International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Judgement of: 12 March 2008

THE PROSECUTOR

v.

ATHANASE SEROMBA

Case No. ICTR-2001-66-A

JUDGEMENT

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Ms. Dior Fall
Ms. Amanda Reichman
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

Counsel for Athanase Seromba:

Mr. Patrice Monthé
Ms. Sarah Ngo Bihegué

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of appeals by Athanase Seromba and the Prosecution against the Judgement and Sentence rendered by Trial Chamber III of the Tribunal on 13 December 2006 in the case of *The Prosecutor v. Athanase Seromba* ("Trial Judgement").[1]

I. INTRODUCTION

A. Background

2. Athanase Seromba was born in 1963 in Rutziro Commune, Kibuye Prefecture, Rwanda.[2] In April 1994, the relevant period covered in the Indictment of 8 June 2001 ("Indictment"), he was a priest at Nyange parish, Kivumu Commune, Kibuye Prefecture.[3]

3. The Trial Chamber convicted Athanase Seromba pursuant to Article 6(1) of the Statute of the Tribunal ("Statute") for aiding and abetting genocide and crimes against humanity against Tutsi refugees who had sought refuge at Nyange parish in order to escape attacks perpetrated against the Tutsis.[4] The Trial Chamber found that Athanase Seromba held discussions with the communal authorities and accepted their decision to destroy the Nyange church, which resulted in the death of at least 1,500 Tutsi refugees.[5] The Trial Chamber found that he gave advice to a bulldozer driver and by his utterances encouraged him to destroy the church.[6] The Trial Chamber found that by his acts, Athanase Seromba aided and abetted the killing of Tutsi refugees in Nyange church.[7]

4. The Trial Chamber further determined that Athanase Seromba prohibited refugees from getting food from a banana plantation belonging to the parish and had ordered gendarmes to shoot at any refugee who ventured there.[8] It also found that he refused to celebrate mass for the Tutsi

[1] For ease of reference, two annexes are appended to this Judgement: Annex A: Procedural Background; Annex B: Cited Materials/Defined Terms.
[2] Trial Judgement, para. 6.
[3] Trial Judgement, paras. 36-38.
[4] Trial Judgement, paras. 44, 54.
[5] Trial Judgement, paras. 268, 285, 334, 364. The Appeals Chamber notes that the Trial Chamber at times referred to *more than* 1,500 Tutsi refugees (para. 334), and at times to *at least* 1,500 Tutsi refugees (para. 285). Throughout this Judgement, the Appeals Chamber will therefore refer to *approximately* 1,500 Tutsi refugees.
[6] Trial Judgement, paras. 269, 364, 365.
[7] Trial Judgement, paras. 334, 335, 337, 338.
[8] Trial Judgement, paras. 95, 323.

refugees at Nyange church[9] and expelled Tutsi employees and refugees from Nyange parish and the presbytery, some of whom were subsequently killed.[10] The Trial Chamber found that by these acts, Athanase Seromba assisted in the killing of Tutsi refugees as well as in the commission of acts causing serious bodily or mental harm.[11]

5. For these crimes, the Trial Chamber convicted Athanase Seromba of aiding and abetting the crimes of genocide (Count 1) and extermination as a crime against humanity (Count 4).[12] The Trial Chamber dismissed the alternative charge of complicity in genocide (Count 2) in light of his conviction for genocide,[13] and acquitted him of the charge of conspiracy to commit genocide (Count 3).[14] The Trial Chamber sentenced Athanase Seromba to a single sentence of fifteen years' imprisonment.[15]

B. The Appeals

6. Athanase Seromba presents ten grounds of appeal. He alleges defects in the form of the Indictment and violations of his right to a fair trial, errors in the assessment of the evidence, as well as errors relating to his convictions pursuant to Article 6(1) of the Statute, the application of Articles 2 and 3 of the Statute, and sentencing. He requests that the Appeals Chamber overturn his convictions and sentence and order his immediate release. In the alternative, he requests that his case be remitted to a differently composed Trial Chamber.[16] The Prosecution responds that all grounds of appeal raised by Athanase Seromba should be dismissed.[17]

7. The Prosecution raises three grounds of appeal challenging Athanase Seromba's acquittal for planning, ordering, and committing genocide as well as extermination as a crime against humanity, as well as his acquittal for conspiracy to commit genocide. It requests that the Appeals Chamber convict Athanase Seromba for these crimes and increase his sentence accordingly.[18] Independently of these two grounds of appeal, the Prosecution requests that the Appeals Chamber increase the sentence imposed on Athanase Seromba for aiding and abetting genocide as well as extermination as a crime against humanity to imprisonment to a term within the range of thirty

[9] Trial Judgement, paras. 107, 323.
[10] Trial Judgement, paras. 114, 201, 202, 324, 325, 332.
[11] Trial Judgement, paras. 328, 331, 332, 335, 336, 338.
[12] Trial Judgement, paras. 342, 371, 372.
[13] Trial Judgement, paras. 343, 372.
[14] Trial Judgement, paras. 351, 372.
[15] Trial Judgement, p. 104, Chapter VI (Disposition).
[16] Seromba's Notice of Appeal, p. 10; Seromba's Appellant's Brief, p. 57.
[17] Prosecution's Respondent's Brief, para. 213.
[18] Prosecution's Notice of Appeal, paras. 1-13, 20; Prosecution's Appellant's Brief, paras. 3, 4, 17-99, 154.

years to life.[19] Athanase Seromba responds that all grounds of appeal raised by the Prosecution should be dismissed.[20]

8. The Appeals Chamber heard oral submissions regarding these appeals on 26 November 2007.

[19] Prosecution's Notice of Appeal, paras. 14-19; Prosecution's Appellant's Brief, paras. 4, 100-154.
[20] Seromba's Respondent's Brief, paras. 13-132.

