renzaho's orders to erect roadblocks did not substantially contribute to the killings at roadblocks is considered below.[721]

329. Accordingly, this argument is rejected.

(b) Indiscipline at Roadblocks

330. Renzaho claims that the Trial Chamber disregarded Defence evidence tending to show that *conseillers* and *bourgmestres* committed crimes without his knowledge or consent.[722] Renzaho additionally argues that the Trial Chamber failed to draw the proper legal inference from the fact that those manning the roadblocks were inebriated.[723] Renzaho contends that the Trial Chamber contradicted itself in finding that the situation at the roadblocks was uncontrollable and, at the same

[715] Notice of Appeal, para. 68.
[716] Notice of Appeal, para. 71.
[717] Notice of Appeal, para. 68. This argument was not developed in the Appellant's Brief.
[718] Notice of Appeal, para. 68.
[719] Respondent's Brief, para. 106, fn. 177.
[720] *See* Trial Judgement, para. 185, fn. 235, *referring to* Trial Judgement, Sections II.6 and II.9.
[721] *See infra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), Subsection 6 (Substantial Contribution).
[722] Notice of Appeal, para. 71.
[723] Notice of Appeal, para. 72.

time, finding that Renzaho was responsible for the erection of roadblocks throughout Kigali.[724] Renzaho also states that more specificity was required as to which roadblocks he was responsible for.[725]

331. The Prosecution responds that there was no need to list all the roadblocks established on Renzaho's orders.[726] It argues that the evidence established that local officials were Renzaho's subordinates, and that they obeyed his orders and erected additional roadblocks.[727]

332. Renzaho seems to argue that the situation at the roadblocks was uncontrollable and that the individuals manning those roadblocks were not taking orders from him or, indeed, from anybody. In this sense, he is merely repeating arguments already rejected at trial without showing how the Trial Chamber erred in its conclusions.[728] It is clear that the Trial Chamber did in fact consider Defence submissions concerning the actions of *conseillers* and *bourgmestres* at the roadblocks, both in the factual findings[729] and the legal findings.[730] The Trial Chamber explicitly took into consideration the fact that there was a "measure of indiscipline" at the roadblocks and that some assailants might not have recognized Renzaho's authority in isolated cases, but concluded that Defence and Prosecution evidence demonstrates that *conseillers* and *responsables de cellule* played critical roles in the establishment and oversight of roadblocks throughout Kigali.[731]

333. As stated above, the Appeals Chamber will not lightly overturn matters which are within the ambit of the Trial Chamber's discretion unless Renzaho points to a specific error[732] and appeal proceedings are not an opportunity to reargue the case *de novo*.[733] Renzaho has failed to show any error in the Trial Chamber's assessment of the pertinent evidence.[734]

334. Having failed to articulate any error, Renzaho's argument is therefore rejected.

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[724] Notice of Appeal, para. 56; Appellant's Brief, para. 198.
[725] Appellant's Brief, para. 199.
[726] Respondent's Brief, para. 124.
[727] Respondent's Brief, paras. 124, 125.
[728] *See* Trial Judgement, para. 159.
[729] *See* Trial Judgement, para. 164, fn. 190.
[730] *See* Trial Judgement, para. 767.
[731] Trial Judgement, para. 767.
[732] *See supra*, Chapter II (Standards of Appellate Review), para. 10.
[733] *Kajelijeli* Appeal Judgement, para. 89; *Rutaganda* Appeal Judgement, para. 15.
[734] As to Renzaho's contention that the Trial Chamber should have determined which roadblocks Renzaho was specifically responsible for (*see* Appellant's Brief, para. 199), the Appeals Chamber considers that there is no requirement for absolute specificity in findings such as this one; it is enough that the Trial Chamber thoroughly analysed Renzaho's responsibility with respect to ordering roadblocks.

6. Substantial Contribution

335. Renzaho claims that the Trial Chamber failed to explain how his orders to erect roadblocks substantially contributed to the subsequent killings at them.[735] The Prosecution responds that the Trial Chamber considered whether Renzaho's orders substantially contributed to the killings at roadblocks and that evidence shows that as a consequence of his orders, Tutsis were killed at roadblocks.[736]

336. The Trial Chamber's conclusion that Renzaho is responsible for aiding and abetting the killings of Tutsi civilians at roadblocks is based on its factual findings that Renzaho ordered the establishment of roadblocks, sanctioned "the conduct at them", and provided "continued material support for the killings through the distribution of weapons."[737] The Trial Chamber was satisfied that local officials erected additional roadblocks within Kigali-Ville prefecture based on Renzaho's orders.[738] It further noted that Renzaho facilitated the acquisition of weapons by local officials which lent further sanction and material support to the killings.[739] It therefore concluded that Renzaho substantially contributed to "the killing of Tutsi civilians" at roadblocks through his orders and public support.[740]

337. The Appeals Chamber agrees that these elements demonstrate that Renzaho's actions in support of roadblocks substantially contributed to the killings at them. As Prefect, Renzaho was the highest authority in Kigali-Ville prefecture. He knew that Tutsis were targeted and killed at roadblocks.[741] At a meeting with local officials he stated that the roadblocks were meant to confront the Tutsis.[742] Renzaho ordered local authorities to collaborate with residents in erecting roadblocks to intercept *Inkotanyi* or *Inyenzi*, including Tutsi civilians. As a consequence of his orders, local officials erected additional roadblocks and showed their support for the *Interahamwe* and civilians manning the existing roadblocks.[743] Renzaho also ordered the distribution of weapons.[744] While there was only scant evidence as to how the weapons were used, the Trial Chamber concluded that the act of distributing weapons demonstrated the government's unequivocal support of the killings of Tutsi civilians, and substantially contributed to the slaughter.[745] Accordingly, the only reasonable conclusion was that Renzaho's instructions to erect roadblocks and to distribute weapons

[735] AT. 16 June 2010 pp. 23-25.
[736] AT. 16 June 2010 pp. 41-46.
[737] Trial Judgement, para. 766.
[738] Trial Judgement, para. 181.
[739] Trial Judgement, para. 764.
[740] Trial Judgement, paras. 181, 764.
[741] Trial Judgement, paras. 183, 767.
[742] Trial Judgement, paras. 168, 179.
[743] Trial Judgement, para. 181.
[744] Trial Judgement, para. 251.

encouraged the people manning the roadblocks to kill Tutsis and therefore substantially contributed to the killings at them.[746]

338. This argument is therefore rejected.

7. Effective Control over Roadblocks Throughout Kigali

339. The Trial Chamber's finding that Renzaho bore superior responsibility for the killings of Tutsi civilians at roadblocks in Kigali was based, *inter alia*, on its determination that those manning the roadblocks were Renzaho's subordinates and that *conseillers de secteur* and *responsables de cellule* – who were found by the Trial Chamber to be Renzaho's subordinates over whom he exercised effective control – played critical roles in the establishment and oversight of roadblocks throughout Kigali.[747]

340. Renzaho submits that the Trial Chamber erred in finding that he exercised effective control over roadblocks throughout Kigali.[748] He argues that by using the expression "throughout Kigali", the Trial Chamber disregarded the existence of RPF-occupied areas within Kigali, admitted by the Prosecution, as well as disregard for the evidence showing boundaries therein, thereby reversing the burden of proof.[749]

341. The Prosecution responds that the Trial Chamber did not hold Renzaho liable for any roadblocks found in areas allegedly controlled by the RPF.[750]

342. The Appeals Chamber has found that the Trial Chamber did not convict Renzaho as a superior in relation to roadblocks.[751] Rather, the Trial Chamber took his related abuse of authority into account in sentencing.[752] Accordingly, the Appeals Chamber will address Renzaho's argument insofar as it relates to his authority. In addition, the Appeals Chamber notes that contrary to Renzaho's suggestion, the Trial Chamber did not find that he exercised effective control over roadblocks throughout Kigali, but over the local officials who established and oversaw them.[753]

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[745] Trial Judgement, para. 253.
[746] Trial Judgement, para. 181.
[747] Trial Judgement, para. 767.
[748] Appellant's Brief, para. 590.
[749] Appellant's Brief, paras. 591-595.
[750] Respondent's Brief, para. 273.
[751] *See infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[752] Trial Judgement, paras. 779, 823. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[753] Trial Judgement, para. 767. Although the Trial Chamber found Renzaho to be the superior of "those manning" the roadblocks, it did not explicitly find that he exercised effective control over them, and the Appeals Chamber has found that he was not convicted as a superior for their crimes. *See infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).

343. While the term "throughout Kigali" may be broad, it does not demonstrate that the Trial Chamber did not consider evidence of the RPF presence and control over certain areas of Kigali. To the contrary, the Trial Chamber duly noted Defence Expert Witness Bernard Lugan's evidence in this regard.[754] In addition, the Trial Chamber specified that it found that Renzaho ordered the Kigali-Ville prefecture *bourgmestres, conseillers,* and other officials "to erect additional roadblocks in areas *under their control*",[755] thereby necessarily excluding areas under RPF control. The fact that some areas of Kigali-Ville prefecture were occupied by the RPF does not cast doubt on the fact that throughout the rest of Kigali-Ville prefecture, roadblocks were erected at which Tutsis were killed.

344. Renzaho therefore fails to demonstrate any error warranting appellate intervention.

B. Alleged Errors Relating to the Distribution of Weapons

345. Under his Sixth Ground of Appeal, Renzaho claims that the Trial Chamber erred in law and in fact in finding him criminally responsible for the distribution of weapons.[756] Renzaho claims that the Trial Chamber erred in finding that he ordered the distribution of weapons at the 16 April Meeting[757] and in its findings concerning the delivery of weapons.[758]

1. Preliminary Issue: Potential Impact of the Alleged Error

346. The Appeals Chamber will first address the Prosecution's contention that Renzaho's Sixth Ground of Appeal should be dismissed because Renzaho's involvement in weapons distribution was only an additional factor considered by the Trial Chamber to convict him for genocide and that this conviction would still stand based on other evidence.[759]

347. Renzaho replies to the Prosecution's objection by arguing that there is no support for the contention that the distribution of weapons was merely an additional basis for his conviction for the killings at roadblocks. He further asserts that all facts underlying a finding of guilt must be proven

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[754] Trial Judgement, paras. 156, 159.
[755] Trial Judgement, para. 179 (emphasis added).
[756] Notice of Appeal, paras. 77-83; Appellant's Brief, paras. 212-260. Renzaho's argument that the Trial Chamber erred in relying on facts not pleaded in the Indictment is considered above in Chapter IV (Alleged Lack of Notice), Section H (Weapons).
[757] Notice of Appeal, paras. 77-81; Appellant's Brief, paras. 215-238.
[758] Notice of Appeal, para. 82; Appellant's Brief, paras. 243-248. *See also* AT. 16 June 2010 pp. 21-25.
[759] Respondent's Brief, para. 133, referring to the evidence showing that he ordered the establishment of roadblocks and the killings at them. The alleged errors relating to these orders are addressed above in Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville).

beyond reasonable doubt and that the Tribunal's jurisprudence does not make a distinction between material and additional facts.[760]

348. The Appeals Chamber recalls that the Trial Chamber convicted Renzaho of genocide under Article 6(1) of the Statute for aiding and abetting the killing of Tutsis at roadblocks based on its factual findings that Renzaho ordered the establishment of roadblocks, sanctioned "the conduct at them", and provided "continued material support for the killings through the distribution of weapons."[761]

349. Thus, contrary to the Prosecution's contention, the findings concerning Renzaho's involvement in the distribution of weapons were not merely additional. They are material to Renzaho's criminal responsibility for aiding and abetting the killings at roadblocks.

350. Accordingly, the Prosecution's objection is rejected. The Appeals Chamber now turns to the substance of the alleged errors.

2. Renzaho's Instructions to Collect Weapons

351. The Trial Chamber found that Renzaho's instructions during the 16 April Meeting to officials, including *conseillers*, to obtain and distribute firearms were coupled with an additional order that weapons be provided to select members of the population.[762] The Trial Chamber also found that following his orders, several local officials, including *conseillers*, collected weapons and distributed them to people within their communities.[763] Renzaho claims that the Trial Chamber erred in finding that he participated in the 16 April Meeting.[764] He also submits that the Trial Chamber erred: (a) in assessing the evidence of Prosecution Witnesses AWE, ALG, UB, and GLJ in relation to this meeting;[765] (b) in disregarding his alibi evidence;[766] and (c) in relation to corroboration.[767]

[760] Brief in Reply, paras. 75-82.
[761] Trial Judgement, para. 766.
[762] Trial Judgement, para. 251.
[763] Trial Judgement, para. 251.
[764] Appellant's Brief, paras. 215-238.
[765] Notice of Appeal, paras. 77, 78, 81; Appellant's Brief, paras. 215-217.
[766] Appellant's Brief, paras. 218-221, 225; Brief in Reply, para. 94.
[767] Appellant's Brief, paras. 234-236.

(a) Assessment of Prosecution Witnesses AWE, ALG, UB, and GLJ

352. Renzaho contends that the Trial Chamber erred in minimizing inconsistencies between the Prosecution witnesses' testimony relating to: (i) the date of the meeting;[768] and (ii) the nature of Renzaho's instructions.[769]

(i) Date

353. Renzaho argues that the Trial Chamber failed to properly take into account the discrepancies between Prosecution witnesses' testimony with regard to the date of the 16 April Meeting.[770] He contends that, contrary to the Trial Chamber's analysis, these discrepancies cannot be explained simply by the passage of time.[771] He specifically asserts that the Trial Chamber erred in relying on the date of 16 or 17 April 1994 indicated by Witness GLJ, considering that it viewed Witness GLJ's testimony with caution.[772] Renzaho further points out that Witness UB referred to a meeting – the second he mentioned – that took place around 11 April 1994.[773]

354. The Prosecution responds that Renzaho has not demonstrated that the Trial Chamber erred in its exercise of caution in assessing the evidence.[774] The Prosecution submits that the presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject the evidence as unreliable.[775] The Prosecution notes that the Trial Chamber explained why it found that Prosecution witnesses testified about the same meeting and why it concluded that the meeting took place around 16 April 1994.[776]

355. The Appeals Chamber recalls that as the primary trier of fact, the Trial Chamber has the main responsibility to resolve any inconsistencies that may arise within or amongst witnesses' testimony.[777] It is within the discretion of the Trial Chamber to evaluate any inconsistencies it finds, to consider whether the evidence taken as a whole is reliable and credible, and to accept or reject the "fundamental features" of the evidence.[778] The Appeals Chamber defers to the Trial Chamber's judgement on issues of credibility, including its resolution of disparities among different witnesses'

[768] Notice of Appeal, para. 78; Appellant's Brief, paras. 222-226. The Appellant explains in detail the discrepancies in the dates of the meeting stated by Witnesses AWE, ALG, GLJ, and UB. *See also* Brief in Reply, paras. 87-96.
[769] Notice of Appeal, para. 78; Appellant's Brief, paras. 227-232.
[770] Appellant's Brief, paras. 216-226; Brief in Reply, paras. 93-96.
[771] Appellant's Brief, para. 226; Brief in Reply, para. 93.
[772] Appellant's Brief, para. 226, *referring* to Trial Judgement, para. 240.
[773] Appellant's Brief, paras. 222-224; Brief in Reply, paras. 88-94.
[774] Respondent's Brief, para. 137.
[775] Respondent's Brief, para. 136.
[776] Respondent's Brief, para. 136.
[777] *Simba* Appeal Judgement, para. 103.
[778] *Simba* Appeal Judgement, para. 103. *See also Muvunyi* Appeal Judgement, para. 144; *Muhimana* Appeal Judgement, para. 135.

accounts, and will only find that an error of fact was committed if it determines that no reasonable trier of fact could have made the impugned finding.[779]

356. The Appeals Chamber notes that the date of the meeting at stake was found to be "around" or "on or about" 16 April 1994.[780] The Trial Chamber noted and carefully considered the discrepancies in the testimony concerning the date of the 16 April Meeting.[781] It noted that Witness AWE's evidence suggested that the instructions to collect weapons were given during a meeting on 11 April 1994, while Witness GLJ testified that "this occurred on 16 April".[782] It further noted that Witness UB's testimony regarding the date varied "between about two days after 10 or 11 April and 16 April [1994]".[783] It also noted Witness ALG's testimony that the instructions to collect weapons were given on 11 April 1994.[784] The Trial Chamber found that these differences were reasonably explained by the passage of time.[785] In so finding, it noted that "the precise date that Renzaho gave these instructions is unclear" and that Witnesses UB and AWE were consistent that the instructions were given during the second meeting with Renzaho at the prefecture office.[786] It further found that this detail was corroborated by the second-hand testimony of Witness ALG and by Witness GLJ's suggestion that those instructions were given based on a decision taken during a prior meeting that he did not attend.[787]

357. Thus, the Trial Chamber duly took into account the discrepancies regarding the date of the meeting. It was open to the Trial Chamber to conclude that a meeting took place around 16 April 1994 at which Renzaho instructed attendees to collect weapons. Renzaho has not demonstrated that no reasonable trier of fact could have reached this conclusion.

(ii) Nature of Instructions Given

358. Renzaho contends that the Trial Chamber reversed the burden of proof in assessing the discrepancies between the testimony of Witnesses GLJ, UB, and AWE relating to the nature of the instructions given by Renzaho at the meeting.[788] He asserts that Witness GLJ testified that the instructions to distribute weapons and to erect roadblocks had been given at the same time, while Witnesses UB and AWE testified that the order to erect roadblocks had been given at a previous

[779] *Muhimana* Appeal Judgement, para. 58; *Rutaganda* Appeal Judgement, paras. 24, 442, 443. *See also Gacumbitsi* Appeal Judgement, para. 70.
[780] Trial Judgement, paras. 247, 251, 764.
[781] Trial Judgement, para. 241.
[782] Trial Judgement, para. 241.
[783] Trial Judgement, para. 241.
[784] Trial Judgement, para. 241.
[785] Trial Judgement, para. 241.
[786] Trial Judgement, para. 241.
[787] Trial Judgement, para. 241.
[788] Appellant's Brief, paras. 228-233.

meeting.[789] He claims that the Trial Chamber misrepresented Witness GLJ's testimony by suggesting that Renzaho might have reiterated his orders to erect roadblocks to select participants at the 16 April Meeting.[790]

359. The Prosecution responds that Renzaho's argument reveals no error in the Trial Chamber's assessment of the evidence, and should be dismissed.[791]

360. The Trial Chamber noted and carefully considered the discrepancies in the testimony regarding the nature of the instructions given at the 16 April Meeting.[792] It found them to be minor.[793] It noted that Witness GLJ testified that the instructions regarding weapons were made in conjunction with a call for the attendees to erect roadblocks. In turn, Witnesses UB and AWE indicated that Renzaho ordered the erection of roadblocks at a previous meeting. The Trial Chamber concluded that their testimony was "not incompatible with Renzaho repeating the instructions concerning roadblocks when directing individuals to obtain and distribute weapons."[794]

361. Renzaho merely states, without developing his argument, that the Trial Chamber reversed the burden of proof in so reasoning. Contrary to Renzaho's submissions, the Trial Chamber did not misrepresent Witness GLJ's testimony by suggesting that Renzaho might have reiterated his orders to erect roadblocks to select participants at the 16 April Meeting. The Trial Chamber did not find that the reiteration of the order to erect roadblocks was made only to select individuals. Rather, it implicitly found that the accounts of Witnesses UB and AWE were not incompatible with that of Witness GLJ in this respect.[795] The Appeals Chamber does not see any error in this approach.

362. Moreover, the Trial Chamber noted other evidence suggesting that Renzaho repeated instructions regarding roadblocks during several meetings.[796] Indeed, Witness ALG testified that after 12 April 1994, he attended several meetings with the Prefect, at which repeated instructions were given about the reinforcement of roadblocks and security issues.[797]

363. Accordingly, these arguments are dismissed.

[789] Appellant's Brief, para. 228.
[790] Appellant's Brief, paras. 229-232.
[791] Respondent's Brief, para. 137.
[792] Trial Judgement, para. 242.
[793] Trial Judgement, para. 242.
[794] Trial Judgement, para. 242.
[795] Trial Judgement, para. 242.
[796] Trial Judgement, para. 242, *referring to* Witness ALG, T. 11 January 2007 pp. 41, 67 [closed session].
[797] Witness ALG, T. 11 January 2007 pp. 41, 67 [closed session].

(b) Alibi

364. Renzaho submits that the Trial Chamber failed to consider his alibi in relation to his alleged participation at the 16 April Meeting.[798] He contends that the Trial Chamber should have explained clearly whether it rejected the testimony of Witness AWE that the meeting took place on 11 April 1994 and that, absent such an explanation, the Trial Chamber was compelled to address the impact of Renzaho's alibi for the period 9 to 11 April 1994.[799]

365. The Prosecution responds that Renzaho's evidence about his alleged whereabouts on 11 April 1994 is irrelevant and should be dismissed.[800]

366. The Appeals Chamber finds that Renzaho's argument is unclear. He does not explain how his evidence concerning his whereabouts between 9 to 11 April 1994 raises reasonable doubt that he participated in the 16 April Meeting. The Appeals Chamber recalls the Trial Chamber's finding that the meeting took place "around 16 April 1994".[801] It is clear that the Trial Chamber did not accept that the meeting took place on 11 April 1994. Thus, the Trial Chamber was not compelled to consider Renzaho's alibi for the period of 9 to 11 April 1994 in connection with the 16 April Meeting.

367. Accordingly, this argument is dismissed.

(c) Corroboration

368. Renzaho claims that the Trial Chamber erred in finding that the Prosecution evidence relating to his orders to distribute weapons was corroborated by a 30 March 1994 report ("30 March Report") prepared by the Rwandan Army Chief of Staff.[802] The Prosecution does not respond to this argument.

369. In analyzing the evidence relating to the 16 April Meeting, the Trial Chamber noted that the 30 March Report, written by the Chief of Staff of the Rwandan Army and addressed to the Minister of Defence and members of the Government, was of interest in this context.[803] The 30 March Report mentioned Renzaho's participation in a meeting on 29 March 1994 ("29 March Meeting") about the civil defence programme.[804] The 30 March Report stated that the

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[798] Appellant's Brief, paras. 218-221, 225; Brief in Reply, para. 94.
[799] Appellant's Brief, paras. 218-221.
[800] Respondent's Brief, para. 136.
[801] Trial Judgement, paras. 247, 764. *See also* Trial Judgement, para. 251.
[802] Appellant's Brief, para. 244, *referring to* Prosecution Exhibit 24 (Letter from Army Chief of Staff Déogratias Nsabimana, copied to Renzaho, about civil defence, dated 30 March 1994).
[803] Trial Judgement, para. 244.
[804] Prosecution Exhibit 24, p. 1.

Ministries of Defence and Interior would be requested to "make weapons available for distribution to selected civilian personnel."[805] The Trial Chamber noted Renzaho's denial that the civil defence programme had been implemented, but concluded that the 30 March Report offered "strong circumstantial corroboration of the consistent Prosecution evidence that local officials would be sent to the Ministry of Defence to obtain weapons to be distributed".[806]

370. The Appeals Chamber understands that, in so finding, the Trial Chamber rejected Renzaho's denial that the distribution of weapons discussed at the 29 March Meeting had been implemented and found the existence of a link between this scheme and the subsequent order to collect weapons at the 16 April Meeting. The 30 March Report provided contextual corroboration of Renzaho's subsequent instructions in relation to the collection of weapons. Renzaho has not demonstrated that no reasonable trier of fact could have reached this conclusion.

371. Accordingly, this argument is dismissed.

3. Delivery of Weapons

(a) Alleged Contradictions in Prosecution Evidence

372. Renzaho argues that the Trial Chamber failed to take into account contradictions between the testimony of Witnesses UB and GLJ as compared with those of Witnesses AWE and ALG regarding how they obtained weapons after Renzaho's instructions at the 16 April Meeting.[807] He asserts that Witnesses AWE and ALG testified that they did not receive weapons at the Ministry of Defence, but from François Karera, who did not attend the 16 April Meeting.[808]

373. The Prosecution responds that Renzaho's argument reveals no error in the Trial Chamber's assessment of the evidence, and should be dismissed.[809]

374. The Appeals Chamber considers that Renzaho misrepresents Witnesses AWE's testimony. Witness AWE testified that he received five weapons from a soldier at the Ministry of Defence after Renzaho called a major at the Ministry of Defence and told Witness AWE to go there to receive them.[810] Witness ALG also testified that he went to the Ministry of Defence with a group led by Jean Baptiste Butera and Sub-Prefect François Karera and that *conseillers* gave weapons to the

[805] Prosecution Exhibit 24, para. 7.
[806] Trial Judgement, para. 244.
[807] Notice of Appeal, paras. 80, 81.
[808] Notice of Appeal, para. 80.
[809] Respondent's Brief, para. 137.
[810] Witness AWE, T. 31 January 2007 pp. 17-20, 42, 47 [closed session]; Trial Judgement, para. 202.

various heads of *cellule* committees for distribution to members of the population.[811] Consequently, the Appeals Chamber sees no contradiction between the evidence of Witnesses UB, GLJ, AWE, and ALG on this point.

375. Accordingly, this argument is dismissed.

(b) Failure to Take into Account Defence Evidence

376. Renzaho claims that the Trial Chamber erred in disregarding Defence Witness PAT's testimony relating to the legal procedure for the delivery of weapons.[812] He claims that the Trial Chamber speculated when it doubted that such legal procedures would have been rigidly followed in April 1994.[813] He claims that in this respect the Trial Chamber should have applied the principle of *in dubio pro reo*.[814] The Prosecution does not respond to this argument.

377. The Trial Chamber considered Witness PAT's testimony. It noted that Witness PAT denied that weapons were distributed from the Ministry of Defence, but considered that while "his description of the formal procedure for obtaining weapons may have been adhered to under normal circumstances", it doubted "that it would have been followed rigidly in April 1994."[815]

378. The Appeals Chamber considers that the Trial Chamber could have used clearer language. However, it is apparent that the Trial Chamber concluded that Witness PAT's testimony did not raise a reasonable doubt as to the evidence that weapons were in fact distributed at the Ministry of Defence in April 1994. Renzaho has not demonstrated that the Trial Chamber erred in reaching this conclusion. The Appeals Chamber notes in particular that Witness PAT never visited the premises of the Ministry of Defence in Kigali and only started working with weapons in May 1994.[816] As a consequence, he had no first-hand knowledge of the issue of distribution of weapons by the Ministry of Defence in April 1994.

379. Accordingly, this argument is dismissed.

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[811] Trial Judgement, para. 205, *referring to* Witness ALG, T. 11 January 2007 pp. 29-32 [closed session], T. 12 January 2007 pp. 28-30 [closed session].
[812] Appellant's Brief, paras. 245-248.
[813] Appellant's Brief, para. 245, *referring to* Trial Judgement, para. 246.
[814] Appellant's Brief, paras. 247, 248.
[815] Trial Judgement, para. 246.
[816] Witness PAT, T. 22 August 2007 pp. 62-64, T. 23 August 2007 pp. 4, 5, 14, 15. *See also* Trial Judgement, paras. 222, 223.

C. Conclusions on Grounds 5 and 6

380. The Appeals Chamber grants Renzaho's Fifth Ground of Appeal in part, Judge Güney and Judge Pocar dissenting, quashing his conviction for genocide for ordering the killings at roadblocks. The Appeals Chamber will consider the impact, if any, of this reversal on Renzaho's sentence in the appropriate section of this Judgement.[817] Renzaho's Sixth Ground of Appeal is dismissed in its entirety.

[817] *See infra*, Section XIV (Sentencing).

VIII. ALLEGED ERRORS RELATING TO THE PROVISION OF FUEL VOUCHERS (GROUND OF APPEAL 7)

381. The Trial Chamber found that the Kigali-Ville prefecture office issued fuel vouchers from about mid-April to early May 1994[818] and that Renzaho distributed fuel by issuing vouchers to chosen people or groups of people, including *Interahamwe*.[819] However, the Trial Chamber concluded that it had not been proven beyond reasonable doubt that the "*Interahamwe*, militia, soldiers and gendarmes who received fuel, provided or authorised by Renzaho, killed or caused harm to Tutsis, or that Renzaho allocated fuel vouchers with the intention of facilitating such killings or harm."[820] The Trial Chamber stated that "the evidence [was] not strong enough to find criminal responsibility."[821]

382. Without challenging the legal findings as such, Renzaho claims that the Trial Chamber committed numerous factual errors, in particular in assessing the evidence of several Prosecution witnesses.[822] Renzaho also asserts that although he was not convicted for the provision of fuel vouchers, the Trial Chamber relied on this finding to conclude that he had control over Kigali-Ville as well as *Interahamwe*.[823]

383. The Prosecution responds that since Renzaho was not held criminally responsible for any crime with respect to his involvement in fuel voucher distribution, this Ground of Appeal amounts to an abuse of process and should be summarily dismissed.[824]

384. The Appeals Chamber has already recalled that, as a general rule, it declines to discuss alleged errors which have no impact on the conviction or sentence.[825] Although Renzaho submits that the Trial Chamber relied on the factual finding that he distributed fuel vouchers to hold that he exercised control over Kigali-Ville and *Interahamwe*, he provides no support for this assertion. A review of the Trial Judgement, and the Trial Chamber's analysis of Renzaho's control over Kigali-

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[818] Trial Judgement, para. 319. *See also* Trial Judgement, para. 12. The Prosecution alleged that Renzaho provided and facilitated the provision of bonds, permits, *laissez-passers*, and food to enable the movement and equipping of the *Interahamwe*, militia, soldiers, and gendarmes and that these individuals killed and/or caused serious bodily or mental harm to Tutsis between 6 April and 17 July 1994. By these actions, Renzaho was alleged to have planned, committed, or otherwise aided and abetted genocide. The Prosecution further alleged that Renzaho had effective control over these individuals. *See* Indictment, paras. 13, 30.
[819] Trial Judgement, para. 321.
[820] Trial Judgement, para. 322.
[821] Trial Judgement, para. 12.
[822] Notice of Appeal, paras. 84-87; Appellant's Brief, paras. 262-280; Brief in Reply, para. 99.
[823] Appellant's Brief, para. 262; Brief in Reply, paras. 97, 98.
[824] Respondent's Brief, paras. 141, 142, 144.
[825] *See supra*, Chapter VI (Alleged Errors Relating to Training *Interahamwe*), para. 251.

