



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

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Liu Daqun
Judge Carmel Agius
Judge Khalida Rachid Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. Bongani Majola

Judgement of: 11 February 2014

**AUGUSTIN NDINDILYIMANA
FRANÇOIS-XAVIER NZUWONEMEYE
INNOCENT SAGAHUTU**

v.

THE PROSECUTOR

Case No. ICTR-00-56-A

SUMMARY OF THE JUDGEMENT

Counsel for Augustin Ndindiliyimana:

Mr. Christopher Black
Mr. Vincent Lurquin

Counsel for François-Xavier Nzuwonemeye:

Mr. Charles A. Taku
Ms. Beth S. Lyons

Counsel for Innocent Sagahutu:

Mr. Fabien Segatwa
Mr. Scott Martin
Mr. Wayne Jordash

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James J. Arguin
Mr. Abdoulaye Seye
Mr. Abubacarr Tambadou
Ms. Thembile M. Segoete
Ms. Florida Kabasinga
Mr. Takeh Sendze
Ms. Christiana Fomenky
Ms. Sunkarie Ballah-Conteh
Ms. Betty Mbabazi
Mr. Deo Mbutu

1. The Appeals Chamber is sitting today in accordance with Rule 118 of the Tribunal's Rules of Procedure and Evidence in the case of *The Prosecutor v. Augustin Ndingiliyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu*. All parties, including the Prosecution, appealed against the Trial Judgement rendered in this case by Trial Chamber II of the Tribunal on 17 May 2011 and issued in writing on 17 June 2011. In accordance with the Scheduling Order of 15 November 2013, the Appeals Chamber will presently deliver the judgement in this case.

2. On 7 February 2014, the Appeals Chamber issued an order severing the case of Augustin Bizimungu, who had been tried with Ndingiliyimana, Nzuwonemeye, and Sagahutu, and whose appeal was heard with theirs. The Appeals Chamber will deliver its judgement on Bizimungu's appeal and the Prosecution appeal related to his case in due course after considering the further submissions ordered.

3. Following the practice of the Tribunal, not every point addressed in the judgement will be mentioned in this summary, which focuses only on central issues. This summary does not constitute any part of the authoritative written judgement of the Appeals Chamber, which will be filed in writing in due course.

I. APPEAL OF AUGUSTIN NDINDILIIYIMANA

4. Ndingiliyimana is the former Chief of Staff of the Rwandan gendarmerie. The Trial Chamber convicted Ndingiliyimana as a superior for genocide and extermination as a crime against humanity based on the participation of gendarmes in an attack on Kansi Parish. It also found him guilty as a superior for genocide and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to crimes committed by gendarmes at Saint André College. The Trial Chamber also convicted Ndingiliyimana of murder as a crime against humanity. The Trial Chamber sentenced Ndingiliyimana to a single sentence of time served and ordered his immediate release on 17 May 2011.

A. Fairness of the Proceedings

5. Ndingiliyimana submits that the Trial Chamber failed to provide sufficient remedies in light of the Prosecution's violation of its disclosure obligations pursuant to Rule 68 of the Rules; that the Tribunal's decisions concerning alleged prosecutorial misconduct were in error; and that the proceedings were unduly delayed. The Appeals Chamber finds that Ndingiliyimana has failed to demonstrate any error that rendered his trial unfair. Accordingly, it dismisses these arguments.

B. Kansi Parish

6. The Trial Chamber found that, on 21 April 1994, gendarmes assigned to guard Ndindiliyimana's residence in Nyaruhengeri provided weapons to and assisted *Interahamwe* in the attack at the nearby parish. The Trial Chamber further held that the gendarmes stationed at Ndindiliyimana's residence were his subordinates acting under his control, and that Ndindiliyimana knew or had reason to know that they had committed crimes at Kansi Parish, but failed to punish them.

