SUMMARY OF JUDGEMENT

Nahimana et al. v. The Prosecutor

Case No. ICTR-99-52-A

Wednesday, 28 November 2007

Arusha, Tanzania

I. INTRODUCTION

Please be seated. First of all I would like to say good morning to Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, the representatives from the Office of the Prosecutor, Defence Counsel, the interpreters, as well as the staff of the Judicial and Legal Services Division, Mr./Madam Registrar, may you please read out the Case No. in the cause list.

Thank you. I would like to know whether Messrs Nahimana, Barayagwiza and Ngeze can follow the proceedings in the language they understand.

Good. I will now ask the parties to identify themselves beginning with Counsel for the Defence please.

Thank you. Now it is the turn of the representatives of the Office of the Prosecutor. Thanks.

As announced by Mr/Madam Registrar, this hearing concerns the case of *Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze* against *The Prosecutor*. Pursuant to the Scheduling Order of 17 September 2007, the Appeals Chamber is sitting today to deliver its Judgement. This hearing is held pursuant to Rule 15 *bis* (A) of the Tribunal's Rules of Procedure, in the absence of one of the Appeals Chamber's Judges, Judge Mehmet Güney, who cannot be present for medical reasons.

In accordance with the Tribunal's practice, I will read out only the Disposition of the Judgement and not the text. After recalling the issues raised on appeal, I will then state the findings of the Appeals Chamber.

I must emphasize that this summary is not part of the written Judgement, which is the only authoritative account of the findings and reasoning of the Appeals Chamber text of the Judgement. Copies of the written Judgement will be made available to the parties at the conclusion of the hearing.

II. SUMMARY OF THE JUDGEMENT

1. Background

The present case concerns the role of Ferdinand Nahimana and Jean-Bosco Barayagwiza in the *Radio télévision libre des mille collines* ("*RTLM*"), that of Hassan Ngeze in the publication of the *Kangura* newspaper, as well as Jean-Bosco Barayagwiza's involvement in the *Coalition pour la défense de la République* ("*CDR*") and the role of Hassan Ngeze in the events that plunged Gisenyi *préfecture* into grief.

Ferdinand Nahimana was born in 1950, in Gatonde commune, Ruhengeri *préfecture*, Rwanda. From 1977, he was an assistant lecturer of history at the National University of Rwanda, and held many posts within the same university up to 1984. In 1990, he was appointed Director of ORINFOR (Rwandan Office of Information) and remained in that post until 1992. In 1992, Nahimana and others founded a *comité d'initiative* to set up the company known as *Radio télévision libre des mille collines, S.A.* He was a member of the party known as *Mouvement révolutionnaire national pour le développement* (MRND).

Jean-Bosco Barayagwiza was born in 1950 in Mutura commune, Gisenyi *préfecture*, Rwanda. A lawyer by training, he was a founding member of the (CDR) party, which was formed in 1992. He was a member of the *comité d'initiative*, which organized the founding of the company *Radio télévision libre des mille collines, S.A.* He was also Director of Political Affairs in the Ministry of Foreign Affairs.

Hassan Ngeze was born in 1957 in Rubavu commune, Gisenyi *préfecture*, Rwanda. From 1978, he worked as a journalist, and in 1990, he founded the newspaper *Kangura* of which he became Editor-in-Chief. He was also a founding member of the *CDR* party.

The Trial Chamber found Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze guilty of conspiracy to commit genocide; genocide pursuant to Article 6(1) of the Statute and, with respect to Jean-Bosco Barayagwiza, also pursuant to Article 6(3) of the Statute; of direct and public incitement to commit genocide pursuant to Article 6(1) and, with respect to Ferdinand Nahimana and Jean-Bosco Barayagwiza, also pursuant to Article 6(3) of the Statute; of persecution as a crime against humanity pursuant to Article 6(1) and, with respect to Ferdinand Nahimana and Jean-Bosco Barayagwiza, also pursuant to Article 6(3) of the Statute. Hassan Ngeze, Jean-Bosco Barayawiza and Ferdinand Nahimana were finally found guilty of extermination as a crime against humanity pursuant to Article 6(1) of the Statute and, with respect to Jean-Bosco Barayagwiza, also pursuant to Article 6(3) of the Statute. The Trial Chamber acquitted the three Accused on the Counts of complicity in genocide, and murder as a crime against humanity. It also acquitted Jean-Bosco Barayagwiza on the Count of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.

The Trial Chamber sentenced each Accused to a single term of life imprisonment. However it reduced the sentenced imposed on Appellant Barayagwiza to 35 years, taking into account the violation of his rights, pursuant to the instructions given by the Appeals Chamber in its Decision of 31 March 2000.

B. The Appeals

Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze all appealed the Judgement rendered on 3 December 2003. The hearings on appeal were held on 16, 17 and 18 January 2007.

Moreover, in its Decision of 12 January 2007, the Appeals Chamber granted leave to the NGO "Open Society Justice Initiative" to file an *Amicus Curiae* Brief discussing the distinction between hate speech, direct and public incitement to commit genocide and genocide and whether hate speech could constitute persecution as a crime against humanity. The parties were also authroized to respond to the *Amicus Curiae* Brief.

I will now review the grounds of appeal raised by the parties, as well as the corresponding findings of the Appeals Chamber, beginning with the grounds relating to the independence and impartiality of the Tribunal, and then the allegations of abuse of process, miscarriage of justice and violations of the rights of the defence of the three Appellants. I will then present the grounds relating to temporal jurisdiction, the Indictments, Hassan Ngeze's alibi and the evidence of the events that occurred on 7 and 8 April 1994 at Gisenyi. I will also deal with the Appellants' grounds of appeal relating to their convictions for genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and crimes against humanity. I will end with the Appellants' grounds of appeal relating to cumulative convictions and sentence. Finally, I will read the Disposition of the Judgement.

As earlier said, I will now start with the three Appellants' grounds of appeal relating to the **independence and impartiality of the Tribunal, the allegations of abuse of process, miscarriage of justice and violations of the rights of the Defence of the three Appellants.**

The Appellants contend that the Trial Chamber violated their right to be tried by an independent and impartial Tribunal, thereby violating their right to a fair trial provided for in Articles 19 and 20 of the Statute.

First, as to the independence of the Tribunal: The Appeals Chamber recalls that the right of an accused to be tried by an independent tribunal is part of his or her right to a fair trial provided for in Articles 19 and 20 of the Statute. The independence of the Tribunal's Judges is guaranteed by their selection criteria, the way they are appointed, their conditions of service and by the immunity they enjoy. The independence of the Tribunal as a judicial organ was affirmed by the Secretary-General when the Tribunal was established. Such institutional independence means that the Tribunal acts independently from the organs of the United Nations and any State or group of States. It is incumbent upon the Appellants to rebut the presumption that the Judges of the Tribunal exercise complete independence when taking their decisions.