Ville and superior responsibility in particular, demonstrates that the Trial Chamber did not rely on these findings to support its conclusions concerning Renzaho's effective control.[826]

385. As the Trial Chamber did not find that Renzaho was individually criminally responsible in relation to the distribution of fuel vouchers, and since Renzaho has not demonstrated how the Trial Chamber's findings impact his convictions or sentence, the Appeals Chamber will not consider his arguments further.

386. Renzaho's Seventh Ground of Appeal is therefore dismissed.

[826] *See* Trial Judgement, paras. 343, 748-757.

IX. ALLEGED ERRORS RELATING TO CONTROL OVER RESOURCES IN KIGALI-VILLE (GROUND OF APPEAL 8)

387. The Trial Chamber found that, through a radio broadcast on 10 April 1994, Renzaho directed state government employees to report to the Kigali-Ville prefecture office.[827] The following day, Renzaho chaired the 11 April Meeting at the prefecture office where he instructed the attendees to clear bodies from Kigali-Ville.[828] It further found that staff from the prefecture's sanitation unit, the Ministry of Public Works, the Ministry of Public Health, the ICRC, and prisoners transported in prefecture office vehicles from the Kigali-Ville main prison participated in the clean-up operation.[829] Particularly in light of the ICRC's initiative and participation in this operation, the Trial Chamber concluded that concealment of bodies was not the only reasonable motive for the operation as it also had the effect of mitigating the public health risk.[830] No conviction was entered in relation to these events.

388. However, the Trial Chamber also found that "the entire operation shows a level of organisation within the Kigali-Ville prefecture, and a degree of co-ordination with other government services as well as the medium of radio that demonstrates Renzaho's control over resources, both human and material, after 6 April 1994."[831] The Trial Chamber noted that this finding undermined the Defence's argument that, after this date, chaos and anarchy reigned in Kigali-Ville, and that Renzaho only had authority over prefecture office staff.[832]

389. On appeal, Renzaho argues that the Trial Chamber erred in law and in fact by finding that he had control over Kigali-Ville.[833] He submits that: (1) he lacked notice that the Prosecution intended to incriminate him or to demonstrate his effective control by virtue of his participation in humanitarian operations;[834] and (2) the Trial Chamber erred in assessing the relevant evidence.[835]

A. Alleged Lack of Notice

390. The Prosecution alleged that, between 6 April and 17 July 1994, Renzaho facilitated the movement and equipping of *Interahamwe*, militia, soldiers, and gendarmes participating in the

[827] Trial Judgement, para. 341.
[828] Trial Judgement, para. 341.
[829] Trial Judgement, para. 341.
[830] Trial Judgement, para. 342.
[831] Trial Judgement, para. 343.
[832] Trial Judgement, para. 343.
[833] Notice of Appeal, paras. 88, 89; Appellant's Brief, paras. 281-310.
[834] Appellant's Brief, paras. 281-290.
[835] Notice of Appeal, para. 89; Appellant's Brief, paras. 291-310.

killing of Tutsis and that he had effective control over these individuals.[836] In connection with this allegation, the Prosecution contended that the prefecture office supplied vehicles to the communal authorities and also requisitioned vehicles for operations to remove bodies from the streets of Kigali-Ville.[837] The Defence acknowledged that Renzaho participated in the collection of bodies, but claimed that he did so for public health reasons, rather than to hide the killings.[838]

391. The Trial Chamber found that as the Prosecution's allegation concerning the provision of vehicles was not pleaded in the Indictment, nor included in the Pre-Trial Brief, "the use of vehicles [could not] form the basis of a conviction."[839] However, it found that it would nonetheless be useful to address the issue.[840]

392. Renzaho argues that he lacked notice of the Prosecution's intention to incriminate him or to demonstrate his effective control by virtue of his participation in humanitarian operations.[841] He submits that the Trial Chamber committed an error of law invalidating the Trial Judgement by considering facts not pleaded in the Indictment.[842] He further asserts that the Trial Chamber relied on its conclusion that he participated in the operation to remove bodies to find that he had effective control over Kigali-Ville and that he was criminally responsible as a superior.[843]

393. In response, the Prosecution maintains that the Trial Chamber did not find that Renzaho's involvement in the operation resulted in a crime, and that Renzaho fails to substantiate his contention that the Trial Chamber relied on his involvement in the operation to analyse his responsibility as a superior under Article 6(3) of the Statute.[844] Thus, the Prosecution submits that Renzaho has not explained how the alleged error impacts upon his convictions or sentence.[845]

394. The Appeals Chamber notes that Renzaho failed to present this argument in his Notice of Appeal as required by Rule 108 of the Rules. However, as the Prosecution has not objected, and has responded in its Respondent's Brief, the Appeals Chamber will consider Renzaho's argument.

395. The Appeals Chamber considers that Renzaho misconstrues the Trial Chamber's findings on this issue. The Trial Chamber did not, as he asserts, find that he had effective control over Kigali-

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[836] Indictment, paras. 2(A)(iii), 13, 30. *See also* Trial Judgement, para. 254.
[837] Trial Judgement, para. 323, *referring to* Prosecution Closing Brief, paras. 117, 142, 144, 145, 158 *and* Prosecution Witness UB's testimony.
[838] Trial Judgement, paras. 324, 340, *referring to* Defence Closing Brief, paras. 329, 330, 961-984 *and* Defence Closing Arguments, T. 14 February 2008 p. 41.
[839] Trial Judgement, para. 338.
[840] Trial Judgement, para. 338.
[841] Appellant's Brief, paras. 281-284.
[842] Appellant's Brief, paras. 286-288, 290.
[843] Appellant's Brief, paras. 289, 310. *See also* Brief in Reply, paras. 100-103.
[844] Respondent's Brief, para. 152.
[845] Respondent's Brief, para. 149.

Ville. Rather, the Trial Chamber noted that the operation demonstrated "a level of organisation within the Kigali-Ville prefecture" and "Renzaho's control over resources, both human and material, after 6 April 1994."[846] It also found that the operation undermined the Defence's contention that anarchy reigned in Kigali-Ville after 6 April 1994, and that Renzaho's authority was therefore limited to the prefecture office staff.[847] However, having concluded that no conviction could be entered in relation to the provision of vehicles, the Appeals Chamber considers that the Trial Chamber was unclear as to why it nonetheless found it "useful" to consider the evidence in this regard.[848]

396. Although Renzaho contends that the Trial Chamber relied on this conclusion to determine his effective control over subordinates,[849] the Appeals Chamber notes that the Trial Chamber did not refer to this finding in its deliberations regarding effective control. In its general discussion of Renzaho's superior responsibility, the Trial Chamber again noted the Defence's contention that Renzaho lacked the means and resources to exercise control over those committing crimes in Kigali-Ville, but did not refer to its findings regarding Renzaho's participation in the operation to remove bodies to reject this contention.[850] Further, the Trial Chamber relied on other evidence to find that Renzaho was a superior over local officials within his prefecture.[851] With respect to other categories of offenders such as soldiers, gendarmes, and militiamen, the Trial Chamber held that it would consider Renzaho's authority on a case-by-case basis.[852] When conducting this analysis, the Trial Chamber did not rely on its conclusion regarding Renzaho's control over human and material resources after 6 April 1994.[853] Consequently, the Appeals Chamber considers that Renzaho has failed to demonstrate that the Trial Chamber relied on its findings concerning the operation to remove bodies to determine his effective control over subordinates. His arguments concerning lack of notice in this respect are accordingly dismissed.

397. At the Appeal Hearing, Renzaho argued for the first time that the Trial Chamber relied on his involvement in the operation to remove bodies to find that he had the *mens rea* for killings at

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[846] Trial Judgement, para. 343.
[847] Trial Judgement, para. 343.
[848] Trial Judgement, para. 338.
[849] Appellant's Brief, paras. 289, 310.
[850] *See* Trial Judgement, para. 754.
[851] *See* Trial Judgement, paras. 753, 754. The Trial Chamber noted, *inter alia*, that: "by virtue of his position as prefect and with his high military rank, Renzaho was clearly an important and influential authority"; there was strong circumstantial evidence "that in the wake of war all resources of local administration would be effectively placed under the authority of the prefect"; "Renzaho regularly convened and chaired meetings at the prefecture level involving civilian and military officials, where he issued instructions and orders for the maintenance of security"; "Renzaho clearly had *de jure* authority over *bourgmestres* and the urban police force"; Renzaho "issued instructions to the *conseillers* and provided them with urban police as their personal guards"; and Renzaho had "ultimate supervision of the replacement of local officials under his Kigali-Ville *bourgmestres*".
[852] Trial Judgement, paras. 755, 756.
[853] *See* Trial Judgement, paras. 767, 770, 773, 777.

roadblocks.[854] He did not assert that he lacked notice of the Prosecution's intention to rely on this fact to establish his *mens rea* and notably does not contend that he suffered prejudice as a result. Nonetheless, the Appeals Chamber notes that the Trial Chamber relied on Renzaho's participation in the 11 April Meeting to find that he had knowledge of the scale on which killings were occurring at roadblocks before 10 April 1994.[855]

398. To the extent that the Trial Chamber relied on this evidence to establish Renzaho's *mens rea* to aid and abet genocide under Article 6(1) of the Statute, the Appeals Chamber considers that Renzaho's participation in the 11 April Meeting and the operation to remove bodies was a matter of evidence which did not need to be pleaded in the Indictment.[856] The Appeals Chamber further notes that the Trial Chamber did not convict Renzaho under Article 6(3) of the Statute in relation to roadblocks, but rather took his abuse of authority into account as an aggravating factor in sentencing.[857] Consequently, the Appeals Chamber considers that Renzaho has not demonstrated that the alleged lack of notice has any impact upon his convictions. The Trial Chamber's consideration of Renzaho's purported abuse of authority in relation to his participation in the operation to remove bodies will be discussed in relation to sentencing.[858]

B. Alleged Errors in Assessing the Evidence

399. Renzaho submits that the Trial Chamber erred in assessing the evidence relating to the operation to remove bodies from Kigali-Ville.[859] Specifically, he argues that the Trial Chamber

[854] AT. 16 June 2010 pp. 21, 22. The Prosecution does not respond to this point.
[855] Trial Judgement, para. 183 ("[T]he need to hold a meeting as early as 11 April to organize the removal of corpses covering the streets of Kigali leads to the only reasonable conclusion that Renzaho, the administrative head of Kigali-Ville, would have been aware of the scale in which killings were occurring before that date. Accordingly, the Chamber is convinced beyond reasonable doubt that Renzaho knew that killings at roadblocks, like elsewhere, targeted Tutsis on an ethnic basis before the meeting where he ordered local officials to erect them around 10 April. In this context, the Chamber finds beyond reasonable doubt that he was aware that the continued killing of Tutsi civilians was a likely outcome when he urged the meetings' attendants to erect additional roadblocks to be manned by those within their communities."). *See also* Trial Judgement, para. 767.
[856] *See Nahimana et al.* Appeal Judgement, para. 347 ("[T]he indictment may either (i) plead the state of mind of the accused, in which case the facts by which that matter is to be established are matters of evidence, and need not be pleaded; or (ii) the evidentiary facts from which the state of mind is to be inferred."). *See also* Indictment, Count I (in which the Prosecution pleads Renzaho's "intent to destroy, in whole or in part, a racial or ethnic group, as such"), paras. 7-9.
[857] Trial Judgement, para. 779. *See also infra*, Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).
[858] *See infra*, Chapter XIV (Sentencing), Section C (Aggravating Factors), paras. 614, 615.
[859] Renzaho also argues that the Trial Chamber improperly applied the burden of proof and erred in law by incorrectly assessing the circumstantial evidence. *See* Notice of Appeal, para. 89. However, as Renzaho fails to substantiate these arguments either in his Notice of Appeal or Appellant's Brief, the Appeals Chamber declines to consider them. In his reply, Renzaho appears to argue, for the first time, that there was insufficient evidence for the Trial Chamber's finding that Renzaho gave a radio address on 10 April 1994. *See* Brief in Reply, para. 104-106. As Renzaho fails to substantiate this argument, the Appeals Chamber will not consider it further.

erred in assessing the evidence of: (1) Prosecution Witness UL;[860] and (2) Defence Witnesses PGL and PPG.[861]

400. The Prosecution responds that Renzaho's admitted involvement in the operation to remove bodies showed a level of organization within the Kigali-Ville prefecture.[862] It further asserts that Renzaho merely argues that the Trial Chamber should have preferred the evidence of Defence witnesses, without demonstrating that the Trial Chamber's finding was unreasonable.[863]

1. Prosecution Witness UL

401. Renzaho first argues that the Trial Chamber ignored Witness UL's evidence that the ICRC initiated the work of burying bodies, that the 11 April Meeting was held under the ICRC's aegis, and that the ICRC provided fuel for the clean-up operation.[864]

402. In its summary of Witness UL's testimony, the Trial Chamber noted that Witness UL gave evidence that a representative of the ICRC attended the 11 April Meeting, that staff from the ICRC participated in the clean-up operation, that bodies of the wounded and dead were transported in ICRC vehicles, and that the ICRC had asked Renzaho to assist in the work of burying bodies.[865] In its findings, the Trial Chamber also noted that the ICRC provided fuel for the operation.[866] The Appeals Chamber therefore finds Renzaho's contention that the Trial Chamber ignored Witness UL's evidence concerning the ICRC's participation in the clean-up operation to be without merit.

403. Renzaho next argues that Witness UL's evidence that the 11 April Meeting was held in Renzaho's office is improbable given the large number of alleged participants.[867] However, Renzaho fails to explain how the location of the meeting – whether in Renzaho's office or elsewhere in the prefecture office as Defence Witness BDC testified[868] – would impact the Trial Chamber's findings. Further, Renzaho has not demonstrated that no reasonable trier of fact could rely on Witness UL to find that Renzaho chaired the 11 April Meeting.

404. Renzaho finally argues that the Trial Chamber failed to provide sufficient reasons for preferring the testimony of Witness UL over that of Defence Witness BDC, the only two witnesses

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[860] Appellant's Brief, paras. 291-299.
[861] Appellant's Brief, paras. 300-310.
[862] Respondent's Brief, para. 155.
[863] Respondent's Brief, para. 156.
[864] Appellant's Brief, para. 298.
[865] Trial Judgement, paras. 326-328.
[866] Trial Judgement, para. 341, fn. 410.
[867] Appellant's Brief, para. 299.
[868] *See* Trial Judgement, para. 333; Witness BDC, T. 4 June 2007 p. 7.

who provided direct evidence concerning the 11 April Meeting.[869] He maintains that while Witness UL testified that Renzaho chaired the 11 April Meeting, Witness BDC testified that the meeting was jointly convened by the Ministries of Public Health and Public Works, and that Renzaho simply provided the venue.[870] Renzaho argues that the Trial Chamber evidently preferred Witness UL's testimony without substantiating its preference.[871]

405. The Appeals Chamber recalls that the right to a reasoned opinion relates to a Trial Chamber's judgement rather than to each and every submission made at trial,[872] and that, as a general rule, a Trial Chamber is not required to set out in detail why it accepted or rejected a particular testimony.[873] The Appeals Chamber notes that the Trial Chamber found that "Witness UL gave first-hand, credible and detailed testimony about [the clean-up operation], several aspects of which were corroborated by Witnesses UB, GLJ, BDC and PPG."[874] Although the Trial Chamber did not expressly consider the credibility of Witness BDC, the Appeals Chamber notes that Witness BDC testified that he was not present at the 11 April Meeting, but rather heard the details afterwards.[875] Consequently, the Appeals Chamber considers that it was reasonable for the Trial Chamber to prefer Witness UL's eyewitness account of the 11 April Meeting over Witness BDC's hearsay evidence.

2. Defence Witnesses PGL and PPG

406. Renzaho argues that the Trial Chamber failed to draw reasonable conclusions from its own findings concerning the evidence of Defence Witnesses PGL and PPG.[876] Renzaho maintains that the Trial Chamber noted that Witness PGL testified that the ICRC had the necessary means to collect bodies, while the prefecture office did not, and that Witness PPG testified that the ICRC initiated the 11 April Meeting and provided workers to supervise the clean-up operation.[877] Consequently, Renzaho submits that the evidence does not demonstrate the organizational capacity of the Kigali-Ville prefecture office, or his control over human and material resources.[878] Rather, he argues that the evidence demonstrates that the ICRC initiated and provided all of the necessary means for the operation, while the prefecture office merely provided the meeting room.[879] He argues that the Defence evidence casts reasonable doubt on the initiative and direction attributed to

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[869] Appellant's Brief, paras. 291-296.
[870] Appellant's Brief, para. 293.
[871] Appellant's Brief, para. 294.
[872] *Krajišnik* Appeal Judgement, para. 139, *referring to Limaj et al.* Appeal Judgement, para. 81.
[873] *Krajišnik* Appeal Judgement, para. 139; *Musema* Appeal Judgement, para. 20.
[874] Trial Judgement, para. 341.
[875] Trial Judgement, para. 333; Witness BDC, T. 4 June 2007 pp. 5, 7.
[876] Appellant's Brief, para. 300.
[877] Appellant's Brief, paras. 301, 302.
[878] Appellant's Brief, para. 303.

Renzaho and that the Trial Chamber erred in finding that he had the human and material resources to exercise control over Kigali-Ville.[880]

407. The Appeals Chamber notes that the Trial Chamber relied on the "initiative and participation" of the ICRC in the clean-up operation to find that the public health risk was a reasonable motive for the clean-up operation.[881] Therefore, it clearly took into account the evidence, provided by both Prosecution and Defence witnesses, concerning the involvement of the ICRC. The Appeals Chamber also notes that even Defence witnesses gave evidence that the Kigali-Ville prefecture office cooperated with the ICRC and other government agencies in the collection of bodies.[882] Consequently, the Appeals Chamber considers that it was reasonable for the Trial Chamber to find that the evidence demonstrated "a level of organisation within the Kigali-Ville prefecture, and a degree of co-ordination with other government services".[883]

408. Regarding the Trial Chamber's finding that the clean-up operation also demonstrated "Renzaho's control over resources, both human and material, after 6 April 1994",[884] the Appeals Chamber finds that Renzaho merely asserts that the Trial Chamber should have interpreted the evidence in a different manner.[885] Renzaho fails to demonstrate that it was unreasonable for the Trial Chamber to prefer the Prosecution evidence regarding the extent of his involvement in the 11 April Meeting and subsequent clean-up operation.

C. Conclusion

409. Renzaho's Eighth Ground of Appeal is therefore dismissed.

[879] Appellant's Brief, paras. 304, 306, 307.
[880] Appellant's Brief, paras. 305, 306, 308-310.
[881] Trial Judgement, para. 342.
[882] Trial Judgement, paras. 334-337; Witness PGL, T. 6 June 2007 pp. 16-18 [closed session]; Witness PPG, T. 18 June 2007 pp. 45, 51, 52 [closed session]; Witness UT, T. 24 May 2007 pp. 20, 22, 41, 42 [closed session].
[883] Trial Judgement, para. 343.
[884] Trial Judgement, para. 343.
[885] The Appeals Chamber notes that such arguments are liable to be summarily dismissed. *See Krajišnik* Appeal Judgement, para. 27.

X. ALLEGED ERRORS RELATING TO THE EVENTS AT CELA (GROUND OF APPEAL 9)

410. The Trial Chamber found that Renzaho was present at CELA on 22 April 1994 and that he, by his own actions and through the assistance of Angéline Mukandutiye and Odette Nyirabagenzi, ordered *Interahamwe* to select Tutsi men, who were then separated from the women and children.[886] The Trial Chamber further found that approximately 40 refugees, mostly Tutsi men, including Charles, Wilson, and Déglote Rwanga, were removed from CELA and that the ultimate goal of this operation was to eliminate Tutsi men of combat age.[887] The refugees were taken to the CND,[888] where *Interahamwe* killed all those who had not been killed en route or who had not escaped, including the Rwangas.[889] The Trial Chamber concluded that Renzaho gave an order to kill the male refugees removed from CELA.[890]

411. Based on these findings, the Trial Chamber concluded that "Renzaho substantially contributed to the attack by ordering the separation and the killings."[891] The Trial Chamber convicted Renzaho pursuant to Article 6(1) of the Statute for aiding and abetting and ordering genocide for the killing of approximately 40 Tutsi civilians.[892] It also held that Renzaho bore superior responsibility under Article 6(3) for these crimes, finding that the *Interahamwe* who killed the Tutsi refugees were Renzaho's subordinates at the time of the attack.[893]

412. The Trial Chamber also found Renzaho guilty of murder as a crime against humanity pursuant to Article 6(1) of the Statute for aiding and abetting and ordering the killing of Charles, Wilson, and Déglote Rwanga.[894] It further concluded that Renzaho was responsible for murder as a crime against humanity as a superior pursuant to Article 6(3) of the Statute for the killing of Charles, Wilson, and Déglote Rwanga and of the other mostly Tutsi men removed from CELA.[895]

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[886] Trial Judgement, paras. 434, 768.
[887] Trial Judgement, paras. 440, 442, 768.
[888] The Appeals Chamber notes that the CND was a nickname for an area containing mass graves. Trial Judgement, fn. 441.
[889] Trial Judgement, paras. 439, 440.
[890] Trial Judgement, paras. 443, 768.
[891] Trial Judgement, para. 769.
[892] Trial Judgement, paras. 770, 779.
[893] Trial Judgement, para. 770.
[894] Trial Judgement, para. 789.
[895] Trial Judgement, para. 789.

413. Renzaho submits that the Trial Chamber erred in fact and in law in finding that he was criminally responsible for the events at CELA.[896] The Prosecution responds that this Ground of Appeal should be dismissed in its entirety.[897]

A. Alleged Errors in the Assessment of the Evidence

414. Renzaho submits that the Trial Chamber erred in its assessment of: (1) Witness BUO; (2) Witness ALG; (3) the presence of Odette Nyirabagenzi and Angéline Mukandutiye; (4) the evidence of Prosecution witnesses; (5) the evidence of Defence witnesses; and (6) the identities of the victims and the circumstances of the killings.[898]

1. Witness BUO

415. Prosecution Witness BUO, who was a member of the *Interahamwe* in Rugenge sector in Kigali,[899] was found by the Trial Chamber to have "provided the most extensive evidence of Renzaho's cooperation and coordination with *Interahamwe* and others who attacked CELA on 22 April 1994."[900] Witness BUO also testified that Renzaho distributed weapons prior to, and was present at, an alleged attack at CELA on 21 April 1994.[901] Further, Witness BUO testified that Renzaho went to the house of Angéline Mukandutiye, the school inspector and a local *Interahamwe* leader,[902] before both attacks.[903]

416. Renzaho submits that the Trial Chamber erred in relying primarily on the evidence of Witness BUO to find that he participated in the selection of refugees at CELA.[904] He argues that in light of the multiple credibility issues raised by the Trial Chamber itself, the Trial Chamber should not have relied on Witness BUO's evidence.[905] He points to: the Trial Chamber's dismissal of Witness BUO's testimony regarding the alleged 21 April 1994 attack at CELA;[906] the Trial Chamber's rejection of Witness BUO's evidence concerning Renzaho's whereabouts prior to the attack at CELA on 22 April 1994;[907] the absence of corroboration for Witness BUO's claim that Renzaho was present at Saint Paul on 17 June 1994;[908] and Witness BUO's incarceration at the time

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[896] Notice of Appeal, paras. 90-95; Appellant's Brief, paras. 311-367; Brief in Reply, paras. 107-129.
[897] Respondent's Brief, para. 180.
[898] Notice of Appeal, paras. 90-95; Appellant's Brief, paras. 313-355.
[899] Trial Judgement, para. 364.
[900] Trial Judgement, para. 417.
[901] Trial Judgement, para. 409.
[902] Trial Judgement, para. 417.
[903] Trial Judgement, paras. 364-370.
[904] Appellant's Brief, para. 316-342.
[905] Notice of Appeal, para. 91; Appellant's Brief, paras. 316-323; Brief in Reply, paras. 112, 113; AT. 16 June 2010 pp. 62, 63.
[906] Appellant's Brief, para. 318.
[907] Appellant's Brief, para. 319; Brief in Reply, para. 110.
[908] Appellant's Brief, para. 321.

of his testimony for his participation in crimes committed during the genocide, coupled with the Trial Chamber's conclusion that his testimony may therefore have been influenced by a desire to improve his situation in Rwanda.[909]

417. Renzaho contends that, in these circumstances, the Trial Chamber should not have relied on Witness BUO's evidence that Odette Nyirabagenzi and Angéline Mukandutiye directed the separation of refugees at CELA under the supervision of Renzaho.[910] Renzaho further submits that, although the Trial Chamber sought to corroborate Witness BUO's evidence with that of Prosecution Witnesses UI, ACK, ACS, ATQ, and HAD, Witness BUO's testimony that Renzaho did not speak to the CELA refugees puts him at odds with these witnesses.[911]

418. The Prosecution responds that it was open to the Trial Chamber to accept parts of Witness BUO's evidence, particularly where it was corroborated by other evidence on the record.[912] The Prosecution also submits that the Trial Chamber duly considered that Witness BUO's testimony may have been influenced by a desire to ameliorate his circumstances in Rwanda.[913]

419. When considering Witness BUO's evidence, the Trial Chamber noted that he was incarcerated at the time of his testimony, serving a 15-year sentence for his participation in crimes during the genocide.[914] The Trial Chamber consequently found that Witness BUO's evidence may have been influenced by a desire to improve his circumstances in Rwanda, and therefore stated that it would view his testimony with caution.[915]

420. The Appeals Chamber recalls that Trial Chambers are entitled to rely on the testimony of accomplice witnesses, but should treat such evidence with caution.[916] In particular, a Trial Chamber should briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused to show its cautious assessment of such evidence. Trial

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[909] Notice of Appeal, para. 92; Appellant's Brief, para. 320. *See also* Brief in Reply, para. 112. Renzaho asserts that the Trial Chamber could not reasonably rely on Witness BUO's testimony in light of the fact that in the *Setako* Trial Chamber could not reasonably rely on Witness BUO's testimony in light of the fact that in the *Setako* proceedings, the Trial Chamber found that Witness BUO was not a member of the *Interahamwe*. However, the Appeals Chamber notes that the Trial Chamber in the *Setako* case in fact questioned Witness BUO's assertion that he was *the vice-president* of his local *Interahamwe* group. *See Setako* Trial Judgement, para. 432.

[910] Appellant's Brief, paras. 323, 325.

[911] Appellant's Brief, para. 324; Brief in Reply, para. 111.

[912] Respondent's Brief, para. 162.

[913] Respondent's Brief, para. 163.

[914] Trial Judgement, para. 410.

[915] Trial Judgement, para. 410.

[916] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), para. 263; *Nchamihigo* Appeal Judgement, para. 42.