7. The Trial Chamber found that, after 7 April 1994, the operational command over the majority of gendarmerie units was transferred to the Rwandan army and that Ndindiliyimana therefore no longer exercised effective control over gendarmes who had been deployed to assist the army in combat against the RPF. The Trial Chamber held, however, that Ndindiliyimana retained full *de jure* authority over approximately 200 gendarmes not deployed to assist the army in combat. With respect to these gendarmes, the Trial Chamber acknowledged that: Ndindiliyimana suffered from a lack of resources and faced difficulties in communicating with gendarmerie units on the ground; his force was infiltrated by extremists and rogue elements; and his material ability to control the gendarmes under his operational command decreased as the war progressed. For these reasons, the Trial Chamber considered that Ndindiliyimana did not exercise effective control over all gendarmes under his operational command and that his "material ability to prevent and/or punish crimes [...] varied considerably between different *gendarmerie* units".

8. At the time of the attack at Kansi Parish on 21 April 1994, Ndindiliyimana's residence in Nyaruhengeri was guarded by a number of gendarmes who had been deployed by the commander of the Butare gendarmerie unit based on a personal request for protection by Ndindiliyimana's wife. The Trial Chamber concluded that Ndindiliyimana exercised "*de facto* authority" over these gendarmes because they had been "gathered" by his wife and Ndindiliyimana had "admitted" at trial that he would have known had they participated in the attack at Kansi Parish. It also stated that the gendarmes belonged to units under the operational command of the gendarmerie and that their operation at Kansi Parish entailed a degree of organization and therefore found that: "[i]t follows from Ndindiliyimana's position as Chief of Staff of the *Gendarmerie* that the *gendarmes* in question were his subordinates under his effective control".

9. The Appeals Chamber finds that the Trial Chamber failed to explain the basis of its finding that the gendarmes guarding Ndindiliyimana's house came from a unit under his operational command. Furthermore, the Appeals Chamber finds that, based on the evidence referred to in the

Trial Judgement and on the record, no reasonable trier of fact could have concluded that Ndingiliyimana had effective control over these gendarmes.

10. Even if the gendarmes stationed at Ndingiliyimana's residence could have been considered his subordinates, the Trial Chamber did not address any possible impact on this relationship flowing from the fact that a separate unit either of gendarmes or the Presidential Guard collected the group of gendarmes from Ndingiliyimana's home shortly before the attack at Kansi Parish on 21 April 1994. The Trial Chamber could not have reasonably excluded the possibility that the gendarmes at the residence acted under the arriving group's command and orders at the time of the commission of crimes at the parish and that Ndingiliyimana therefore lacked the material ability to prevent or punish their conduct.

11. Finally, the Appeals Chamber also concludes that no reasonable trier of fact could have found that the gendarmes stationed at Ndingiliyimana's residence in fact participated in the attack at Kansi Parish given the significant discrepancies in the evidence between the witnesses who observed the gendarmes leaving the residence and the witness who gave evidence concerning the participation of gendarmes in the attack on the parish.

12. For the foregoing reasons, the Appeals Chamber finds that the Trial Chamber erred in concluding that Ndingiliyimana exercised effective control over the gendarmes guarding his residence in Nyaruhengeri at the time of the attack against Kansi Parish. Moreover, the Appeals Chamber concludes that no reasonable trier of fact could have inferred as the only reasonable conclusion that the gendarmes stationed at Ndingiliyimana's residence participated in the attack. These errors invalidate the Trial Chamber's finding that Ndingiliyimana could be held liable under Article 6(3) of the Statute for crimes committed by gendarmes during the attack on Kansi Parish. Accordingly, the Appeals Chamber reverses Ndingiliyimana's conviction in relation to the killing of Tutsi refugees at Kansi Parish.

C. Saint André College

13. The Trial Chamber found that gendarmes from the Nyamirambo Brigade, acting in collaboration with *Interahamwe*, carried out an attack at Saint André College on 13 April 1994. It further held that the gendarmes in question were Ndingiliyimana's subordinates acting under his control, and that Ndingiliyimana knew or had reason to know that they had committed crimes, but failed to punish them.