II. STANDARDS OF APPELLATE REVIEW

9. The Appeals Chamber recalls the applicable standards of appellate review pursuant to Article 24 of the Statute. The Appeals Chamber reviews errors of law which invalidate the decision of the Trial Chamber and errors of fact which have occasioned a miscarriage of justice.[21]

10. As regards errors of law, the Appeals Chamber has stated:

> Where a party alleges that there is an error of law, that party must advance arguments in support of the submission and explain how the error invalidates the decision. However, if the appellant's arguments do not support the contention, that party does not automatically lose its point since the Appeals Chamber may step in and, for other reasons, find in favour of the contention that there is an error of law.[22]

11. As regards errors of fact, it is well established that the Appeals Chamber will not lightly overturn findings of fact made by the Trial Chamber:

> Where the Defence alleges an erroneous finding of fact, the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.[23]

The same standard of reasonableness and the same deference to factual findings of the Trial Chamber apply when the Prosecution appeals against an acquittal. The Appeals Chamber will only hold that an error of fact was committed when it determines that no reasonable trier of fact could have made the impugned finding. However, considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a defence appeal against conviction. A convicted person must show that the Trial Chamber's factual errors create a reasonable doubt as to his guilt. The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the convicted person's guilt has been eliminated.[24]

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[21] *See Nahimana et al.* Appeal Judgement, para. 11; *Simba* Appeal Judgement, para. 8; *Blagojević and Jokić* Appeal Judgement, para. 6, fn. 14 (recalling jurisprudence under Article 25 of the ICTY Statute and under Article 24 of the Statute).

[22] *See Gacumbitsi* Appeal Judgement, para. 7, quoting *Ntakirutimana* Appeal Judgement, para. 11 (footnotes omitted). *See also Muhimana* Appeal Judgement, para. 7; *Kajelijeli* Appeal Judgement, para. 5; *Staki}* Appeal Judgement, para. 8; *Vasiljević* Appeal Judgement, para. 6.

[23] *Gacumbitsi* Appeal Judgement, para. 8, quoting *Krsti}* Appeal Judgement, para. 40 (footnotes omitted). *See also Muhimana* Appeal Judgement, para. 8; *Kajelijeli* Appeal Judgement, para. 5.

[24] *Limaj et al*. Appeal Judgement, para. 13; *Rutaganda* Appeal Judgement, para. 24; *Bagilishema* Appeal Judgement, paras. 13, 14.

12. A party cannot merely repeat on appeal arguments that did not succeed at trial, unless it can demonstrate that the Trial Chamber's rejection of those arguments constituted an error warranting the intervention of the Appeals Chamber.[25] Arguments which do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.[26]

13. In order for the Appeals Chamber to assess arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the decision or judgement to which the challenge is made.[27] Further, the Appeals Chamber cannot be expected to consider a party's submissions in detail if they are obscure, contradictory, vague, or suffer from other formal and obvious insufficiencies.[28] Finally, the Appeals Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing and will dismiss arguments which are evidently unfounded without providing detailed reasoning.[29]

[25] *Simba* Appeal Judgement, para. 10; *Muhimana* Appeal Judgement, para. 9; *Ndindabahizi* Appeal Judgement, para. 11; *Gacumbitsi* Appeal Judgement, para. 9; *Niyitegeka* Appeal Judgement, para. 9. *See also Staki}* Appeal Judgement, para. 11; *Naletili} and Martinovi}* Appeal Judgement, para. 13.
[26] *Nahimana et al.* Appeal Judgement, para. 16; *Simba* Appeal Judgement, para. 10; *Muhimana* Appeal Judgement, para. 9; *Ndindabahizi* Appeal Judgement, para. 11; *Kajelijeli* Appeal Judgement, para. 6; *Ntakirutimana* Appeal Judgement, para. 13. *See also Staki}* Appeal Judgement, para. 11; *Naletili} and Martinovi}* Appeal Judgement, para. 13.
[27] Practice Direction on Formal Requirements for Appeals from Judgement, para. 4(b). *See also Nahimana et al.* Appeal Judgement, para. 16; *Simba* Appeal Judgement, para. 11; *Muhimana* Appeal Judgement, para. 10; *Ndindabahizi* Appeal Judgement, para. 12; *Gacumbitsi* Appeal Judgement, para. 10; *Kajelijeli* Appeal Judgement, para. 7; *Staki}* Appeal Judgement, para. 12; *Vasiljevi}* Appeal Judgement, para. 11.
[28] *Nahimana et al.* Appeal Judgement, para. 16, quoting *Vasiljević* Appeal Judgement, para. 12; *Simba* Appeal Judgement, para. 11. *See also Muhimana* Appeal Judgement, para. 10; *Ndindabahizi* Appeal Judgement, para. 12; *Naletili} and Martinovi}* Appeal Judgement, para. 14; *Kajelijeli* Appeal Judgement, para. 7.
[29] *Nahimana et al.* Appeal Judgement, para. 17; *Simba* Appeal Judgement, para. 11; *Muhimana* Appeal Judgement, para. 10; *Gacumbitsi* Appeal Judgement, para. 10; *Kajelijeli* Appeal Judgement, para. 8; *Niyitegeka* Appeal Judgement, para. 11. *See also Staki}* Appeal Judgement, para. 13; *Bla{ki}* Appeal Judgement, para. 13.

III. THE APPEAL OF ATHANASE SEROMBA

14. The Appeals Chamber will now turn to the grounds of appeal, generally in the order submitted by Athanase Seromba, not necessarily in the order warranted by the seriousness of the criminal conduct as found by the Trial Chamber.

A. Alleged Violation of the Right to a Fair Trial (Ground of Appeal 1)

15. Athanase Seromba submits that his trial was unfair because the Trial Chamber ordered that should he choose to testify, he must do so before the Defence called its last remaining witness.[30] He also argues that the Trial Chamber erred in law by closing the presentation of the Defence evidence without waiting for the outcome of his appeal from a decision of the Bureau, which had denied his motion for disqualification of the Judges of the Trial Chamber.[31] According to Athanase Seromba, these decisions violated his rights under Articles 20(1) and 20(4) of the Statute to adequate time and facilities for the preparation of his defence, to equality of arms, and to the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, as well as his rights under Rule 85(A) and (C) of the Rules of Procedure and Evidence of the Tribunal ("Rules") to call witnesses and to appear as a witness in his own defence.[32]

16. The Prosecution responds that Athanase Seromba has presented no evidence of a violation of any of his rights by the Trial Chamber warranting invalidation of the Trial Judgement on appeal.[33] It claims that the Trial Chamber correctly exercised its authority, pursuant to Rule 90(F) of the Rules, in requiring Athanase Seromba to testify before another Defence witness.[34] According to the Prosecution, the provisions of Rules 48, 85, and 98 of the Rules, as interpreted in the jurisprudence of the *ad hoc* Tribunals, confirm that an accused has no absolute right to testify at the end of the Defence case.[35] The Prosecution further submits that the Trial Chamber provided Athanase Seromba with all necessary facilities for the preparation of his defence, and that it took appropriate measures in order to ensure the continuity of the trial without unnecessary delay.[36]