Chambers cannot merely state that they exercised caution when assessing the evidence of an accomplice witness, but must establish that they in fact did so.[917]

421. The thrust of Renzaho's argument appears to be that the Trial Chamber's rejection of some aspects of Witness BUO's evidence should have led it to similarly reject his evidence concerning the 22 April 1994 events at CELA. Renzaho seems to submit that the Trial Chamber's failure to do so demonstrates that it did not actually apply the appropriate caution in its assessment of Witness BUO's evidence.[918]

422. Renzaho points in particular to the Trial Chamber's rejection of three aspects of Witness BUO's evidence. First, Witness BUO provided evidence concerning an attack at CELA on 21 April 1994, at which Renzaho was allegedly present.[919] The Trial Chamber found that elements of Witness BUO's testimony raised questions about its reliability.[920] It noted in particular that there was no corroboration for Witness BUO's evidence in this respect, notwithstanding the numerous Prosecution witnesses who were refugees at CELA and therefore well-placed to observe it.[921] The Trial Chamber also noted that there was evidence which undermined Witness BUO's assertion that gendarmes were killed during the attack.[922] Ultimately, the Trial Chamber concluded that it had not been proven beyond reasonable doubt that an attack at CELA occurred that day.[923]

423. Second, Renzaho points to Witness BUO's evidence that, prior to the attack at CELA on 22 April 1994, Renzaho went to Angéline Mukandutiye's home to distribute weapons.[924] The Trial Chamber noted that Witness BUO's evidence on this event was uncorroborated.[925] It further noted that an aspect of his testimony, "while not inconsistent, evolved", and found another portion confusing.[926] The Trial Chamber held that differences between Witness BUO's evidence and Witness ALG's evidence concerning Renzaho's whereabouts prior to the attack raised further doubts.[927] Ultimately, the Trial Chamber concluded that the Prosecution failed to prove beyond reasonable doubt that Renzaho went to Angéline Mukandutiye's home prior to the attack.[928]

424. Third, Renzaho points to Witness BUO's evidence concerning Renzaho's presence at the 17 June 1994 attack at Saint Paul. The Trial Chamber noted that Witness BUO was the sole witness

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[917] *Nchamihigo* Appeal Judgement, para. 46.
[918] Notice of Appeal, para. 92; Appellant's Brief, paras. 316, 320-323, 326; Brief in Reply, paras. 107-113.
[919] *See* Trial Judgement, paras. 364, 365.
[920] Trial Judgement, para. 412.
[921] Trial Judgement, para. 412.
[922] Trial Judgement, para. 413.
[923] Trial Judgement, para. 414.
[924] Trial Judgement, paras. 366, 417.
[925] Trial Judgement, para. 418.
[926] Trial Judgement, para. 418.
[927] Trial Judgement, para. 419.

to testify to Renzaho's presence, as well as to the involvement of several other individuals.[929] Recalling that it viewed Witness BUO's evidence with caution, the Trial Chamber refused "to accept the precise details of the specific individuals that were engaged in the attack without corroboration."[930] The Trial Chamber found that there was an insufficient basis to find Renzaho criminally responsible for the attack at Saint Paul on 17 June 1994.[931]

425. The Appeals Chamber cannot conclude that the Trial Chamber's findings with respect to these portions of Witness BUO's evidence should have led it to reject the entirety of his evidence. First, the Appeals Chamber recalls that a Trial Chamber may accept some parts of a witness's testimony while rejecting others.[932] Second, the Appeals Chamber finds that the Trial Chamber applied the necessary caution to Witness BUO's evidence. The Trial Chamber provided detailed reasoning for why it considered Witness BUO's evidence to be unreliable in certain respects, and notably, refused to rely on Witness BUO's evidence without corroboration, which was well within its discretion.[933]

426. Turning to Witness BUO's evidence concerning the 22 April 1994 events at CELA, the Trial Chamber did not expressly require corroboration of his testimony. The Appeals Chamber recalls that the Trial Chamber was not required to do so, even though he was an accomplice witness.[934] However, a review of the Trial Chamber's deliberations reveals that the Trial Chamber did not rely solely on Witness BUO's testimony for proof of any material fact leading to Renzaho's conviction.[935] Renzaho's presence at CELA on 22 April 1994 was undisputed.[936] The Trial Chamber relied on the evidence of Witnesses BUO, ACK, ACS, HAD, UI, and ATQ to find that Renzaho was operating as an authority figure and participated in the separation of Tutsi men.[937] The Trial Chamber relied on the evidence of Witnesses BUO, ACK, ACS, HAD, UI, and ATQ with respect to the number of refugees removed from CELA,[938] and on the evidence of Witnesses BUO, UI, ACS, and HAD to find that the Rwangas were among those removed.[939] The finding that

[928] Trial Judgement, para. 420.
[929] Trial Judgement, para. 582.
[930] Trial Judgement, para. 583.
[931] Trial Judgement, para. 584. Although the Trial Chamber stated the date of the attack in this paragraph as "14 June", the Appeals Chamber is satisfied that this was a typographical error.
[932] *Nchamihigo* Appeal Judgement, para. 161; *Karera* Appeal Judgement, para. 88. *See also Seromba* Appeal Judgement, para. 110, *referring to Simba* Appeal Judgement, para. 212, *Kamuhanda* Appeal Judgement, para. 248, *and Kupreškić et al.* Appeal Judgement, para. 333.
[933] *See Nchamihigo* Appeal Judgement, paras. 44, 45.
[934] *Nchamihigo* Appeal Judgement, para. 48.
[935] *See* Trial Judgement, paras. 421, 424, 432, 435, 436, 437, 439, 441.
[936] Trial Judgement, para. 421.
[937] Trial Judgement, para. 424.
[938] Trial Judgement, para. 436.
[939] Trial Judgement, para. 439.

Renzaho ordered the killings was based on the evidence of Witnesses BUO, ATQ, and UI.[940] This further demonstrates that the Trial Chamber adopted a cautious approach in its assessment of Witness BUO's testimony.

427. Finally, although Renzaho points out that Witness BUO's evidence differed from that of Witnesses ACS and HAD concerning whether he spoke to the refugees,[941] the significance Renzaho assigns to this difference is unclear. The Trial Chamber was clearly aware of the differing testimony on this point,[942] noting that Witnesses BUO and ACK primarily portrayed Renzaho as overseeing the operation from a distance, whereas Witnesses ACS and HAD depicted Renzaho as having a more active role.[943] The Trial Chamber concluded that, notwithstanding these differences, the fundamental features of the evidence demonstrated that Renzaho held a position of authority.[944] Renzaho has not demonstrated that no reasonable trier of fact could have reached this conclusion.

428. Consequently, the Appeals Chamber finds that Renzaho has not demonstrated any error in the Trial Chamber's assessment of Witness BUO's evidence.

2. Witness ALG

429. Renzaho claims that the Trial Chamber erred in relying on Prosecution Witness ALG, an accomplice witness, to find that Renzaho supervised the selection of Tutsi men at CELA.[945] He submits that the Trial Chamber should have clarified Witness ALG's role in the events at CELA,[946] and that it is evident that Witness ALG incriminated Renzaho in order to avoid his own responsibility.[947]

430. The Prosecution responds that it was open to the Trial Chamber to accept parts of Witness ALG's evidence, particularly where it was corroborated by other evidence on the record.[948] It further submits that the Trial Chamber treated Witness ALG's accomplice evidence with appropriate caution.[949]

431. The Trial Chamber noted that Witness ALG was awaiting trial in Rwanda for genocide when he testified, and considered that his evidence may have been influenced by a wish to

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[940] Trial Judgement, para. 441.
[941] Appellant's Brief, para. 324.
[942] *See* Trial Judgement, para. 424, fns. 496, 497.
[943] Trial Judgement, para. 424.
[944] Trial Judgement, para. 424.
[945] Notice of Appeal, para. 92; Appellant's Brief, para. 338; Brief in Reply, paras. 114-117.
[946] Appellant's Brief, paras. 340, 341.
[947] Brief in Reply, para. 116.
[948] Respondent's Brief, paras. 162, 164.
[949] Respondent's Brief, para. 163.

positively affect the proceedings against him in Rwanda.[950] Accordingly, it stated several times that it viewed his evidence with caution.[951] Although the Trial Chamber did not expressly repeat these considerations in its deliberations regarding the events at CELA, the Appeals Chamber finds that it was not necessary for the Trial Chamber to do so. The Trial Chamber's repeated statements of caution concerning Witness ALG's testimony in relation to other events demonstrates that it was aware of the correct standard when it assessed Witness ALG's evidence relating to the events at CELA.

432. The Appeals Chamber also notes that Witness ALG was not central to the Trial Chamber's findings. Witness ALG testified that Renzaho was at CELA on 22 April 1994,[952] which was not disputed.[953] Additionally, the Trial Chamber relied on the evidence of multiple witnesses for each of its material findings, namely that: Renzaho participated in the selection of refugees; the selected refugees were removed from CELA; Charles, Wilson, and Déglote Rwanga were among the refugees removed; and Renzaho gave the order to kill the male refugees.[954] Consequently, Renzaho has not demonstrated that no reasonable trier of fact could have relied on Witness ALG's evidence to the extent the Trial Chamber did.

433. Finally, with respect to Renzaho's argument that the Trial Chamber should have clarified Witness ALG's role at CELA, it is not clear what import this has with respect to the Trial Chamber's findings. As Renzaho has failed to substantiate this argument, the Appeals Chamber will not consider it.

3. Evidence Regarding Odette Nyirabagenzi's and Angéline Mukandutiye's Role in the Selection of Tutsi Men at CELA

434. The Trial Chamber found that Renzaho ordered *Interahamwe* to select Tutsi men at CELA partly through the assistance of Angéline Mukandutiye and Odette Nyirabagenzi.[955] The Trial Chamber also noted that Father Munyeshyaka and *Bourgmestre* Bizimana were allegedly present, but found the nature of their participation to be unclear.[956]

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[950] Trial Judgement, para. 113, fn. 137.
[951] Trial Judgement, para. 113, fn. 137, paras. 321, 487, 569. The Appeals Chamber notes that, with respect to Witness ALG's evidence concerning Saint Paul, the Trial Chamber stated that "[g]iven the distinct possibility that the witness may have sought to positively affect the outcome of his trial in Rwanda by deflecting responsibility to Renzaho, the Chamber views his evidence with caution and will not accept it without corroboration." Trial Judgement, para. 569.
[952] Witness ALG, T. 11 January 2007 p. 53 [closed session].
[953] Trial Judgement, paras. 363, 415, 421.
[954] *See supra*, Chapter X (Alleged Errors Relating to the Events at CELA), Section A (Alleged Errors in the Assessment of the Evidence), para. 426; Trial Judgement, paras. 424, 434, 436, 439, 441.
[955] Trial Judgement, para. 434.
[956] Trial Judgement, para. 435.

435. Renzaho makes several arguments concerning his alleged relationship with Angéline Mukandutiye and Odette Nyirabagenzi and their presence at CELA. First, Renzaho submits that none of the Prosecution witnesses provided identifying information or a physical description of Angéline Mukandutiye or Odette Nyirabagenzi.[957] He argues that Witness BUO, the only witness who admitted to committing crimes with them, was found to be unreliable by the Trial Chamber concerning Renzaho's alleged visits to their homes.[958]

436. Renzaho further argues that the Trial Chamber erred in finding that discrepancies in the evidence concerning who was with him at CELA were immaterial, because the presence of Angéline Mukandutiye and Odette Nyirabagenzi and their ties to him should have been established beyond reasonable doubt.[959] He contends that because the Trial Chamber had doubts about the nature and extent of Father Munyeshyaka's role at CELA, the Trial Chamber should have had similar doubts concerning the presence of Angéline Mukandutiye and Odette Nyirabagenzi given that the Trial Chamber did not have a better evidentiary basis for establishing their presence.[960] Renzaho also notes that the Trial Chamber found that the nature of *Bourgmestre* Bizimana's participation and the effect of his presence to be unclear.[961]

437. The Prosecution responds that Renzaho fails to provide a cogent reason why the lack of a physical description of Angéline Mukandutiye or Odette Nyirabagenzi undermines the Trial Chamber's acceptance of the Prosecution witnesses' testimony, specifically their knowledge of these co-perpetrators and description of their conduct.[962] The Prosecution argues that it was open to Renzaho to cross-examine witnesses on the physical description of these individuals if he deemed it necessary, and his failure to do so should prevent him from raising it on appeal.[963]

438. The Appeals Chamber finds Renzaho's challenge to be unclear. The Appeals Chamber first notes that the Trial Chamber's finding that Renzaho was in the company of Angéline Mukandutiye and Odette Nyirabagenzi was based on the evidence of Prosecution Witnesses BUO, ACS, ATQ, HAD, and ALG.[964] To the extent that Renzaho argues that the Prosecution witnesses' identification

[957] Appellant's Brief, paras. 327, 328, 330.
[958] Appellant's Brief, para. 329.
[959] Appellant's Brief, para. 332, *referring to* Trial Judgement, para. 431.
[960] Appellant's Brief, paras. 333-336.
[961] Appellant's Brief, para. 337.
[962] Respondent's Brief, paras. 171, 172.
[963] Respondent's Brief, para. 170.
[964] Trial Judgement, paras. 421-423.

of these individuals was insufficient, this claim does not withstand scrutiny given that the witnesses either explained how they knew these individuals or described their positions in the community.[965]

439. To the extent that Renzaho contends that the Trial Chamber should have required a physical description in order to rely on the Prosecution witnesses' identification evidence, he provides no legal basis for such an assertion. The Appeals Chamber considers that there was ample evidence supporting the Trial Chamber's finding that Angéline Mukandutiye and Odette Nyirabagenzi were at CELA on 22 April 1994.

440. Renzaho further argues that the Trial Chamber should have rejected Witness BUO's evidence that Angéline Mukandutiye and Odette Nyirabagenzi were at CELA on 22 April 1994.[966] Although the Trial Chamber rejected Witness BUO's evidence that Renzaho went to Angéline Mukandutiye's home on the mornings of 21 and 22 April 1994, there is no suggestion that the Trial Chamber found Witness BUO's identification of Angéline Mukandutiye to be in any way unreliable.[967] Renzaho provides no further reason why Witness BUO's testimony regarding the presence of Angéline Mukandutiye and Odette Nyirabagenzi at CELA is unreliable.

441. With respect to Father Munyeshyaka and *Bourgmestre* Bizimana, the Appeals Chamber notes that there was no onus on the Trial Chamber to make findings regarding their presence. Further, it was reasonable for the Trial Chamber to find that the Prosecution witnesses' evidence concerning the participation of Father Munyeshyaka and *Bourgmestre* Bizimana at CELA was unclear, while relying on some of the same Prosecution witnesses to make findings concerning the participation of Angéline Mukandutiye and Odette Nyirabagenzi. Consequently, Renzaho has failed to demonstrate that no reasonable trier of fact could conclude that Angéline Mukandutiye and Odette Nyirabagenzi were at CELA on 22 April 1994.

442. Renzaho next argues that the Trial Chamber erred in finding that the differences in the evidence concerning persons in his company at CELA were immaterial.[968] The Appeals Chamber

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[965] *See* Witness BUO, T. 25 January 2007 pp. 52, 53 [closed session] (Angéline Mukandutiye was the school inspector for Rugenge sector and leader of the *Interahamwe* for Rugenge sector, Bwahirimba cellule. She was a close friend of the family and asked Witness BUO to join the *Interahamwe*), T. 26 January 2007 p. 2 (Odette Nyirabagenzi was the *conseiller* of Rugenge sector, whom he had met before); Witness ACS, T. 30 January 2007 pp. 33, 34 (Renzaho was at CELA on 22 April 1994 with Angéline Mukandutiye, the primary school inspector in the Nyarugenge area, and Odette Nyirabagenzi, the *conseiller* of his sector); Witness ATQ, T. 1 February 2007 p. 1 (Angéline was a neighbour of the witness, and was the head teacher of the school complex where the witness attended school and subsequently promoted to the post of school inspector for Nyarugenge commune. Odette Nyirabagenzi was a *conseiller* of the sector, whose home was close to the primary school the witness attended); Witness HAD, T. 1 February 2007 p. 13 (Odette Nyirabagenzi was the *conseiller* of Rugenge); Witness ALG, T. 12 January 2007 pp. 34, 35 [closed session] (Angéline Mukandutiye was staff of the ministry of primary and secondary education in Nyarugenge commune. Odette Nyirabagenzi was a *conseiller*).

[966] Appellant's Brief, paras. 335, 336.

[967] *See* Trial Judgement, paras. 409-414, 417-420.

[968] Appellant's Brief, para. 332.

notes that the Trial Chamber appears to have found that differences in the Prosecution evidence concerning *Bourgmestre* Bizimana and Father Munyeshyaka's presence at CELA were immaterial.[969] The Trial Chamber did not find that there were differences in the evidence concerning Angéline Mukandutiye or Odette Nyirabagenzi's presence. In any event, Renzaho has not demonstrated that no reasonable trier of fact could have come to this conclusion.

443. Finally, Renzaho submits that the Trial Chamber should have established his relationship with Angéline Mukandutiye and Odette Nyirabagenzi beyond reasonable doubt.[970] Renzaho does not explain this contention. Nonetheless, the Appeals Chamber notes that the Trial Chamber found that there was "credible, largely consistent and abundant Prosecution evidence suggesting that [...] [Renzaho] was also working in coordination with assailants who were separating males from females."[971] It ultimately concluded that Renzaho ordered the selection of Tutsi men partly "through the assistance of" Angéline Mukandutiye and Odette Nyirabagenzi.[972]

444. As such, the Appeals Chamber finds that the Trial Chamber evidently considered Angéline Mukandutiye and Odette Nyirabagenzi to be Renzaho's co-perpetrators.[973] Contrary to Renzaho's suggestion, the Trial Chamber did not have to establish that Renzaho had any particular relationship with Angéline Mukandutiye or Odette Nyirabagenzi either prior to or during the events at CELA in order to find that they were co-perpetrators. The Appeals Chamber considers that Renzaho has failed to demonstrate any error committed by the Trial Chamber in this regard.

445. These arguments are therefore dismissed.

4. Inconsistencies in the Evidence of Prosecution Witnesses

446. Renzaho claims that the Trial Chamber erred by disregarding numerous differences between the evidence of Prosecution witnesses.[974] He submits that the Trial Chamber erred in relying on the evidence of Prosecution Witnesses BUO, UI, ACS, HAD, and ACK to find that he ordered that the separated men be killed, in light of these inconsistencies.[975]

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[969] *See* Trial Judgement, para. 431, fn. 505.
[970] Appellant's Brief, para. 332.
[971] Trial Judgement, para. 427.
[972] Trial Judgement, para. 434.
[973] The Appeals Chamber notes that the Trial Chamber found that the *Interahamwe* who killed the Tutsi refugees were Renzaho's subordinates. *See* Trial Judgement, para. 770. There is no suggestion that Angéline Mukandutiye and Odette Nyirabagenzi were considered by the Trial Chamber to also be Renzaho's subordinates in relation to this event.
[974] Appellant's Brief, paras. 330-332.
[975] Appellant's Brief, paras. 344-346. *See also* Notice of Appeal, para. 91.

447. The Prosecution responds that the Trial Chamber took into account alleged contradictions and inconsistencies in the evidence of Prosecution Witnesses BUO, ACK, UI, ACS, ATQ, and HAD and did not find that their testimony lacked coherence.[976]

448. Renzaho argues that the Trial Chamber erred in its treatment of Prosecution witnesses in four instances: (1) Witness ACS's previous statements; (2) Witness HAD's allegation that a grenade was thrown into a group of refugees; (3) Witness UI's evidence that he was not paying attention to Renzaho at time of the separation; and (4) inconsistencies between evidence of Witnesses UI and ACK.

449. Turning to Renzaho's first contention, he argues that the Trial Chamber failed to sufficiently address the fact that Prosecution Witness ACS gave two statements regarding CELA to the Rwandan judicial authorities without mentioning Renzaho.[977] The Trial Chamber noted that Witness ACS did not mention Renzaho's involvement in the attack at CELA in two statements to Rwandan authorities, in April 1998 and March 2003 respectively.[978] It found that "[o]n first glance, the witness's omissions regarding that attack and Renzaho's involvement in it are glaring", particularly since the questions that Witness ACS was asked during the April 1998 interview were open-ended.[979] Witness ACS explained that his statements concerned meetings and crimes in which Renzaho did not participate.[980] The Trial Chamber accepted "that the witness may have believed that the investigations he assisted were unrelated to Renzaho and [found] the explanation reasonable."[981]

450. The Appeals Chamber recalls that a Trial Chamber has the discretion to accept a witness's evidence, notwithstanding inconsistencies between the evidence and his prior statements, as the Trial Chamber determines whether an alleged inconsistency is sufficient to cast doubt on the witness's credibility.[982] The Trial Chamber took into account the inconsistency between Witness ACS's evidence and his prior statements and explained why it found his explanation for the discrepancy to be reasonable. Renzaho has failed to demonstrate that no reasonable trier of fact would have accepted Witness ACS's explanation and found that the witness was credible. Consequently, Renzaho has failed to show any error in the Trial Chamber's acceptance of, and reliance on, Witness ACS's evidence.

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[976] Respondent's Brief, paras. 167-169.
[977] Appellant's Brief, para. 331.
[978] Trial Judgement, para. 433; Defence Exhibits 20C *and* 21C.
[979] Trial Judgement, para. 433, fn. 508.
[980] Trial Judgement, para. 433, fn. 508; Witness ACS, T. 30 January 2007 pp. 75, 76.
[981] Trial Judgement, para. 433, fn. 508.
[982] *Seromba* Appeal Judgement, para. 116; *Rutaganda* Appeal Judgement, para. 443.

451. Second, Renzaho points to the Trial Chamber's decision to rely on Prosecution Witness HAD's evidence, despite rejecting Witness HAD's allegation that a grenade was thrown into a group of refugees during the selection.[983] The Trial Chamber noted that this evidence was solicited in cross-examination and was based upon her prior statement to Tribunal investigators in August 2000.[984] The Trial Chamber considered that Witness HAD's evidence about this incident was imprecise, and ultimately concluded that "[t]he reliability of this account is questionable, particularly in light of the fact that well placed Prosecution witnesses did not offer any evidence in corroboration."[985] The Appeals Chamber recalls that a Trial Chamber may accept some parts of a witness's testimony while rejecting others.[986] Renzaho has not demonstrated that, having rejected this aspect of her testimony, it was unreasonable for the Trial Chamber to rely on other aspects of Witness HAD's evidence.

452. Third, Renzaho notes that Witness UI gave evidence that he was not paying attention to Renzaho at the time of the separation.[987] The Appeals Chamber notes that Witness UI testified that after being informed that an attack was being launched against CELA, he was called out of hiding in the chapel, and was informed that Renzaho was looking for him.[988] Witness UI went to the main entrance of CELA where Renzaho was standing with others.[989] He heard Renzaho tell *Interahamwe* not to attack the refugees immediately.[990] Renzaho then handed Witness UI over to a soldier, who attempted to take him to Saint Paul.[991] They were noticed leaving, and Witness UI was brought back to CELA where he was made to kneel with a group of refugees.[992] Witness UI testified that when he returned to CELA, he did not look in the direction of where he had previously seen Renzaho, and was not aware if he was still present.[993]

453. The Appeals Chamber finds Renzaho's argument with respect to Witness UI to be unclear. To the extent that he argues that the Trial Chamber erred in relying on Witness UI's evidence that Renzaho gave instructions to the *Interahamwe* because Witness UI was not aware of Renzaho's presence at CELA later that same day, his argument is without merit. The fact that Witness UI did not see Renzaho later in the day does not in any way demonstrate Witness UI's lack of reliability

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[983] Appellant's Brief, para. 331.
[984] Trial Judgement, para. 433; Defence Exhibit 25B.
[985] Trial Judgement, para. 433.
[986] *Nchamihigo* Appeal Judgement, para. 161; *Karera* Appeal Judgement, para. 88; *Seromba* Appeal Judgement, para. 110.
[987] Appellant's Brief, para. 346.
[988] Witness UI, T. 5 February 2007 pp. 58, 59.
[989] Witness UI, T. 5 February 2007 p. 59.
[990] Witness UI, T. 5 February 2007 pp. 59, 60.
[991] Witness UI, T. 5 February 2007 pp. 60, 61.
[992] Witness UI, T. 5 February 2007 pp. 61, 62. *See also* Witness UI, T. 6 February 2007 pp. 14, 15, 17, 18; Defence Exhibit 27.
[993] Witness UI, T. 6 February 2007 p. 18.

regarding the events at CELA earlier in the day. Renzaho does not otherwise demonstrate that the Trial Chamber erred in relying on Witness UI's evidence.

454. Finally, Renzaho states that Witness UI's account is inconsistent with Witness ACK's evidence because Witness ACK stated that Witness UI was present when Charles Rwanga and his children were removed.[994] The Appeals Chamber notes that both Witness ACK and Witness UI testified that they were present at CELA when approximately 20 males were separated from the rest of the refugees.[995] Witness ACK testified that Charles Rwanga and his children were among those separated.[996] Witness UI did not mention seeing the Rwangas during the separation, but testified that Charles Rwanga and his children were later removed from CELA in the same minibus as him.[997] The Appeals Chamber sees no inconsistency in this evidence. Renzaho has failed to demonstrate any error in the Trial Chamber's acceptance of, and reliance on, Witness ACK's and Witness UI's evidence.

455. Thus, contrary to Renzaho's submissions, the Appeals Chamber considers that the Trial Chamber did consider discrepancies in the evidence of Prosecution witnesses and provided cogent reasons for the weight it attached to their evidence. In particular, the Trial Chamber concluded that frailties in the Prosecution evidence did not undermine the fundamental features concerning the attack.[998] It was within the discretion of the Trial Chamber to evaluate any inconsistencies in witness testimony, to consider whether the evidence taken as a whole was reliable and credible, and to accept or reject the "fundamental features" of the evidence.[999] Renzaho has not demonstrated that the Trial Chamber failed to properly assess the testimony of Prosecution witnesses or that no reasonable trier of fact could have found them to be credible.

456. Therefore, the Appeals Chamber dismisses Renzaho's arguments in this respect.

5. Alleged Error in Disregarding Evidence of Defence Witnesses

457. Renzaho argues that the Trial Chamber erred in disregarding the evidence of Defence witnesses whose credibility was not questioned by the Prosecution and whose testimony exonerated Renzaho.[1000] The Prosecution responds that the Trial Chamber properly exercised its discretion in

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[994] Appellant's Brief, para. 346.
[995] Witness ACK, T. 5 March 2007 pp. 62 [closed session], 63-66; Witness UI, T. 5 February 2007 pp. 60, 61.
[996] Witness ACK, T. 5 March 2007 pp. 62 [closed session], 63, 64.
[997] Witness UI, T. 5 February 2007 p. 68 [closed session].
[998] Trial Judgement, para. 434.
[999] *Simba* Appeal Judgement, para. 103.
[1000] Notice of Appeal, para. 94.

finding that the Defence evidence did not weaken the Prosecution case, and gave reasons for rejecting the evidence of Defence witnesses.[1001]

458. The Appeals Chamber notes that the Trial Chamber questioned the credibility of Renzaho and Defence Witness WOW, and found the evidence of Defence Witnesses KRG, UT, and PPV to be second-hand and of limited probative value.[1002] The Trial Chamber provided detailed and cogent reasons for its findings. The Appeals Chamber therefore rejects Renzaho's contention that the Trial Chamber disregarded the Defence evidence and finds that Renzaho has failed to demonstrate that the Trial Chamber erred.

6. Identities of Victims and Circumstances of the Killings

459. Renzaho submits that the identities of the refugees allegedly taken from CELA and the circumstances of their murder were not clarified during the trial.[1003] In particular, he argues that no reasonable trier of fact could have concluded from the evidence presented that Charles, Wilson, and Déglote Rwanga were taken from CELA and subsequently killed on 22 April 1994.[1004]

460. First, Renzaho points to a judgement from Rwandan proceedings which found Alphonse Macumi responsible for killing Charles Rwanga and his children at Sainte Famille on a date other than 22 April 1994 ("Macumi Judgement").[1005] Renzaho notes that Prosecution Witness ACK rejected that conclusion during her evidence in this case.[1006] Renzaho claims that the contradiction between the findings of the Trial Judgement and the Macumi Judgement raises doubt with respect to the perpetrators and the circumstances of the murder of the Rwangas.[1007]

461. Second, Renzaho points to the Munyeshyaka Indictment, in which the Prosecution alleges that two unnamed daughters and an unnamed son of Rose Rwanga were killed by Father

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[1001] Respondent's Brief, para. 168.
[1002] Trial Judgement, paras. 428-430.
[1003] Appellant's Brief, para. 343.
[1004] Appellant's Brief, para. 354.
[1005] Appellant's Brief, para. 347; Brief in Reply, paras. 120-128, *referring to* Defence Exhibit 40 ("Portion of the Judgement of the Kigali Court of First Instance Dated 23 October 2003"). In relevant part, the Macumi Judgement states that Alphonse Macumi "killed Tutsis after having taken them out of the place of refuge, that is to say respectively the CELA centre, *Sainte Famille*, and the Saint Paul centre. The victims are, amongst other people, Charles Rwanga and his children, Ngarambe, Charles Gahima, as well as many others [...]. [Alphonse Macumi] had Charles Rwanga and his children killed, as well as Emile Rukundo, Bicinoni, after having taken them out of *Sainte Famille*. There are a number of witnesses who have provided such evidence". *See* T. 6 March 2007 pp. 58, 59.
[1006] Appellant's Brief, para. 348. *See also* AT. 16 June 2010 p. 61.
[1007] Appellant's Brief, para. 349; Brief in Reply, paras. 118-128. In reply, Renzaho argues for the first time that the Trial Chamber applied different standards in its treatment of Prosecution and Defence evidence. To support this assertion, he claims that the Trial Chamber relied on a *Gacaca* judgement to reject Defence Witness WOW's testimony, while it rejected a *Gacaca* judgement to find Prosecution Witness ACK credible. However, the Appeals Chamber notes that, in assessing Witness WOW's evidence, the Trial Chamber noted that the witness fled Rwanda after being called before *Gacaca* proceedings. It did not rely on any *Gacaca* judgement to make adverse findings against this witness. *See* Trial Judgement, para. 429.