14. The Trial Chamber concluded that Ndindiliyimana exercised “*de facto* authority” over the gendarmes who participated in the attack at Saint André College on 13 April 1994, reasoning that: (i) the killings took place in Kigali where Ndindiliyimana spent a large proportion of his time; (ii) Ndindiliyimana “admitted” at trial that he received reports from his General Staff regarding events at the college and issued orders to his subordinates operating at that location around the time of the attack; and (iii) Ndindiliyimana was aware that an employee at Saint André College who implicated gendarmes from the Nyamirambo Brigade in the attack requested gendarmerie protection for the college on 14 April 1994.

15. The Trial Chamber further held that “in light of the fact that Ndindiliyimana received information and issued orders to his subordinates regarding [Saint] André College, he maintained command and control over the gendarmes operating at that location”. It also stated that the gendarmes implicated in the attack at Saint André College belonged to units under the operational command of the gendarmerie and that their operation at the college entailed a degree of organization. The Trial Chamber therefore found that: “[i]t follows from Ndindiliyimana’s position as Chief of Staff of the *Gendarmerie* that the *gendarmes* in question were his subordinates under his effective control”.

16. The Appeals Chamber finds that the Trial Chamber failed to explain the basis of its conclusion that the Nyamirambo Brigade remained under Ndindiliyimana’s operational command in particular in view of its finding that, after 7 April 1994, the operational command over the majority of gendarmerie units was transferred to the Rwandan army.

17. The Appeals Chamber observes that the Trial Chamber considered credible testimony that indicates that the army was exercising authority over the Nyamirambo Brigade which calls into question the reasonableness of the Trial Chamber’s inference that members of the brigade acted under Ndindiliyimana’s operational command and effective control at the time of the attack at Saint André College.

18. The Appeals Chamber also finds that no reasonable trier of fact could have relied on the other factors mentioned by the Trial Chamber to infer that Mr. Ndindiliyimana exercised effective control over the Nyamirambo Brigade.

19. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in concluding that Ndindiliyimana exercised effective control over the gendarmes from the Nyamirambo Brigade who participated in the attack against Saint André College on 13 April 1994. This error invalidates the Trial Chamber’s finding that Ndindiliyimana could be held liable under Article 6(3) of the Statute

for crimes committed by gendarmes during the attack. The Appeals Chamber reverses his convictions in relation to the killing of Tutsi refugees at Saint André College.

D. Cumulative Convictions

20. In view of the Appeals Chamber's findings in relation to Kansi Parish and Saint André College, the Appeals Chamber dismisses as moot Mr. Ndindiliyimana's challenge to the cumulative convictions entered by the Trial Chamber for these events.

E. Murder as a Crime Against Humanity

21. In its verdict, the Trial Chamber convicted Ndindiliyimana for murder as a crime against humanity under Count 4 of the Indictment. The Appeals Chamber notes that the Prosecution withdrew a number of allegations against Ndindiliyimana underlying Count 4 of the Indictment at the end of its case. The remainder of the charges under this count was dismissed in the Trial Judgement. Consequently, there was no basis upon which Ndindiliyimana could be convicted under Count 4 of the Indictment. The Appeals Chamber therefore finds that the Trial Chamber erred in law by convicting Ndindiliyimana under this count. Accordingly, the Appeals Chamber reverses his conviction under Count 4 of the Indictment for murder as a crime against humanity.

II. APPEALS OF FRANÇOIS-XAVIER NZUWONEMEYE AND INNOCENT SAGAHUTU

22. Nzuwonemeye is the former commander of the Reconnaissance Battalion. Sagahutu previously served as the commander of Squadron A within the Reconnaissance Battalion.

23. The Trial Chamber convicted Nzuwonemeye and Sagahutu of ordering and aiding and abetting murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the killing of Prime Minister Agathe Uwilingiyimana. It further found that they could be held responsible for this killing as superiors, which it considered in relation to sentencing.