Appellant Barayagwiza contends that the Tribunal, and more especially the Judges of the Appeals Chamber showed a lack of independence in the conduct of proceedings between the Decision of 3 November 1999 and that of 31 March 2000 because of the pressure exerted by the Government of Rwanda, the words allegedly uttered by the spokesperson of the Secretary-General of the United Nations, and the Prosecutor's statements during the hearing of 22 February 2000.

The Appeals Chamber dismisses these grounds of appeal for the reasons stated in this Judgement. As to the particular contention that the Government of Rwanda exerted pressure, the Appeals Chamber notes that although statements by some Rwandan officials as well as the threat to suspend Rwanda's cooperation following the Decision of 3 November 1999 can be analysed as an attempt to exert pressure on the Tribunal, the Appeals Chamber is of the opinion that such statements do not suffice to establish that the Judges who rendered the Decision on the Request for Review or Reconsideration were influenced by such pressure. The Appeal Chambers also recalls that the decision to grant leave to Rwanda to appear as *Amicus Curiae* was in complete compliance with Rule 74 of the Rules, and that nothing demonstrates that such decision was the result of political pressure.

I will now deal with the grounds alleging partiality:

The Appeals Chamber recalls that to question the impartiality of a judge, it must be demonstrated that there is actual bias or an unacceptable appearance of bias because the Judge is a party to the case, or has a financial or proprietary interest in the outcome of the case, or because the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.

Based on these criteria, the Appeals Chamber finds that Appellant Nahimana has not demonstrated that the Trial Chamber was biased by distorting the interview of 25 April 1994 or the essay entitled *Rwanda: problèmes actuels, solutions*. The argument that the Trial Chamber failed to respond to Appellant Nahimana's two key arguments is also dismissed without further consideration.

As to Appellant Barayagwiza's argument based on the visit to Rwanda by Judges Pillay and Møse shortly before the commencement of the trial in their respective capacities as President and Vice President of the Tribunal, the Appeals Chamber is of the opinion that a reasonable and properly informed observer would not question the impartiality of those Judges. The allegation of an appearance of bias based on the Oral Decision of 11 September 2000 on Motion for disqualification of Judges Pillay and Møse is also dismissed. While acknowledging that these two motions should have been sent to the Bureau, the Appeals Chamber is of the opinion that the irregularities committed in the procedure used to decide on the motions for disqualification of Judges Pillay and Møse cannot, *per se*, suffice to lead a reasonable and properly informed observer to apprehend bias, or rebut the presumption of impartiality of those Judges.

As to the Appellants contentions based on Judge Pillay's participation in the *Akayesu* Judgement, and Appellant Nahimana's contention based on Judges Pillay's and Møse's participation in the

Ruggiu Judgement, the Appeals Chamber recalls that the Judges of the Tribunal and of the ICTY often deal with many cases which, by their very nature, concern similar issues. Failing proof of the contrary, one can presume that by reason of their training and experience, the Judges determine matters solely and exclusively on the evidence adduced in the case at issue. The Appeals Chamber finds that the Appellants have failed to rebut the presumption of impartiality that the Judges enjoy.

The Appeals Chamber also dismisses Appellant Barayagwiza's arguments alleging the Trial Chamber's partiality based on its decision to continue the proceedings in his absence, and on the fact that he was purportedly not provided with an effective defence.

Now, as to the allegation of abuse of process:

For reasons given in the Judgement, the Appeals Chamber considers that Appellant Barayagwiza has not established that there was loss of competence due to an abuse of process.

I will now deal with the rights of the Appellants' Defence, beginning with those of Appellant Barayagwiza

Appellant Barayagwiza contends that his right to a fair trial was violated because of the continuation of the proceedings in his absence; of the lack of legal assistance until 6 February 2001; of the incompetence of Counsel and co-Counsel assigned after that date, and the fact that they did not cross-examine some witnesses; and lastly of the way the Trial Chamber treated Counsel.

The first contention is that the Trial Chamber conducted the proceedings in the absence of Appellant Barayagwiza, whereas no provision or practice allowed this at the time. The Appeals Chamber notes that the Appellant refused to exercise his right to be present at his trial. Such renunciation, as long as it is free and unequivocal, and made after the Accused has been duly informed of the place and date of his trial, the charges against him and of his right to be present during the hearings and the need for his presence, cannot amount to a violation by a court of the right of the accused to be present at trial. The Appeals Chamber finds that the Trial did not err in continuing the proceedings in spite of Appellant Barayagwiza's refusal to be present at the hearings.

The Appeals Chamber also dismisses the argument that the Trial Chamber failed in its duty to ensure fairness of the proceedings in accepting the passive presence of Counsel Marchessault and Danielson between 23 October 2000 and 6 February 2001, since it was the Appellant himself who expressly instructed them not to represent him at the trial.

As to the competence of Counsel assigned by the Registrar at the behest of the Trial Chamber to represent the interests of Appellant Barayagwiza after 6 February 2001, the Appeals Chamber finds that the Trial Chamber ensured that the new Counsel had the time he deemed necessary for the preparation of the Appellant's defence and that the Appellant has not established any fault or serious professional misconduct on the part of Counsel Barletta-Caldarera.

As to the allegations of incidents of lateness and absence raised by Appellant Barayagwiza, the Appeals Chamber considers that, failing exceptional circumstances, Counsel or co-Counsel who fails to attend a hearing, whereas he or she is the sole representative of the Defence of an accused while evidence is being adduced, commits a serious professional misconduct. Moreover, such manifest misconduct of counsel for an accused would oblige the Trial Chamber to act, for example, by adjourning the proceedings and, if need be, by sanctioning the conduct in question. As to the many incidents of lateness and absence alleged by Appellant Barayagwiza, the Appeal Chamber finds that there is need to discard some testimonies that were heard in the absence of his Counsel. However, excluding such evidence has no effect on the factual findings made by the Trial Chamber in finding Appellant Barayagwiza guilty.

Moreover, for reasons stated in this Judgement, the Appeals Chamber cannot endorse the argument that statements by Counsel Barletta-Caldarera would be in conflict with Appellant Barayagwiza's cause or interests. The Appeals Chamber also dismisses the contentions as to lack of assistance to a Kinyarwanda-speaking person, lack of investigations, failure by his Counsel to ask crucial questions and to obtain information from third parties, failure to recall Prosecution witnesses who had testified between 23 October 2000 and 6 February 2001, as well as failure to cross-examine some witnesses and the decision to call Expert Witness Goffioul.