17. Towards the close of the Defence case, on 21 April 2006, the Trial Chamber ordered that if Athanase Seromba wished to testify, he must do so on 24 April 2006.[37] The Trial Chamber noted

[30] Seromba's Notice of Appeal, para. 8; Seromba's Appellant's Brief, paras. 8-13.
[31] Seromba's Notice of Appeal, para. 8; Seromba's Appellant's Brief, paras. 10, 14, 17.
[32] Seromba's Notice of Appeal, para. 9; Seromba's Appellant's Brief, paras. 5-7, 15-17.
[33] Prosecution's Respondent's Brief, paras. 26, 86; AT. 26 November 2007 pp. 60, 67.
[34] Prosecution's Respondent's Brief, paras. 44-51; AT. 26 November 2007 p. 59.
[35] Prosecution's Respondent's Brief, paras. 52-63; AT. 26 November 2007 p. 58.
[36] Prosecution's Respondent's Brief, paras. 64-85.
[37] T. 21 April 2006 p. 1.

that the only other remaining witness, Witness PS2, would be heard by video-link on 26 April 2006, pursuant to its Decision of 20 April 2006.[38] The Trial Chamber noted that scheduling Athanase Seromba's testimony for 24 and 25 April 2006 was necessary to ensure the completion of the trial by the previously-agreed date of 27 April 2006.[39] The Defence did not object to the Trial Chamber's ruling at that time. However, on 24 April 2006, the date on which Athanase Seromba was scheduled to testify, the Defence requested reconsideration of the Trial Chamber's order.[40] After hearing the oral arguments of both parties, the Trial Chamber denied the motion for reconsideration and further denied the Defence request for certification to appeal that decision.[41]

18. Following the Trial Chamber's rulings on Athanase Seromba's motions for reconsideration of its order of 21 April 2006 and certification for appeal, the Defence filed a motion before the Bureau for the disqualification of all three Judges of the Trial Chamber.[42] On 25 April 2006, the Bureau denied the motion.[43] On 26 April 2006, Athanase Seromba filed an appeal from that decision before the Appeals Chamber.[44] When the trial continued on 26 April 2006, with measures in place for the testimony by video-link of Witness PS2, the Defence declined to examine the witness on the ground that its appeal from the decision of the Bureau was pending before the Appeals Chamber.[45] The Trial Chamber, after hearing the parties, denied the Defence request to suspend the proceedings.[46] It subsequently requested the Registry, pursuant to Rule 54 of the Rules, to notify Athanase Seromba that he was required to be present at his trial in order to inform the Trial Chamber whether he wished to testify.[47] When Athanase Seromba chose not to appear, the Trial Chamber concluded that

> [i]n view of the fact that the Defence does not have the – does not intend to hear the Accused, the only decision that the Trial Chamber can take, is to note that the Accused refuses to appear, and as a result he is waiving his right to testify before the Trial Chamber. So we can only reach the

[38] T. 21 April 2006 p. 1. *See Décision relative à la requête de la défense aux fins de recueillir les dépositions du témoin PS2 par voie de vidéoconférence*, 20 April 2006.
[39] T. 21 April 2006 p. 1. *See* T. 18 April 2006 pp. 6-7.
[40] *Requête en extrême urgence aux fins de reconsidération de la décision du 21 Avril 2006 concernant la comparution de l'Accusé en qualité de témoin*, 24 April 2006.
[41] T. 24 April 2006 pp. 5-6.
[42] *Requête en extrême urgence aux fins de récusation des Juges Andrésia Vaz, Gustave Kam, et Karin Hökborg*, 24 April 2006 and *Acte Rectificatif de la Requête en Extrême Urgence de la Défense,* 25 April 2006.
[43] Decision on Motion for Disqualification of Judges, 26 April 2006.
[44] *Requête d'appel de la Défense contre la décision du Bureau rendu le 25 avril 2006 relative à la récusation des Juges Andrésia Vaz, Gustave Kam, et Karin Hökborg*, 26 April 2006. The Appeals Chamber dismissed this appeal on the basis that Athanase Seromba had no right of appeal against a decision of the Bureau. *See* Decision on Interlocutory Appeal of a Bureau Decision, 22 May 2006, para. 7.
[45] T. 26 April 2006 pp. 4-6.
[46] T. 26 April 2006 pp. 15-16.
[47] T. 26 April 2006 pp. 8, 16.

> conclusion that the Trial Chamber no longer has any further witnesses to hear and that the Defence case closes today, on the 27th of April 2006.[48]

1. Alleged Error relating to the Right to Appear as a Witness

19. Athanase Seromba submits that the Trial Chamber violated his right to appear as a witness in his own defence by requiring that he testify prior to the testimony of Witness PS2 if he wished to testify.[49] The Appeals Chamber notes that in the *Galić* case, the ICTY Appeals Chamber considered whether the Trial Chamber had violated Stanislav Galić's right to a fair trial by requiring him to testify prior to the appearance of expert witnesses for the Defence.[50] It held that while it had been the practice of the ICTY to allow an accused to determine when to testify, this had not created an enforceable right to choose when to testify or speak at one's own trial.[51] Rather, the ICTY Appeals Chamber concluded:

> Trial Chambers have discretion pursuant to Rule 90(F) of the Rules to determine when an accused may testify in his own defence, but this power must nevertheless be exercised with caution as it is, in principle, for both parties to structure their cases themselves, and to ensure that the rights of the accused are respected, in particular his or her right to a fair trial.[52]

The Appeals Chamber adopts this holding[53] and turns to consider whether, by requiring Athanase Seromba to testify before Witness PS2, the Trial Chamber unreasonably interfered with his right to testify, and whether, consequently, his right to a fair trial was violated.