24. The Trial Chamber also concluded that Nzuwonemeye was liable as a superior for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II with respect to the killing of Belgian peacekeepers who were part of the UNAMIR peacekeeping mission. The Trial Chamber found Sagahutu liable as a superior for murder as a crime against humanity in relation to the killing of the Belgian peacekeepers and also convicted him of ordering and aiding and abetting murder as a serious

violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Trial Chamber sentenced Nzuwonemeye and Sagahutu each to a single term of 20 years of imprisonment.

A. Fairness of the Proceedings

25. Nzuwonemeye asserts that he was denied the right to counsel and the right to cross-examination; that the Trial Chamber erred in denying requests for certification to appeal decisions; that the Trial Chamber erred in its assessment of the Prosecution's disclosure violations and granted ineffective remedies; that the Trial Chamber erred in taking judicial notice of the existence of a widespread and systematic attack against a civilian population and a non-international armed conflict; and that the Trial Chamber violated the protections set forth in Rules 82(A) and 87(B) of the Rules. The Appeals Chamber finds no error in the Trial Chamber's relevant determinations that would result in a miscarriage of justice or invalidate the verdict.

B. Notice

26. At the outset, the Appeals Chamber dismisses Nzuwonemeye's and Sagahutu's arguments that there were errors regarding cumulative or alternative charging of forms of responsibility.

27. With respect to the killing of the Prime Minister, the Appeals Chamber is not satisfied that Nzuwonemeye or Sagahutu have demonstrated that they lacked notice of their responsibility for ordering the crime.

28. Turning to aiding and abetting, the Trial Chamber found that Nzuwonemeye aided and abetted the killing of the Prime Minister by ordering the deployment of soldiers of the Reconnaissance Battalion to the Prime Minister's residence in the morning of 7 April 1994, remaining in contact with soldiers at this location, sending supplies, and issuing operational instructions to them. However, none of these facts is mentioned in the Indictment. The paragraphs of the Indictment which relate specifically to Nzuwonemeye's and Sagahutu's responsibility for the killing of the Prime Minister do not identify any particular conduct on Nzuwonemeye's part or *mens rea* necessary to establish the elements for aiding and abetting. Nzuwonemeye could therefore not have known from the Indictment that, and on which basis, the Prosecution sought to hold him responsible for aiding and abetting the killing of the Prime Minister. The Indictment was thus defective.

29. Furthermore, the defect was not subsequently cured by timely, clear, and consistent information. Various allegations in the Pre-Trial Brief related to this incident neither informed Nzuwonemeye by which conduct he aided and abetted the crime nor that the Prosecution did in fact intend to hold him responsible under this mode of liability. The Appeals Chamber further notes that,

in its opening statement, the Prosecution maintained that Nzuwonemeye incurred criminal liability for the crimes charged in the Indictment for other reasons. Not even in its Closing Brief did the Prosecution submit that any evidence adduced at trial demonstrated that Nzuwonemeye assisted the killing of the Prime Minister. Thus, up until the end of the proceedings, the Prosecution did not unequivocally indicate that its theory of the case against Nzuwonemeye was that he aided and abetted the killing of the Prime Minister. It therefore comes as no surprise that Nzuwonemeye made no attempt at trial to refute such an allegation. The Appeals Chamber finds that the Trial Chamber erred in convicting Nzuwonemeye for aiding and abetting the Prime Minister's killing because he lacked proper notice for this form of responsibility. Accordingly, the Appeals Chamber reverses his conviction for aiding and abetting murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

30. Although the Indictment was also defective in relation to pleading Sagahutu's responsibility for aiding and abetting the killing of the Prime Minister, the Appeals Chamber is not satisfied that Sagahutu has demonstrated that his defence was materially impaired by the defects in the Indictment and dismisses his arguments.

31. The Appeals Chamber also rejects Nzuwonemeye's submission that he lacked notice of the material facts necessary to plead his superior responsibility for the Prime Minister.