Munyeshyaka on 13 April 1994.[1008] Renzaho argues that the fact that there are three theories concerning the death of Charles Rwanga and his children raises reasonable doubt about the circumstances of their deaths.[1009]

462. The Prosecution responds that the Trial Chamber reasonably accepted the evidence of Witness ACK.[1010] It submits that the Trial Chamber fully considered the documents used by Renzaho to challenge her testimony and either did not admit them into evidence or found her explanations to be reasonable.[1011]

463. When considering the removal of refugees from CELA, the Trial Chamber found that the Prosecution evidence about the number of victims removed was "largely consistent and clearly credible."[1012] The Trial Chamber concluded that approximately 40 refugees were removed from CELA on 22 April 1994.[1013] With respect to the victims' identities, the Trial Chamber found that the accounts were similar and appeared reliable, as were the descriptions of the vehicles carrying the refugees.[1014] Regarding the presence of Charles, Wilson, and Déglote Rwanga, the Trial Chamber found that the "consistent first-hand accounts of Witnesses BUO, UI, ACS and HAD, among other evidence, confirm that Charles Rwanga and his children Wilson and Déglote were among the men identified and removed from CELA".[1015]

464. The Trial Chamber acknowledged the Defence evidence which suggested that Charles, Wilson, and Déglote Rwanga were not removed from CELA on 22 April 1994 and that they had been killed in other circumstances. First, it noted that Defence Witness WOW testified that he had heard that Charles Rwanga was killed on 7 April 1994, but found that this evidence carried limited weight as Witness WOW did not see the alleged 7 April 1994 attack or Charles Rwanga's body afterwards.[1016]

465. Second, the Trial Chamber considered the Macumi Judgement, which was put to Witness ACK.[1017] Witness ACK maintained that Charles, Wilson, and Déglote were removed from CELA,

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[1008] Appellant's Brief, paras. 350-352, *referring to* Defence Exhibit 105. In relevant part, paragraphs 13, 14 and 15 of the Munyeshyaka Indictment read: *Le 13 avril 1994 ou vers cette date, dans l'enceinte de la paroisse Sainte Famille de Kigali, le père Wenceslas MUNYESHYAKA, dans l'intention de détruire en tout ou en partie le groupe ethnique tutsi comme tel, a abattu une jeune Tutsie âgée de 18 ans qui était la fille de Rose RWANGA*", "*a abattu un jeune Tutsi âgé de 20 ans qui était le fils de Rose RWANGA*" and "*a abattu une jeune Tutsie âgée de 22 ans qui était la fille de Rose RWANGA.*"
[1009] Appellant's Brief, paras. 354, 355; AT. 16 June 2010 pp. 25, 26.
[1010] Respondent's Brief, paras. 174, 178.
[1011] Respondent's Brief, paras. 174-178. *See also* AT. 16 June 2010 pp. 44, 50, pp. 51-53 [closed session].
[1012] Trial Judgement, para. 436.
[1013] Trial Judgement, para. 440.
[1014] Trial Judgement, para. 437.
[1015] Trial Judgement, para. 439.
[1016] Trial Judgement, para. 438.
[1017] Trial Judgement, para. 438.

not from Sainte Famille, and stated that the Macumi Judgement's finding otherwise was incorrect and based on information provided by persons other than her.[1018] The Trial Chamber accepted this explanation as reasonable.[1019]

466. In another portion of the Trial Judgement, the Trial Chamber acknowledged the Munyeshyaka Indictment, which was entered into evidence during Renzaho's testimony.[1020] The Trial Chamber noted that the Munyeshyaka Indictment "could be viewed as inconsistent with Prosecution evidence that Wilson and Déglote were separated at CELA on 22 April 1994, removed and killed."[1021]

467. To the extent that Renzaho argues that the Trial Chamber erred in failing to identify all of the victims removed from CELA and killed, the Appeals Chamber finds this argument to be without merit. When it is alleged that the accused is responsible for a large number of killings, the scale of the alleged crime can make the determination of the identity of each victim impossible.[1022]

468. The Appeals Chamber further considers that the Trial Chamber was clearly aware of the various challenges to the Prosecution evidence that Charles, Wilson, and Déglote Rwanga were removed from CELA on 22 April 1994 and killed. Renzaho does not point to any error in the Trial Chamber's analysis, but merely asserts that the Macumi Judgement and the Munyeshyaka Indictment should have created reasonable doubt. 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.[1023]

469. Moreover, the Appeals Chamber notes that the Macumi Judgement resulted from a separate proceeding against a different accused and, as a result, its contents are neither binding nor authoritative before this Tribunal. The Appeals Chamber also notes that the Munyeshyaka

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[1018] Trial Judgement, para. 438; Witness ACK, T. 6 March 2007 pp. 59, 60. When asked why the Macumi Judgement stated that Charles Rwanga and his children were killed after having been taken from Sainte Famille, Witness ACK explained that the Macumi Judgement was a summary of the testimony of several witnesses and "deals with the cases of several different people".
[1019] Trial Judgement, para. 438, fn. 518.
[1020] Trial Judgement, paras. 46-50; Defence Exhibit 105.
[1021] Trial Judgement, para. 49.
[1022] The Appeals Chamber considers that this follows from the relevant jurisprudence concerning the sufficiency of pleadings in an indictment. *See Muvunyi* Appeal Judgement, para. 58 ("[I]n certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes."); *Ntakirutimana* Appeal Judgement, para. 73 ("[I]n many of the cases before the two International Tribunals, the number of individual victims is so high that identifying all of them and pleading their identities is effectively impossible. The inability to identify victims is reconcilable with the right of the accused to know the material facts of the charges against him because, in such circumstances, the accused's ability to prepare an effective defence to the charges does not depend on knowing the identity of every single alleged victim.").
[1023] *See Martić* Appeal Judgement, para. 19; *Strugar* Appeal Judgement, para. 21; *Brđanin* Appeal Judgement, para. 24.

Indictment is not evidence, as recognized by the Trial Chamber,[1024] but a procedural instrument containing unproven allegations. In the present case, the Trial Chamber considered both the Macumi Judgement and the Munyeshyaka Indictment and found that they did not create reasonable doubt with respect to the Prosecution evidence. The Appeals Chamber considers that it was reasonable for the Trial Chamber to prefer the direct evidence of several witnesses concerning the circumstances of the deaths of Charles, Wilson, and Déglote Rwanga.[1025]

470. The Appeals Chamber therefore dismisses this argument.

B. Alleged Legal Errors

471. Renzaho submits that the Trial Chamber committed legal errors by failing to apply the principle of *in dubio pro reo* and in finding that he ordered the killing of the male refugees removed from CELA.[1026]

1. Application of *In Dubio Pro Reo*

472. Renzaho submits that, in seeking to ascertain whether the guilt of the accused has been proven beyond reasonable doubt, the Trial Chamber must carefully verify that there is no other version of the evidence than that which establishes the accused's guilt.[1027] Any ambiguity or doubt must be resolved in favour of the accused.[1028]

473. Renzaho specifies that the Macumi Judgement and the Munyeshyaka Indictment create doubt concerning the perpetrators and circumstances of the death of Charles, Wilson, and Déglote Rwanga.[1029] He argues that the Trial Chamber committed an error of law by failing to evaluate such doubts in his favour.[1030] The Prosecution responds that Renzaho has failed to explain how the Trial Chamber violated the principle of *in dubio pro reo* with regard to his convictions or sentence.[1031]

[1024] Trial Judgement, para. 48.
[1025] *See Akayesu* Appeal Judgement, para. 134 ("[L]ive testimony is primarily accepted as being the most persuasive evidence before a court."); *Simba* Appeal Judgement, para. 103 ("[T]here is a general, though not absolute, preference for live testimony before this Tribunal.").
[1026] Notice of Appeal, para. 95; Appellant's Brief, paras. 356-367.
[1027] Appellant's Brief, para. 357.
[1028] Appellant's Brief, para. 357, *referring to Halilović* Trial Judgement, para. 12 *and Blagojević and Jokić* Trial Judgement, para. 18.
[1029] Appellant's Brief, paras. 358-360; AT. 16 June 2010 p. 26.
[1030] Appellant's Brief, paras. 360-362; Brief in Reply, para. 129.
[1031] Respondent's Brief, para. 179.

474. The principle of *in dubio pro reo* provides that any doubt should be resolved in favour of the accused.[1032] The Appeals Chamber recalls that, as a corollary to the presumption of innocence and the burden of proof beyond reasonable doubt, the principle of *in dubio pro reo* applies to findings required for conviction, such as those which make up the elements of the crime charged.[1033]

475. The Appeals Chamber is not convinced that the Trial Chamber misapplied the principle of *in dubio pro reo* in the present case. The Trial Chamber reasonably assessed the totality of the evidence and concluded that Charles, Wilson, and Déglote Rwanga were among those selected and removed from CELA, and ultimately killed by *Interahamwe*.[1034] In addition, and as noted above, the Trial Chamber considered the Macumi Judgement and the Munyeshyaka Indictment and found that their contents did not undermine the testimony of the Prosecution witnesses. The Appeals Chamber therefore finds that there was no reasonable doubt that the application of the principle of *in dubio pro reo* could help to resolve.[1035]

476. This argument is therefore dismissed.

2. Ordering

477. Renzaho claims that the Trial Chamber erred in finding that he ordered the killing of the male refugees removed from CELA.[1036] Renzaho asserts that the Trial Chamber impermissibly inferred the order to kill from the order to transfer the refugees, given that it had found that there was no proof of an explicit order to kill.[1037] He notes that Witness BUO testified that Angéline Mukandutiye, not Renzaho, gave the order to take the refugees to the CND mass grave.[1038] Renzaho also points to Witness UI's evidence that Renzaho gave instructions that the refugees should be taken to the Muhima gendarmerie brigade and tried before a military court.[1039]

[1032] *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. 73; *Akayesu* Trial Judgement, para. 319 ("[T]he general principles of law stipulate that, in criminal matters, the version favourable to the Accused should be selected.").
[1033] *Limaj et al.* Appeal Judgement, para. 21 ("[T]he principle is essentially just one aspect of the requirement that guilt must be found beyond a reasonable doubt.").
[1034] Trial Judgement, paras. 439, 440.
[1035] *Cf. Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – *Joint Criminal Enterprise*, 21 May 2003, para. 28; *Stakić* Appeal Judgement, paras. 102, 103; *Limaj et al.* Appeal Judgement, para. 22.
[1036] Appellant's Brief, paras. 363-367.
[1037] Appellant's Brief, para. 364; AT. 16 June 2010 p. 26.
[1038] AT. 16 June 2010 p. 26.
[1039] Appellant's Brief, para. 365; AT. 16 June 2010 pp. 26, 27.

478. The Prosecution responds that the finding that Renzaho ordered the removal and killing of the men removed from CELA was the only reasonable inference available from the evidence.[1040] It further argues that the legal elements of ordering have been established.[1041]

479. As a preliminary matter, the Appeals Chamber notes that Renzaho failed to include this argument in his Notice of Appeal as required by Rule 108 of the Rules. However, as the Prosecution has not objected, and had the opportunity to respond, the Appeals Chamber is not convinced that there is any unfairness to the Prosecution in this respect and will therefore consider this argument.

480. As recalled above, a person in a position of authority may incur responsibility for ordering another person to commit an offence if the order has a direct and substantial effect on the commission of the illegal act.[1042] No formal superior-subordinate relationship between the accused and the perpetrator is required.[1043]

481. At trial, three Prosecution witnesses gave evidence concerning the instructions given regarding the male refugees removed from CELA, namely, Witnesses BUO, ATQ, and UI. The Trial Chamber found that:

> No witness heard any explicit order from Renzaho to kill the men who had been separated at CELA. However, Witness BUO's evidence suggests that the order to kill was implicit in the instruction to bring the refugees to the CND that was made by Mukandutiye in Renzaho's presence. Witness ATQ's evidence also reflects that *Interahamwe* understood during the separation process that the men would be killed. Witness UI testified that Renzaho ordered that the men be taken to Muhima gendarmerie, making no mention of the CND. However, these instructions reflected a cautionary approach aimed at concealing the activity, namely an "attack" that would prompt attention.
>
> In the Chamber's view, the Prosecution evidence demonstrates that the ultimate goal of the operation was the elimination of the combat aged Tutsi men. Different accounts regarding the precise words used by Renzaho are not significant. Moreover, Witness UI's evidence that the refugees were brought to the Muhima gendarmerie brigade instead of directly to the mass grave does not, in the Chamber's view, reflect that the plan to kill the men materialised without Renzaho's encouragement or knowledge and after they were removed. The refugees were quickly transferred from within the gendarmerie brigade to the *Interahamwe* who ultimately killed them.[1044]

482. The Trial Chamber found that "the only reasonable conclusion is that orders were given to kill the male refugees removed from CELA. Given the authority exercised by Renzaho during the

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[1040] AT. 16 June 2010 pp. 46-49.
[1041] AT. 16 June 2010 p. 46.
[1042] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), para. 315.
[1043] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville), para. 315; *Nahimana et al.* Appeal Judgement, fn. 1162; *Semanza* Appeal Judgement, para. 361; *Kordić and Čerkez* Appeal Judgement, para. 28.
[1044] Trial Judgement, paras. 441, 442.

operation, the Chamber is also convinced that the only reasonable conclusion is that Renzaho gave these orders."[1045]

483. The present issue is whether the Trial Chamber erred in concluding that the only reasonable interpretation of the evidence was that an order was given to kill the male refugees removed from CELA, and in turn, whether the only reasonable conclusion was that Renzaho gave that order.

484. The Appeals Chamber notes that multiple witnesses testified that during the selection or removal of the refugees, it was understood that the refugees would be killed. Witness BUO, who was among the attackers, testified that he knew that the refugees were to be selected and then driven elsewhere to be killed.[1046] The instructions on this point were made in Renzaho's presence.[1047] Witness BUO also gave evidence that some of the refugees understood that they were being taken to be killed.[1048] Witness ATQ, who was a refugee at CELA, gave evidence that she saw Renzaho speaking to a group of people. One member of the group, an *Interahamwe*, then reported to the refugees that Renzaho had said that they were going to kill young people and men.[1049] They then began selecting people to be killed.[1050] Witness ATQ testified that it was "obvious that the *Interahamwe* were taking those people to kill them."[1051] Witness UI, another refugee, testified that Renzaho gave instructions to *Interahamwe* at CELA, telling them not to attack the refugees immediately and to choose the ringleaders among them.[1052] Witness UI was subsequently taken from CELA with a group of refugees, and testified that it was "obvious" that they were going to be

[1045] Trial Judgement, para. 443.
[1046] Witness BUO, T. 26 January 2007 p. 5 ("It was decided on the spot that the people were to be selected and driven somewhere and killed. We were told that we were to take them to the place called CND, and we knew what such letters meant, CND. And it was done; there is evidence to that effect."), T. 29 January 2007 pp. 19, 20 (The *Interahamwe* "were the ones to sort out those refugees that were to be killed. And let me specify that [Renzaho and Munyakazi] had not come there to talk to the refugees. They had came there, rather, to supervise the selection of those among the refugees who were to be put to death.").
[1047] Witness BUO, T. 26 January 2007 p. 5 ("When we were instructed to take these people to CND, Angeline Mukandituye was with Renzaho, Tharcisse, when the order was given. So Renzaho was present."). *See also* Witness BUO, T. 29 January 2007 p. 22.
[1048] Witness BUO, T. 26 January 2007 p. 7 ("Some of them got to know what would happen. If someone starts beating you up and that person has a weapon, and if you know the reason why you went to seek refuge at that location, you can understand. They knew that their Tutsi compatriots had been killed".).
[1049] Witness ATQ, T. 31 January 2007 p. 65 ("After speaking a few words to one another, Fid[è]le left that group and moved a few metres away towards us. Then he said, 'Renzaho has said we should not kill men and women. We are going to kill young people and men.' I did not hear Fid[è]le – I did not hear Renzaho make those utterances, it was, rather, Fid[è]le who said that.").
[1050] Witness ATQ, T. 31 January 2007 p. 66.
[1051] Witness ATQ, T. 31 January 2007 p. 66.
[1052] Witness UI, T. 5 February 2007 pp. 59, 60 ("When I arrived, the *préfet* was telling them not to attack the refugees immediately. And I remember that he told them not to help the enemy. He was telling them that everything that was being done was being observed by the satellites and that as a consequence had to act in an intelligent manner. He gave instructions to them and he told them to choose amongst the refugees the ring leaders. That was the word he used. And he said that the ring leaders were to be taken to the Muhima Brigade and be tried before a military court. But, in fact, he was not doing that because he wished to save those who were staying at the centre.").

killed.[1053] Witness ACS, another refugee at CELA, testified that while he was being forced to line up with the other refugees, he understood that they would be killed.[1054] Witness HAD testified that, at the time of the separation, the refugees realised that the men were going to be killed.[1055]

485. In sum, multiple witnesses, from different perspectives, testified that the purpose of the entire operation was to kill the selected male refugees. It was on this basis that the Trial Chamber concluded that the evidence demonstrated that "the ultimate goal of the operation was the elimination of the combat aged Tutsi men."[1056] The Appeals Chamber considers that a reasonable trier of fact could conclude that the only reasonable inference to be drawn from this evidence was that an order to kill the male refugees was given.

486. With respect to whether the Trial Chamber erred in concluding that Renzaho gave this order, the Appeals Chamber notes that the Trial Chamber relied particularly on Renzaho's exercise of authority at CELA to make its finding.[1057] The Appeals Chamber finds that there was evidence, described above, which demonstrates that Renzaho played a direct role in the operation and provided instructions to the attackers. For instance, Witness ACS testified that Renzaho was the one directing the attack.[1058] Consequently, the Appeals Chamber finds no error in the Trial Chamber's conclusion that Renzaho exercised authority during the operation.

487. Although, as Renzaho points out, Witness BUO testified that Angéline Mukandituye gave instructions that the refugees be taken to the CND mass grave, the Appeals Chamber notes that Witness BUO also testified that these instructions were given in Renzaho's presence, and had been decided upon beforehand.[1059] Notably, Witness ACS testified that Renzaho "was the one who gave the orders" and that although there were other individuals present such as Angéline Mukandituye, Renzaho "directed the operation."[1060] The Appeals Chamber therefore finds that the evidence that Angéline Mukandituye gave instructions to the attackers does not raise reasonable doubt that Renzaho gave an order to kill.

[1053] Witness UI, T. 5 February 2007 p. 65 [closed session] ("I thought we were simply going to be killed. [...] When I recalled Renzaho's statements, it was obvious that nothing, but death was awaiting us. Based on what he said, it was obvious. And they were simply going to change their methods, but it was going to be the same results. They were going to kill us.").
[1054] Witness ACS, T. 30 January 2007 p. 38 ("I was lined up and awaiting my death.").
[1055] Witness HAD, T. 1 February 2007 p. 14 ("[W]e realised that the men were going to be killed.").
[1056] Trial Judgement, para. 442.
[1057] *See* Trial Judgement, para. 443.
[1058] Witness ACS, T. 30 January 2007 pp. 37, 42 ("That operation was conducted under the leadership of *Préfet* Tharcisse Renzaho. Any junior official could not have directed the operation in the presence of *Préfet* Tharcisse Renzaho. He was the one who gave the orders, no one else spoke on that occasion. So it was Renzaho who directed that operation in his capacity as *préfet* of Kigali-ville *préfecture*. Even though there were certain other personalities like the *conseillers*, the *bourgmestres* from Nyarugenge *commune*, as well as Angeline Mukandituye, I confirm that it was Renzaho who directed the operation.").
[1059] Witness BUO, T. 26 January 2007 p. 5. *See also* Trial Judgement, para. 441, fn. 522.
[1060] Witness ACS, T. 30 January 2007 p. 42.

488. The Appeals Chamber also notes evidence that Renzaho gave specific instructions to kill. For instance, Witness ATQ testified that he was told by an *Interahamwe* that Renzaho said that they were going to kill the men.[1061] A refugee then appealed to Renzaho as a former schoolmate, and Witness ATQ heard Renzaho reply "even though we were schoolmates, you were *Inyenzi*."[1062] Considering the totality of the evidence, and in particular Renzaho's authority and extensive participation in the attack, the Appeals Chamber finds no error in the Trial Chamber's finding that the only reasonable conclusion is that Renzaho gave orders to kill the refugees.

489. Finally, Renzaho points to Witness UI's evidence that Renzaho gave instructions that the male refugees should be taken to the Muhima gendarmerie brigade rather than to the mass grave, which were followed.[1063] The Appeals Chamber understands the thrust of this argument to be that the Trial Chamber erred in finding that Renzaho substantially contributed to the killing of the refugees given that he had no responsibility for the gendarmes at the brigade.[1064]

490. The Appeals Chamber notes that the Trial Chamber considered Witness UI's evidence in this respect and found that it did not "reflect that the plan to kill the men materialised without Renzaho's encouragement or knowledge and after they were removed."[1065] The Appeals Chamber finds no error in such a conclusion. Indeed, Witness UI testified that the refugees remained at the Muhima gendarmerie brigade for a very short period.[1066] The refugees were then put back on the same minibus and left with the same *Interahamwe* with whom they had arrived.[1067] In light of the evidence that the refugees remained in the custody of the same individuals who attacked CELA, the Appeals Chamber finds that Renzaho has not shown that evidence that the refugees were not taken directly to the CND mass grave raises a reasonable doubt that Renzaho's orders at CELA substantially contributed to the killing of the refugees.

C. Conclusion

491. The Appeals Chamber therefore dismisses Renzaho's Ninth Ground of Appeal.

[1061] Witness ATQ, T. 31 January 2007 p. 65.
[1062] Witness ATQ, T. 31 January 2007 p. 66.
[1063] Appellant's Brief, para. 365; AT. 16 June 2010 pp. 26, 27. *See* Trial Judgement, para. 442.
[1064] AT. 16 June 2010 pp. 27, 29, *referring to Ntagerura et al.* Appeal Judgement. *See also* AT. 16 June 2010 p. 62.
[1065] Trial Judgement, para. 442.
[1066] Witness UI, T. 5 February 2007 pp. 66, 67 [closed session] (Witness UI testified that the refugees were held in the Muhima gendarmerie bridge for "three or four minutes.").
[1067] Witness UI, T. 5 February 2007 p. 67 [closed session].

XI. ALLEGED ERRORS RELATING TO THE ATTACK AT SAINTE FAMILLE (GROUND OF APPEAL 10)

492. The Trial Chamber found Renzaho guilty of genocide under Article 6(1) of the Statute for ordering an attack which killed hundreds of Tutsi refugees at Sainte Famille on 17 June 1994.[1068] The Trial Chamber also found Renzaho guilty of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(1) of the Statute for ordering the killing of at least 17 Tutsi men at Sainte Famille on 17 June 1994.[1069] This conviction was based on findings that: (1) Renzaho was present at the Sainte Famille compound sometime before noon on 17 June 1994, where he ordered the *Interahamwe* to attack the church, and later, to stop the killings; and (2) the *Interahamwe* attackers obeyed his instructions and, as a result, several hundred Tutsi refugees were killed.[1070]

493. The Trial Chamber's findings were primarily based on the evidence of Prosecution Witnesses AWO,[1071] HAD,[1072] BUO,[1073] ACK,[1074] AWX,[1075] and ATQ.[1076]

494. Renzaho submits that the Trial Chamber incorrectly assessed the evidence relating to the attack at Sainte Famille, and therefore erroneously held him criminally responsible for it.[1077] In particular, he argues that the Trial Chamber: (a) disregarded the fact that the alleged attacks at Sainte Famille and Saint Paul constituted a single attack;[1078] (b) disregarded evidence showing that Renzaho was not present at Sainte Famille during the attack;[1079] (c) improperly assessed the credibility and reliability of Prosecution Witnesses ACK, AWO, ATQ, HAD, AWX, and BUO;[1080]

[1068] Trial Judgement, paras. 773, 779. The Trial Chamber found that at least 17 Tutsi men were among those killed. *See* Trial Judgement, para. 663. Accordingly, the Trial Chamber found Renzaho guilty of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(1) of the Statute for ordering their killing. *See* Trial Judgement, paras. 805, 807. The Trial Chamber also found Renzaho liable as a superior for these crimes. *See* Trial Judgement, paras. 806, 807. *See also infra,* Chapter XIII (Alleged Errors Relating to Legal Findings), Section A (Preliminary Issue).

[1069] Trial Judgement, para. 807.

[1070] Trial Judgement, para. 663. *See also* Trial Judgement, paras. 658-662, 771-773.

[1071] *See* Trial Judgement, paras. 604-607, 645, 647, 649-652, 660.

[1072] *See* Trial Judgement, paras. 612-617, 645, 647-650, 652, 659, 660.

[1073] *See* Trial Judgement, paras. 621-625, 645, 648-652, 660.

[1074] *See* Trial Judgement, paras. 608-611, 649, 650, 652.

[1075] *See* Trial Judgement, paras. 603, 651-653.

[1076] *See* Trial Judgement, paras. 618-620, 647-652, 654, 659.

[1077] Notice of Appeal, paras. 96-114; Appellant's Brief, paras. 368-509. Renzaho also submits that the Trial Chamber erred in finding that the *Interahamwe* were his subordinates at the time of the attack (*see* Notice of Appeal, para. 114), but does not develop or substantiate this submission in his Appellant's Brief.

[1078] Appellant's Brief, paras. 368-387, 491.

[1079] Notice of Appeal, paras. 96, 97, 105-109, 113; Appellant's Brief, paras. 388-402, 466-491.

[1080] Notice of Appeal, paras. 98, 100-103; Appellant's Brief, paras. 402-464.

and (d) misinterpreted the evidence to find that Renzaho gave the order for the *Interahamwe* to attack.[1081]

A. Alleged Errors in Considering the 17 June 1994 Attacks at Saint Paul and Sainte Famille Separately

495. The Prosecution alleged that Renzaho participated in an attack at Saint Paul on 17 June 1994, which neighboured Sainte Famille, but the Trial Chamber dismissed this charge.[1082]

496. Renzaho submits that, despite the Prosecution having pleaded the 17 June 1994 attacks at Saint Paul and Sainte Famille separately, the evidence established that they were one and the same. Renzaho claims that the attacks were perpetrated by the same people with the same motivation, beginning at Saint Paul and ending at Sainte Famille.[1083] He contends that in disregarding this fact, the Trial Chamber committed a serious error by failing to assess the evidence in a comprehensive manner.[1084] He argues that if the Trial Chamber had assessed the evidence as a whole, it would have reached a different conclusion.[1085]

497. The Prosecution responds that Renzaho does not show how the Trial Chamber erred.[1086] It submits that although evidence was adduced concerning the attack against Tutsi refugees at Saint Paul on 17 June 1994, the Prosecution's case concerning Saint Paul was focused on attacks which took place before that date, and notes that the Trial Chamber found that Renzaho's liability was not established for any of the alleged attacks at Saint Paul.[1087]

498. In reply, Renzaho notes that the Prosecution does not challenge the assertion that there was a single attack against both Saint Paul and Sainte Famille. He argues that the Trial Chamber's findings that he ordered the attack at Sainte Famille and had effective control over the assailants are contradicted by and inconsistent with its finding that he was not responsible for the attack at Saint Paul.[1088]

499. The Appeals Chamber considers Renzaho's contention to be speculative. Even if the Trial Chamber had considered the attacks at Saint Paul and Sainte Famille to constitute a single attack, it

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[1081] Notice of Appeal, paras. 99, 112, 113; Appellant's Brief, paras. 492-503.
[1082] Trial Judgement, paras. 580-584, fn. 649.
[1083] Appellant's Brief, paras. 368-371, 373, 378-383, 385, *referring to* Witness BUO, T. 26 January 2007 pp. 27-31, Witness PER, T. 23 August 2007 pp. 38-40, Witness WOW, T. 4 July 2007 pp. 45-47, *and* Witness ALG, T. 10 January 2007 pp. 69, 70 [closed session]; Brief in Reply, paras. 130-135.
[1084] Appellant's Brief, paras. 372, 374-377, 384.
[1085] Appellant's Brief, paras. 385-387.
[1086] Respondent's Brief, paras. 182, 184, 186, 187, 189-194.
[1087] Respondent's Brief, paras. 188, 189.
[1088] Brief in Reply, paras. 130, 132-134.

does not necessarily follow that the Trial Chamber would have reached similar conclusions about the allegations against Renzaho concerning Sainte Famille as it did about those concerning Saint Paul. The Trial Chamber noted Saint Paul's immediate proximity to Sainte Famille, but considered that the attacks were pleaded separately;[1089] accordingly, it treated them separately.[1090] In doing so, the Trial Chamber considered evidence relating to Saint Paul when evaluating the evidence relating to Sainte Famille.[1091] The Appeals Chamber finds no error in the Trial Chamber's approach and considers that Renzaho has not demonstrated that no reasonable trier of fact could have reached the conclusion that Renzaho participated in the attack at Sainte Famille while being unable to conclude that he participated in an attack at Saint Paul.