On the contrary, the Appeals Chamber finds that in deciding not to adjourn the proceedings to wait for the arrival of the new Counsel after the assignment of Counsel Marchessault and Danielson had been terminated, and in refusing to exclude the testimony of Witness FS relating to Appellant Barayagwiza, which testimony was heard during that period, the Trial Chamber violated the Appellant's right to have examined the witnesses against him enshrined in Article 20(4)(e) of the Statute and the principle of the equality of arms provided for in Article 20(1) and (2) of the Statute. Accordingly, the Appeals Chamber excludes the testimony of Witness FS in relation to Appellant Barayagwiza, but finds that the testimony has no effect on the findings of guilt pronounced against him as explained in the Judgement.

As to the way in which the Trial Chamber treated Counsel for the Appellant, the Appeals Chamber finds no error on the part of the Trial Chamber, which did not exceed its discretionary power to exercise control over the hearings pursuant to Rule 90(F) of the Rules.

The Appeals Chamber also dismisses Appellant Barayagwiza's ground of appeal alleging that the Trial Chamber erred in presuming that Prosecution witnesses were credible and contending that it wrongly admitted the reports and testimonies of Expert Witnesses Des Forges, Chrétien and Kabanda.

Lastly, Appellant Barayagwiza's ground of appeal requesting reversal of the Judgement in the interests of justice is also dismissed.

I will now deal with issue of the rights of the Defence for Appellant Nahimana

Appellant Nahimana alleges that the Trial Chamber violated his right to have the necessary facilities and time for the preparation of his defence and that it violated his right to examine or have examined the witnesses against him. While noting that the Trial Chamber violated the principle of the equality of arms as regards the Appellant's right to a rejoinder and the restrictions imposed on the testimonies of Defence expert witnesses, the Appeals Camber considers that the Appellant has not established how such violations would have affected the verdict.

As to the rights of the Defence for Appellant Ngeze, for the reasons stated in the Judgement, the Appeals Chamber dismisses the contentions that the Trial Chamber jeopardized the fairness of the trial by refusing to have translated all the issues of the *Kangura* newspaper, by not granting his request to replace his Counsel and co-Counsel, by refusing him the right to cross-examine witnesses himself, by allowing Witnesses Ruzindana, Chrétien and Kabanda to appear as experts, by refusing to call a certain expert witness, and lastly, by refusing to order Colonel Tikoca to appear as a Defence witness, and seven individuals detained at the United Nations Detention Facility.

I will now deal with the issue of the temporal jurisdiction of the Tribunal raised by the three Appellants

The Appellants contend that the Trial Chamber exceeded its temporal jurisdiction by basing their convictions on acts which occurred prior to 1994 and by considering that the crimes of conspiracy and direct and public incitement to commit genocide would extend in time until the accomplishment of the genocide. The Appeals Chambers considers that the drafters of the Statute indicated that the Tribunal could only exercise its jurisdiction to sentence an accused if all the facts that must be established to find him guilty existed in 1994. Such an interpretation is consistent with the principle of strict interpretation of the provisions conferring jurisdiction on an international Tribunal and with the principle of strict interpretation in criminal law. The Appeals Chamber thus considers that it must be established that the crime for which the accused is allegedly responsible was committed in 1994, that the acts or omissions of the accused underpinning his responsibility by virtue of any form of responsibility provided for in Articles 6(1) or 6(3) of the Statute occurred in 1994, and that the Accused had at the time of the commission of such acts or omissions the requisite intention to be found guilty in accordance with the form of responsibility in question. The Appeals Chamber finds that the Trial Chamber erred by basing some of the findings of guilt of the Appellants on criminal conduct prior to 1 January 1994. Moreover, the Appeals Chamber considers that even if the continuous criminal conduct began prior to 1 January 1994 and continued during that year, a finding of guilt can only be based on that part of the criminal conduct which occurred in 1994. However, the Appeals Chamber does not endorse the argument that the Trial Chamber exceeded its jurisdiction or jeopardized the fairness of the proceedings in admitting or relying on evidence of events which occurred prior to 1994.

The next issue raised by the Appellants concerns the Indictments

The three Appellants contend that the Trial Chamber found them guilty based on allegations that were not pleaded or were very vaguely pleaded in their respective Indictments.

As to Appellant Nahimana, the Appeals Chamber considers that he has not established that some crucial facts on which the allegations against him were based were not pleaded in the Indictment.

The Appeals Chamber also dismisses the grounds of appeal raised by Appellant Barayagwiza for the reasons stated in the Judgement. Although it recognizes that his Indictment was vitiated in respect of one of the components of his responsibility as a CDR superior and in respect of the distribution of weapons at Mutura, the Appeals Chamber considers that in both cases, the Appellant has not established that his ability to prepare his defence was seriously compromised as a result thereof.

Appellant Ngeze contends that the Trial Chamber erred in granting the Prosecutor leave to amend the Indictment, in dismissing all the preliminary objections that he raised concerning defects in the form of the Indictment, and by basing its factual and legal findings on a crucial fact, the competition of March 1994 jointly organized by *RTLM* and *Kangura*, which was not pleaded in the Indictment. The Appeals Chamber dismisses the first two contentions. However, in light of its findings on temporal jurisdiction, it finds that failure to plead in the Indictment the competition organized in March 1994, which constituted the essential legal basis enabling the Judges to take into account the issues of *Kangura* published prior to 1 January 1994 without contravening the temporal restrictions imposed on the Tribunal, amounted to a defect vitiating the Indictment. Accordingly, the Appeals Chamber reverses the findings of guilt pronounced in respect of genocide, direct and public incitement to commit genocide and persecution based on the issues of *Kangura* published prior to 1994. The Trial Chamber adds that it is by no means persuaded that Appellant Ngeze could have been found guilty of genocide, direct and public incitement to commit genocide and persecution based on the issues of *Kangura* published prior to 1994 "brought back into circulation" through the competition of March 1994, failing evidence establishing that all the issues of *Kangura* published prior to 1994 had been brought back into circulation or were available in 1994, and failing proof of a substantial link between the competition and the commission of acts of genocide or of crimes against humanity.

I will now deal with the issue of <u>Appellant Ngeze's alibi and the assessment of the evidence relating to the events of 7 and 8 April 1994</u>.

As to Appellant Ngeze's alibi, the Appeals Chamber considers that the Trial Chamber did not err in its decision to exclude this alibi without being sure that the Prosecutor had carried out an investigation thereon. Similarly, Appellant Ngeze has not established that the Trial Chamber shifted the burden of proof and required that the Appellant prove his alibi beyond all reasonable doubt. As to Witness Serushago, the Appeals Chamber also finds that the contentions relating to the Trial Chamber's assessment of the testimony of Witness Serushago should be dismissed.