20. In the present case, the Trial Chamber directed Athanase Seromba to testify before his last witness, if he intended to testify in his defence. The Trial Chamber considered judicial economy and the interests of justice, taking into account the technical problems which led to the scheduling of the video-link testimony of Witness PS2 on 26 April 2006 and the completion of the trial on 27 April 2006, which had been set in agreement with the parties.[54] The Trial Chamber's decision to

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[48] T. 27 April 2006 p. 4.
[49] Seromba's Appellant's Brief, paras. 7, 9-13.
[50] *Galić* Appeal Judgement, paras. 13-23.
[51] *Galić* Appeal Judgement, para. 19.
[52] *Galić* Appeal Judgement, para. 20.
[53] The Appeals Chamber is not persuaded by Athanase Seromba's suggestion that he has a right to testify last because he "is from a civil law system in which the right to testify as a last witness is regarded as a cardinal principle in criminal proceedings". Seromba's Appellant's Brief, para. 1. The Tribunal is not bound to follow the practices of any particular national jurisdiction. Moreover, as the ICTY Appeals Chamber has observed, there exists no uniform practice among national jurisdictions as to when an accused is entitled to testify. *See Galić* Appeal Judgement, para. 19.
[54] T. 24 April 2006 p. 6:

> The Trial Chamber, out of concern for an efficient management of the trial, and in the interest of justice, having taken into account technical problems connected with the hearing of the last Defence witness, PS2, scheduled for next Wednesday, merely reverted -- or varied, sorry, the sequence of appearance of the said witness in order to comply with the date set for the closing of the Defence case, which is scheduled for the 27th of April 2006, jointly agreed upon by the parties and the Trial Chamber – or, and the Bench.

call Athanase Seromba to testify before Witness PS2 was a reasonable measure taken to avoid unnecessary delays in the proceedings while accommodating his late request that Witness PS2 be allowed to testify by video-link from South Africa. In addition, the Trial Chamber stated that it would allow Athanase Seromba to take the stand a second time after the testimony of Witness PS2 to give him an opportunity to respond to evidence of Witness PS2.[55] However, Athanase Seromba refused to testify and his counsel refused to examine Witness PS2 on the scheduled dates.[56] Nevertheless, the Trial Chamber informed the Defence that it was willing to give Athanase Seromba an opportunity to testify up until the time of the parties' closing arguments.[57] Athanase Seromba was also permitted to address the Trial Chamber following the closing arguments of the Defence.[58] In these circumstances, the Appeals Chamber is not satisfied that the conditions that the Trial Chamber placed on the Defence unreasonably interfered with Athanase Seromba's right to testify and violated his right to a fair trial.

2. Alleged Errors relating to the Trial Chamber's Refusal to Suspend Proceedings and its Declaration that the Defence Case was Closed

21. Athanase Seromba submits that, as a result of the Trial Chamber's refusal to suspend the trial proceedings, "the fairness of the trial was irreparably affected to the detriment of the Appellant because he could not properly rest his case, and that he was compelled by the Chamber to rest his case so that it could hear the Prosecutor's Closing Brief and the Defence Closing arguments."[59] While neither the Statute nor the Rules provide for the suspension of a trial while a motion for disqualification is being considered, an accused may request a suspension of proceedings while a motion for disqualification is pending.[60] The Trial Chamber's decision on whether or not to suspend a trial while a motion for disqualification is pending is a discretionary one.[61] The Appeals Chamber will reverse such a decision only upon a showing of abuse of discretion resulting in prejudice.[62] Athanase Seromba has failed to show such abuse of discretion by the Trial Chamber.

22. In the present case, Athanase Seromba sought a suspension of the proceedings after his motion for disqualification had been finally decided by the Bureau. As the Appeals Chamber later held, Athanase Seromba had no right to appeal from a decision taken by the Bureau pursuant to

[55] T. 24 April 2006 p. 6.
[56] T. 26 April 2006 pp. 4-6, 10-15; T. 27 April 2006 p. 4.
[57] T. 26 April 2006 p. 16.
[58] T. 28 June 2006 pp. 35-36.
[59] Seromba's Appellant's Brief, para. 14.
[60] *See Galić* Appeal Judgement, para. 33.
[61] *See Galić* Appeal Judgement, para. 33.
[62] *Gacumbitsi* Appeal Judgement, para. 19, referring to *Semanza* Appeal Judgement, para. 73.

Rule 15(B) of the Rules, and his appeal was therefore inadmissible.[63] The Appeals Chamber is satisfied that the Trial Chamber acted well within its discretion in refusing to suspend the proceedings, pending Athanase Seromba's improperly filed appeal. Accordingly, the Appeals Chamber finds no error in the Trial Chamber's decision to declare the Defence case closed after the Defence refused to proceed with its scheduled examination of Witness PS2 and after Athanase Seromba refused to appear before the Trial Chamber in person to state whether he wished to testify.

3. Conclusion

23. For the foregoing reasons, this ground of appeal is dismissed in its entirety.

[63] Decision on Interlocutory Appeal of a Bureau Decision, 22 May 2006, para. 7.

B. Alleged Errors relating to Defects in the Indictment (Ground of Appeal 2)

24. Athanase Seromba submits that sixteen of the fifty paragraphs in the Indictment contained allegations of a general nature and argues that it is "incomprehensible and inadmissible" that the Trial Chamber delivered its judgement on the basis of this Indictment.[64] He asserts that since the "core and substance" of the Indictment contained allegations of a general nature, it did not enable him to make a full answer and defence.[65] Athanase Seromba claims that the Trial Chamber committed errors of law and fact by failing to find the Indictment defective and by proceeding to issue its judgement on the basis thereof.[66]

25. Athanase Seromba submits that paragraphs 5, 6, 7, 8, 11, 14, 15, 16, 17, 18, 24, 32, 33, 34, 35, 45, and 50 of the Indictment were defective.[67] He recalls that the Trial Chamber found the allegations in paragraphs 5, 18, 24, 32, 33, 34, 35, 45, and 50 of the Indictment to be of a general nature and did not consider them in its factual findings.[68] However, he argues, the Trial Chamber erred by not finding paragraphs 7, 8, 11, 14, 15, 16, and 17 of the Indictment defective because, as he had argued in his final trial brief, these paragraphs were vague and imprecise.[69]

26. In response, the Prosecution submits that this ground of appeal should be summarily dismissed.[70] It argues that Athanase Seromba alleged defects in his Indictment for the first time in his final trial brief,[71] and that he had not objected to the alleged lack of notice when evidence of the relevant material facts was being tendered, or at any stage during the trial.[72] The Prosecution contends that Athanase Seromba did not provide a reasonable explanation, either in his final trial brief or in his Appellant's Brief, for his failure to raise these alleged defects at the time the evidence was introduced or as soon as possible thereafter.[73] The Prosecution further contends that Athanase Seromba does not identify any defects in the Indictment on appeal, nor make any arguments with regard to any prejudice he might have suffered in the presentation of his defence, due to the alleged lack of notice.[74]

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[64] Seromba's Appellant's Brief, para. 35.
[65] Seromba's Appellant's Brief, para. 35.
[66] Seromba's Appellant's Brief, para. 52.
[67] Seromba's Appellant's Brief, paras. 32, 33, 52. Athanase Seromba tenders no argument in relation to his assertion that paragraph 6 of the Indictment is defective.
[68] Seromba's Appellant's Brief, para. 33.
[69] Seromba's Appellant's Brief, para. 32.
[70] Prosecution's Respondent's Brief, para. 91.
[71] Prosecution's Respondent's Brief, para. 88.
[72] Prosecution's Respondent's Brief, para. 90.
[73] Prosecution's Respondent's Brief, para. 90.
[74] Prosecution's Respondent's Brief, para. 88.

27. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in the indictment so as to provide notice to the accused.[75] Criminal acts that were physically committed personally by the accused must be specifically set forth in the indictment, including where feasible "the identity of the victim, the time and place of the events and the means by which the acts were committed."[76] Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[77] The Appeals Chamber has held that an indictment must be considered as a whole.[78] Where an indictment contains some allegations of a general nature, this alone does not render it defective. Other allegations in the indictment may sufficiently plead the material facts underpinning the charges in the indictment.

28. In the present case, the Trial Chamber found that paragraphs 1, 5, 18, 24, 32, 33, 34, 35, 45, and 50 of the Indictment were of a general nature and did not take them into account when making its factual findings.[79] Athanase Seromba however argues that paragraphs 7, 8, 11, 14, 15, 16, and 17 of the Indictment were also defective. The Appeals Chamber notes that the Trial Chamber took into consideration Athanase Seromba's submissions in relation to the alleged defects in the Indictment and concluded as follows:

> [T]he arguments raised by the Defence do not permit the conclusion that the Indictment contains defects that might have warranted an amendment. The Chamber therefore dismisses the Defence allegations that the Indictment is defective and accordingly, finds that there are no grounds for reopening the hearing.[80]

The Trial Chamber further concluded, with regard to paragraphs 7, 8, 11, 14, 15, 16, and 17 of the Indictment, that the issues raised by Athanase Seromba regarding the allegations in these paragraphs were "unfounded"[81] and that the "material facts are set forth both in the Indictment and in the Prosecutor's pre-trial brief which was disclosed to the Defence in a timely manner".[82]

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[75] *Simba* Appeal Judgement, para. 63, referring to *Muhimana* Appeal Judgement, paras. 76, 167, 195. *See also Gacumbitsi* Appeal Judgement, para. 49; *Ndindabahizi* Appeal Judgement, para. 16.
[76] *Muhimana* Appeal Judgement, para. 76; *Gacumbitsi* Appeal Judgement, para. 49; *Ntakirutimana* Appeal Judgement, para. 32, quoting *Kupreški} et al*. Appeal Judgement, para. 89. *See also Ndindabahizi* Appeal Judgement, para. 16.
[77] *Ntagerura et al.* Appeal Judgement, para. 25.
[78] *Gacumbitsi* Appeal Judgement, para. 123.
[79] Trial Judgement, paras. 29-35.
[80] Trial Judgement, para. 23.
[81] Trial Judgement, para. 22.
[82] Trial Judgement, para. 22.

29. The Appeals Chamber considers that an appellant who submits that he was not able to answer the charges against him because of a defective indictment bears the burden of showing that the indictment did not sufficiently plead the charges against him, or the material facts underlying the charges, and that the Trial Chamber erroneously found otherwise. Under this ground of appeal, Athanase Seromba has not tendered any specific argument to show an error in the Trial Chamber's finding that paragraphs 7, 8, 11, 14, 15, 16, and 17 of the Indictment were not defective. Moreover, he has not specified how the alleged defects in the Indictment hindered the preparation of his case and the presentation of his defence. In view of the foregoing, the Appeals Chamber finds that Athanase Seromba has not demonstrated that, due to a defect in the Indictment, he lacked notice of any charge or material fact that formed the basis of his conviction.

30. Accordingly, this ground of appeal is dismissed.

C. Alleged Errors relating to the Conviction for Genocide (Ground of Appeal 8)

31. The Trial Chamber found that by his words and actions on 12, 14, 15, and 16 April 1994, Athanase Seromba aided and abetted the commission of killings and in causing serious bodily and mental harm to the Tutsis who had sought refuge in Nyange church during the events covered in the Indictment.[83] Having found that the victims of the crimes in question were Tutsis and thus members of a protected group under Article 2(2) of the Statute,[84] that the attackers committed the crimes against them on ethnic grounds and with the intent to destroy them as an ethnic group,[85] and that Athanase Seromba could not have been unaware of the intent of the attackers to commit acts of genocide against the Tutsi refugees in Nyange parish,[86] the Trial Chamber concluded that the Prosecution had proven that Athanase Seromba aided and abetted the crime of genocide.[87]

1. Arguments relating to the Applicable Law

(a) Arguments relating to the Mode of Participation in the Crimes

32. Under the present ground of appeal, Athanase Seromba first sets out his understanding of the "applicable law" regarding criminal responsibility under Article 6(1) of the Statute. In particular, he details his conception of the "five forms of participation" envisaged under Article 6(1) of the Statute and refers to the jurisprudence of the two *ad hoc* Tribunals, which, in his view, confirms his interpretation of the law.[88] Based on this, he submits that the Trial Chamber should have first considered whether the Prosecution had provided proof of the commission of any crime, before assessing his criminal responsibility and participation in these crimes.[89] He argues further that the Trial Chamber should have determined whether the perpetrators of the crimes had the intent to destroy the Tutsi population.[90]

33. The Prosecution responds that, even if Athanase Seromba correctly set out the modes of liability and elements of the crimes for which he was convicted, he does not base his contention that the Trial Chamber erred in its findings on any one of these elements or modes of liability.[91]

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[83] Trial Judgement, paras. 322, 326-328, 331, 335, 338.
[84] Trial Judgement, para. 339.
[85] Trial Judgement, para. 340.
[86] Trial Judgement, para. 341.
[87] Trial Judgement, para. 342.
[88] Seromba's Appellant's Brief, paras. 217-225.
[89] Seromba's Appellant's Brief, paras. 220, 221.
[90] Seromba's Appellant's Brief, para. 224.
[91] Prosecution's Respondent's Brief, para. 188.