500. The Appeals Chamber accordingly dismisses Renzaho's arguments.

B. Alleged Errors in Assessing the Evidence Relating to Renzaho's Presence

1. Assessment of Credibility

501. Renzaho submits that the Trial Chamber erred in failing to approach the testimony of Prosecution Witnesses AWX, ACK, AWO, and HAD with caution and in summarily accepting their unsatisfactory explanations for inconsistencies in their prior statements.[1092]

(a) Witness AWX

502. In evaluating Witness AWX's evidence on the attack at Sainte Famille, the Trial Chamber addressed a discrepancy between her *viva voce* testimony and a prior written statement as follows:

> Witness AWX did not observe the attack at Sainte Famille but was in a house not far away, where she was being raped. She observed Renzaho talking about the need to bury dead bodies on the same day as she saw the corpse of her sister in a wheelbarrow. According to her testimony, this happened around 18 June. In her written statement of February 2005, she indicated that she saw her sister's body two days after 25 June. The Chamber accepts that she had problems recalling dates, in particular in view of her traumatic situation. The statement does not mention Renzaho's

[1089] Trial Judgement, fn. 649, which states: "Notwithstanding Saint Paul's immediate proximity to Sainte Famille, the Prosecution chose to plead attacks at Saint Paul and Sainte Famille separately. Thus, there are serious concerns as to the consistency of the notice as the Indictment distinguishes attacks at both locations."
[1090] *See* Trial Judgement, para. 648, which states in the context of the attack at Sainte Famille: "Witness BUO stated that an attack against both Saint Paul and Sainte Famille began around 7.00 a.m. This is much earlier than the indications given by Witnesses AWC, ATQ and HAD. However, it is undisputed that the two sites were very close, and Witness BUO testified that the attackers, including him, went to Saint Paul before proceeding to Sainte Famille. In the Chamber's view, his account does not discredit those of the three refugees. Moreover, while the Chamber has rejected aspects of Witness BUO's testimony as it relates to the attack on Saint Paul on 17 June and, in particular, Renzaho's presence and involvement in it [...], his corroborated evidence of Renzaho's presence at Saint Famille on 17 June lends credence to his testimony in the present context."
[1091] Trial Judgement, para. 648.
[1092] Appellant's Brief, paras. 427, 428, 436, 453, 454, 462, 463.

> name when describing this incident. The witness said that she had given his name to the investigators. In the Chamber's view, this discrepancy does not affect her credibility.[1093]

503. In so finding, the Trial Chamber noted that "[i]n the statement, the observation of the sister's body in the wheelbarrow is mentioned very briefly. Renzaho's names [*sic*] appears before and after this event, and it is clear that she saw him several times."[1094]

504. Renzaho contends that the Trial Chamber's finding that Witness AWX saw Renzaho several times during the relevant period is a distortion of the facts contained in her February 2005 statement, as Renzaho's name is only mentioned once in relation to the month of May 1994, and she made no reference to him with respect to the attack at Sainte Famille on 17 June 1994.[1095] Renzaho asserts that it was unreasonable for the Trial Chamber to accept her explanation that the investigators must have omitted her mention of him at Sainte Famille.[1096] He further asserts that the Trial Chamber contradicted itself by suggesting that Witness AWX saw him at Sainte Famille, while admitting that she did not observe the attack because she was at a house nearby.[1097]

505. The Prosecution responds that Renzaho shows no error in the Trial Chamber's acceptance of Witness AWX's evidence, and that it was correct to conclude that the witness's statement showed that she saw him several times during the relevant period.[1098] The Prosecution adds that, even though Witness AWX did not observe the attack at Sainte Famille, she personally saw him near there, and thus her evidence can corroborate direct evidence placing him there.[1099]

506. In her February 2005 statement, Witness AWX recalled that:

> Sometime in May 1994 my elder sister [...] and I, were taken by a group of presidential guards to a house where we were raped in different rooms. [...] I remember that on the 25th of June 1994 I was taken again to the same house by military men and raped once. [...] [My sister] was killed after being raped. Two days after being taken away by the men I saw [my sister's] dead body in a wheelbarrow. [...]
>
> I also know RENZAHO, the Prefect of Kigali. The first time I saw RENZAHO was in May 1994 in civilian clothes but he was with the military. On one occasion, I heard RENZAHO telling interahamwe to flush out the "inyenzi" (Tutsis). He would come to St Famille with interahamwe and tell the interahamwe to get out of the vehicle and "get to work" meaning to kill Tutsis. At this, [*sic*] the interahamwe would start checking identity cards and the killings would start. I believe that as the Prefect of Kigali, RENZAHO [...] wielded so much power that if he had ordered the perpetrators of rapes and killings to stop they would have obeyed him.[1100]

[1093] Trial Judgement, para. 653.
[1094] Trial Judgement, fn. 720, *referring to* Defence Exhibit 30 (statement of 10 February 2005).
[1095] Appellant's Brief, paras. 429-435.
[1096] Appellant's Brief, paras. 436-440.
[1097] Appellant's Brief, paras. 441-444, *referring to* Trial Judgement, paras. 603, 646, 653.
[1098] Respondent's Brief, paras. 200, 201.
[1099] Respondent's Brief, para. 202.
[1100] Defence Exhibit 30, p. 3.

507. The Appeals Chamber finds that it was reasonable for the Trial Chamber to have inferred from her statement that Witness AWX saw Renzaho several times during the events. In the Appeals Chamber's view, Renzaho misrepresents the contents of Witness AWX's statement by claiming that his name is only mentioned once in relation to the month of May 1994. While she did not mention him in her prior statement in relation to seeing her sister's corpse in a wheelbarrow on 17 June 1994, it is misleading to assert that she made no reference to him in regards to the attack at Sainte Famille, when in fact she said that "[h]e would come to St Famille" and tell the *Interahamwe* to start killing Tutsis.[1101]

508. With respect to the failure to mention Renzaho in her prior statement in relation to the burial of the Sainte Famille victims' bodies, the Appeals Chamber considers that it was open to the Trial Chamber to accept Witness AWX's insistence that she had mentioned it to the investigators.[1102] Renzaho has not demonstrated that it was unreasonable for the Trial Chamber to do so.[1103]

509. To support his assertion that the Trial Chamber made inconsistent findings about Witness AWX's evidence, Renzaho relies on the Trial Chamber's statement that "Witness AWX did not observe the attack at Sainte Famille" which he claims contradicts its earlier finding that "[s]ix Prosecution witnesses testified that they saw him at Sainte Famille on 17 June."[1104] Although it is not immediately clear which Prosecution witnesses it was referring to, a review of the Trial Chamber's reasoning reveals that Witness AWX must have been included among the six witnesses.[1105] Renzaho is therefore correct that there is an inconsistency in the Trial Chamber's

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[1101] Defence Exhibit 30, p. 3.

[1102] *See* Witness AWX, T. 6 February 2007 pp. 40, 41:

> Q. Madam Witness, I read out to you what you stated regarding Mr. Renzaho, and in the same statement in the third paragraph I had read out to you previously, when referring to the events of the 25th of June 1994, you do not mention either the second meeting with Mr. Renzaho or any utterances that Mr. Renzaho allegedly made indicating that it would be a good thing for the dead bodies to be taken away so that they would not be seen by the white people. Why this omission, Madam Witness?
> A. I did refer to that when I gave my statement, Counsel.
> Q. So was it the Prosecutor who failed to mention all those aspects in the statement?
> A. What I do know is that I mentioned it to the investigators. Renzaho's utterances whereby the bodies should be buried immediately for the white people not to see them is something I mentioned to the investigators.

[1103] Renzaho submits that ICTR investigators enjoy a presumption of diligence in taking witness statements, but fails to provide any legal support for this assertion. *See* Appellant's Brief, para. 437.

[1104] *See* Appellant's Brief, paras. 441-444, *referring to* Trial Judgement, paras. 653 *and* 646, *respectively*. Renzaho also refers to paragraph 603 of the Trial Judgement, but because this forms part of the Trial Chamber's summary of Witness AWX's evidence, and not of its findings, the Appeals Chamber will not consider it.

[1105] Prosecution Witnesses KZ, AWX, AWO, ACK, HAD, ATQ, BUO, and Corinne Dufka testified in relation to the events at Sainte Famille. *See* Trial Judgement, paras. 599, 601-627. Witnesses KZ and Corinne Dufka never testified to seeing Renzaho at Sainte Famille, and their testimony was not relied upon to make findings on Renzaho's presence there or the timing thereof. *See* Trial Judgement, paras. 601, 602, 661, fn. 712. Witnesses AWX, AWO, ACK, HAD, ATQ, and BUO, however, all testified to seeing Renzaho at Sainte Famille, but not all at the same time. *See* Trial Judgement, paras. 603, 605-607, 610, 613, 618, 619, 625. The Appeals Chamber therefore considers these six Prosecution witnesses to be those to whom the Trial Chamber was referring.

findings. The Appeals Chamber considers the Trial Chamber's assertion in respect of Witness AWX was an error, as it cannot reasonably be inferred from her sighting of him on the day after the attack that she saw him on the day of the attack. However, since no errors have been found below with respect to other Prosecution evidence placing him at Sainte Famille, the Appeals Chamber finds that Renzaho has not demonstrated that this error amounts to a miscarriage of justice.

(b) Witness ACK

510. Witness ACK testified that she saw Renzaho during the attack at Sainte Famille on 17 June 1994.[1106] A credibility issue arose concerning her failure to mention Renzaho's presence at Sainte Famille in a previous statement before national judicial proceedings against Father Munyeshyaka in February 1996.[1107] The Trial Chamber accepted her explanation that she did not mention him in those proceedings because she was focused on Father Munyeshyaka's role.[1108]

511. Renzaho contends that the Trial Chamber erred in accepting Witness ACK's explanation.[1109] Relying on the *Rwamakuba* Trial Judgement, Renzaho submits that it is established jurisprudence that a witness's failure to mention an accused in previous statements cannot be justified by not having been directly questioned about him or her.[1110]

512. The Prosecution responds that Renzaho's reference to the *Rwamakuba* Trial Judgement does not support his suggestion that such an explanation should be systematically rejected.[1111]

513. In the *Rwamakuba* case, the Trial Chamber considered that a particular witness's failure to mention the accused in a previous statement could not be satisfactorily explained by the fact that he or she was not questioned about the accused at the time, "as the absence of certain questions would not preclude a witness, who wanted to give a credible picture of an event, from volunteering information."[1112] Such a conclusion was within the *Rwamakuba* Trial Chamber's discretion. However, it did not establish the kind of precedent suggested by Renzaho. Rather, such considerations are made on a case-by-case basis.[1113]

[1106] *See* Trial Judgement, para. 610, *referring to* Witness ACK, T. 5 March 2007 pp. 70, 71, T. 6 March 2007 p. 64.
[1107] Trial Judgement, para. 652.
[1108] Trial Judgement, para. 652, fn. 717, *referring to* Witness ACK, T. 6 March 2007 pp. 63, 64 ("In this document I was talking about Munyeshyaka. Therefore I did not have to talk about Renzaho, given that I did not know where he was.").
[1109] Appellant's Brief, paras. 445-453.
[1110] Appellant's Brief, para. 449, *referring to Rwamakuba* Trial Judgement, para. 114.
[1111] Respondent's Brief, para. 203.
[1112] *Rwamakuba* Trial Judgement, para. 114.
[1113] *See, e.g., Muhimana* Appeal Judgement, para. 58 ("[T]he presence of inconsistencies within or amongst witnesses' testimonies does not *per se* require a reasonable Trial Chamber to reject the evidence as being unreasonable."). *See also Niyitegeka* Appeal Judgement, para. 95, *referring to Kupreškić et al.* Appeal Judgement, para. 31.

514. In the present case, the Trial Chamber considered that "the particular portion of [Witness ACK's prior] statement concerning 17 June 1994 clearly focuses on Munyeshyaka's role in connection with a specific killing".[1114] It was within the Trial Chamber's discretion in these cirumstances to accept Witness ACK's explanation. Renzaho fails to demonstrate that no reasonable trier of fact could have reached the same conclusion.

(c) Witness AWO

515. In finding that Renzaho ordered the attack at Sainte Famille, the Trial Chamber relied on Witness AWO's testimony that she observed Renzaho arrive around 11:00 a.m., and that she witnessed him, from a place overlooking the church, instructing the *Interahamwe* to kill "many people".[1115]

516. Renzaho submits that the Trial Chamber admitted that Witness AWO was inconsistent and incoherent, and claims it should have exercised caution given her repeated requests to the Tribunal for assistance in obtaining medical treatment.[1116] He asserts that the Trial Chamber should have therefore required corroboration of her evidence, particularly since it relied on her evidence as the sole basis for finding that, on 17 June 1994, Renzaho ordered the *Interahamwe* at Sainte Famille to attack.[1117]

517. The Prosecution does not respond to this argument.

518. The Appeals Chamber recalls that a Trial Chamber may rely on a single witness's testimony for proof of a material fact if, in its opinion, that testimony is relevant and credible.[1118] Renzaho does not provide any references to the Trial Judgement or transcripts to support his claim that the Trial Chamber should have required corroboration of Witness AWO's evidence. In any event, a review of the Trial Chamber's reasoning relating to Witness AWO's evidence on the attack at Sainte Famille reveals that, contrary to Renzaho's implicit assertion that her testimony was inconsistent with that of other witnesses,[1119] the Trial Chamber found the testimony of Prosecution witnesses, including Witness AWO, to be "generally coherent and consistent."[1120]

[1114] Trial Judgement, fn. 717, *referring to* Defence Exhibit 41 (*procès-verbal d'audition de partie civile*, dated 14 February 1996).
[1115] Trial Judgement, para. 647, *referring to* Witness AWO, T. 7 February 2007 p. 13 ("Renzaho was in a place that was overlooking the area, and he was telling the *Interahamwe* to kill – to kill many people. And he would tell us, the [women], to applaud.").
[1116] Appellant's Brief, paras. 459-462, *referring to* Witness AWO, T. 2 July 2007 pp. 14, 26, 27 [closed session].
[1117] Appellant's Brief, paras. 463-464.
[1118] *See, e.g., Musema* Appeal Judgement, paras. 36-38.
[1119] Renzaho appears to be referring to the Trial Chamber's assessment of Witness AWO's evidence in relation to the rapes in Rugenge sector, where it found Witness AWO's account to be "at times, confusing", elements of her

519. A review of Witness AWO's testimony reveals, as Renzaho correctly points out, that the witness did request that the Tribunal assist her in receiving medical treatment.[1121] However, it is noteworthy that she did not make her request until after she had already completed her testimony, which demonstrates that her willingness to testify was not conditioned upon the Tribunal's assistance. Even if it could be determined that the possibility of receiving such assistance was an incentive for her to testify, it does not follow that it would have motivated her to provide *false* testimony. Renzaho's contention that the Trial Chamber should have exercised caution given this request therefore fails.

520. Further, under his Eleventh Ground of Appeal, Renzaho submits that the sexual abuse suffered by Witness AWO made the 1994 events extremely difficult for her, and relies on academic articles and Canadian case law to argue that high levels of anger and stress diminish a person's capacity for recognition and identification.[1122] The Prosecution responds that Renzaho's reliance on psychological theories of trauma to discredit the witness's recollection of events should be rejected because they were not raised at trial and were not the subject of any expert evidence.[1123]

521. The matter of Witness AWO's ability to identify and recognize Renzaho was an issue at trial which was central to his defence. However, Renzaho did not specifically raise the particular psychological theories he now relies on before the Trial Chamber, nor did he tender the academic articles into evidence, depriving the Prosecution of the opportunity to contradict them and present rebuttal evidence. Moreover, Renzaho cannot now seek to rely on these articles in circumvention of Rule 115 of the Rules.

522. In any event, the Trial Chamber exercised caution, and expressly addressed the trauma suffered by Witness AWO as a possible factor that negatively influenced the accuracy of her identification evidence.[1124] The Trial Chamber concluded that Witness AWO's testimony was "generally coherent and consistent" with that of the other Prosecution witnesses.[1125] The Appeals Chamber finds that Renzaho's generalized arguments do not demonstrate error in the Trial Chamber's approach.

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description of an attack on an orphanage to be incoherent, and her evidence about when she was sexually assaulted and the sequence of events to sometimes lack clarity. *See* Trial Judgement, para. 712. Despite these internal problems with her evidence, the Trial Chamber nevertheless accepted the fundamental aspects of Witness AWO's testimony on the rapes. *See* Trial Judgement, paras. 712, 717.

[1120] Trial Judgement, para. 652.

[1121] Witness AWO, T. 7 February 2007 pp. 14, 26, 27.

[1122] Appellant's Brief, paras. 521, 522, fns. 266, 268.

[1123] Respondent's Brief, para. 241.

[1124] Trial Judgement, para. 712 ("[T]o the extent the witness did not provide testimony in a cohesive, narrative form, this is reasonably explained by the passage of time and the extremely traumatic nature of the events.").

[1125] Trial Judgement, para. 652.

2. Alleged Error Relating to Identification

523. Renzaho submits that the Trial Chamber erred in failing to properly analyse and evaluate the identification evidence of Prosecution Witnesses AWX, ATQ, and AWO.[1126] He contends that the Trial Chamber erred in law in failing to provide a reasoned opinion on his identification by these witnesses,[1127] and erred in fact in failing to consider significant factors affecting their reliability.[1128] In this respect, he points to: Witness AWX's speculative and unconfirmed identification of him at CELA, and her unexplained second sighting of him;[1129] and Witness ATQ's lack of prior knowledge of him, her inability to recognize him during the attack or in court, and her uncorroborated sighting of him in a military uniform that day.[1130] Renzaho submits that the fact that the witnesses heard his name being shouted by other refugees cannot alone establish that it was him who arrived at the scene.[1131]

524. With respect to Witness AWO's identification evidence, Renzaho relies on his submissions under his Eleventh Ground of Appeal where he contends that the Trial Chamber failed to exercise the extreme caution required when assessing the reliability of Witness AWO's identification of him in relation to her rapes in Rugenge sector.[1132] He submits that the Trial Chamber failed to adequately address significant factors putting Witness AWO's reliability into question,[1133] such as the fact that the witness did not know him personally, the existence of internal discrepancies in her testimony and identification, and the paucity of her physical descriptions of him.[1134] Renzaho also contends that Witness AWO admitted that she did not usually meet him, and that she might not be able to recognize him during her testimony because of how much time had passed since she last saw him.[1135] He submits that she could only identify him from the events of 1994 as being bald and having big eyes.[1136] He argues that her inability to identify him in court demonstrated her lack of knowledge of him.[1137]

525. The Prosecution responds that Renzaho's arguments are without merit.[1138] It submits that Witness AWX testified that she already knew Renzaho when she saw him in May 1994, and that

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[1126] Appellant's Brief, paras. 404-426; Brief in Reply, paras. 143-152.
[1127] Appellant's Brief, paras. 405-407, *referring to Kupreškić et al.* Appeal Judgement, para. 39 *and Kvočka et al.* Appeal Judgement, para. 24.
[1128] Appellant's Brief, paras. 408-413.
[1129] Appellant's Brief, paras. 421-425, *referring to* Witness AWX, T. 6 February 2007 p. 29.
[1130] Appellant's Brief, paras. 414-417, 419, 420, *referring to* Witness ATQ, T. 31 January 2007 pp. 64-66.
[1131] Appellant's Brief, para. 418, *referring to Kamuhanda* Appeal Judgement, paras. 240, 241, 298.
[1132] Appellant's Brief, paras. 426, 514-528.
[1133] Appellant's Brief, para. 515, *referring to Kupreškić et al.* Appeal Judgement, para. 39 *and Kvočka et al.* Appeal Judgement, para. 24. *See also* Appellant's Brief, paras. 523, 524, *referring to Bagilishema* Appeal Judgement, para. 75.
[1134] Appellant's Brief, paras. 519, 520, 525. *See also* Appellant's Brief, para. 537.
[1135] Appellant's Brief, para. 517, *referring to* T. 7 February 2007 p. 5 (French).
[1136] Appellant's Brief, para. 517.
[1137] Appellant's Brief, para. 519.

her evidence corroborated that of other witnesses who saw Renzaho at Sainte Famille.[1139] With respect to Witness ATQ, the Prosecution submits that Renzaho provides a truncated and misleading version of her identification evidence, that Renzaho's presence at CELA on the relevant day is not in dispute, and that it was reasonable for the Trial Chamber to accept Witness ATQ's evidence identifying Renzaho at Sainte Famille on 17 June 1994.[1140]

526. The Prosecution further responds that the Trial Chamber properly assessed the testimony of Witness AWO, duly taking into account any difficulties associated with her identification evidence.[1141] It submits that there were no difficult circumstances requiring the Trial Chamber to assess the witness's evidence with "extreme caution".[1142] It argues that Renzaho has failed to demonstrate any basis for appellate intervention in the Trial Chamber's assessment of her evidence or to explain why the alleged failure to provide a reasoned opinion, if any, invalidated the decision on appeal.[1143] The Prosecution finally argues that Witness AWO's inability to identify Renzaho in the courtroom does not negatively impact her solid evidence identifying him at the time of the events.[1144]

527. The Appeals Chamber notes that the Trial Chamber failed to provide any reasons for accepting the Prosecution witnesses' identifications of Renzaho at Sainte Famille on 17 June 1994. The Appeals Chamber recalls the general principle that a Trial Chamber need not articulate every step of its reasoning.[1145] However, as established in the *Kupreškić et al.* case, "where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances, the Trial Chamber must rigorously implement its duty to provide a 'reasoned opinion'."[1146]

528. The Trial Chamber summarized the circumstances of the witnesses' identifications of Renzaho at Sainte Famille as follows: (1) Witness AWO saw Renzaho instruct the *Interahamwe* to kill "many people" and, after the killings, she saw him instruct the women to applaud;[1147] (2) Witness AWX saw Renzaho speaking with persons carrying dead bodies in wheelbarrows, one of which was carrying her dead sister's body;[1148] and (3) Witness ATQ saw Renzaho at Sainte Famille, for the first time in her life, five minutes before the *Interahamwe* arrived and started

[1138] Respondent's Brief, para. 195.
[1139] Respondent's Brief, paras. 199, 201, 202.
[1140] Respondent's Brief, paras. 196-198.
[1141] Respondent's Brief, paras. 234-240, 243-246, 249.
[1142] Respondent's Brief, para. 243.
[1143] Respondent's Brief, paras. 246, 249. *See also* Respondent's Brief, para. 242.
[1144] Respondent's Brief, para. 240.
[1145] *See Karera* Appeal Judgement, para. 19.
[1146] *Kupreškić et al.* Appeal Judgement, para. 39.
[1147] *See* Trial Judgement, para. 606. *See also* Witness AWO, T. 7 February 2007 p. 13.

shooting at the refugees, and did not know who he was until someone pointed him out and told her it was him.[1149]

529. The Appeals Chamber considers that the circumstances in which these witnesses identified Renzaho were traumatic. In addition, Witness AWO's evidence was determinative to the Trial Chamber's finding that Renzaho ordered the attack at Sainte Famille (rather than simply being present).[1150] The Trial Chamber therefore should have provided some reasons for accepting their identifications of Renzaho in relation to the attack at Sainte Famille. The Appeals Chamber finds that the Trial Chamber erred in failing to do so. However, the Appeals Chamber finds that this error does not invalidate the Trial Judgement.

530. Turning first to Renzaho's arguments concerning Witness AWO raised under his Eleventh Ground of Appeal, the Appeals Chamber notes that, in relation to her rapes in Rugenge sector, the Trial Chamber was satisfied with Witness AWO's identification of Renzaho and found her physical description of him to be adequate and consistent.[1151] As to factors impacting negatively on the reliability of her identification evidence, the Appeals Chamber recalls that not *all* factors need to be explicitly addressed, only *any significant* ones.[1152] The fact that Witness AWO had seen Renzaho only once before April 1994 does not, *per se*, diminish the reliability of her sighting, and the fact that she did not personally know him prior to the events is not sufficient to undermine the reliability of her identification evidence as to the rapes, or moreover with respect to Sainte Famille.[1153]

531. Regarding whether the Trial Chamber should have exercised "extreme caution" in assessing Witness AWO's identification evidence in relation to the attack at Sainte Famille, the Appeals Chamber recalls that such a high level of caution is required only when a witness's identification was made under difficult circumstances.[1154] In this case, the Appeals Chamber finds that the identification evidence did not necessarily call for an "extreme" level of caution.[1155] While the events suffered by Witness AWO were unquestionably traumatic, her identification of Renzaho at

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[1148] *See* Trial Judgement, para. 603. *See also* Witness AWX, T. 6 February 2007 p. 32.
[1149] *See* Trial Judgement, para. 618. *See also* Witness ATQ, T. 31 January 2007 p. 68.
[1150] *See* Trial Judgement, para. 716.
[1151] *See* Trial Judgement, para. 716, *referring to* Witness AWO, T. 7 February 2007 p. 9 ("It was a man who was bald. He had big eyes [...] and I believe he must be quite old today.").
[1152] *Kupreškić et al.* Appeal Judgement, para. 39.
[1153] *Cf. Kayishema and Ruzindana* Appeal Judgement, paras. 327, 328.
[1154] *Kupreškić et al.* Appeal Judgement, paras. 34, 39. *See also Kalimanzira* Appeal Judgement, para. 96.
[1155] In *Kupreškić et al.*, the ICTY Appeals Chamber found that Witness H's identification of the Defendants was carried out under "very difficult circumstances" because, *inter alia*, the attackers descended upon her and her family while they were sleeping; her father was killed as the family hid in the basement; and the attackers had masked their faces with paint in an attempt to camouflage themselves. *Kupreškić et al.* Appeal Judgement, para. 133. Despite these and many other "stressful conditions", the Appeals Chamber was nevertheless "not persuaded by the Defendant's arguments that the difficult circumstances in which Witness H found herself that morning completely eliminated any possibility of her recognising the attackers and that no reasonable Trial Chamber could have accepted that she did". *Kupreškić et al.* Appeal Judgement, para. 135.

Sainte Famille did not occur in circumstances that made him difficult to identify, such as in the dark or as a result of a fleeting glance.[1156]

532. The Appeals Chamber notes that Renzaho makes no reference to Witness AWO's transcript when he claims that she was unable to recognize him in court. A review of her testimony reveals that Witness AWO was never asked to perform an in-court identification of Renzaho. Instead, upon being asked to describe Renzaho when she saw him in 1994, Witness AWO said he was bald with big eyes, and then spontaneously added that she "[did not] believe [she] would be able to recognize him today after all the time that has elapsed since the last time [she] saw him."[1157] The Appeals Chamber does not consider such a statement, which refers to Witness AWO's perceived ability to identify Renzaho almost 13 years after the events, to demonstrate a lack of knowledge of Renzaho or undermine her identification of him during the events.

533. Turning to Witness AWX, the Appeals Chamber notes that she testified that, before seeing Renzaho in May 1994, she already knew him because, as Prefect, he would chair meetings in her locality.[1158] The Trial Chamber also noted that Witness AWX had seen him several times during the genocide of 1994,[1159] and took into account factors affecting her credibility.[1160] Consequently, Renzaho fails to demonstrate that the Trial Chamber's reliance on her evidence was unreasonable.

534. With respect to Witness ATQ, Renzaho correctly points out that she had no prior knowledge of him, and the Appeals Chamber notes that her identification of him is based on hearsay. While hearsay evidence is not *per se* inadmissible, depending on the circumstances of the case, it may require other credible or reliable evidence adduced by the Prosecution in order to support a finding of fact beyond reasonable doubt.[1161]

535. In the present case, the Trial Chamber found that the evidence of Witnesses ATQ, AWO, and HAD established Renzaho's presence at Sainte Famille sometime before noon,[1162] implying that the Trial Chamber considered that their identifications of Renzaho provided a degree of corroboration of one another. The Trial Chamber further found that the evidence of Witnesses AWX, ATQ, AWO, and BUO established that Renzaho was involved in the removal of dead bodies

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[1156] *Cf. Kupreškić et al.* Appeal Judgement, para. 40.
[1157] Witness AWO, T. 7 February 2007 p. 9 [closed session].
[1158] Witness AWX, T. 6 February 2007 p. 43.
[1159] *See* Trial Judgement, fn. 720. *See also supra*, Chapter XI (Alleged Errors Relating to the Attack at Sainte Famille), Section B (Alleged Errors in Assessing the Evidence Relating to Renzaho's Presence), para. 507, where the Appeals Chamber discusses its finding that it was reasonable for the Trial Chamber to infer from the language of Witness AWX's February 2005 statement that she had seen Renzaho several times.
[1160] Trial Judgement, para. 653.
[1161] *See Rutaganda* Appeal Judgement, paras. 33, 34; *Kalimanzira* Appeal Judgement, para. 96.
[1162] Trial Judgement, para. 647.

after the attack,[1163] which implies that the Trial Chamber considered their identifications of Renzaho to provide a degree of corroboration of one another as well. There is no indication that the Trial Chamber improperly analysed or evaluated the testimony of these witnesses. They were indeed corroborative with respect to Renzaho's presence at Sainte Famille before noon and after the attack. The Appeals Chamber therefore finds that it was reasonable, in these circumstances, for the Trial Chamber to rely, in part, on Witness ATQ's evidence.

536. For these reasons, the Appeals Chamber finds that Renzaho does not demonstrate that the Trial Chamber erred in accepting Witnesses AWO, AWX, and ATQ's identifications of Renzaho at Sainte Famille, despite its failure to provide a reasoned opinion in this regard.

3. Alleged Differential Treatment

537. The Trial Chamber evaluated the evidence of the Defence witnesses who testified that they did not see Renzaho during the attack on 17 June 1994, and concluded that their accounts carried limited weight.[1164] With respect to Defence Witness PER, the Trial Chamber noted that he "stated that he was hiding in the presbytery during the entire attack, which explains why he could not see Renzaho."[1165] With respect to Defence Witness TOA, the Trial Chamber stated that he was "hiding inside the church during the attack. He was therefore unable to see what was happening outside, and the Chamber finds his evidence to be of limited value."[1166]

538. Renzaho submits that the Trial Chamber erred in applying different standards to Defence and Prosecution evidence. Renzaho argues that the Trial Chamber excluded the evidence of Defence Witnesses PER and TOA that Renzaho was not present at Sainte Famille on 17 June 1994, because they were hiding during the attack and therefore could not see him, while accepting the evidence of Prosecution Witnesses HAD and ACK that Renzaho was there, despite the fact that they were also hiding at the time.[1167] In particular, he contends that since Witnesses HAD and ACK only saw Renzaho, respectively, before and after the attack, Witnesses PER and TOA would also have seen him there as they were outside the church at those times.[1168]

[1163] Trial Judgement, para. 651. This finding was based on Witness ATQ's sighting of Renzaho the day after the attack. *See* Trial Judgement, para. 620, *referring to* Witness ATQ, T. 1 February 2007 pp. 6-8.
[1164] Trial Judgement, para. 655.
[1165] Trial Judgement, para. 655.
[1166] Trial Judgement, para. 656.
[1167] Appellant's Brief, paras. 465, 479-487.
[1168] Appellant's Brief, paras. 482-485.