However, in light of the testimonies given during the trial, the Appeals Chamber finds that Trial Chamber erred by describing as "thoroughly inconsistent", to use the specific terms of the Judgement, the testimonies of Defence witnesses relating to the alleged arrest of the Appellant

on 6 April 1994 and his alleged detention up to 9 April 1994. Moreover, the Appeals Chamber grants the ground of appeal based on the lack of credibility of Witness EB and excludes the testimony of this witness to the extent that it is not corroborated. To arrive at this finding, the Appeals Chamber relies more especially on the hearing on appeal of Witness EB and of the Prosecution Investigator, and on the findings of handwriting reports requested by the Prosecutor and the Appeals Chamber. The Appeals Chamber is of the opinion that if, after hearing the testimony if Witness EB at the trial, the Trial Chamber had been seized of the issues of which the Appeals Chamber itself has been seized– namely that Witness EB denies before the Appeals Chamber that he was the author of a declaration to recant but that an expert hired by the Prosecution unhesitatingly attributes the writing and signature to him, that the Prosecution investigator raised serious concerns as to the character of this witness and states that many survivors of the genocide considers the said witness as being ready to do anything for money – the Trial Chamber could only have noted that these allegations raised serious doubts as to the credibility of Witness EB, or at the very least, have required that his statements be corroborated by credible evidence.

The Appeals Chamber will now assess the impact on the verdict of such finding as well as that relating to the contradictory nature of the testimonies of alibi witnesses.

Appellant Ngeze's convictions for ordering genocide and extermination are hereby reversed, considering that they are based entirely on the testimony of Witness EB.

The Appeals Chamber considers that the reasons advanced by the Trial Chamber to find that the alibi did not raise a reasonable doubt as to the Appellant's actions of 6 to 9 April 1994 are erroneous for two reasons. First, the testimonies of Defence witnesses were not thoroughly inconsistent. Second, the sources of information indicated by Defence witnesses were vague only in certain cases. The Appeals Chamber is therefore of the opinion that retaining the finding on the alibi would create a risk of miscarriage of justice, especially as – considering that the testimony of Witness EB has been excluded – only three witnesses testified that they saw Appellant Ngeze between 6 and 9 April 1994, with Witness Serushago's testimony not being accepted failing corroboration. Accordingly, the Appeals Chamber reverses the Trial Chamber's finding on the alibi and finds that it has not been established beyond all reasonable doubt that the Appellant participated in the distribution of weapons on 8 April 1994. However, the Appeals Chamber considers that this does not mean that Witness AHI's testimony should be entirely excluded. It finds that the Trial Chamber's following findings should be retained: Appellant Ngeze stored weapons prior to 6 April 1994; he supervised roadblocks at Gisenyi; he drove about in a vehicle calling for the extermination of the *Inyenzi*; and had declared that if President Habyarimana was killed, the Tutsi would not be spared.

I will now deal with the grounds of appeal relating to the crimes of genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and crimes against humanity

First, as to the crime of genocide, the Appellants allege that the Trial Chamber erred in law and in fact in finding them guilty of genocide.

The first issue examined relates to the notion of protected group. Appellants Nahimana and Ngeze contend that the Trial Chamber erred in considering the acts committed against Hutu opposition as acts of genocide, thereby illegally extending the notion of protected group. Whereas to avoid any ambiguity, the Trial Chamber could have avoided discussing the murder of Hutu political opponents in the part of the Judgement dealing with genocide, the Appeals Chamber is of the opinion that the Trial Chamber did not err in its findings on the responsibility of the Appellants for genocide, which are based solely on massacre of the Tutsi. This contention is dismissed.

The Appeals Chamber will then examine the three Appellants' grounds of appeal based on the absence of a causal link between, on the one hand, RTLM's broadcasts, the articles that were published in Kangura *and the activities of the CDR and, on the other hand, the acts of genocide.*

As to the *RTLM*, the Appeals Chamber considers that the Trial Chamber could not find beyond all reasonable doubt that the broadcasts made prior to 6 April 1994 contributed significantly to the commission of murders, instigating as it were the commission of acts of genocide, and the Trial Chamber's findings on this issue are therefore invalidated. Nevertheless, the Appeals Chamber upholds the Trial Chamber's findings that RTLM's broadcasts after 6 April 1994 contributed significantly to the commission of acts of genocide.

The Trial Chamber also considers that a reasonable trier of fact could not have found beyond all reasonable doubt that *Kangura* publications had contributed significantly to the commission of acts of genocide. The Appeals Chamber notes in particular that the Trial Chamber does not state the issues of *Kangura* published in 1994 that would have contributed significantly to the commission of acts of genocide. This ground of appeal is allowed.

As to the link between the activities of the CDR and the commission of acts of genocide, the Appeals Chamber considers that the question as to whether the speeches by the CDR calling for extermination contributed to the massacre of Tutsi civilians is irrelevant, considering that the Trial Chamber found Appellant Barayagwiza guilty of genocide only for the acts of genocide committed by CDR militants and *Impuzamugambi*. This ground of appeal is also dismissed.

The following arguments relate to genocidal intent

The Appeals Chamber concludes that it is not necessary to examine Appellant Nahimana's arguments on this point in the light of its findings on the responsibility of the Appellant under Article 6(1) of the Statute. Further, the contentions raised by Appellant Ngeze on genocidal intent are rejected for reasons stated in the Appeal Judgement.

The Appeals Chamber also rejects all the arguments advanced in this regard by Appellant Barayagwiza. First, the Appeals Chamber considers that, although the Trial Chamber erred in finding that the Appellant had used the term "*tubatsembatsembe*", the error did not occasion a miscarriage of justice. A reasonable trier of fact could indeed consider that other terms that were held to have been used by the Appellant unequivocally amounted to a call for the

extermination of the Tutsi and not just for the extermination of RPF accomplices, and that their use was determinant in establishing the genocidal intent of the Appellant.

Secondly, the Appeals Chamber rejects Appellant Barayagwiza's arguments concerning the humiliation of the Tutsi-Bagogwe and threats against them. The Chamber accepts, in the light of the Prosecution Investigator's statements, that Witness AFX's evidence must be excluded, except if is corroborated by other credible evidence. However, the Appeals Chamber considers that Witness AAM's testimony must be maintained and that the facts testified to constitute sufficient indicia of the Appellant's genocidal intent.

Lastly, the Appeals Chamber rejects Appellant Barayagwiza's argument as to the existence of exculpatory evidence, as well as his contention that the evidence upon which the Trial Chamber found that he had genocidal intent falls outside the temporal jurisdiction of the Tribunal.

I now turn to the arguments concerning the Appellants' individual criminal responsibility for genocide, beginning with those raised by Appellant Nahimana:

Appellant Nahimana argues that the Trial Chamber committed errors of law and of fact in finding that he incurred responsibility for genocide under Article 6(1) of the Statute. The Appeals Chamber notes that it appears that the Trial Chamber convicted the Appellant under Article 6(1) for instigating genocide, whereas no evidence on the record suggests that the Appellant played an active role in the post-6 April 1994 broadcasts which instigated the killing of Tutsi. This argument is well-founded and the Appeals Chamber therefore reverses the conviction for genocide entered against Appellant Nahimana.