32. However, with respect to the pleading of Nzuwonemeye's responsibility as a superior for the killing of the Belgian peacekeepers, the Appeals Chamber observes that Nzuwonemeye was convicted because his immediate subordinate, Sagahutu, instructed Corporals Nzeyimana and Masonga to put down the resistance by the captured peacekeepers at Camp Kigali and for this purpose provided or approved the use of an MGL from his office.

33. The Indictment, however, does not plead any specific conduct by which Nzuwonemeye could have been found to have known of the involvement of his soldiers in the attack against the Belgian peacekeepers and failed to take punitive measures. The Pre-Trial Brief is similarly deficient. Moreover, the Prosecution made no mention of Nzuwonemeye's responsibility as a superior or, in fact, under any other mode of liability, for the killing of the Belgian peacekeepers. In addition, when the Prosecution finally did elaborate on Nzuwonemeye's superior responsibility at the end of trial, it argued a different case than that which was ultimately accepted by the Trial Chamber.

34. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in holding Nzuwonemeye responsible as a superior in relation to the killing of the Belgian peacekeepers. Nzuwonemeye's convictions in relation to this event must therefore be reversed.

35. With respect to Sagahutu, the Appeals Chamber finds that he has not demonstrated that he lacked notice regarding his superior responsibility for the killing of the Belgian peacekeepers. Likewise, the Appeals Chamber has dismissed Sagahutu's arguments concerning the defective pleading of his ordering and aiding and abetting liability with respect to these killings.

C. Legal Elements of the Crimes

36. Nzuwonemeye and Sagahutu challenge the Trial Chamber's findings on the *chapeau* elements for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Appeals Chamber finds that Nzuwonemeye and Sagahutu have failed to demonstrate that the Trial Chamber erred in its assessment of these elements.

D. Killing of the Prime Minister

37. The Trial Chamber found that, on 7 April 1994, various units of the Rwandan army, including soldiers of the Reconnaissance Battalion, attacked the Prime Minister's residence and killed her in what the Trial Chamber described as an organized military operation conducted with the authorization of senior military officers.

38. Specifically, the Trial Chamber concluded that Nzuwonemeye ordered Sagahutu to deploy an armoured unit from the Reconnaissance Battalion to reinforce elements of the Presidential Guard at the Prime Minister's residence. The Trial Chamber found that Sagahutu complied with this order and that an armoured vehicle was stationed between 150 and 200 metres from the residence. The Trial Chamber also credited evidence from several witnesses who heard Corporal Fiacre Afrika, a member of the Squadron A of the Reconnaissance Battalion, boast about his role in the killing of the Prime Minister. The Trial Chamber also found, in light of the well-coordinated nature of the operation, that evidence suggesting that a soldier from the *École supérieure militaire* ("ESM") killed the Prime Minister, would not absolve Nzuwonemeye or Sagahutu of their subordinates' involvement in the operation that led to her death. The Trial Chamber further found that, during the course of the operation, Nzuwonemeye and Sagahutu remained in contact with the troops on the ground, sent them supplies, and issued operational instructions. The Trial Chamber found that the Reconnaissance Battalion soldiers who participated in the killing acted on the orders and with the knowledge of Nzuwonemeye and Sagahutu given the organized nature of the attack, their role as commanders, and the fact that they remained abreast of the situation.

39. The Appeals Chamber observes that the Trial Chamber did not make express findings on the *mens rea* and *actus reus* related to Nzuwonemeye's and Sagahutu's liability for ordering the killing

or Sagahutu's responsibility for aiding and abetting the crime. This amounts to a failure to provide a reasoned opinion.