34. The Appeals Chamber notes that, in its legal analysis, the Trial Chamber first outlined the applicable law underlying the forms of participation for the crimes charged in the Indictment. It then entered general findings on the criminal responsibility of Athanase Seromba for the crimes charged.[92] In so doing, the Trial Chamber specifically based its general findings on its factual findings. The Trial Chamber limited Athanase Seromba's alleged criminal responsibility to his participation by aiding and abetting the crimes for which he may be convicted, finding that the Prosecution had not proven beyond reasonable doubt that any other form of participation could apply.[93]

35. With regard to Athanase Seromba's assertion that, before assessing his "responsibility for the commission of any crimes, the Trial Chamber should have first considered whether the Prosecution had provided proof of such crimes",[94] the Appeals Chamber notes that the Trial Chamber did not limit its assessment of Athanase Seromba's criminal responsibility to the general legal findings in paragraphs 311 and 312 of the Trial Judgement. Rather, when assessing each of the crimes charged in the Indictment, the Trial Chamber made explicit findings on Athanase Seromba's participation therein,[95] assessing his criminal responsibility only with regard to those alleged crimes it had found to have been proven beyond reasonable doubt by the Prosecution.[96]

36. The Appeals Chamber considers that the approach to be taken by a Trial Chamber will depend largely on the circumstances of the case. In the present case, Athanase Seromba has failed to show how the structure of the Trial Judgement, and, in particular, the Trial Chamber's general approach regarding the application of the law on criminal responsibility, could constitute an error capable of invalidating the Trial Judgement.

37. With regard to Athanase Seromba's further submission that "the [Trial] Chamber should have determined whether the perpetrators of these crimes had the same intent to destroy the Tutsi population",[97] the Appeals Chamber notes that Athanase Seromba has failed to indicate in any way how the Trial Chamber erred in its corresponding analysis. In particular, the Appeals Chamber considers that the Trial Chamber indeed focused on the necessary intent of the principal perpetrators. Specifically, the Trial Chamber considered that "it is beyond dispute that during the

[92] Trial Judgement, paras. 301-313.
[93] Trial Judgement, paras. 311, 312.
[94] Seromba's Appellant's Brief, para. 220.
[95] S*ee*, in particular, Trial Judgement, para. 322.
[96] *See*, in particular, Trial Judgement, para. 340, where the Trial Chamber considered that it was beyond dispute that during the events of April 1994 in Nyange church, the attackers and other *Interahamwe* militiamen murdered and caused serious bodily or mental harm to the Tutsi refugees with the intent to destroy them in whole or in part as an ethnic group.
[97] Seromba's Appellant's Brief, para. 224.

events of April 1994 in Nyange church, the attackers and other *Interahamwe* militiamen committed murders of Tutsi refugees in Nyange church and caused serious bodily or mental harm to them on ethnic grounds, *with the intent to destroy them, in whole or in part, as an ethnic group*".[98] Accordingly, the allegations of Athanase Seromba in this regard are without merit.

38. The Appeals Chamber therefore finds that Athanase Seromba has failed to show any error by the Trial Chamber in its approach regarding the general application of the law on the mode of participation, which could invalidate the Trial Judgement.

(b) Arguments relating to Genocide

39. In his submissions, Athanase Seromba sets out his understanding of the applicable law regarding the crime of genocide, providing a definition for the crime which, in his view, is confirmed by the jurisprudence of the Tribunal and specifying its constituent elements, *actus reus* and *mens rea*.[99] The Prosecution responds that this submission largely consists of a basic restatement of the law and, as such, fails to raise any legal or factual issue that might cause the reversal of his convictions.[100]

40. The Appeals Chamber considers that, under this ground of appeal, Athanase Seromba has failed to specify any error allegedly committed by the Trial Chamber in its analysis of the relevant legal provisions. In this context, the Appeals Chamber recalls that, on appeal, parties must limit their arguments to alleged errors of law that could invalidate the decision of the Trial Chamber and to alleged errors of fact that could result in a miscarriage of justice. These criteria are set forth in Article 24 of the Statute and are well established by the Appeals Chambers of the Tribunal and that of the ICTY.[101] The Appeals Chamber will therefore only address those issues in Athanase Seromba's appeal which raise specific challenges to the Trial Judgement that could potentially invalidate the decision of the Trial Chamber.

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[98] Trial Judgement, para. 340 (emphasis added).
[99] Seromba's Appellant's Brief, paras. 226-254.
[100] Prosecution's Respondent's Brief, paras. 183, 188.
[101] *Simba* Appeal Judgement, para. 8; *Ndindabahizi* Appeal Judgement, paras. 8-10; *Ntagerura et al.* Appeal Judgement, paras. 11, 12; *Gacumbitsi* Appeal Judgement, paras. 6-8; *Kajelijeli* Appeal Judgement, para. 5; *Semanza* Appeal Judgement, paras. 7, 8; *Musema* Appeal Judgement, para. 15; *Kayishema and Ruzindana* Appeal Judgement, para. 177; *Akayesu* Appeal Judgement, paras. 178, 179. For jurisprudence under Article 25 of the ICTY Statute, *see Blagojević and Jokić* Appeal Judgement, para. 6; *Brđanin* Appeal Judgement, para. 8; *Gali}* Appeal Judgement, para. 6; *Blagoje Simi}* Appeal Judgement, para. 7; *Staki}* Appeal Judgement, para. 7; *Kvo~ka et al.* Appeal Judgement, para. 14; *Vasiljevi}* Appeal Judgement, para. 5; *see also Kunarac et al.* Appeal Judgement, paras. 35-48; *Kupre{ki} et al.* Appeal Judgement, paras. 21-41; *^elebi}i* Appeal Judgement, paras. 434, 435; *Furund`ija* Appeal Judgement, paras. 34-40.