With respect to the responsibility of Appellant Barayagwiza, the Appeals Chamber will first examine if the Appellant could be held responsible under Article 6(3) of the Statute for RTLM broadcasts.

For reasons stated in the Judgement, the Appeals Chamber considers that the Trial Chamber could reasonably have found that prior to 6 April 1994 the Appellant was the Number 2 of RTLM, and that he had effective control over his subordinates. However, in the light of findings according to which the Trial Chamber could not reasonably conclude that prior to 6 April 1994 the journalists of RTLM had substantially contributed to the commission of acts of genocide, the Appellant cannot be held responsible under Article 6(3) of the Statute for acts committed during that period. As regards the period after 6 April 1994, the Appeals Chamber considers that a reasonable trier of fact could not have concluded that the Appellant's exercise of effective control over the RTLM journalists after 6 April 1994 had been established beyond reasonable doubt. Accordingly, the conviction for genocide entered against Appellant Barayagwiza under Article 6(3) of the Statute on account of RTLM programming is reversed.

I turn to the arguments raised by Appellant Barayagwiza as to his responsibility for activities of the CDR, which arguments the Appeals Chamber dismisses. First, it considers that certain facts referred to by the Trial Chamber fall outside the Tribunal's temporal jurisdiction. Considering the fact that the Trial Chamber did not clearly state whether these facts had been relied upon to

establish the Appellant's responsibility, the Appeals Chamber finds that the legal findings of the Trial Judgement lacked precision. However, the Appeals Chamber considers that that error does not invalidate the Appellant's conviction, since it is equally based on the Appellant's supervision of "roadblocks" manned by CDR militants and *Impuzamugambi* for the purpose of stopping and killing the Tutsi – a factual finding that the Appeals Chamber, moreover, affirms. Finally, the Appeals Chamber considers that the Trial Chamber could reasonably have found that, on account of his involvement in the supervision of roadblocks during the genocide and of the instructions given to the *Impuzamugambi* manning the roadblocks to stop and kill the Tutsi who came there, which instructions were effectively carried out, the Appellant had instigated the commission of genocide and that, clearly, the Appellant had the intention to instigate others to commit genocide. The Appeals Chamber affirms the Trial Chamber's finding that Appellant Barayagwiza is guilty under Article 6(1) of the Statute for instigating the commission of acts of genocide by CDR militants and *Impuzamugambi*. Accordingly, the Appeals Chamber will not consider whether the Appellant could also be held responsible for the activities of CDR under Article 6(3) of the Statute and it reverses the Trial Chamber's finding in this regard, in accordance with the rule that an accused cannot be convicted under Article 6(1) and 6(3) of the Statute on the same count and for the same facts.

I now turn to the arguments advanced by Appellant Ngeze concerning his responsibility for genocide.

Since the Trial Chamber's findings on instigation by *Kangura* in the commission of genocide and on Appellant Ngeze's responsibility for ordering the commission of genocide have been set aside, the Appeals Chamber will only consider whether Appellant Ngeze can be held responsible under Article 6(1) of the Statute for aiding and abetting in the commission of genocide. On this point, the Appeals Chamber considers that the Trial Chamber could have concluded that Appellant Ngeze had aided and abetted in the commission of genocide through the erection, manning and supervision of roadblocks in Gisenyi in 1994 for the identification of Tutsi civilians being sought out, who were subsequently taken to the *Commune rouge* and killed.

Now I address the crime of direct and public incitement to commit genocide.

The Appeals Chamber first of all recalls that direct and public incitement to commit genocide is an inchoate offence, punishable even if no act of genocide results therefrom.

The Appeals Chamber will then focus on the distinction between hate speech and direct incitement to commit genocide. The Appeals Chamber concludes in this regard that when a person is accused pursuant to Article 2(3)(c) of the Statute, she cannot be held responsible for hate speeches that do not directly incite genocide. The Appeals Chamber also considers that given that not every hate speech constitutes incitement to genocide, case-law on incitement to hatred, discrimination and violence is not immediately applicable in determining what would characterize direct incitement to commit genocide. However, the Appeals Chamber considers that in the present case, the Trial Chamber simply discussed certain general principles of interpretation and accountability for media-based speech. Therefore, the Trial Chamber did not

erroneously modify the constituent elements of the crime of direct and public incitement to commit genocide in the context of the mass media.

The Appeals Chamber will then examine whether speeches that are open to several interpretations can amount to direct and public incitement to commit genocide and whether the Trial Chamber erred by making reference to the presumed intention of the author, potential danger and to the author's membership in a political party or in a community in order to determine the criminal nature of certain speeches.

For reasons stated in the Judgement, the Appeals Chamber considers that an approach whereby incitement to commit genocide is considered direct only when it is explicit and whereby the Judge can in no circumstance consider the contextual elements in determining if a speech constitutes direct incitement to genocide is too restrictive.

First of all the Appeals Chamber considers that it was open to the Trial Chamber to find that a speech which was not an explicit call to commit genocide or which could appear ambiguous at first sight nevertheless amounted to direct incitement to commit genocide in a particular context.

Secondly the Appeals Chamber rejects the argument that the Trial Chamber held that a speech which does not contain any direct call to commit genocide can nevertheless constitute the *actus reus* of direct and public incitement to commit genocide if the author of the speech had a criminal intent. The Appeals Chamber also considers that the Trial Chamber could have taken into account the fact that genocide had taken place and considered that as one of the indicia in this case showing that, in a given context, the speech had been perceived as an incitement to commit genocide. In the opinion of the Appeals Chamber, the Trial Chamber did not commit an error in holding that it was necessary to consider the potential impact of words in their particular context in order to determine whether those words constitute direct and public incitement to commit genocide. Finally, the Appeals Chamber considers that the Trial Chamber apparently did not make reference to ethnicity or community origin in its analysis of the charges brought against the Appellants.

For these reasons the Appeals Chamber rejects the arguments raised by the Appellants.

The Appeals Chamber then examines whether the Trial Chamber erred in finding that all the RTLM programmes from July 1993 to July 1994 fall within the temporal jurisdiction of the Tribunal because they constitute direct and public incitement to commit genocide.

The Appeals Chamber recalls that the qualifications of inchoate crime and continuing crime are independent from one another. It is the Appeals Chamber's view that the Trial Chamber erred in holding that incitement to commit genocide continues in time until the completion of the intended acts. On the contrary direct and public incitement is completed as soon as the words in question are uttered, broadcast or published. The Trial Chamber could not have jurisdiction over incitement committed before 1994 on grounds that such incitement continued in time until the occurrence of genocide. RTLM broadcast or *Kangura* newspaper editions before 1994 could however be taken into account as contextual factors that would permit a better understanding of

the broadcast or newspapers published in 1994. Lastly, the Trial Chamber should have mentioned more clearly the broadcasts which, in its opinion, amounted to direct and public incitement to commit genocide; by failing to do this the Trial Chamber committed an error.