40. A review of the Trial Chamber's findings and the evidence it credited reveal that the Trial Chamber only concluded that Nzuwonemeye and Sagahutu sent Reconnaissance Battalion soldiers to the vicinity of the Prime Minister's residence to reinforce the Presidential Guard, without concluding that the purpose of this deployment at the time it was made was to kill the Prime Minister. The Trial Judgement refers to no evidence suggesting that, at the time of the deployment of Reconnaissance Battalion soldiers to the vicinity of the Prime Minister's residence, Nzuwonemeye and Sagahutu were aware of an operation to kill the Prime Minister. To the contrary, the Trial Chamber considered as a "reasonable inference" that "Nzuwonemeye may have ordered Sagahutu to reinforce the Presidential Guard soldiers at the residence of the Prime Minister in order to prevent her from reaching the radio station where she was expected to deliver a radio speech calling for calm in the country". This conclusion does not necessarily indicate that, in deploying Reconnaissance Battalion soldiers to reinforce the Presidential Guard at the Prime Minister's residence, Nzuwonemeye and Sagahutu intended that the Prime Minister be killed or were aware of the substantial likelihood that this might occur in the execution of the order.

41. In addition, the Appeals Chamber observes that none of the evidence cited by the Trial Chamber reflects that Nzuwonemeye and Sagahutu issued an order to Reconnaissance Battalion soldiers to kill the Prime Minister. The Trial Chamber's findings and the evidence it relied upon in making them are consistent with the Trial Chamber's own consideration that Reconnaissance Battalion soldiers may have been deployed for the purpose of preventing the Prime Minister from giving a radio address.

42. The Trial Chamber also failed to identify what conduct by the Reconnaissance Battalion members had a "direct and substantial effect" on the killing of the Prime Minister. In this regard, the Trial Chamber stated that Reconnaissance Battalion soldiers under Nzuwonemeye's and Sagahutu's command "participated in the attack on and killing of" the Prime Minister. The Appeals Chamber observes that the only evidence that a Reconnaissance Battalion soldier physically participated in the killing of the Prime Minister is indirect. However, the Trial Chamber did not discredit evidence that an ESM soldier shot the Prime Minister. Presented with direct evidence that a soldier from ESM shot the Prime Minister and the indirect evidence that a Reconnaissance Battalion soldier had claimed that he had done so, no reasonable trier of fact could have concluded that the Reconnaissance Battalion soldier shot the Prime Minister.

43. Moreover, the Trial Chamber's statement that certain witnesses "provided eyewitness testimony that [Reconnaissance] Battalion soldiers were involved in the attack that led to the killing

of the Prime Minister” is not reasonably supported by their testimonies. Even accepting the Prosecution evidence that Reconnaissance Battalion soldiers were posted in the vicinity of the Prime Minister’s residence, the record shows that not all Rwandan army soldiers who were in the vicinity of the Prime Minister’s residence were searching for her or contributed to her killing.

44. The Appeals Chamber concludes that the Trial Chamber failed to make sufficient findings to establish the elements necessary to establish Nzuwonemeye’s and Sagahutu’s liability for ordering the killing of the Prime Minister. Moreover, no reasonable trier of fact could have found that Reconnaissance Battalion soldiers “participated in the attack on and killing of” the Prime Minister on the basis of the trial record. The Appeals Chamber, therefore, reverses Nzuwonemeye’s and Sagahutu’s convictions for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of ordering and aiding and abetting the killing of the Prime Minister. These conclusions also invalidate the Trial Chamber’s finding that they could bear superior responsibility for the killing.

E. Killing of the Belgian Peacekeepers

45. The Trial Chamber convicted Sagahutu in relation to this event as a superior for murder as a crime against humanity and for ordering and aiding and abetting for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. In entering these convictions, the Trial Chamber concluded that Sagahutu issued an order to Corporal Nzeyimana or to Corporals Nzeyimana and Masonga from the Reconnaissance Battalion to put down the Belgian peacekeepers’ resistance and for this purpose either provided a multi-grenade launcher (“MGL”) from his office or consented to the use of this weapon. The Trial Chamber further found that Corporals Nzeyimana and Masonga actively participated in what it characterized as the second and concluding phase of the attack against the Belgian peacekeepers and that they used the MGL to fire at the peacekeepers.