2. Alleged Errors regarding the Criminal Responsibility for Genocide

(a) Alleged Errors regarding the Causing of Serious Bodily or Mental Harm

41. Athanase Seromba submits that the Trial Chamber erred when making the "specious assertion" that his alleged prohibition of the Tutsi refugees seeking food in the banana plantation of the parish and his alleged order to gendarmes to shoot at refugees who were found there; his alleged refusal to celebrate mass for Tutsi refugees at Nyange church; and his alleged decision to expel the Tutsi employees from the parish, contributed towards the perpetration of acts causing serious bodily or mental harm to the Tutsi refugees in Nyange church.[102] He broadly claims that this finding by the Trial Chamber "does not stand up to scrutiny and is not justified in the instant case" and refers generally to his previous submissions in this respect.[103]

42. In this regard, under this ground of appeal, Athanase Seromba submits that the Trial Chamber's finding that his "alleged refusal [to celebrate mass for the refugees] was an element of genocide, which is a new criterion for the characterization of genocide, is not based on rigorous, logical and coherent legal reasoning that a reasonable trier of fact would reach".[104] He also submits that the Trial Chamber failed to state the legal consequence of his refusal to celebrate mass for the refugees in relation to his individual criminal responsibility within the meaning of Article 6(1) of the Statute.[105]

43. The Prosecution responds that the Trial Chamber established that Athanase Seromba "carried out acts which specifically assisted, encouraged, and even lent moral support to the attackers and their leaders".[106] The Prosecution stresses that the relevant factual findings support the determination that Athanase Seromba "at the very least" aided and abetted the commission of genocide.[107]

44. The Appeals Chamber first recalls that the Trial Chamber found that Athanase Seromba could incur criminal responsibility only for his participation by *aiding and abetting* the crime of genocide and did not find him guilty of planning, instigating, ordering, or committing the crime of genocide.[108] The Appeals Chamber recalls that, to establish the *actus reus* of aiding and abetting

[102] Seromba's Appellant's Brief, paras. 255, 258, 259.
[103] Seromba's Appellant's Brief, para. 259.
[104] Seromba's Appellant's Brief, para. 95.
[105] Seromba's Appellant's Brief, para. 99.
[106] Prosecution's Respondent's Brief, para. 194, referring to Trial Judgement, paras. 326, 328, 334, 335, and to *Vasiljevi}* Appeal Judgement, para. 102.
[107] Prosecution's Respondent's Brief, para. 195.
[108] Trial Judgement, paras. 311, 312, 322.

under Article 6(1) of the Statute, it must be proven that the alleged aider and abettor committed acts specifically aimed at assisting, encouraging, or lending moral support for the perpetration of a specific crime, and that this support had a substantial effect on the perpetration of the crime.[109]

45. In light of the foregoing, the Appeals Chamber considers that the issue at stake is not whether the Trial Chamber erred in finding that Athanase Seromba's refusal to celebrate mass for the Tutsi refugees,[110] either alone or in combination with his order prohibiting refugees from getting food at the banana plantation and his decision to expel Tutsi employees and Tutsi refugees "was an element of genocide",[111] nor whether these acts constituted the necessary *actus reus* for the crime of genocide. Rather, the Appeals Chamber must assess whether the Trial Chamber correctly established the *actus reus* of the principal perpetrators for causing serious bodily or mental harm to the Tutsi refugees in Nyange church such as to amount to genocide and whether the Trial Chamber, when assessing Athanase Seromba's criminal responsibility, erred in finding that his acts constituted the *actus reus* for aiding and abetting the perpetration of this crime.[112]

46. The Appeals Chamber recalls that "serious bodily or mental harm" is not defined in the Statute,[113] and that the Appeals Chamber has not squarely addressed the definition of such harm. The quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs.[114] Relatedly, serious mental harm includes "more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat".[115] Indeed, nearly all convictions for

[109] *Nahimana et al.* Appeal Judgement, para. 482; *Ntagerura et al.* Appeal Judgement, para. 370; *Ntakirutimana* Appeal Judgement, para. 530. *See also Blagojevi} and Jokić* Appeal Judgement, para. 127; *Vasiljević* Appeal Judgement, para. 102; *Bla{kić* Appeal Judgement, para. 45.

[110] As specifically claimed in Seromba's Appellant's Brief, para. 95. However, the Appeals Chamber notes that, contrary to these submissions, the Trial Chamber did not find that his refusal to celebrate mass for the Tutsi refugees *alone* contributed to the commission of acts causing serious mental harm. Rather, it found that his "line of conduct", which comprised of his "order prohibiting refugees from getting food from the banana plantation, his refusal to celebrate mass in Nyange church, and his decision to expel employees and Tutsi refugees from the parish and the presbytery facilitated the perpetration of acts causing serious mental harm to the Tutsi refugees in Nyange church" (Trial Judgement, para. 326).

[111] Seromba's Appellant's Brief, para. 95.

[112] A similar approach was taken by the ICTY Appeals Chamber in the *Krsti}* Appeal Judgement, paragraphs 135ff, where the Appeals Chamber assessed the issue of the level of Radislav Krstić's criminal responsibility "in the circumstances as properly established", *i.e.* after having established that genocide had been committed by the Bosnian Serb forces who had sought to eliminate a part of the Bosnian Muslims in Srebrenica, a conclusion based on the killings of Muslim men of military age (*see*, in particular, *Krsti}* Appeal Judgement, para. 37).

[113] *Semanza* Trial Judgement, para. 320.

[114] *Semanza* Trial Judgement, para. 320, referring to *Kayishema and Ruzindana* Trial Judgement, para. 109; *Ntagerura et al.* Trial Judgement, para. 664.

[115] *Kajelijeli* Trial Judgement, para. 815, referring to *Kayishema and Ruzindana* Trial Judgement, para. 110; *Semanza* Trial Judgement, para. 321.

the causing of serious bodily or mental harm involve rapes or killings.[116] To support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.[117]

47. The Appeals Chamber notes that the Trial Chamber did not clearly differentiate the *actus reus* of the underlying crime and the *actus reus* for aiding and abetting that crime. The Trial Chamber suggested that "[Athanase] Seromba's refusal to allow the refugees to get food from the banana plantation substantially contributed to their physical weakening"[118] and that "[Athanase] Seromba's order prohibiting refugees from getting food from the banana plantation, his refusal to celebrate mass in Nyange church, and his decision to expel employees and Tutsi refugees" facilitated their "living in a constant state of anxiety".[119] Beyond these vague statements, the only other reference in the Trial Judgement to the underlying acts that caused serious bodily or mental harm is the conclusory statement that "it is beyond dispute that during the events of April 1994 in Nyange church, the attackers and other *Interahamwe* militiamen [...] caused serious bodily or mental harm to [the Tutsi refugees] on ethnic grounds, with the intent to destroy them, in whole or in part, as an ethnic group."[120]

48. The Trial Chamber failed to define the underlying crime to which Athanase Seromba's actions supposedly contributed. It also had a duty to marshal evidence regarding the existence of the underlying crime that caused serious bodily or mental harm, and its parsimonious statements fail to do so. In the absence of such evidence, the Appeals Chamber cannot equate nebulous invocations of "weakening" and "anxiety" with the heinous crimes that obviously constitute serious bodily or mental harm, such as rape and torture.