539. The Prosecution responds that Renzaho's speculation that both Witnesses PER and TOA would have seen him before or after the attack if he had been present is without merit.[1169]

540. Basic principles of fairness and justice dictate that a Trial Chamber should not apply differing standards in its treatment of Prosecution and Defence evidence.[1170] However, the Appeals Chamber does not agree with Renzaho's argument that the Trial Chamber treated the evidence of Witnesses PER and TOA differently from that of Witnesses ACK and HAD. In particular, the Appeals Chamber notes that the Trial Chamber did not disbelieve any of these witnesses. Even if they were all in the church during the attack, the finding that some witnesses saw Renzaho at Sainte Famille is not irreconcilable with the acceptance that others did not. It is noteworthy that while Witness TOA admitted that he did not see Renzaho at Sainte Famille at any point during his stay, he heard from other refugees that the Prefect had come there on 16 June 1994 with UNAMIR soldiers.[1171] Accordingly, the Appeals Chamber finds that Renzaho has failed to demonstrate any undue preference for Prosecution evidence on this matter.

541. The Appeals Chamber therefore dismisses Renzaho's allegations of differential treatment.

4. Conclusion

542. The Appeals Chamber accordingly dismisses Renzaho's allegation that the Trial Chamber erred in finding him present at Sainte Famille on 17 June 1994.

C. Alleged Errors Relating to the Timing of the Attack

543. The Appeals Chamber recalls the Trial Chamber's finding that "sometime before noon" on 17 June 1994, Renzaho was present at Sainte Famille.[1172] It further concluded that "*Interahamwe* attacked the Sainte Famille compound on 17 June 1994, starting some time before noon [and that] Renzaho was present and ordered the *Interahamwe* to attack, and later, to stop the killings."[1173]

544. Renzaho submits that the Trial Chamber erred in disregarding Prosecution evidence that he was not present at Sainte Famille during the attack.[1174] In particular, he submits that the Trial Chamber erroneously disregarded Prosecution Witness KZ's testimony that Renzaho was not

[1169] Respondent's Brief, paras. 213-215.
[1170] *See Ntakirutimana* Appeal Judgement, para. 133.
[1171] *See* Trial Judgement, para. 637. *See also* Witness TOA, T. 6 September 2007 p. 10. This is consistent with Witness PER's testimony that he saw Renzaho at Saint Paul with UNAMIR soldiers on 16 June 1994. *See* Trial Judgement, para. 635. *See also* Witness PER, T. 23 August 2007 pp. 34, 35.
[1172] Trial Judgement, paras. 647, 658. *See also* Trial Judgement, para. 663.
[1173] Trial Judgement, para. 663.
[1174] Appellant's Brief, paras. 388-403.

present during the attack at Saint Paul in its analysis of the attack at Sainte Famille.[1175] In addition, Renzaho contends that by failing to cite it, the Trial Chamber obviously disregarded Prosecution Exhibit 42,[1176] which shows that the attack at Sainte Famille occurred before 9:00 a.m., and not at 11:00 a.m. as the Trial Chamber concluded.[1177] He submits that had the Trial Chamber considered this evidence, its factual findings would have been different.[1178]

545. Renzaho further submits that the Trial Chamber wrongly disregarded Defence Witness RCB-2's evidence on the basis that the witness placed the attack at Sainte Famille earlier than 11:00 a.m., the time at which the Trial Chamber erroneously concluded that the majority of witnesses placed the attack.[1179] He contends that in so finding, the Trial Chamber distorted the evidence of Prosecution Witnesses HAD, ACK, and PER.[1180]

546. The Prosecution responds that even though the Trial Chamber did not need to refer to the testimony of every witness or every part of the trial record, it specifically noted Witness KZ's evidence about the attack at Saint Paul.[1181] The Prosecution further responds that the Trial Chamber properly summarized and assessed the evidence of Renzaho and the Defence witnesses, all of whom testified that they did not see him at Sainte Famille on 17 June 1994.[1182]

547. Contrary to Renzaho's assertion, the Trial Chamber did not find that the attack at Sainte Famille occurred at 11:00 a.m., nor did it conclude that the majority of witnesses placed the attack at 11:00 a.m.; rather, it found that the attack began "sometime before noon".[1183] The Appeals Chamber notes that the UNAMIR Situation Report of 17 June 1994 indicates that the attack at Sainte Famille was ongoing at 9:20 a.m.[1184] Because this evidence is consistent with the Trial Chamber's finding that the attack started sometime before noon, the Trial Chamber's failure to mention the evidence in its reasoning does not amount to an error.

[1175] Appellant's Brief, paras. 388-397, *referring to* Trial Judgement, paras. 601, 602 *and* Witness KZ, T. 25 January 2007 pp. 25-30 [closed session].
[1176] Prosecution Exhibit 42 is a Situation Report by UNAMIR dated 17 June 1994.
[1177] Appellant's Brief, paras. 388, 398, 399.
[1178] Appellant's Brief, paras. 400, 401.
[1179] Appellant's Brief, paras. 466-478.
[1180] Appellant's Brief, paras. 468-475.
[1181] Respondent's Brief, para. 186, *referring to* Trial Judgement, para. 512.
[1182] Respondent's Brief, paras. 208-212, *referring to* Trial Judgement, paras. 628-643.
[1183] Trial Judgement, para. 663.
[1184] Prosecution Exhibit 42, p. 5 ("170920: Get contact with the Prefect of Kigali Town. There 40 people killed and 40 was injuried [*sic*]. At that place the fighting is still going at Ste Famille."). *See also* Prosecution Exhibit 42, p. 2, para. 1 ("RPF have carried out a raid at 0300 hrs at St Paul to rescue Tutsi refugees. Militia and *Interahamwe* retaliated by attacking inhabitants of Hotel Millie [*sic*] Collines who were mostly Tutsis.") *and* p. 4, para. 6 ("RPF conducted a raid on St Paul at 0300 hrs and evacuated all displaced persons (Tutsi). During that operation 40 persons were reported to be killed.").

548. In relation to the events at Saint Paul, contrary to Renzaho's contention, the Trial Chamber did note Witness KZ's evidence in this regard, namely that Renzaho received a call in his office during the attack there.[1185] The Appeals Chamber further notes that there is no dispute that *Interahamwe* attacked Saint Paul before moving on to Sainte Famille.[1186] Renzaho fails to demonstrate how Witness KZ's evidence regarding his absence from Saint Paul casts doubt on the finding that he was present later at Sainte Famille.

549. Finally, the Appeals Chamber considers Renzaho's contention that Witness RCB-2's evidence was rejected for placing the attack against Tutsis at Sainte Famille far earlier than 11:00 a.m. to be misleading. Witness RCB-2's evidence was limited to hearing gunshots coming from Saint Famille at about 4:00 or 5:00 a.m. and seeing corpses there at 6:00 a.m. following an RPF attack.[1187] The Trial Chamber's rejection of Witness RCB-2's testimony, which was based on other factors such as dubious statements about having never seen a roadblock between April and July 1994,[1188] was therefore reasonable.

550. The Appeals Chamber therefore dismisses Renzaho's allegations of errors relating to the timing of the attack.

D. Alleged Errors in Finding that Renzaho Ordered the Attack

551. The Appeals Chamber recalls that the Trial Chamber found that Renzaho "directed the *Interahamwe* to kill 'many persons'" at Sainte Famille on 17 June 1994.[1189] This finding was based primarily on the evidence of Witness AWO.[1190] The Trial Chamber also found that Renzaho later ordered the *Interahamwe* to stop the attack.[1191]

552. Renzaho submits that the evidence does not establish beyond reasonable doubt that he ordered the attack at Sainte Famille.[1192] He recalls his assertion that the attack started at Saint Paul and the Trial Chamber's finding that the Prosecution failed to prove that he ordered the attack at Saint Paul.[1193] Asserting that the finding that he ordered the attack at Sainte Famille is based solely

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[1185] Trial Judgement, paras. 582, 583.
[1186] *See* Respondent's Brief, para. 192; Appellant's Brief, paras. 368-371, 373, 378-383.
[1187] Trial Judgement, para. 657. The Trial Chamber further noted that Witness RCB-2 seemed to dispute that an attack against Tutsis at Sainte Famille took place, possibly in order to minimise any role gendarmes, such as he, may have played. *See* Trial Judgement, para. 657, fn. 724, *referring to* Witness RCB-2, T. 6 June 2007 p. 11. *See also* Witness RCB-2, T. 6 June 2007 pp. 3, 4.
[1188] Trial Judgement, para. 657, *referring to* T. 6 June 2007 pp. 6-10.
[1189] Trial Judgement, para. 658.
[1190] Witness AWO, T. 7 February 2007 p. 13 ("Renzaho was in a place that was overlooking the area, and he was telling the *Interahamwe* to kill – to kill many people. And he would tell us, the [women], to applaud").
[1191] Trial Judgement, para. 658. This finding was based on the evidence of Witnesses AWO, ACK, HAD, ATQ, and BUO. *See* Trial Judgement, paras. 649, 650.
[1192] Appellant's Brief, para. 492.
[1193] Appellant's Brief, para. 493.

on the testimony of Witness AWO,[1194] he reiterates that this witness's identification of him was unreliable, and that her uncorroborated testimony should have been treated with caution.[1195]

553. Renzaho further contends that the Trial Chamber erred in finding that he ordered assailants to stop the attack.[1196] He argues that the Trial Chamber unreasonably relied on Witness AWO's inconsistent and uncorroborated testimony to reach this conclusion.[1197] Renzaho argues that, in any case, the Trial Chamber's finding that he ordered assailants to stop the attack is an insufficient basis to conclude that he ordered them to start the attack.[1198]

554. The Prosecution responds that these arguments were not raised in Renzaho's Notice of Appeal and should be dismissed on that basis alone.[1199] It further contends that they are cursory and unmeritorious, and that there is direct and circumstantial evidence establishing beyond reasonable doubt that Renzaho ordered the attack and killings at Sainte Famille on 17 June 1994.[1200]

555. Renzaho's arguments reiterate those he has made elsewhere in relation to evidence of his presence at Sainte Famille. These issues were properly raised in his Notice of Appeal, including the contention that "[n]o evidence was adduced to prove that Renzaho ordered the attack" and that the Trial Chamber "erred in fact by finding that the Accused was present and ordered the attack and killings [at Sainte Famille] to stop."[1201] Thus, the Appeals Chamber rejects the Prosecution's claim that Renzaho's arguments should be dismissed for failure to raise them in his Notice of Appeal.

556. The Appeals Chamber recalls its findings that Renzaho has failed to demonstrate that: (1) evidence of his absence from Saint Paul on 17 June 1994 casts doubt on the finding that he was present later at Sainte Famille;[1202] and (2) the Trial Chamber improperly evaluated Witness AWO's evidence and erred in accepting her identification of Renzaho.[1203] For the same reasons, and recalling that a Trial Chamber may rely on the uncorroborated but otherwise credible testimony of a single witness,[1204] the Appeals Chamber finds that Renzaho has not demonstrated that the Trial

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[1194] Appellant's Brief, paras. 494, 495.
[1195] Appellant's Brief, paras. 496, 497.
[1196] Appellant's Brief, para. 498.
[1197] Appellant's Brief, paras. 499-502. Renzaho argues that Witness ATQ's testimony to that effect was hearsay and speculative. *See* Appellant's Brief, para. 500.
[1198] Appellant's Brief, para. 503.
[1199] Respondent's Brief, para. 216.
[1200] Respondent's Brief, paras. 217-220.
[1201] *See* Notice of Appeal, paras. 112, 113.
[1202] *See supra*, Chapter XI (Alleged Errors Relating to the Attack at Sainte Famille), Section A (Alleged Errors in Considering 17 June 1994 Attacks at Saint Paul and Sainte Famille Separately), para. 499, where the Appeals Chamber finds that Renzaho has not demonstrated that no reasonable trier of fact could have reached the conclusion that he participated in the attack at Sainte Famille while being unable to conclude that he participated in an attack at Saint Paul.
[1203] *See supra*, Chapter XI (Alleged Errors Relating to the Attack at Sainte Famille), Section B (Alleged Errors in Assessing the Evidence Relating to Renzaho's Presence), paras. 529-532, 536.
[1204] *See, e.g., Rutaganda* Appeal Judgement, paras. 28, 29.

Chamber unreasonably relied on Witness AWO's testimony to conclude that he ordered the *Interahamwe* to attack Sainte Famille, and accordingly rejects Renzaho's contentions here.

557. Renzaho further submits that it was unreasonable for the Trial Chamber to rely on Witness HAD's testimony that, after Renzaho left the compound, he ordered "his dogs" to attack the refugees, to find that he ordered *Interahamwe* to attack.[1205] He contends that the Trial Chamber distorted and expanded her testimony, which was a mere assumption on her part, as she neither saw nor heard him give an order.[1206]

558. The Prosecution does not respond to these submissions.

559. Contrary to Renzaho's assertion, the Trial Chamber did not rely on Witness HAD's testimony to find that Renzaho ordered the attack. The portion of the Trial Judgement referred to by Renzaho in support of his assertion did not relate to whether Renzaho ordered the attack, but rather to whether Renzaho was present at Sainte Famille before the attack commenced.[1207] Renzaho's submission is accordingly dismissed.

560. The Appeals Chamber therefore finds that Renzaho has not demonstrated any error in the Trial Chamber's finding that he ordered *Interahamwe* to attack Sainte Famille.

E. Conclusion

561. The Appeals Chamber accordingly dismisses Renzaho's Tenth Ground of Appeal.

[1205] Appellant's Brief, paras. 454-457, *referring to* Trial Judgement, para. 613.
[1206] Appellant's Brief, para. 458.
[1207] Trial Judgement, para. 647.

XII. ALLEGED ERRORS RELATING TO SEXUAL VIOLENCE (GROUND OF APPEAL 11)

562. Under his Eleventh Ground of Appeal, Renzaho claims that the Trial Chamber erred in finding him guilty of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(3) of the Statute based on his failure to prevent the rapes of Prosecution Witnesses AWO and AWN, as well as Witness AWN's sister.[1208] Renzaho does not dispute that these women were raped,[1209] but claims that the Trial Chamber erred in basing its conclusion about Renzaho's responsibility for the rapes on the uncorroborated testimony of Witnesses AWO and AWN,[1210] and in accepting their identification of him.[1211] Renzaho further contends that the Trial Chamber erred in: (1) failing to carefully consider Witness AWN's age;[1212] (2) failing to consider the discrepancies in Witnesses AWO and AWN's testimony;[1213] and (3) inadequately assessing his alibi for the period of 9 to 11 April 1994.[1214]

563. The Appeals Chamber has already considered Renzaho's contentions that the Trial Chamber erred in relying on Witness AWO's evidence under his Tenth Ground of Appeal.[1215] In light of the reversal of Renzaho's convictions relating to the rapes of Witness AWO, Witness AWN, and Witness AWN's sister, the remainder of Renzaho's arguments in his Eleventh Ground of Appeal need not be considered.

[1208] Notice of Appeal, paras. 115-121; Appellant's Brief, paras. 510-581. *See* Trial Judgement, paras. 779, 794, 811. The Trial Chamber determined that these acts of rape constituted serious bodily or mental harm as genocide, rape as a crime against humanity, and rape as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. *See* Trial Judgement, paras. 776, 793, 810.
[1209] Notice of Appeal, para. 115.
[1210] Notice of Appeal, paras. 116, 118; Appellant's Brief, paras. 510, 544-559. *See also* Appellant's Brief, paras. 535, 536, 540, 542, 543.
[1211] Notice of Appeal, para. 117; Appellant's Brief, paras. 510, 514-536.
[1212] Appellant's Brief, paras. 529-536.
[1213] Appellant's Brief, paras. 510, 537, 538, 540.
[1214] Appellant's Brief, paras. 571-581.
[1215] *See supra*, Chapter XI (Alleged Errors Relating to the Attack at Saint Famille).

XIII. ALLEGED ERRORS RELATING TO LEGAL FINDINGS (GROUND OF APPEAL 12)

A. Preliminary Issue

564. Although neither Party raised the issue, the Appeals Chamber notes that the Trial Chamber's language in rendering its convictions against Renzaho may give the impression that it entered double convictions under Articles 6(1) and 6(3) of the Statute. The Appeals Chamber recalls that it is inappropriate to convict an accused for a specific count under both Article 6(1) and Article 6(3) of the Statute.[1216] When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both provisions and the accused could be found liable under both, the Trial Chamber should enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating circumstance in sentencing.[1217]

565. The Trial Chamber found Renzaho guilty of genocide under Article 6(1) of the Statute for aiding and abetting as well as ordering the killing of Tutsis at roadblocks throughout Kigali from April to July 1994; for aiding and abetting and ordering killings at CELA on 22 April 1994; and for his orders in relation to crimes committed at Sainte Famille on 17 June 1994.[1218] The Trial Chamber also found Renzaho "liable" as a superior for these crimes,[1219] indicating that it would take this liability into account in sentencing.[1220]

566. The Trial Chamber also found Renzaho guilty of murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(1) of the Statute for ordering the killing of at least 17 Tutsi men at Sainte Famille church on 17 June 1994.[1221] The Trial Chamber found Renzaho "liable" as a superior for these murders as well.[1222] The Trial Chamber indicated that it would take Renzaho's liability as a superior into account in sentencing.[1223]

567. In addition, the Trial Chamber found Renzaho guilty of murder as a crime against humanity under Article 6(1) of the Statute for aiding and abetting and ordering the killing of Charles, Wilson,

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[1216] *Nahimana et al.* Appeal Judgement, para. 487.
[1217] *Nahimana et al.* Appeal Judgement, para. 487, *referring to Galić* Appeal Judgement, para. 186, *Blagojević and Jokić* Appeal Judgement, paras. 23-28, *Kajelijeli* Appeal Judgement, para. 81, *Kvočka et al.* Appeal Judgement, para. 104, *Kordić and Čerkez* Appeal Judgement, paras. 34, 35, *and Blaškić* Appeal Judgement, para. 91.
[1218] Trial Judgement, para. 779.
[1219] Trial Judgement, para. 779.
[1220] Trial Judgement, para. 779. *See also* Trial Judgement, para. 823.
[1221] Trial Judgement, para. 807.
[1222] Trial Judgement, para. 807.
[1223] Trial Judgement, para. 807. *See also* Trial Judgement, para. 823.

and Déglote Rwanga, who had been removed from CELA on 22 April 1994.[1224] The Trial Chamber likewise found Renzaho "guilty" as a superior based on Article 6(3) of Statute, for the killing of Charles, Wilson, and Déglote Rwanga as well as the other mostly Tutsi men removed from CELA on that date.[1225] The Trial Chamber indicated in connection with these crimes that it would take Renzaho's liability as a superior into account in sentencing.[1226]

568. While it is clear that the Trial Chamber considered Renzaho's superior position as an aggravating circumstance,[1227] the Appeals Chamber considers that the Trial Chamber should have refrained from using language which is suggestive of double convictions based on both Articles 6(1) and 6(3) of the Statute. Nevertheless, the Appeals Chamber is not convinced that the Trial Chamber impermissibly convicted Renzaho twice for the same facts where it found him to be "liable" as a superior. Likewise, and despite the unfortunate use of the term "guilty" when finding Renzaho liable as a superior for murder as a crime against humanity for the killings of Charles, Wilson, and Déglote Rwanga, the Appeals Chamber is not convinced that the Trial Chamber impermissibly convicted Renzaho twice for the same facts.[1228]

B. Submissions

569. Renzaho challenges the Trial Chamber's legal findings.[1229] With respect to his convictions for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, Renzaho argues that the Trial Chamber erred in convicting him for the killings committed at roadblocks, CELA, and Sainte Famille.[1230] More specifically, he submits that the Trial Chamber erred in fact and in law in finding that he had authority and effective control over perpetrators.[1231] He also alleges that the Trial Chamber failed to establish a superior-subordinate relationship between him and the perpetrators of the rapes of Witnesses AWO and AWN, and of Witness AWN's sister, as well as his knowledge or reason to know of the rapes.[1232]

[1224] Trial Judgement, para. 789.
[1225] Trial Judgement, para. 789.
[1226] Trial Judgement, para. 789. *See also* Trial Judgement, para. 823.
[1227] Trial Judgement, para. 823.
[1228] The Appeals Chamber notes that the Trial Chamber convicted Renzaho solely under Article 6(3) of the Statute for murder as a crime against humanity for the killing of a group of mostly Tutsi men also removed from CELA on 22 April 1994. *See* Trial Judgement, para. 789.
[1229] Notice of Appeal, paras. 122-135.
[1230] Notice of Appeal, paras. 125-132, 134, 135.
[1231] Notice of Appeal, paras. 130, 134.
[1232] Brief in Reply, paras. 229, 230.

570. The Prosecution responds that Renzaho's submissions should be dismissed in their entirety because they are vague and do not demonstrate any error warranting appellate intervention.[1233]

571. The Appeals Chamber observes that many of the arguments advanced under this Ground of Appeal repeat challenges made under other Grounds of Appeal to the Trial Chamber's factual findings, as well as its findings related to notice.[1234] The Appeals Chamber has already discussed these arguments in the respective sections of this Judgement.[1235] To the extent that no additional arguments are presented under this Ground of Appeal, no further discussion is warranted.

572. In addition, the Appeals Chamber will not consider the unsubstantiated claim that the Trial Chamber erred in fact and in law by finding that the events which occurred in Rwanda in 1994 constituted a non-international conflict.[1236]

573. Finally, the Appeals Chamber recalls that it has reversed Renzaho's convictions for the rapes of Witnesses AWO and AWN, as well as Witness AWN's sister.[1237] As such, Renzaho's arguments in relation to his conviction for these rapes will not be considered.

C. Alleged Errors Relating to Renzaho's Authority and Effective Control

574. The Trial Chamber was "satisfied that Renzaho exercised effective control and was a superior over the local officials within his prefecture, including sub-prefects, *bourgmestres*, *conseillers*, *responsables de cellule* and *Nyumba Kumi* (ten-house leaders) as well as prefecture and commune employees such as the urban police."[1238] With respect to other categories of possible perpetrators, such as soldiers, gendarmes, and militiamen, the Trial Chamber considered that Renzaho's authority over these individuals should be assessed on a case-by-case basis.[1239]

[1233] Respondent's Brief, paras. 264-301.
[1234] Under his Twelfth Ground of Appeal, Renzaho submits that the Trial Chamber's factual errors vitiate its guilty findings for: (i) genocide for the killings of Tutsis at roadblocks, CELA, and Sainte Famille (*see* Appellant's Brief, paras. 633-657); (ii) murder as a crime against humanity for the killing of Charles, Wilson, and Déglote Rwanga at CELA on 22 April 1994 (*see* Appellant's Brief, paras. 663-665); and (iii) genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the rapes of Witnesses AWO and AWN, and Witness AWN's sister (*see* Appellant's Brief, paras. 659, 662, 666-670, 675-677). *See also* Brief in Reply, paras. 233-243. Renzaho further submits that the Trial Chamber's cumulative factual errors led it to the erroneous conclusion that he played a key role in the civil defence process and mobilized all of the local administration's resources under his authority in the wake of the war. *See* Appellant's Brief, paras. 602-610. *See also* Brief in Reply, paras. 221-223.
[1235] *See supra*, Chapter IV (Alleged Lack of Notice); Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville); Chapter X (Alleged Errors Relating to the Events at CELA); Chapter XI (Alleged Errors Relating to Attack at Sainte Famille).
[1236] Notice of Appeal, para. 133.
[1237] *See supra*, Chapter IV (Alleged Lack of Notice), Section I (Rapes).
[1238] Trial Judgement, para. 753.
[1239] Trial Judgement, paras. 755, 756.

575. Renzaho submits that the Trial Chamber erred in reaching the factual findings underlying its conclusions that he bears criminal responsibility under Article 6(3) of the Statute.[1240] In particular, he asserts that the Trial Chamber erred in amplifying his prerogatives as Prefect of Kigali-Ville prefecture,[1241] and inferring that he had effective control over soldiers, *conseillers* and militiamen.[1242]

576. The Appeals Chamber recalls that, in light of the reversal of Renzaho's convictions for the rapes of Witnesses AWO and AWN, and Witness AWN's sister, Renzaho's only conviction pursuant to Article 6(3) of the Statute is for murder as a crime against humanity for the killing of the mostly Tutsi men removed from CELA on 22 April 1994.[1243] The Trial Chamber found that the *Interahamwe* who killed the Tutsi refugees were Renzaho's subordinates at the time of the attack.[1244] The Appeals Chamber recalls that it has rejected Renzaho's arguments that the Trial Chamber erred in convicting him in relation to the events at CELA,[1245] and Renzaho does not advance any additional arguments under this Ground of Appeal suggesting that the Trial Chamber erred in finding him liable as a superior of the *Interahamwe*.

577. The Trial Chamber did, however, take its findings regarding Renzaho's superior responsibility for the crimes committed at roadblocks, CELA, and Sainte Famille into account in sentencing.[1246] The Appeals Chamber will therefore consider Renzaho's arguments in relation to superior responsibility only insofar as they may impact his sentence.

1. Prefectural Prerogatives

578. In determining that Renzaho exercised authority and had effective control over the local officials within Kigali-Ville prefecture,[1247] the Trial Chamber relied on, among other things, the powers vested in all prefects by Rwandan laws passed on 11 March 1975 (as modified on 14 August 1978) and on 22 June 1990,[1248] which it found demonstrated that his tasks as Prefect included the maintenance of peace, public order, and security of persons and property within the

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[1240] Notice of Appeal, paras. 122-135; Appellant's Brief, paras. 582-678; Brief in Reply, paras. 208-243.
[1241] Appellant's Brief, paras. 583-589; Brief in Reply, paras. 210-216.
[1242] Appellant's Brief, paras. 611-632; Brief in Reply, paras. 224-232.
[1243] *See* Trial Judgement, para. 789.
[1244] Trial Judgement, para. 770.
[1245] *See supra*, Chapter X (Alleged Errors Relating to the Events at CELA).
[1246] *See* Trial Judgement, para. 823.
[1247] Trial Judgement, para. 753.
[1248] Trial Judgement, para. 750, *referring to* Prosecution Exhibits 14 (*Loi portant organisation administrative de la préfecture de la ville de Kigali* of 22 June 1990) ("Law of 22 June 1990") *and* 10 (*Décret-loi sur l'organisation et fonctionnement de la préfecture* of 11 March 1975 as modified on 14 August 1978) ("Law of 11 March 1975").

prefecture.[1249] The Trial Chamber considered that Renzaho was the representative of the national government in Kigali-Ville, vested with the authority of the state.[1250]

579. Renzaho submits that the Trial Chamber failed to note that since December 1993, those responsibilities vested in the prefect of Kigali-Ville prefecture had been transferred to UNAMIR under the Kigali Weapons Secure Area ("KWSA") agreement,[1251] which marginalized the prefect's role in maintaining peace and public order.[1252] He contends that this situation prevailed after 6 April 1994, particularly because, despite the resumption of hostilities on 7 April 1994, the interim government had not decreed a state of emergency, which was the only action that could confer exceptional powers on the prefect of Kigali-Ville prefecture.[1253] Renzaho asserts that by failing to refer to the KWSA agreement, the Trial Chamber was unreasonable, lacked objectivity, and erroneously exaggerated his prerogatives as Prefect of Kigali-Ville prefecture.[1254]

580. The Prosecution responds that the argument that the prefect's powers were transferred to UNAMIR through the KWSA program is contradicted by the evidence, that it is unclear how reference thereto would have affected the evidence in this regard, and that, in any event, Renzaho does not demonstrate any error in the Trial Chamber's conclusions regarding his effective control over his subordinates.[1255]

581. Renzaho replies that, because the KWSA agreement transferred responsibility for the security of Kigali to the UNAMIR Commander, the Trial Chamber could not conclude that the prefect of Kigali-Ville prefecture was the authority in charge of maintaining peace and security therein without precisely determining the period in which these prerogatives were transferred back to him.[1256]

582. Renzaho relies specifically on paragraphs 2 and 4 of Defence Exhibit 36, a document entitled "*Procédure opérationnelle pour l'établissement de la zone de consignation d'armes de Kigali*" dated 20 December 1993.[1257] The Appeals Chamber notes that these paragraphs indicate that the purpose of establishing a weapons-free zone was, *inter alia*, to ensure the security of the expatriate and resident population of Kigali, and that UNAMIR was responsible for the

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[1249] *See* Law of 22 June 1990, Article 25(11); Law of 11 March 1975, Article 8(2).
[1250] Trial Judgement, para. 750.
[1251] Appellant's Brief, para. 584, *referring to* Defence Exhibit 36. *See also* Appellant's Brief, paras. 587, 588; Brief in Reply, paras. 210-212.
[1252] Appellant's Brief, para. 585. *See also* AT. 16 June 2010 p. 64.
[1253] Appellant's Brief, para. 586. *See also* Brief in Reply, paras. 214, 215.
[1254] Appellant's Brief, paras. 588, 589; Brief in Reply, para. 216.
[1255] Respondent's Brief, para. 267. *See also* Respondent's Brief, paras. 268-271.
[1256] Brief in Reply, paras. 212-214.
[1257] Brief in Reply, para. 211.

implementation of the zone in collaboration with the national gendarmerie and local police.[1258] However, contrary to Renzaho's contention, these provisions do not suggest that the prefect's role and responsibilities in maintaining peace and public order had been transferred to UNAMIR.