The Appeals Chamber then determines whether in the present case RTLM broadcast, Kangura articles or statements made by CDR in 1994 constituted direct and public incitement to commit genocide.

With respect to RTLM, the Appeals Chamber considers that failure by the Trial Chamber to specify whether the broadcasts amounted to direct and public incitement to commit genocide before 6 April 1994 constitutes an error of law. The Appeals Chamber must therefore determine whether the Appeals Chamber itself is satisfied beyond reasonable doubt that such was the case. After a thorough examination of all the programs broadcast between 1 January and 6 April 1994 which are analysed in the Judgement as well as the evidence relating thereto, the Appeals Chamber concludes that they did not constitute direct incitement to commit genocide. However, the Appeals Chamber is of the view that the Trial Chamber did not err in finding that certain RTLM programmes broadcast after 6 April 1994 constituted direct and public incitement to genocide.

With respect to CDR, the Appeals Chamber acknowledges that Appellant Barayagwiza could not be convicted for direct and public incitement to commit genocide on account of facts committed before 1994. However, Appellant Barayagwiza has not demonstrated that it was unreasonable for the Trial Chamber to hold that the expression *"tubatsembatsembe"* had been chanted by CDR militants and *Impuzamugambi* during meetings and rallies held in 1994.

Lastly, with regards to Kangura, the Appeals Chamber notes that the Trial Chamber did not clearly specify the extracts from *Kangura* which, in its opinion, amounted to direct incitement to genocide, and that it only mentioned extracts from *Kangura* which were published before 1 January 1994. Not only has the Appeals Chamber concluded that the Trial Chamber erred in convicting Appellant Ngeze on the basis of pre-1994 publications, it also considers that the lack of precision as to acts constituting direct and public incitement to genocide amounts to an error and compels the Appeals Chamber to examine the 1994 *Kangura* publications mentioned in the Judgement in order to determine beyond reasonable doubt if one or several of them constitute direct and public incitement to commit genocide. After this analysis, the Appeals Chamber concludes that certain articles published in *Kangura* in 1994 directly and publicly incited the commission of genocide.

The Appeals Chamber then addresses the individual criminal responsibility of Appellant Nahimana for the crime in question.

The Appeals Chamber has already concluded that Appellant Nahimana could not be found guilty under Article 6(1) of the Statute on account of RTLM programmes that instigated the commission of genocide. For the same reasons the Appellant cannot be held responsible under Article 6(1) of the Statute on account of RTLM broadcasts that directly and publicly incited the commission of genocide. This conviction is therefore also reversed.

As regards the responsibility of Appellant Nahimana under Article 6(3) of Statute for direct and public incitement to commit genocide before 6 April 1994, the Appeals Chamber rejects the allegations of errors of law based on the Trial Chamber's incorrect application of the effective control criterion, on the absence of intent on the part of the Appellant and of explanations on the necessary and reasonable measures that the Appellant should have taken. Concerning allegations of errors of fact, the Appeals Chamber is of the opinion that the Trial Chamber could reasonably have concluded that the Appellant was a superior of the RTLM staff and that he had the material ability to prevent or punish the broadcast of criminal utterances by such staff even after 6 April 1994. The Appeals Chamber considers that there is no doubt that the Appellant knew or had reasons to know that his subordinates at RTLM were about to broadcast or had already broadcast utterances inciting the killing of Tutsi. Finally, the Appeals Chamber considers that the Appellant has not shown that the Trial Chamber erred in finding that he had not taken reasonable and necessary steps to prevent or punish incitement by RTLM staff in 1994 to kill the Tutsi.

The Appeals Chamber affirms the conviction entered against Appellant Nahimana on the count of direct and public incitement to commit genocide pursuant to Article 6(3) of the Statute.

I will now address the individual criminal responsibility of Appellant Barayagwiza. The Appeals Chamber recalls that it has already concluded that only RTLM broadcasts made after 6 April 1994 constitute direct and public incitement to commit genocide and that Appellant Barayagwiza exercised effective control over the journalists and employees of RTLM only before 6 April 1994. Therefore the Appeals Chamber considers that Appellant Barayagwiza could not be convicted under Article 6(3) of the Statute for direct and public incitement to commit genocide by the RTLM journalists and employees.

With regard to the involvement of Appellant Barayagwiza in the CDR and his responsibility under Article 6(1) of the Statute, the Appeals Chamber notes that the conviction of the Appellant for direct and public incitement to commit genocide cannot be based on direct calls for the extermination of the Tutsi, since witness statements in this regard made reference to events that occurred before 1994. Moreover, the Appeals Chamber fails to see how the other facts stated in paragraph 1035 of the Trial judgement constituted the personal acts of the Appellant which would justify a conviction for direct and public incitement to commit genocide pursuant to Article 6(1) of the Statute. Accordingly, the Appeals Chamber reverses the conviction entered against Appellant Barayagwiza under Article 6(1) of the Statute for direct and public incitement to commit genocide.

As regards Appellant Barayagwiza's superior responsibility for the activities of the CDR, it is the Appeals Chamber opinion that the Appellant has not shown that the Trial Chamber finding that from February 1994 he was the president of CDR is erroneous. The Appeals Chamber also rejects the Appellant's contention that the Trial Chamber erred in finding that he was a member of the executive committee of CDR before February 1994. However, the Appeals Chamber is not satisfied that the evidence relied on by the Trial Chamber is sufficient to establish the existence of the Appellant effective control over all the CDR militants and *Impuzamugambi* in all circumstances. The Appeals Chamber sets aside the conviction entered against Appellant

Barayagwiza under Article 6(3) of the Statute for direct and public incitement to commit genocide by CDR militants and *Impuzamugambi*.

Lastly I address the individual criminal responsibility of Appellant Ngeze.

The Appeals Chamber considers that in the light of the evidence presented at Trial, the Trial Chamber could reasonably attribute all the articles and editorials published in *Kangura* to Appellant Ngeze. The Appeals Chamber further considers that in any event the Appellant himself wrote two of the three articles published in 1994 which were found to constitute direct and public incitement to commit genocide. The Appeals Chamber upholds the conviction entered against the Appellant for direct and public incitement to commit genocide on account of *Kangura* publications in 1994.

With regard to the involvement of Appellant Ngeze in the Gisenyi events and to his conviction for direct and public incitement to commit genocide in relation to these events, the Appeals Chamber notes that the Trial Chamber fails to specify the time when the acts in question took place. Of the four testimonies relayed upon by the Trial Chamber, only the testimony of Witness Serushago clearly refers to the events which allegedly took place in February 1994. However, since that testimony cannot be admitted without corroboration by other credible evidence, the Appeals Chamber considers that a reasonable trier of fact could not have found that in 1994 the Appellant had directly and publicly incited the commission of genocide in the Gisenyi *préfecture.* Appellant Ngeze's conviction in this regard for direct and public incitement to commit genocide is therefore reversed.