46. The Appeals Chamber finds that the Trial Chamber did not err in finding that Sagahutu instructed Corporal Nzeyimana to put down the Belgian peacekeepers’ resistance and for this purpose either provided an MGL or consented to the use of this weapon, which was taken from his office. It also did not err in finding that this MGL was in fact used during the attack. The Trial Chamber, however, did err in its assessment of the evidence that Corporal Masonga was involved in the attack and that Corporal Nzeyimana in fact fired on the Belgian peacekeepers. The Appeals Chamber further concludes that the Trial Chamber did not err in finding that the MGL used in the attack contributed to the death of at least two Belgian peacekeepers.

47. With respect to Sagahutu's responsibility for ordering the killings, the Appeals Chamber is satisfied that his instruction to put down the resistance amounted to an order to kill the Belgian peacekeepers. However, there is no evidence that the person who received the order from Sagahutu to kill – Corporal Nzeyimana – personally carried out the crime. Furthermore, there is no evidence that any Belgian peacekeeper died from wounds inflicted by this weapon. There are also no findings or evidence that Sagahutu was in a position of authority *vis-à-vis* the person who fired the MGL against the UNAMIR building or the individuals who killed the last peacekeepers. Under these circumstances, the Appeals Chamber considers that no reasonable trier of fact could have concluded that Sagahutu's order to Corporal Nzeyimana had a direct and substantial effect on the killing of the Belgian peacekeepers. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in convicting Sagahutu of ordering the crimes.

48. The Appeals Chamber, however, is satisfied that the Trial Chamber findings are sufficient to establish Sagahutu's responsibility for aiding and abetting the killings. As previously noted, the evidence shows that the Trial Chamber reasonably interpreted Sagahutu's instruction to Corporal Nzeyimana as an order to kill the last of the Belgian peacekeepers and for this purpose allowed the corporal to take an MGL from his office. For purposes of aiding and abetting, it is immaterial that there is no evidence that any peacekeeper died from injuries inflicted by the MGL that Sagahutu provided. The assistance of an aider and abettor need not serve as a condition precedent for the crime. The overall reasoning in the Trial Judgement indicates that Sagahutu was held responsible because he assisted the *attack* against the Belgian peacekeepers by providing one of the weapons used and not because someone was killed with this particular weapon.

49. The Appeals Chamber also rejects Sagahutu's challenges to his superior responsibility for the role his subordinate played in assisting in the attack.

50. Accordingly, the Appeals Chamber reverses Sagahutu's conviction for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva conventions and Additional Protocol II on the basis of ordering the killing of the Belgian peacekeepers. Sagahutu's remaining convictions for these crimes based on aiding and abetting, and as a superior remain undisturbed.

III. APPEAL OF THE PROSECUTION

A. Kansi Parish and Saint André College

51. The Prosecution appeals against the Trial Chamber's conclusion that it had insufficient evidence to convict Ndindiliyimana for failing to prevent the crimes which occurred at Kansi Parish

and Saint André College. The Appeals Chamber has reversed Ndindiliyimana's convictions in relation to the events at Kansi Parish and Saint André College because the Trial Chamber erred in finding that Ndindiliyimana had effective control over the perpetrators. Accordingly, the Prosecution's submissions are dismissed as moot.

B. Centre d'étude des langues africaines

52. At trial, the Prosecution sought to hold Ndindiliyimana responsible as a superior for the actions of gendarmes in relation to the killing of Tutsi refugees removed from *Centre d'étude des langues africaines* ("CELA") on or about 22 April 1994. The Trial Chamber found that 40 civilians, the majority of whom were Tutsi, were taken from CELA to the gendarmerie's Muhima Brigade ostensibly for questioning. There, the civilians were briefly detained before being turned over to the *Interahamwe*, who took them towards Rugege where at least 10 of the civilians were killed by the *Interahamwe* at a roadblock. The Trial Chamber concluded that the gendarmes at the Muhima Brigade were complicit in the crimes against the civilians removed from CELA. However, it was not satisfied that Ndindiliyimana knew or had reason to know of the complicity of the gendarmes in the crimes dismissed this charge. The Prosecution submits that the Trial Chamber erred in failing to convict Ndindiliyimana for the crimes against the civilians removed from CELA. The Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber erred in its application of the standard for assessing Ndindiliyimana's *mens rea* in relation to the crimes or in its application of the standard of proof. Finally, the Prosecution has failed to demonstrate any error in the Trial Chamber's assessment of the evidence. Accordingly, it has not shown that the Trial Chamber erred in not convicting Ndindiliyimana of these crimes.