583. UNAMIR's mandate was defined by UN Security Council Resolution 872 (1993), which specified that the mission was to: contribute to the security of Kigali by ensuring that weapons were strictly controlled; monitor the cease-fire; assist local authorities in demobilising the two Rwandan armies; and investigate violations of the Arusha Accords.[1259] As such, the prefect's *de jure* powers to ensure the security of the people and property within his or her prefecture remained undisturbed. There is no evidence that Renzaho was relieved of his duties or that his role as Prefect was marginalized or diminished. To the contrary, the evidence shows that Renzaho remained in charge of local officials, in particular *bourgmestres* and the local police,[1260] at all times relevant to the charges.

584. Renzaho's arguments are therefore dismissed.

2. *Conseillers*

585. The Trial Chamber found that Renzaho exercised effective control and was a superior over the local officials within his prefecture, including *conseillers*.[1261] In reaching this conclusion, the Trial Chamber considered, among other things, that "his effective control [over *conseillers*] is reflected by his ultimate supervision of the replacement of local officials under his Kigali-Ville *bourgmestres*, notwithstanding the limitations of the law."[1262]

586. However, the Trial Chamber did not find the evidence of Renzaho's conduct in the dismissal of political moderates to be capable of sustaining a conviction.[1263] In particular, it found that Renzaho approved the dismissal of *Conseiller* Célestin Sezibera, who was considered a

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[1258] Defence Exhibit 36, p. 2 ("2. *L'objet de l'établissement de cette zone est triple: a) assurer la mise en place saine et paisible d'un Gouvernement de Transition à Base Élargie au Rwanda; b) assurer la sécurité de la communauté des expatriés résidant à Kigali et de toute la population résidant à Kigali et; [sic] c) contrôler le mouvement et l'emploi [d']éléments militaires des FGR (Forces Gouvernementales Rwandaises), du FPR (Front Patriotique Rwandais) et des autres éléments armés se trouvant à Kigali et ses environs.* [...] *4. Le Commandant du Secteur de Kigali est responsable de la mise en place de la Zone de Consignation des Armes de KIGALI, en collaboration avec la Gendarmerie Nationale et la police locale.*").

[1259] *See* Defence Exhibit 35B (United Nations Security Council Resolution 872 (1993) [On the Establishment of the UN Assistance Mission to Rwanda (UNAMIR)], 5 October 1993 (S/RES/872)), para. 3.

[1260] *See, e.g.*, Renzaho, T. 28 August 2007 p. 35, T. 30 August 2007 p. 21; Witness PPV, T. 4 June 2007 p. 78 [closed session]; Witness AIA, T. 2 July 2007 p. 50 [closed session]; Witness ALG, T. 10 January 2007 p. 58 [closed session]; Witness UB, T. 23 January 2007 pp. 6-8, 19 [closed session]; Prosecution Exhibit 9 (*Loi sur l'organisation de la commune* of 23 November 1963), Articles 46, 48, 85; Law of 22 June 1990, Article 27.

[1261] Trial Judgement, para. 753.

[1262] Trial Judgement, para. 754.

[1263] Trial Judgement, para. 498.

moderate and not supportive of the killings in Kigali-Ville prefecture, but that there was no evidence that he appointed the new *Conseiller*, Jéremie Kaboyi, who participated in killings after assuming this position. The Trial Chamber also found that it was unclear whether the idea of dismissal and replacement originally came from Renzaho, or was formulated at a lower administrative level.[1264]

587. Renzaho contends that the Trial Chamber erred in inferring his alleged control over *conseillers* from the role it ascribed to him in the replacement of local officials, thereby contradicting its own doubts about *Conseiller* Célestin Sezibera's wrongful dismissal.[1265]

588. The Appeals Chamber sees no contradiction between the Trial Chamber's findings and the Trial Chamber's later qualification of Renzaho's role in the replacement of local officials as one of "ultimate supervision".[1266]

589. The Appeals Chamber further notes that the Trial Chamber did not infer Renzaho's alleged control over *conseillers* solely from his role in the replacement of local officials, but that it relied upon other factors in reaching its conclusion, such as the issuance of instructions to the *conseillers* and the fact that he provided them with urban police as their personal guards.[1267]

590. As such, Renzaho has failed to demonstrate any error in the Trial Chamber's reliance on evidence of his supervision over the dismissal of local officials which would invalidate the Trial Chamber's conclusion that he exercised effective control over *conseillers* within his prefecture.

591. This submission is accordingly dismissed.

3. Soldiers and Militiamen

592. In reaching the conclusion that Renzaho had effective control over the local officials within his prefecture, the Trial Chamber considered that, "by virtue of his position as prefect and with his high military rank, Renzaho was clearly an important and influential authority of the Rwandan government entrusted with the administration of a key strategic location during a time of war."[1268] With respect to other categories of possible offenders, such as soldiers and militiamen, the Trial

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[1264] Trial Judgement, para. 498.
[1265] Appellant's Brief, paras. 623-631, *referring to* Trial Judgement, paras. 487, 495, 496. Renzaho further submits that the Trial Chamber erred in finding that he had effective control over *Conseiller* Odette Nyirabagenzi in particular, and refers back to his submissions under his Ninth, Tenth, and Eleventh Grounds of Appeal in support of this contention. *See* Appellant's Brief, paras. 620-622. The Appeals Chamber has already dismissed these arguments and need not revisit them here.
[1266] Trial Judgement, para. 754.
[1267] Trial Judgement, para. 754.
[1268] Trial Judgement, para. 753.

Chamber considered that his authority over these individuals should be assessed on a case-by-case basis.[1269]

593. Renzaho submits that the Trial Chamber erred in finding that he had effective control over some soldiers.[1270] He claims that, by stating that such effective control could be inferred from the fact that he regularly convened and chaired prefectural meetings involving civilian and military officials,[1271] the Trial Chamber contradicted its own findings that there were differences in the Prosecution witnesses' accounts of the participants of the 10 and 16 April Meetings concerning, respectively, the erection of roadblocks and the distribution of weapons, and never indicated that soldiers were present.[1272]

594. Renzaho also argues that the Trial Chamber erred in making his influence a determinative factor in its assessment of his effective control over some soldiers and militiamen.[1273] He contends that there was no evidence to suggest that his senior officer's grade conferred any operational authority on him within the Rwandan army.[1274] To the contrary, Renzaho submits that the evidence showed that, as Prefect, he did not hold or exercise any military functions or activities, only civil administrative ones.[1275] He further submits that the Trial Chamber considered determinative the fact that as an army officer, he had the right and duty to make all lower-ranked soldiers comply with general rules of discipline, but failed to consider that he did not have the power to punish officers who were not under his authority.[1276]

595. The Prosecution responds that Renzaho's submissions are baseless,[1277] and that contrary to his suggestion, his authority also derived from his relationship with the army.[1278]

596. The Appeals Chamber observes that nothing in the Trial Chamber's reasoning suggests that it considered Renzaho's influential authority to be a determinative factor in finding that he exercised effective control over some militiamen. To the contrary, it found that "given his position within the civilian administration, and the formal limitations on his authority over gendarmes, the Chamber is not convinced beyond reasonable doubt that Renzaho's effective control extended to all gendarmes or every army soldier of a lesser rank."[1279] In addition, the Trial Chamber duly

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[1269] Trial Judgement, paras. 755, 756.
[1270] Appellant's Brief, paras. 611-616.
[1271] Appellant's Brief, para. 612.
[1272] Appellant's Brief, paras. 613-615.
[1273] Appellant's Brief, paras. 600, 601, *referring to* Trial Judgement, paras. 745, 755, 767, 777.
[1274] Appellant's Brief, para. 597.
[1275] Appellant's Brief, para. 598, *referring to* Defence Exhibit 102.
[1276] Appellant's Brief, paras. 617-619, *referring to* Prosecution Exhibit 11, Articles 11, 60, 61.
[1277] Respondent's Brief, para. 277.
[1278] Respondent's Brief, para. 276.
[1279] Trial Judgement, para. 755.

recognized that Renzaho did not have operational command or authority over gendarmes and soldiers.[1280] For these reasons, it found that his effective control over them could only be determined on a case-by-case basis.[1281]

597. Similarly, the Trial Chamber found that there was limited evidence detailing the actual structure and chain of command governing the civil defence forces and militiamen in all instances, and therefore indicated that it would assess the circumstances on the ground in order to determine whether Renzaho exercised effective control over them in the context of a given incident.[1282] The Appeals Chamber sees no error in the Trial Chamber's approach.

598. Accordingly, the Appeals Chamber dismisses Renzaho's arguments challenging the Trial Chamber's findings that he bears superior responsibility.

D. Conclusion

599. The Appeals Chamber dismisses Renzaho's Twelfth Ground of Appeal.

[1280] Trial Judgement, para. 755.
[1281] Trial Judgement, paras. 755, 756. The Appeals Chamber notes that the Trial Chamber did not find Renzaho responsible for any crime committed by gendarmes, and only found him responsible as a superior to soldiers for the rapes they perpetrated upon Witness AWO. *See* Trial Judgement, paras. 777, 779, 794, 811.
[1282] Trial Judgement, para. 756.

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XIV. SENTENCING (GROUND OF APPEAL 13)

600. The Trial Chamber sentenced Renzaho to life imprisonment for genocide (Count 1), murder as a crime against humanity (Count 3), rape as a crime against humanity (Count 4), murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 5), and rape as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 6).[1283]

601. In imposing this sentence, the Trial Chamber considered the Parties' submissions on the gravity of the offences and on Renzaho's aggravating and mitigating circumstances.[1284] Regarding gravity, the Trial Chamber concluded that "Renzaho's crimes are grave and resulted in a massive toll of human suffering."[1285] The Trial Chamber further found that Renzaho's specific role in each of these crimes would "individually warrant the highest sanction and censure comparable to other senior leaders who have received life sentences."[1286]

602. In relation to aggravating circumstances, the Trial Chamber held that "Renzaho's abuse of his role as an influential authority and superior in connection with those crimes for which he was convicted under Article 6(1) of the Statute amounts to an aggravating factor."[1287]

603. Finally, in considering "Renzaho's background and individual circumstances" the Trial Chamber noted Renzaho's "lengthy public service to his country prior to the events as well as his submissions concerning assistance to Tutsis", but held that it would accord "these mitigating circumstances very limited weight in view of the gravity of his crimes."[1288]

604. On appeal, Renzaho challenges the Trial Chamber's assessment of mitigating factors and submits that the Trial Chamber erred by failing to take into account the violation of his right to a fair trial.[1289] The Prosecution responds that Renzaho's arguments should be summarily dismissed as he fails to articulate any error warranting appellate intervention.[1290]

[1283] Trial Judgement, paras. 812, 826.
[1284] Trial Judgement, paras. 815, 816.
[1285] Trial Judgement, para. 821.
[1286] Trial Judgement, para. 821. *See also* Trial Judgement, paras. 817-820.
[1287] Trial Judgement, para. 823.
[1288] Trial Judgement, para. 824.
[1289] Sentencing Submissions, paras. 2-7; Appellant's Brief, paras. 680-684. *See also* Brief in Reply, para. 244, which merely refers to the Appellant's Brief; Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009.
[1290] Respondent's Brief, paras. 303-305, 312.

A. Applicable Law

605. Article 24 of the Statute allows the Appeals Chamber to "affirm, reverse or revise" a sentence imposed by a Trial Chamber. The factors that a Trial Chamber is obliged to take into account in sentencing are set out in Article 23 of the Statute and in Rule 101 of the Rules, but are by no means exhaustive.[1291] They include: (1) the gravity of the offence; (2) the individual circumstances of the convicted person, including any aggravating and mitigating circumstances; (3) the general practice regarding prison sentences in the courts of Rwanda; and (4) the extent to which any sentence imposed on the convicted person by a court of any State for the same act has already been served.[1292]

606. Due to their obligation to individualize the penalties to fit the circumstances of an accused and the gravity of the crime, Trial Chambers are vested with a broad discretion in determining the appropriate sentence.[1293] As a general rule, the Appeals Chamber will not substitute its own sentence for that imposed by a Trial Chamber unless it has been shown that the latter committed a discernible error in exercising its discretion, or failed to follow the applicable law.[1294] It is for the appellant to demonstrate that the Trial Chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, or made a clear error as to the facts upon which it exercised its discretion, or that the Trial Chamber's decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.[1295]

B. Mitigating Factors

607. Renzaho argues that the Trial Chamber failed to take into account the exceptional situation equivalent to *force majeure* in which he found himself from 6 April to 5 July 1994.[1296] He submits that the Trial Chamber failed to take into account several other mitigating factors, including: his character and past behaviour; that he did not belong to any political party; that he contributed to the building of democracy and the rule of law in Rwanda; that he demonstrated neutrality during political strife as Prefect; and that he was unable to prevent massacres due to lack of resources

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[1291] *Bikindi* Appeal Judgement, para. 140; *Nahimana et al.* Appeal Judgement, para. 1038.
[1292] *Bikindi* Appeal Judgement, para. 140. *See also Nahimana et al.* Appeal Judgement, para. 1038.
[1293] *Rukundo* Appeal Judgement, para. 240; *Kalimanzira* Appeal Judgement, para. 224; *Bikindi* Appeal Judgement, para. 141; *Nchamihigo* Appeal Judgement, para. 384; *Karera* Appeal Judgement, para. 385.
[1294] *Rukundo* Appeal Judgement, para. 240; *Kalimanzira* Appeal Judgement, para. 224; *Bikindi* Appeal Judgement, para. 141; *Nchamihigo* Appeal Judgement, para. 384; *Karera* Appeal Judgement, para. 385.
[1295] *Bikindi* Appeal Judgement, para. 141; *D. Milošević* Appeal Judgement, para. 297.
[1296] Sentencing Submissions, para. 2; Appellant's Brief, para. 680.

during the events of April to July 1994, but did rescue people in danger, whatever their ethnicity, when he was able to do so.[1297]

608. The Prosecution responds that the issue of whether the situation after 6 April 1994 was exceptional is irrelevant to the Trial Chamber's findings that Renzaho was an authority who substantially contributed to the crimes for which he was convicted.[1298] The Prosecution maintains that the Trial Chamber took into account Renzaho's background and individual circumstances, including his past conduct and submissions regarding assistance to Tutsis.[1299] The Prosecution notes that the finding of mitigating circumstances does not preclude the imposition of a sentence of life imprisonment.[1300]

609. The Appeals Chamber considers Renzaho's arguments concerning the exceptional situation in Rwanda from April to July 1994 and the alleged *force majeure* to be vague and unsubstantiated. He does not explain how the events during this period impact upon his individual circumstances such that his sentence should be mitigated. To the extent that he advances the general contention that he did not have the resources to prevent massacres, he also fails to explain how this should impact upon his sentence. The Appeals Chamber will therefore not consider this argument further.

610. With respect to mitigating factors and contrary to Renzaho's assertion, the Trial Chamber did consider the factors Renzaho cites. It considered Renzaho's background and individual circumstances and stated that it was mindful of his lengthy public service as well as his submissions concerning assistance to Tutsis.[1301] The Appeals Chamber recalls that although a Trial Chamber has an obligation to take any mitigating circumstances into account in determining the appropriate sentence, the weight to be accorded to such circumstances lies within the discretion of the Trial Chamber, which is under no obligation to set out in detail each and every factor relied upon.[1302] The Appeals Chamber also notes that the Trial Chamber described Renzaho's sentencing submissions in detail before its deliberations.[1303] Thus, Renzaho cannot claim that the Trial Chamber failed altogether to take into account the mitigating factors upon which he relies.

611. To the extent that Renzaho argues that the Trial Chamber failed to find that these factors weighed as heavily in his favour as he would have liked, the Appeals Chamber recalls that a Trial Chamber's sentencing decision may only be disturbed on appeal if the Trial Chamber committed a

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[1297] Sentencing Submissions, paras. 3, 4; Appellant's Brief, paras. 682, 683, *referring to* Defence Closing Brief, paras. 1265-1287.
[1298] Respondent's Brief, para. 308.
[1299] Respondent's Brief, para. 310.
[1300] Respondent's Brief, para. 310, *referring to Niyitegeka* Appeal Judgement, para. 267.
[1301] Trial Judgement, para. 824.
[1302] *Ntagerura et al.* Appeal Judgement, para. 436, *referring to Kupreškić et al.* Appeal Judgement, para. 430.
[1303] Trial Judgement, para. 816.

discernible error, or if the appellant shows that the Trial Chamber erred in the weighing process either by taking into account what it ought not to have considered or by failing to take into account what it ought to have considered.[1304] The Appeals Chamber finds that Renzaho has not demonstrated that the Trial Chamber committed a discernible error in affording insufficient weight to a particular factor.

612. The Appeals Chamber recalls that even where mitigating circumstances exist, a Trial Chamber is not precluded from imposing a sentence of life imprisonment, where the gravity of the offence requires the imposition of the maximum sentence provided for.[1305] The Appeals Chamber therefore finds that Renzaho has not demonstrated that the Trial Chamber committed a discernible error in its assessment of mitigating circumstances.

C. Aggravating Factors

613. Renzaho advances the general contention that the Trial Chamber erred in its consideration of aggravating circumstances, but fails to substantiate this assertion.[1306] The Appeals Chamber will accordingly not consider this argument further.

614. However, the Appeals Chamber recalls that the Trial Chamber found that Renzaho's abuse of authority in relation to his superior responsibility for killings at roadblocks was an aggravating factor.[1307] In finding that Renzaho had superior responsibility in this respect, the Trial Chamber relied on Renzaho's participation in the 11 April Meeting, at which the removal of corpses from the streets of Kigali was organized.[1308] The 11 April Meeting and the operation to remove bodies were not pleaded in the Indictment nor included in the Prosecution Pre-Trial Brief,[1309] and Renzaho contends that he lacked notice of the Prosecution's intention to rely on these facts to incriminate

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[1304] *Semanza* Appeal Judgement, para. 334; *Čelebići* Appeal Judgement, para. 780.
[1305] *Karera* Appeal Judgement, para. 390, *referring to Niyitegeka* Appeal Judgement, para. 267 *and Musema* Appeal Judgement, para. 396.
[1306] Sentencing Submissions, para. 5. The Appeals Chamber further notes that Renzaho makes no submissions suggesting that the crimes for which he was convicted are not grave or that his abuse of authority would not constitute an aggravating factor.
[1307] Trial Judgement, paras. 779, 823.
[1308] Trial Judgement, para. 183. *See also supra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section A (Alleged Lack of Notice), para. 398.
[1309] *See supra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section A (Alleged Lack of Notice), para. 391. *See also* Trial Judgement, para. 338. The Appeals Chamber notes that the summary of Witness GLJ's anticipated evidence attached to the Prosecution Pre-Trial Brief states that Renzaho presided over a meeting around 10 April 1994 during which he assigned vehicles to collect dead bodies from around Kigali. Around 10,000 bodies were collected on 10 and 11 April 1994. Prosecution Pre-Trial Brief, p. 68. The summary of Witness UL's anticipated evidence states that Witness UL attended a meeting on 11 April 1994 at the Kigali-Ville prefecture office where Renzaho stated that there were bodies all over the city and that the workers should bury them. Prosecution Pre-Trial Brief, p. 74.

him.[1310] As discussed above, the Appeals Chamber has found that Renzaho's arguments should be considered in relation to sentencing.[1311]

615. The Appeals Chamber recalls that a Trial Chamber may only consider in aggravation circumstances pleaded in the Indictment.[1312] In this particular case, Renzaho's position as an authority and as a superior in relation to roadblocks were clearly pleaded in the Indictment.[1313] Consequently, the Appeals Chamber finds that the Trial Chamber did not commit a discernible error in finding that Renzaho's abuse of authority in relation to roadblocks was an aggravating factor.

D. Fair Trial

616. Renzaho argues that the Trial Chamber erred by failing to take into account the Prosecution's repeated violation of the Rules, the principles of fair trial, and the manifestly excessive provisional detention he served in determining his sentence.[1314]

617. The Prosecution responds that the alleged violations of the Rules and the principles of fair trial ought not to have been considered in the determination of Renzaho's sentence.[1315] The Prosecution points out that the Trial Chamber found that Renzaho's right to a fair trial was not violated and that he suffered no material prejudice from violations of Rule 68 of the Rules and difficulties in accessing certain witnesses.[1316]

618. Renzaho does not explain which violations of the Rules or principles of fair trial the Trial Chamber should have taken into account in sentencing. In any event, the Appeals Chamber has considered and dismissed Renzaho's claims that his trial was unfair.[1317] The Appeals Chamber has also upheld the Trial Chamber's findings that the Prosecution's violations of Rule 68(A) of the Rules did not cause Renzaho prejudice.[1318] The Appeals Chamber therefore finds that the Trial

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[1310] *See supra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section A (Alleged Lack of Notice), para. 392; Appellant's Brief, paras. 281-284; AT. 16 June 2010 pp. 21, 22.
[1311] *See supra*, Chapter IX (Alleged Errors Relating to Control over Resources in Kigali-Ville), Section A (Alleged Lack of Notice), para. 398.
[1312] *Simba* Appeal Judgement, para. 82, fn. 178, *relying on Kunarac et al.* Trial Judgement, para. 850 ("Only those circumstances directly related to the commission of the offence charged and to the offender himself when he committed the offence, such as the manner in which the offence was committed, may be considered in aggravation. In other words, circumstances not directly related to an offence may not be used in aggravation of an offender's sentence for that offence. To permit otherwise would be to whittle away the purpose and import of an indictment.").
[1313] Indictment, paras. 2, 24-27.
[1314] Sentencing Submissions, paras. 6, 7; Appellant's Brief, para. 684.
[1315] Respondent's Brief, para. 309.
[1316] Respondent's Brief, para. 309.
[1317] *See supra*, Chapter III (Alleged Bias); Chapter V (Alleged Violations of the Right to a Fair Trial).
[1318] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section A (Violation of Rule 68 of the Rules).

Chamber did not commit a discernible error in failing to take Renzaho's contentions into account in sentencing.

619. With respect to Renzaho's pre-trial detention, the Appeals Chamber notes that Renzaho does not appear to have advanced this argument at trial.[1319] The Appeals Chamber recalls that 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.[1320] In any event, as the Appeals Chamber has found that the length of Renzaho's proceedings did not violate his right to be tried without undue delay,[1321] no error in this respect is established.

E. Impact of the Appeals Chamber's Findings on Renzaho's Sentence

620. The Appeals Chamber recalls that it has set aside Renzaho's conviction for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(3) of the Statute for the rapes of Witness AWO, Witness AWN, and Witness AWN's sister.[1322] In addition, the Appeals Chamber, Judge Güney and Judge Pocar dissenting, has reversed Renzaho's conviction for genocide for ordering killings at roadblocks.[1323] These reversals concern very serious crimes and, in some instances, the Appeals Chamber has considered reversals as reason to review and reduce the sentence. However, the Appeals Chamber considers that the crimes for which Renzaho remains convicted are extremely grave. These crimes include genocide, murder as a crime against humanity, and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. Consequently, the Appeals Chamber considers that the reversals do not impact the sentence imposed by the Trial Chamber.

621. As a consequence, the Appeals Chamber affirms Renzaho's sentence of imprisonment for the remainder of his life.

[1319] *See* Defence Closing Brief, paras. 1253-1292; Closing Arguments, T. 15 February 2008 pp. 1-8.
[1320] *Nchamihigo* Appeal Judgement, para. 390; *Karera* Appeal Judgement, para. 388; *Kupreškić et al.* Appeal Judgement, para. 414.
[1321] *See supra*, Chapter V (Alleged Violations of the Right to a Fair Trial), Section D (Violation of the Right to be Tried in a Reasonable Amount of Time).
[1322] *See supra*, Chapter IV (Alleged Lack of Notice), Section I (Rapes).
[1323] *See supra*, Chapter VII (Alleged Errors Relating to Killings at Roadblocks and Distribution of Weapons in Kigali-Ville), Section A (Alleged Errors Relating to the Killings at Roadblocks in Kigali-Ville).

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XV. DISPOSITION

622. 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 Appeal Hearing on 16 June 2010;

SITTING in open session;

GRANTS, in part, Renzaho's First Ground of Appeal and **REVERSES** his convictions for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the rapes of Witnesses AWO and AWN, and Witness AWN's sister;

GRANTS, in part, Judge Güney and Judge Pocar dissenting, Renzaho's Fifth Ground of Appeal, and **REVERSES** his conviction for genocide for ordering the killing of Tutsi civilians at roadblocks in Kigali;

DISMISSES Renzaho's Appeal in all other respects;

AFFIRMS Renzaho's conviction for genocide for aiding and abetting killings of Tutsis at roadblocks in Kigali;

AFFIRMS Renzaho's conviction for genocide for ordering and aiding and abetting killings at CELA on 22 April 1994;

AFFIRMS Renzaho's conviction for murder as a crime against humanity for ordering and aiding and abetting the killing of Charles, Wilson, and Déglote Rwanga on 22 April 1994 and for his superior responsibility under Article 6(3) of the Statute in relation to the killing of other mostly Tutsi men removed from CELA on 22 April 1994;

AFFIRMS Renzaho's conviction for genocide in relation to the killing of hundreds of Tutsi refugees at Sainte Famille on 17 June 1994;

AFFIRMS Renzaho's conviction for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for ordering the killing of at least 17 Tutsi men at Sainte Famille on 17 June 1994;

AFFIRMS Renzaho's sentence of imprisonment for the remainder of his life, subject to credit being given under Rules 101(C) and 107 of the Rules for the period already spent in detention since his arrest on 29 September 2002;

RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules; and

ORDERS that, in accordance with Rules 103(B) and 107 of the Rules, Renzaho 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.

Carmel Agius
Presiding Judge

Mehmet Güney
Judge

Fausto Pocar
Judge

Liu Daqun
Judge

Theodor Meron
Judge

Judge Güney appends a partially dissenting opinion.

Judge Pocar appends a partially dissenting opinion.

Done this 1st day of April 2011 at Arusha, Tanzania.

[Seal of the Tribunal]

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XVI. PARTIALLY DISSENTING OPINION OF JUDGE GÜNEY

1. The Appeals Chamber granted Renzaho's Fifth Ground of Appeal in part and reversed the conviction for genocide based on an explicit order to kill Tutsis at roadblocks.[1] Although I agree that the conviction was not secured based on this finding for the reasons put forward by the Majority, I am of the opinion that other factual findings in the Trial Judgement support the conviction of genocide for ordering the killing at roadblocks based on the lower *mens rea* standard articulated in the *Blaškić* Appeals Judgement.[2]

2. According to the Majority of the Appeals Chamber, the Trial Chamber failed to explain how the only reasonable inference that could be drawn from the evidence was that Renzaho gave a distinct order to kill Tutsis at roadblocks,[3] and did not sufficiently provide the required findings of fact as to each element of this mode of responsibility.[4]

3. As stated by the Majority, I believe that the Trial Chamber erred in inferring that Renzaho "must have [directly] [...] ordered the killings".[5] However, I note that the Trial Chamber also found "beyond reasonable doubt that he [Renzaho] was aware that the continued killing of Tutsi civilians was a likely outcome when he urged the meetings' attendants to erect additional roadblocks to be manned by those within their communities."[6] In addition, I note that the evidence clearly shows that, in the circumstances in which the order to erect additional roadblocks was given during the 10 April Meeting, the implicit and explicit objective of such order was to "confront Tutsis", which inevitably translated into the killing of the Tutsi population.[7] Indeed, the Trial Chamber was "convinced beyond reasonable doubt that Tutsis, those who were perceived to be Tutsi and individuals identified as members of the opposition were singled out at [the] roadblocks and killed."[8] Therefore, taking into account the circumstances of this case, I believe that when Renzaho ordered the establishment of additional roadblocks, he was ordering the killing of Tutsi civilians.

4. As such, I am of the view that the Appeals Chamber should have upheld Renzaho's conviction, considering the Trial Chamber's findings that Renzaho: i) ordered the establishment of

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[1] Trial Judgement, para. 764. The Trial Chamber found that "Renzaho must have equally ordered the killings at roadblocks."
[2] *Blaškić* Appeals Judgement, para. 42.
[3] Appeal Judgement, para. 318.
[4] *Id.*, para. 319.
[5] Trial Judgement, para. 764.
[6] Trial Judgement, para. 183.
[7] Trial Judgement, para. 181.
[8] *Id.* It must be noted, however, that the Trial Chamber did recognize that "[d]irect evidence related to who actually manned the roadblocks set up by the Prosecution witnesses, and the killings that occurred at them, is limited."

roadblocks during April 1994;[9] ii) was aware of the substantial likelihood that killings would be committed there;[10] and iii) shared the "genocidal intent of the assailants at roadblocks".[11]

5. In this regard, I recall the Appeals Chamber's conclusion in the *Ndindabahizi* Appeal Judgement, that "an accused can be convicted for a single crime on the basis of several modes of liability".[12] In the present case, I consider that the "full characterisation" of Renzaho's conduct would be better reflected if the Appeals Chamber referred to both modes of liability (ordering and aiding and abetting) in relation to the crime of genocide. For the foregoing reasons, I respectfully depart from the Majority position of the Appeals Chamber, and thus consider that the factual findings support Renzaho's conviction of genocide for ordering the killings at roadblocks.[13]

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

Judge Mehmet Güney

Done this 1st day of April 2011 at Arusha, Tanzania.