The Appeals Chamber will now examine the crime of conspiracy to commit genocide.

The Appeals Chamber first of all recalls that the *actus reus* of conspiracy to commit genocide is the agreement to act with a view to committing genocide. The Appeals Chamber also considers that the coordinated action of a group of individuals may constitute an *indicium* of existence of an agreement. Consequently, the Appeals Chamber rejects the arguments based on errors of law allegedly committed by the Trial Chamber. However, as to whether there was sufficient evidence of the existence of a concerted resolve on account of collaboration among the Appellants, the Appeals Chamber considers that on the basis of circumstantial evidence presented at trial, a reasonable trier of fact could not conclude that the only reasonable inference was that the Appellants conspired with each other to commit genocide. Similarly, as regards coordinated action by institutions, the Appeals Chamber is of the view that although there is no doubt that the factual findings of the Trial Chamber are consistent with the existence of a "common agenda" for the commission of genocide, it is, however, not the only reasonable inference that can be drawn. Accordingly, the Appeals Chamber reverses the conviction entered against Appellant Nahimana, Barayagwiza and Ngeze for the crime of conspiracy to commit genocide.

I now turn to crimes against humanity. The arguments raised by the Appellants concern the introductory paragraph of Article 3 of the Statute, crimes of extermination and persecutions, as well as their responsibility under these two heads:

The Appeals Chamber first of all rejects a number of arguments that alleged the existence of errors of law concerning criteria required by *the introductory paragraph of Article 3 of the Statute*. However, the Appeals Chamber is of the opinion that a reasonable trier of fact could not conclude in this case that it had been established that a systematic or widespread attack against Tutsi civilians had taken place between 1 January and 6 April 1994. Moreover, the Appeals Chamber is not convinced that *Kangura* publications, RTLM broadcasts and activities of CDR before 6 April 1994 could be considered as being part of widespread and systematic attacks which took place after that date. The Appeals Chamber however adds that the broadcasts, publications and activities might have substantially contributed to the commission of crimes against humanity after 6 April 1994, which could occasion the responsibility of an accused under other modes of responsibility pleaded, such as planning, instigation or aiding and abetting.

Turning to the crime of extermination, the Appeals Chamber will first determine whether RTLM broadcasts substantially contributed to the commission of acts of extermination. The Appeals Chamber considers that although RTLM broadcasts before 6 April 1994 instigated ethnic hatred, a reasonable trier of facts could not have found that they substantially contributed to the extermination of Tutsi civilians. As regards RTLM broadcasts after 6 April 1994, the Appeals Chamber has already concluded that the said broadcasts contributed substantially to the killing of numerous Tutsi. Therefore they contributed substantially to the extermination of Tutsi.

With respect to Appellant Nahimana's responsibility for this crime, the Appeals Chamber has already reversed the conviction entered against the Appellant on account of RTLM broadcasts. The Appeals Chamber must, therefore, also set aside the conviction entered against Appellant Nahimana for extermination as crime against humanity under Article 6(1) of the Statute.

As regards Appellant Barayagwiza, and in the light of preceding conclusions on the superior responsibility of the Appellant for RTLM broadcasts, the conviction entered against Appellant Barayagwiza for extermination as crime against humanity under article 6(3) of the Statute is reversed. However, for reasons stated in the Judgement, the conviction of the Appellant under Article 6(1) of the Statute for ordering or instigating and planning the extermination is upheld in respect of the involvement of Appellant Barayagwiza in the CDR.

As regards Appellant Ngeze, in the light of preceding conclusions of the Appeals Chamber, some of the factual findings underpinning the conviction for extermination must be set aside. However, the finding that the Appellant supervised roadblocks that made it possible to identify Tutsi civilians who were subsequently taken to and killed at the *Commune rouge* is upheld, since Appellant Ngeze has failed to show that the finding was unreasonable. The conviction of Appellant Ngeze pursuant to Article 6(1) of the Statute for adding and abetting in extermination as crime against humanity is affirmed.

The Appellants further alleged that the Trial Chamber committed errors of law and fact by finding them guilty of persecution as a crime against humanity

The Appeals Chamber will first examine whether hate speech can constitute the *actus reus* of the crime of persecution. In this regard, the Appeals Chamber is of the view that a hate speech

targeting a population on ethnic grounds or on any other discriminatory grounds violate the right for the respect of the human dignity of member of the group, and constitute "factual discrimination" even though hate speech cannot on its own amount to a violation of the right to life, freedom and physical integrity. As to whether hate speech can be considered as being of the same gravity as other crimes against humanity, the Appeals Chamber is of the opinion that it is not necessary to determine here whether ordinary hate speeches which do not incite violence among members of an ethnic group are in themselves of a gravity equivalent to other crimes against humanity. In the present case, the Appeals Chamber concludes that the hate speeches were accompanied by calls for genocide against the Tutsi ethnic group and that all those speeches were part of a massive campaign for persecution directed against the Tutsi population of Rwanda, this campaign being also characterized by acts of violence and destruction of property. When considered together, in their context, the RTLM speeches in question were, in the opinion of the Appeals Chamber, of equivalent gravity as the other crimes against humanity. The Appeals Chamber therefore concludes that the hate speeches and the speeches that called for violence against the Tutsi made after 6 April 1994 are in themselves acts of persecution.

The Appeals Chamber will now examine the arguments relating to the individual criminal responsibility of the Appellants for persecution

As regards RTLM, the Appeals Chamber concludes that the broadcasts made before 6 April 1994 could not constitute acts of persecution because the said broadcasts were not part of a systematic and widespread attack against the Tutsi population. Nor did the broadcasts instigate the commission of acts of persecution against the Tutsi as the Appeals Chamber had earlier concluded that the Trial Chamber could not reasonably find that the broadcasts made before 6 April 1994 substantially contributed to killing of Tutsi after 6 April 1994. However, the Appeals Chamber considers that the broadcasts made after 6 April 1994 which substantially contributed to the killing of Tutsi not only instigated the commission of acts of genocide but also of acts of persecution. Furthermore, as explained above, RTLM broadcasts made before 6 April 1994 were in themselves acts of persecution. Consequently, the superior responsibility of Accused Nahimana for the RTLM broadcasts after 6 April 1994 is affirmed. However, the conviction of Appellant Barayagwiza as a superior of RTLM is reversed for reasons that have already been stated.