IV. SENTENCING

53. The Appeals Chamber will next discuss the sentencing appeal in relation to Sagahutu. The Prosecution's sentencing appeals against Ndindiliyimana and Nzuwonemeye are moot.

54. The Appeals Chamber recalls that the Trial Chamber sentenced Sagahutu to 20 years of imprisonment. Both Sagahutu and the Prosecution appealed. The Appeals Chamber is not satisfied, however, that their challenges to the Trial Chamber's consideration of the sentence demonstrate that it acted outside the scope of its sentencing discretion. The impact of the Appeals Chambers findings on Sagahutu's sentence will be noted in the disposition.

V. DISPOSITION

55. 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 7 to 10 May 2013;

SITTING in open session;

WITH RESPECT TO AUGUSTIN NDINDILYIMANA'S APPEAL

GRANTS Ndindilyimana's First, Second, and Fourth Grounds of Appeal, in part, **REVERSES** his convictions for genocide and extermination as a crime against humanity in relation to the attack on Kansi Parish on 21 April 1994, as well as his convictions for genocide and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the attack at Saint André College on 13 April 1994, and **ENTERS** a verdict of acquittal under Counts 2, 5, and 7 of the Indictment;

GRANTS Ndindilyimana's Tenth Ground of Appeal, **REVERSES** his conviction for murder as a crime against humanity, and **ENTERS** a verdict of acquittal under Count 4 of the Indictment;

DISMISSES Ndindilyimana's appeal in all other respects;

WITH RESPECT TO FRANÇOIS-XAVIER NZUWONEMEYE'S APPEAL

GRANTS Nzuwonemeye's First, Third, and Sixth Grounds of Appeal, in part, **REVERSES** his convictions for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of ordering and aiding and abetting the killing of the Prime Minister and as a superior in relation to the killing of the Belgian peacekeepers, and **ENTERS** a verdict of acquittal under Counts 4 and 7 of the Indictment;

DISMISSES Nzuwonemeye's appeal in all other respects;

WITH RESPECT TO INNOCENT SAGAHUTU'S APPEAL

GRANTS Sagahutu's Second to Fifth Grounds of Appeal, in part, and **REVERSES** his convictions for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of ordering and aiding and abetting the killing of the Prime Minister;

GRANTS Sagahutu's Eighth to Tenth Grounds of Appeal, in part, and **REVERSES** his conviction for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of ordering the killing of the Belgian peacekeepers and on the basis Corporal Masonga's participation in the attack;

DISMISSES Sagahutu's appeal in all other respects;

AFFIRMS Sagahutu's convictions for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II on the basis of aiding and abetting the killing of Belgian peacekeepers and as a superior for murder as a crime against humanity in relation to the killing of Belgian peacekeepers;

REDUCES, Judge Tuzmukhamedov dissenting, the sentence of 20 years of imprisonment imposed on Sagahutu by the Trial Chamber to 15 years of imprisonment, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 15 February 2000;

WITH RESPECT TO THE PROSECUTION'S APPEAL

DISMISSES the Prosecution's appeal as it relates to Ndindiliyimana, Nzuwonemeye, and Sagahutu;

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

ORDERS, in accordance with Rules 99(A) and 107 of the Rules, the immediate release of Nzuwonemeye, and **DIRECTS** the Registrar to make the necessary arrangements; and

ORDERS that, in accordance with Rule 103(C) and Rule 107 of the Rules, Sagahutu 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.