[Seal of the Tribunal]

[9] Trial Judgement, paras. 164-179.
[10] *Supra*, fn. 6.
[11] Trial Judgement, para. 765.
[12] *Ndindabahizi* Appeal Judgement, para. 122.
[13] *Cf.* Trial Judgement, para. 766. *See Ndindabahizi* Appeal Judgement, para. 123.

XVII. PARTIALLY DISSENTING OPINION OF JUDGE POCAR

1. In this Judgement, the Appeals Chamber allows Renzaho's Fifth Ground of Appeal, in part, with regard to the Trial Chamber's finding in relation to ordering the killings of Tutsis at roadblocks throughout Kigali.[1] I respectfully disagree with both the reasoning and the conclusion of the Majority of the Appeals Chamber and its consequent reversal of Renzaho's conviction for genocide for ordering the killings of Tutsi civilians at roadblocks.[2]

2. The Trial Chamber concluded that Renzaho is guilty of genocide under Article 6(1) of the Statute for ordering the killings of Tutsis at roadblocks throughout Kigali from April to July 1994[3] by finding that roadblocks were established in Kigali pursuant to Renzaho's orders, which were used to identify and intentionally kill Tutsi civilians, and that Renzaho issued these orders to establish roadblocks and made other supportive public statements with the awareness and full knowledge that continued killings were being perpetrated against Tutsi civilians at them.[4]

3. In addition to these findings, in a single paragraph of the Trial Judgement, the Trial Chamber mentions that "[t]here is no explicit evidence that Renzaho ordered the killing of Tutsis at roadblocks" but incorrectly considers that "in view of [Renzaho's] authority, his actions in support of roadblocks, their role in the 'defence' of the city, their widespread and continuing operation, as well as his order to distribute weapons, [it] is convinced that Renzaho must have equally ordered the killings there."[5]

4. The Majority of the Appeals Chamber isolates this paragraph and finds it to be an insufficient basis from which to infer that Renzaho explicitly ordered the killings at roadblocks. Specifically, the Majority of the Appeals Chamber finds that in stating "that Renzaho gave a distinct order to kill Tutsis at roadblocks, the Trial Chamber failed to explain how this was the only reasonable inference that could be drawn from the evidence."[6] It further finds that, "[e]ven if all of these factors [enumerated by the Trial Chamber in this paragraph] consistently show that Renzaho's actions were aimed at the killing of Tutsis at roadblocks or that he was aware of the risk that Tutsis would be killed at roadblocks, there is an insufficient basis to make the factual finding that Renzaho 'ordered' such killings."[7] The Majority of the Appeal Chamber concludes that "the paucity of

[1] Appeal Judgement, para. 321; Trial Judgement, paras. 766, 779.
[2] Appeal Judgement, paras. 321, 622.
[3] Trial Judgement, paras. 766, 779.
[4] Trial Judgement, paras. 157, 163, 165, 169, 172, 174-176, 179, 181, 183, 763, 765.
[5] Trial Judgement, para. 764.
[6] Appeal Judgement, para. 319.
[7] Appeal Judgement, para. 319, *referring to* Trial Judgement, para. 764.

findings in relation to the conclusion that Renzaho ordered killings at roadblocks convinces [it] that the Trial Chamber erred in failing to provide a reasoned opinion."[8]

5. I concede to the Majority of the Appeals Chamber that the Trial Chamber may have been incorrect in stating that "Renzaho must have equally ordered the killings" at roadblocks.[9] In my view, this sentence is improper and, by stating so, the Trial Chamber contradicts its other findings that "[t]he evidence does not reflect that Renzaho provided explicit orders to kill Tutsis at roadblocks."[10] However, the Majority of the Appeals Chamber ignores the Trial Chamber's other finding that Renzaho issued orders to establish roadblocks and made other supportive public statements with the awareness "that the continued killing of Tutsis civilians was a likely outcome when he urged the meetings' attendants to erect additional roadblocks to be manned by those within their communities."[11]

6. As correctly stated in the Appeal Judgement, the standard of *mens rea* for ordering under Article 6(1) of the Statute may be lower than that for direct intent.[12] Indeed, responsibility is also incurred if a person, in a position of authority, orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently.[13] A person who orders an act with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article (6)(1) of the Statute pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.[14]

7. According to our well-established applicable standard of appellate review, "[w]here the Appeals Chamber finds an error of law in a trial judgement arising from the application of an incorrect legal standard, it will articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly. 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."[15] However, with respect to ordering killings at roadblocks, the Majority of the Appeals Chamber

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[8] Appeal Judgement, para. 320.
[9] Trial Judgement, para. 764.
[10] Trial judgement, para. 182. *See also* Trial Judgement, para. 764.
[11] Trial Judgement, para. 183.
[12] Appeal Judgement, para. 315.
[13] *Nahimana et al.* Appeal Judgement, para. 481.
[14] *Blaškić* Appeal Judgement, para. 42 (internal citation omitted).
[15] Appeal Judgement, para. 9 and references cited therein.

simply concentrates on paragraph 764 of the Trial Judgement, disregards the Trial Chamber's other relevant findings, and fails to fulfil its function to apply the correct legal standard.

8. Despite the unfortunate sentence in the Trial Judgement, where the Trial Chamber stated that "Renzaho must have equally ordered the killings there",[16] the Trial Chamber made the correct legal findings allowing it to enter a conviction for genocide for ordering killings of Tutsi civilians at roadblocks. More specifically, through an exhaustive and detailed factual analysis, the Trial Chamber found "beyond reasonable doubt that around 10 April [1994], Renzaho convened a meeting in the prefecture office, wherein Kigali-Ville *bourgmestres* and *conseillers* as well as other officials discussed the prevailing security situation throughout Kigali-Ville prefecture. During this meeting, Renzaho was alerted to killings of Tutsis and other criminal activities in various Kigali-Ville sectors. Renzaho ordered those in attendance to erect additional roadblocks in areas under their control. Furthermore, during at least one additional meeting in mid-April, Renzaho repeated his instructions that local officials provide support to roadblocks."[17]

9. In addition, the Trial Chamber found beyond reasonable doubt that: (i) "local officials – in particular *conseillers* and other local authorities such as *responsables des cellules* – erected additional roadblocks within Kigali-Ville prefecture based on Renzaho's orders and that existing roadblocks manned by *Interahamwe* and civilian militia were shown unequivocal support by local authorities";[18] (ii) "Tutsis, those who were perceived to be Tutsi and individuals identified as members of the opposition were singled out at these roadblocks and killed";[19] (iii) "Renzaho, by his own admission, was aware of disorder at roadblocks by 8 April [1994] and that killings were occurring in all parts of the city [and] admitted that, after 10 April [1994], he was aware that people were being killed at roadblocks in Kigali-Ville prefecture based on their ethnicity and political leanings";[20] (iv) "the need to hold a meeting as early as 11 April [1994] to organise the removal of corpses covering the streets of Kigali leads to the only reasonable conclusion that Renzaho, the administrative head of Kigali-Ville, would have been aware of the scale in which killings were occurring before that date";[21] and (v) "Renzaho knew that killings at roadblocks, like elsewhere, targeted Tutsis on an ethnic basis before the meeting where he ordered local officials to erect them around 10 April [1994]."[22]

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[16] Trial Judgement, para. 764.
[17] Trial Judgement, para. 179. *See also* Trial Judgement, paras. 165-178.
[18] Trial Judgement, para. 181 (internal citations omitted).
[19] Trial Judgement, para. 181.
[20] Trial Judgement, para. 183, *referring to* Renzaho, T. 28 August 2007 pp. 2, 11; Renzaho, T. 30 August 2007 p. 54.
[21] Trial Judgement, para. 183 (internal citations omitted).
[22] Trial Judgement, para. 183.

10. In light of all these findings, the Trial Chamber ultimately found beyond reasonable doubt that Renzaho "was aware that the continued killing of Tutsi civilians was a likely outcome when he urged the meetings' attendants to erect additional roadblocks to be manned by those within their communities."[23] In its legal findings, the Trial Chamber added that "Renzaho issued orders to establish roadblocks and made other supportive public statements with full knowledge that crimes were being perpetrated agasint [*sic*] Tutsi civilians at them. Renzaho's orders to establish roadblocks demonstrated that their purpose was to confront Tutsis. Accordingly, the Chamber is convinced that Renzaho acted with knowledge of the genocidal intent of the assailants at roadblocks, which he shared as well."[24] Thus, the Trial Chamber made the correct factual and legal findings to conclude that Renzaho is liable under Article 6(1) of the Statute for genocide for ordering the killings of Tutsi civilians. I cannot see any error in this conclusion reached by the Trial Chamber.

11. In refusing to consider the other relevant factual and legal findings of the Trial Chamber and to apply the correct legal standard, I believe the conclusion of the Majority of the Appeals Chamber is wrongly based on a single sentence of the Trial Chamber without looking at the rest of the Trial Judgement. Thus, in my view, the Appeals Chamber fails in this respect to fulfil its function. The Majority of the Appeals Chamber fails to appreciate that the Trial Chamber's finding that Renzaho's order to establish roadblocks with the awareness that the killings of Tutsi civilians was a likely outcome is *per se* an order to kill Tutsis.

12. The Majority of the Appeals Chamber finds that ordering the establishment of roadblocks in Kigali from April to July 1994 with the awareness of not only the substantial likelihood, but the certainty,[25] that killings of Tutsi civilians would be committed in the execution of that order does not amount to the crime of ordering the killings of Tutsis. This is tantamount to denying that ordering the construction of additional gas chambers during the *Shoah* by a Nazi commander of a camp, with the awareness of the substantial likelihood that the killings of Jews will be committed in the execution of that order, is equivalent to ordering the killings of the detainees. In accordance with a strict application of our law on ordering, I simply cannot agree with such a conclusion.

13. For the foregoing reasons, I disagree with the reasoning and the conclusion of the Majority of the Appeals Chamber with respect to the orders to kill Tutsis at roadblocks. Upon careful

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[23] Trial Judgement, para. 183.
[24] Trial Judgement, para. 765 (internal citations omitted).
[25] It is certain that killing Tutsis was the sole purpose of establishing roadblocks in the context of the Rwandan Genocide in 1994 in Kigali. The Trial Chamber itself made the finding that "roadblocks were in fact established pursuant to Renzaho's orders, which were used to identify and *intentionally kill Tutsi civilians throughout Kigali*." *See* Trial Judgement, para. 763 (emphasis added). *See also* Appeal Judgement, para. 253.

consideration of the Trial Judgement, I would dismiss Renzaho's Fifth Ground of Appeal in this respect and affirm his conviction for genocide for ordering the killings of Tutsi civilians at roadblocks.[26]

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

Judge Fausto Pocar

Done this 1st day of April 2011 at Arusha, Tanzania.

[Seal of the Tribunal]

[26] Appeal Judgement, paras. 321, 622.

XVIII. ANNEX A – PROCEDURAL HISTORY

1. The main aspects of the appeal proceedings are summarized below.

A. Notice of Appeal and Briefs

2. Trial Chamber I pronounced the judgement in this case on 14 July 2009 and issued the written Trial Judgement on 14 August 2009.

3. On 22 September 2009, in response to a motion for an extension of time filed by Renzaho,[1] the Appeals Chamber instructed Renzaho to file his Notice of Appeal, if any, by 2 October 2009.[2]

4. Renzaho filed his Notice of Appeal on 2 October 2009.[3] He submitted a clarification of the thirteenth Ground of Appeal on 23 October 2009[4] in response to the Appeals Chamber's request of 14 October 2009.[5] The Prosecution did not file a Notice of Appeal.

5. The Appeals Chamber granted Renzaho's motion for an extension of time for the filing of his Appellant's Brief[6] on 21 October 2009.[7] On 26 February 2010, the Appeals Chamber dismissed Renzaho's motion to extend the time limit for the filing of his Appellant's Brief until he was in receipt of certain documents requested from the Prosecution.[8] The Appellant's Brief was filed confidentially on 2 March 2010.[9]

6. On 16 March 2010, the Appeals Chamber, on the Prosecution's motion,[10] ordered Renzaho to file a public redacted version of his Appellant's Brief;[11] Renzaho complied on 2 April 2010.[12] On 12 April 2010, the Prosecution filed its Respondent's Brief.[13]

7. On 20 April 2010, the Appeals Chamber granted Renzaho a limited extension of time to file his Brief in Reply.[14] On the same day, the Appeals Chamber allowed Renzaho's corrections to his

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[1] *Avis d'appel et requête en demand de délai*, 2 September 2009.
[2] Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Notice of Appeal and Brief in Reply, 22 September 2009, para.8.
[3] *Acte d'Appel*, 2 October 2009.
[4] *Réponse à la demand de la Chambre d'Appel du 14 octobre 2009*, 23 October 2009.
[5] Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009.
[6] *Requête en demande de délai*, 9 October 2009.
[7] Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Appellant's Brief, 21 October 2009.
[8] Decision on Motion for Disclosure and for Extension of Time for Filing of Appellant's Brief, 26 February 2010.
[9] *Mémoire d'Appel*, 2 March 2010 (confidential).
[10] Prosecutor's Motion Requesting a Public Filing of Tharcisse Renzaho's Appellant's Brief, 15 March 2010.
[11] Decision on Tharcisse Renzaho's Appellant's Brief, 16 March 2010.
[12] *Mémoire d'Appel Public*, 2 April 2010.
[13] Prosecutor's Respondent's Brief, 12 April 2010.
[14] Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Brief in Reply, 20 April 2010.

Appellant's Brief.[15] Renzaho filed his Brief in Reply on 5 May 2010.[16] On 18 May 2010, the Appeals Chamber dismissed Renzaho's motion to amend his Notice of Appeal.[17]

B. Assignment of Judges

8. On 14 September 2009, the Presiding Judge of the Appeals Chamber assigned the following Judges to hear the appeal: Judge Patrick Robinson (Presiding), Judge Mehmet Güney, Judge Fausto Pocar, Judge Theodor Meron, and Judge Carmel Agius.[18] On 22 September 2009, Judge Robinson designated Judge Agius as the Pre-Appeal Judge.[19] On 5 February 2010, Judge Liu Daqun was designated to replace Judge Patrick Robinson in this case[20] and the Bench elected Judge Agius to preside.

C. Other Issues

9. On 4 May 2010, Renzaho filed certain documents and both Parties filed submissions[21] pursuant to a 27 April 2010 order by the Appeals Chamber.[22] On 19 May 2010, the Appeals Chamber ordered Renzaho to provide additional documents,[23] which were produced on 21 May 2010.[24]

10. On 25 May 2010, the Appeals Chamber ordered the Registrar to provide submissions concerning an uncompleted investigation into alleged witness intimidation.[25] On 1 June 2010, the Registrar filed submissions.[26] Pursuant to a motion by Renzaho,[27] on 13 July 2010, the Appeals Chamber issued an interim order for a report concerning the investigation into witness intimidation.[28]

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[15] Decision on Tharcisse Renzaho's Motion for Rectification of Appellant's Brief, 20 April 2010.
[16] *Réplique de l'appelant. Art 113 RPP*, 5 May 2010.
[17] Decision on Renzaho's Motion to Amend Notice of Appeal, 18 May 2010.
[18] Order Assigning Judges to a Case Before the Appeals Chamber, 14 September 2009.
[19] Order Assigning a Pre-Appeal Judge, 22 September 2009.
[20] Order Replacing a Judge in a Case Before the Appeals Chamber, 5 February 2010.
[21] *Mémoire en communication de pièces ordonné par la Chambre*, 4 May 2010; Prosecutor's Submissions Regarding Date of Disclosure of Documents, 4 May 2010.
[22] Order to Produce Documents, 27 April 2010.
[23] Order for Translation and Documents, 19 May 2010.
[24] *Communication de pieces par Me. Cantier*, 21 May 2010.
[25] Order to Registrar for Submissions, 25 May 2010.
[26] Registrar's Submissions Under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar dated 25 May 2010. Renzaho filed a response on 7 June 2010. *See R[é]ponse aux conclusions du greffe intitulées « Registrar's submissions under rule 33 (B) of the rules of procedure and evidence in re[s]pect of the appeals chamber order to the regist[r]ar dated 25 may 2010 » du 1er juin 2010*, 7 June 2010.
[27] *Requête en demande d'enqu[ê]te*, 31 May 2010. *See also Annexe confidentielle a la requête en demande d'enqu[ê]te*, 31 May 2010 (confidential).
[28] Interim Order Regarding Renzaho's Motion for Investigation, 13 July 2010.

11. On 27 September 2010, the Appeals Chamber denied Renzaho's four motions to admit additional evidence on appeal and to order an investigation.[29]

D. Hearing of the Appeal

12. The Appeals Chamber issued a Scheduling Order for the Appeal Hearing on 21 May 2010.[30] On 7 June 2010 and 15 June 2010, the Appeals Chamber denied Renzaho's requests to postpone the Appeal Hearing.[31] The Appeals Chamber issued an Order for the Preparation of Appeal Hearing on 7 June 2010.[32] On 16 June 2010, the Parties presented oral arguments at the hearing in Arusha, Tanzania.

[29] Decision on Tharcisse Renzaho's Motions for Admission of Additional Evidence and Investigation on Appeal, 27 September 2010.
[30] Scheduling Order, 21 May 2010.
[31] Decision on Renzaho's Motion to Postpone Appeal Hearing, 7 June 2010; Decision on Renzaho's Second Request to Postpone Appeal Hearing, 15 June 2010.
[32] Order for Preparation of Appeal Hearing, 7 June 2010.

XIX. 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")

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement, 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-1, Judgement (Reasons), 3 July 2002 ("*Bagilishema* Appeal Judgement")

Bagosora *et al.*

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Disclosure of Defence Witness Statements in the Possession of the Prosecution Pursuant to Rule 68(A), 8 March 2006

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.* Interlocutory Appeal on Questions of Law Decision")

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Judgement and Sentence, 18 December 2008 ("*Bagosora et al.* Trial Judgement")

Bikindi

The Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-A, Judgement, 18 March 2010 ("*Bikindi* Appeal Judgement")

Bizimungu *et al.*

The Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-AR73.8, Decision on Appeals Concerning the Engagement of a Chambers Consultant or Legal Officer, 17 December 2009

Gacumbitsi

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kalimanzira

Callixte Kalimanzira v. The Prosecutor, Case No. ICTR-05-88-A, Judgement, 20 October 2010 ("*Kalimanzira* 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, Oral Decision (Rule 115 and Contempt of False Testimony), 19 May 2005

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-95-54A-A, Judgement, 19 September 2005 ("*Kamuhanda* Appeal Judgement")

Kanyarukiga

Gaspard Kanyarukiga v. The Prosecutor, Case No. ICTR-02-78-AR73, Decision on Kanyarukiga's Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents, 19 February 2010 ("*Kanyarukiga* Decision on Interlocutory Appeal")

Karemera *et al.*

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial, 5 October 2007

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.11, Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations, 23 January 2008 ("*Karemera et al.* Decision on Appeal Concerning Disclosure Obligations")

The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion", 14 May 2008 ("*Karemera et al.* Decision on Tenth Rule 68 Motion")

Karera

François Karera v. The Prosecutor, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December 2007 ("*Karera* Trial Judgement")

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-A, Judgement (Reasons), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

Muhimana

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, 16 November 2001 ("*Musema* Appeal Judgement")

Muvunyi

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, 12 May 2005

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-00-55A-A, Judgement, 29 August 2008 ("*Muvunyi* Appeal Judgement")

Nahimana *et al.*

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement, 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Nchamihigo

The Prosecutor v. Siméon Nchamihigo, Case No. ICTR-2001-63-A, Judgement, 18 March 2010 ("*Nchamihigo* Appeal Judgement")

Ndayambaje

The Prosecutor v. Élie Ndayambaje et al., Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeals against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007

Ndindabahizi

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 et al., 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")

Nyiramasuhuko *et al.*

Arsène Shalom Ntahobali and Pauline Nyiramasuhuko v. The Prosecutor, Case No. ICTR-97-21-AR73, Decision on 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 ("*Ntahobali and Nyiramasuhuko* Decision on Interlocutory Appeal on Admissibility")

Rukundo

Emmanuel Rukundo v. The Prosecutor, Case No. ICTR-2001-70-A, Judgement, 20 October 2010 ("*Rukundo* Appeal Judgement")

Rwamakuba

The Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-PT, Decision on Defence Motion for Stay of Proceedings, 3 June 2005

The Prosecutor v. André Rwamakuba, Case No. ICTR-98-44C-T, Judgement, 20 September 2006 ("*Rwamakuba* Trial Judgement")

André Rwamakuba v. The Prosecutor, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement")

Semanza

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")

Setako

The Prosecutor v. Ephrem Setako, Case No. ICTR-04-81-T, Judgement and Sentence, 25 January 2010 ("*Setako* Trial Judgement")

Simba

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

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement, 17 January 2005 ("*Blagojević and Jokić* Trial Judgement")

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement")

Boškoski and Tarčulovski

Prosecutor v. Ljube Boškoski and Johan Tarčulovski, Case No. IT-04-82-A, Judgement, 19 May 2010 ("*Boškoski and Tarčulovski* Appeal Judgement")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 ("*Brđanin* Appeal Judgement")

Čelebići

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement")

D. Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement, 12 November 2009 ("*D. Milošević* Appeal Judgement")

Furundžija

Prosecutor v. Anto Furundžija, Case No. IT-97-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgement")

Galić

Prosecutor v. Stanislav Galić, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Galić* Appeal Judgement")

Hadžihasanović and Kabura

Prosecutor v. Enver Hadžihasanović and Amir Kabura, Case No. IT-01-47-A, Judgement, 22 April 2008 ("*Hadžihasanović and Kabura* Appeal Judgement")

Halilović

Prosecutor v. Sefer Halilović, Case No. IT-01-48-T, Judgement, 16 November 2005 ("*Halilović* Trial Judgement")

Haradinaj *et al.*

Prosecutor v. Ramush Haradinaj et al., Case No. IT-04-84-A, Judgement, 19 June 2010 ("*Haradinaj et al.* Appeal Judgement")

Kordić and Čerkez

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement")

Krajišnik

Prosecutor v. Momčilo Krajišnik, Case No. IT-0036-A, Judgement, 17 March 2009 ("*Krajišnik* Appeal Judgement")

Krstić

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstić* Appeal Judgement")

Kunarac *et al.*

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001 ("*Kunarac et al.* Trial Judgement")

Kupreškić *et al.*

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka *et al.*

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

Limaj *et al.*

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement, 27 September 2007 ("*Limaj* Appeal Judgement")

Martić

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement, 8 October 2008 ("*Martić* Appeal Judgement")

Milutinović *et al.*

Prosecutor v. Milan Milutinović et al., Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003

Naletilić and Martinović

Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-A, Judgement, 3 May 2006 ("*Naletilić and Martinović* Appeal Judgement")

Orić

Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement, 3 July 2008 ("*Orić* Appeal Judgement")

Prlić

Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-AR73.17, Decision on Slobodan Praljak's Appeal of the Trial Chamber's Refusal to Decide Upon Evidence Tendered Pursuant to Rule 92 *bis*, 1 July 2010

Stakić

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić* Appeal Judgement")

Strugar

Prosecutor v. Pavle Strugar, Case No. IT-01-42-A, Judgement, 17 July 2008 ("*Strugar* Appeal Judgement")

Tadić

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

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement")

B. Defined Terms and Abbreviations

AT.

Transcript from Appeal Hearing held on 16 June 2010 in *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A. All references are to the official English transcript, unless otherwise indicated

CELA

Centre d'Étude de Langues Africaines

Cf.

[Latin: *confer*] (Compare)

Code of Professional Conduct for Defence Counsel

Code of Professional Conduct for Defence Counsel, International Criminal Tribunal for Rwanda, 14 March 2008

FAR

Forces Armées Rwandaises

fn.

Footnote

1675/H

ICRC

International Committee of the Red Cross

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

KWSA

Kigali Weapons Secure Area

para. (paras.)

paragraph (paragraphs)

Practice Direction on Formal Requirements for Appeals from Judgement

Practice Direction on Formal Requirements for Appeals from Judgement, International Criminal Tribunal for Rwanda, 15 June 2007

Prosecution

Office of the Prosecutor

Renzaho

Tharcisse Renzaho

RPF

Rwandan Patriotic Front

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Statute

Statute of the International Tribunal for Rwanda established by Security Council Resolution 955 (1994)

T.

Trial transcript from the hearings in *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T. All references are to the official English transcript, unless otherwise indicated.

Tribunal

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

UNAMIR

United Nations Assistance Mission for Rwanda

C. Cited Filings, Decisions, and Orders in the *Renzaho* Case

1. Pre-Trial (*The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I)

Indictment, 23 October 2002 ("Initial Indictment")

Amendment of the Indictment against Tharcisse Renzaho dated 23 October 2002, 12 November 2002

Order Confirming Indictment and for Nondisclosure of Identifying Information in Witness Statements, 15 November 2002

Interoffice Memorandum, Subject: "Transmission of the unredacted statements for witnesses AWM-1, AWN-1 and AWO-1 as additional support of Amended Indictment in the Renzaho Case", 3 February 2005 (confidential) ("3 February 2005 Disclosure")

Decision on the Prosecutor's Motion for Leave to Amend the Indictment, 18 March 2005

Amended Indictment, 1 April 2005

The Prosecutor's Application for Leave to Amend the Indictment pursuant to Rule 50(A) of the Rules of Procedure and Evidence, 19 October 2005 ("Motion to Amend")

Déclaration des admissions de la défense, 21 October 2005

The Prosecutor's Pre-Trial Brief, 31 October 2005 ("Prosecution Pre-Trial Brief")

Decision on the Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50(A) of the Rules of Procedure and Evidence, 13 February 2006

Second Amended Indictment, 16 February 2006 ("Indictment")

Requ[ê]te en exception pr[é]judicielle pour vices de forme de l'acte d'accusation, 31 March 2006 (confidential) ("Preliminary Motion")

The Prosecutor's Response to the Accused's '*Requ[ê]te en exception pr[é]judicielle pour vices de forme de l'acte d'accusation*', 10 April 2006 (confidential)

Décision sur la requête en exception préjudicielle pour vices de forme de l'acte d'accusation, 5 September 2006 ("Decision on Preliminary Motion")

Décision relative à la demande aux fins de certification d'appel de la décision du 5 septembre 2006 en vertu de l'article 72(B), 25 October 2006 ("Decision on Certification of Decision on Preliminary Motion")

2. Trial (*The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T)

Mémoire final de la defense, 15 November 2007 ("Defence Closing Brief")

Decision on Defence Motion to Admit Documents, 12 February 2008

Registrar's Submissions under Rule 33 (B) of the Rules on the Final Report of Jean Haguma, 30 June 2009 ("Registrar's Submissions on Haguma Report")

Judgement and Sentence, 14 July 2009 ("Trial Judgement")

3. Appeal (*Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A)

Avis d'appel et requête en demande de délai, 2 September 2009

Acte d'Appel, 2 October 2009 ("Notice of Appeal")

Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009

Réponse à la demande de la Chambre d'Appel du 14 octobre 2009, 23 October 2009 ("Sentencing Submissions")

Mémoire d'Appel, 2 March 2010 (confidential), filed publicly on 2 April 2010 ("Appellant's Brief")

Decision on Tharcisse Renzaho's Appellant's Brief, 16 March 2010

The Prosecutor's Respondent Brief, 12 April 2010 ("Respondent's Brief")

Prosecutor's Submissions Regarding Date of Disclosure of Documents, 4 May 2010 ("Prosecution Disclosure Submissions")

Mémoire en communication de pièces ordonné [*sic*] *par la Chambre*, 4 May 2010 ("Defence Disclosure Submissions")

Réplique de l'appelant. Art. 113 RPP, 5 May 2010 ("Brief in Reply")

Requête en demande d'enqu[*ê*]*te*, 31 May 2010 (confidential)

Annexe confidentielle [*à*] *la requête en demande d'enqu*[*ê*]*te*, 31 May 2010 (confidential) ("Confidential Annex to Investigation Motion")

Registrar's Submissions Under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar Dated 25 May 2010, 1 June 2010 ("Registrar's Submissions on Investigation")

Confidential Annexes to the "Registrar's Submissions under Rule 33 (B) of the Rules of Procedure and Evidence in Respect of the Appeals Chamber Order to the Registrar dated 25 May 2010", 1 June 2010 (confidential) ("Confidential Annexes to Registrar's Submissions on Investigation")

Interim Order Regarding Renzaho's Motion for Investigation, 13 July 2010

Observations du Greffier en vertu de l'Article 33 (B), relatives au décès de Maître Jean Haguma, amicus curiae, 22 July 2010