As regards Appellant Barayagwiza's responsibility for the activities of CDR, the Appeals Chamber concludes that the supervision of roadblocks by the Appellant substantially contributed to the commission of acts of persecution and it also upholds the responsibility of the Appellant under Article 6(1) of the Statute for instigating persecution. The Appeals Chamber, however, reverses Appellant Barayagwiza's conviction for persecution under Article 6(3) of the Statute for acts committed by militants of the CDR and *Impuzamugambi*.

With regards to the responsibility of Appellant Ngeze for the articles that were published in *Kangura*, the Appeals Chamber considers that since *Kangura* was not published between 6 April and 17 July 1994, during which period the systematic and widespread attack against the Tutsi population in Rwanda took place, it cannot be concluded that *Kangura* articles constituted persecution as a crime against humanity. Moreover, for reasons already stated, the Appeals

Chamber considers that it cannot be concluded that certain articles published in *Kangura* in 1994 substantially contributed to commission of acts of persecution against the Tutsi. As regards acts perpetrated by Appellant Ngeze in Gisenyi, the Appeals Chamber notes that the evidence relied upon by the Trial Chamber refers to events which allegedly occurred before the beginning of the widespread and systematic attack against the Tutsi population on 6 April 1994. The Appeals Chamber considers that it cannot be concluded that utterances by Appellant Ngeze substantially contributed to the commission of acts of persecution. The conviction of Appellant Ngeze for persecution as a crime against humanity is reversed.

I now address the argument relating to cumulative convictions. The Appeals Chamber rejects the arguments that cumulative convictions are not allowed for persecution and extermination as crimes against humanity as they are based on the same fact. The same applies to arguments concerning cumulative convictions for genocide and extermination, genocide and persecution and for direct and public incitement to commit genocide and persecution. The other arguments relating to cumulative responsibility are moot considering the reversal of various convictions.

For the reasons stated in the Judgement, the Appeals Chamber rejects all the arguments raised by the Appellants relating to their respective sentences. The Appeals Chamber will however take into account the reversal of several convictions of each of the Appellants in the determination of their sentences.

I will now read the disposition of the Judgement. Messrs. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, would you please stand up.

DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**,

CONSIDERING Article 24 of the Statute and Rule 118 of the Rules;

NOTING the respective written submissions of the parties and the hearings of 16, 17 and 18 January 2007;

SITTING in open court;

REGARDING THE GROUNDS OF APPEAL RAISED BY FERDINAND NAHIMANA

ALLOWS IN PART the second ground of appeal raised by Appellant Nahimana (temporal jurisdiction of the Tribunal), as well as the grounds of appeal (unnumbered) by which he denies responsibility for the crimes of genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, extermination and persecution as crimes against humanity;

DISMISSES all the other grounds of appeal raised by Appellant Nahimana;

REVERSES the findings of guilt entered against Appellant Nahimana under Article 6(1) of the Statute for genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, crimes against humanity (Extermination and Persecution);

AFFIRMS the finding of guilt entered against Appellant Nahimana under Article 6(3) of the Statute but only on the basis of the RTLM broadcasts made after 6 April 1994, for direct and public incitement to commit genocide and (Judge Meron dissenting) for the crime against humanity of Persecution; and

SUBSTITUTES the life imprisonment sentence imposed by the Trial Chamber for a prison term of 30 years (Judge Meron dissenting), subject to credit being given for the period spent in custody, as provided for by Rule 101(D) of the Rules;

Judge Shahabuddeen appends a partially dissenting opinion;

WITH REGARD TO THE GROUNDS OF APPEAL RAISED BY APPELLANT JEAN-BOSCO BARAYAGWIZA

ALLOWS IN PART Grounds 4, 14, 21, 23, 29, 30, 32 to 36 and 38 raised by Appellant Barayagwiza;

DISMISSES all the other grounds of appeal raised by Appellant Barayagwiza;

REVERSES the findings of guilt entered against Appellant Barayagwiza under Article 6(1) of the Statute for direct and public incitement to commit genocide on account of his activities within the CDR and conspiracy to commit genocide, as well as his convictions under Article 6(3) of the Statute for genocide, direct and public incitement to commit genocide, crimes against humanity (Extermination and Persecution) on account of his activities within the *RTLM* and the CDR;

AFFIRMS the findings of guilt entered against Appellant Barayagwiza under Article 6(1) of the Statute for (1) instigating the perpetration of acts of genocide in Kigali by militants of the CDR and the *Impuzamugambi*; (2) ordering or instigating the commission of a crime against humanity (Extermination) by CDR militants and the *Impuzamugambi* in Kigali (Judge Güney dissenting) and for planning the commission of this crime in Gisenyi *préfecture*; and (3) instigating the perpetration by CDR militants and the *Impuzamugambi* in Kigali of a crime against humanity (Persecution); and

SUBSTITUTES the prison sentence of 35 years handed down by the Trial Chamber for a prison term of 32 years, subject to credit being given for the period spent in custody, as provided for by Rule 101(D) of the Rules;

Judge Shahabuddeen appends a partially dissenting opinion;

WITH REGARD TO THE GROUNDS OF APPEAL RAISED BY HASSAN NGEZE
ALLOWS IN PART Grounds 1, 3, 4, 5, and 6 raised by Appellant Ngeze;

DISMISSES all the other grounds of appeal raised by Appellant Ngeze;

REVERSES the findings of guilt entered against Appellant Ngeze under Article 6(1) of the Statute for (1) conspiracy to commit genocide and crime against humanity (Persecution); (2) instigating the commission of genocide through the publication of articles in his *Kangura* newspaper and ordering the commission of genocide on the 7 April 1994 in Gisenyi; (3) direct and public incitement to commit genocide in Gisenyi *préfecture*; (4) ordering the commission of crimes against humanity (Extermination) on 7 April 1994 in Gisenyi;

AFFIRMS the findings of guilt entered against Appellant Ngeze under Article 6(1) of the Statute for (1) aiding and abetting the commission of genocide in Gisenyi *préfecture*; (2) direct and public incitement to commit genocide through the publication of articles in his *Kangura* newspaper in 1994; and (3) aiding and abetting crimes against humanity (Extermination) in Gisenyi *préfecture*; and

SUBSTITUTES the sentence of life imprisonment imposed by the Trial Chamber for a prison term of 35 years, subject to credit being given for the period spent in custody, as provided for by Rule 101(D) of the Rules;

Judge Shahabuddeen appends a partial dissenting opinion;

And lastly,

RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules;

ORDERS that, pursuant to Rules 103(B) and 107 of the Rules, Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze shall remain in the custody of the Tribunal until the necessary arrangements are made for their transfer to a State in which each of them shall serve his sentence.

Judge Pocar appends a partial dissenting opinion.

Judge Shahabuddeen appends a partial dissenting opinion.

Judge Güney appends a partial dissenting opinion.

Judge Meron appends a partial dissenting opinion.

[You may be seated].

[End of session].

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