49. The Appeals Chamber finds that the Trial Chamber failed to establish with sufficient precision the crime of "causing serious bodily or mental harm"; therefore, Athanase Seromba's conviction for aiding and abetting such a crime cannot stand. Accordingly, the Appeals Chamber

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[116] *See, e.g., Muhimana* Trial Judgement, paras. 512, 513, 519; *Gacumbitsi* Trial Judgement, paras. 292, 293; *Ntakirutimana* Trial Judgement, paras. 788-790; *Musema* Trial Judgement, paras. 889, 890.
[117] *Kajelijeli* Trial Judgement, para. 184; *Krajišnik* Trial Judgement, para. 862; Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996). In relation to crimes against humanity, a Trial Chamber has refused to find that the removal of a church roof, which deprived Tutsis of an effective hiding place from those who sought to kill them, constituted the causing of serious bodily or mental harm because "the Chamber [was] not satisfied that this act amount[ed] to an act of similar seriousness to other enumerated acts in the Article". *Ntakirutimana* Trial Judgement, para. 855.
[118] Trial Judgement, para. 327.
[119] Trial Judgement, para. 326.
[120] Trial Judgement, para. 340.

grants this sub-ground of appeal and reverses the finding of the Trial Chamber that Athanase Seromba aided and abetted the causing of serious bodily or mental harm.

(b) Alleged Errors regarding the Killing of Members of the Tutsi Group

50. Athanase Seromba submits that the Trial Chamber erred in relying on the following impugned findings in order to conclude that he committed the *actus reus* of aiding and abetting the commission of killing of Tutsi refugees:[121] that he had expelled Tutsi employees and refugees from Nyange parish;[122] that he had accepted the decision to destroy the church; that he had encouraged the bulldozer driver to destroy the church; and that he had personally provided information to the bulldozer driver concerning the fragile side of the church building.[123] Athanase Seromba claims, in particular, that the Trial Chamber failed to explain how he could have known about the fragile side of the church building, as he had not been there when the church was built, nor was he an architect or a builder.[124]

51. Athanase Seromba further submits that the Trial Chamber erred in law by failing to establish that he had the requisite *dolus specialis* for genocide.[125] He claims that, for genocide to occur, the relevant *mens rea* must exist prior to the commission of the crimes, but that the Trial Chamber never established that he conceived the necessary "plan" before the arrival of the Tutsi refugees at the church.[126] He also contends that the Trial Chamber's conclusion that he had the requisite *mens rea* with regard to aiding and abetting the killing of refugees at Nyange church[127] was erroneously based on "preconceived reasoning".[128]

52. The Prosecution responds that Athanase Seromba appears to have conflated the mental element of aiding and abetting genocide, with that of committing or ordering genocide, which requires *dolus specialis*.[129] According to the Prosecution, an aider and abettor need not share the principal's criminal intent.[130] The Prosecution further submits that, irrespective of whether

[121] Seromba's Appellant's Brief, paras. 264, 265, quoting Trial Judgement, para. 335; AT. 26 November 2007 pp. 50-54. *See also* AT. 26 November 2007 pp. 18, 21-23, 31-33 (related arguments made in response to the Prosecution appeal).
[122] Seromba's Appellant's Brief, para. 262.
[123] Seromba's Appellant's Brief, para. 263, quoting Trial Judgement, para. 334.
[124] Seromba's Appellant's Brief, para. 265. *See also* AT. 26 November 2007 pp. 25-26 (related arguments made in response to the Prosecution appeal). The Appeals Chamber notes that as far as Athanase Seromba seems to dispute the factual findings underlying the Trial Chamber's impugned conclusions, the Appeals Chamber has considered and dismissed his allegations regarding factual errors presented in connection with his Grounds of Appeal 6 and 7.
[125] Seromba's Appellant's Brief, para. 260.
[126] Seromba's Appellant's Brief, para. 261.
[127] Trial Judgement, para. 338.
[128] Seromba's Appellant's Brief, para. 268.
[129] Prosecution's Respondent's Brief, para. 191.
[130] Prosecution's Respondent's Brief, para. 192.

Athanase Seromba *correctly* indicated the weak side of the church, the fact that he indicated to the bulldozer driver a place to start the demolition is probative of his *mens rea* and his participation in relation to the destruction of the church.[131]

(i) *Actus Reus*

53. In its legal analysis regarding Athanase Seromba's substantial contribution to the destruction of Nyange church, the Trial Chamber found that Athanase Seromba made comments to the bulldozer driver, which encouraged him to destroy the church. Relying on its prior factual findings, it also found that Athanase Seromba pointed to the fragile side of the church building.[132] It is apparent from these factual findings that the Trial Chamber wished to emphasize the *encouragement* to destroy the church that Athanase Seromba gave to the bulldozer driver by his comments.[133]

54. That the Trial Chamber did not base its conclusion on Athanase Seromba's knowledge of the specific strength of the church building is clear from the context of this finding, based in large part on the testimony of Witness CDL.[134] Witness CDL explained that the bulldozer driver started the destruction of the church "from the side at which the church tower was located";[135] "[t]hey were trying to destroy the church from one side, and they saw that it was difficult, and Father Seromba advised the bulldozer's driver to go start from the side of the sacristy".[136] Witness CDL's statement that Athanase Seromba "was showing the fragile or weak part that one needed to start in order to kill the Tutsis",[137] when read in the context of the relevant parts of his testimony concerning the destruction of the church, shows that the importance of Athanase Seromba's comments was the encouragement given to the bulldozer driver to continue the destruction of the church by starting on the side of the sacristy, rather than a precise indication of which side of the building was the weakest.

55. The Appeals Chamber therefore finds that it was not unreasonable for the Trial Chamber to base its finding on Athanase Seromba's substantial contribution to the destruction of the church on his statement regarding the weak side of the church building, without assessing his specific knowledge of the structure of the building. Accordingly, the Appeals Chamber rejects Athanase

[131] Prosecution's Respondent's Brief, paras. 203, 204.
[132] Trial Judgement, para. 334 and fn. 663.
[133] *See* Trial Judgement, para. 269. *See also* Trial Judgement, paras. 218, 239.
[134] Trial Judgement, para. 218, referring to T. 19 January 2005 pp. 28, 29, and Trial Judgement, para. 239, where the Trial Chamber found Witness CDL credible with regard to the information Seromba gave to the bulldozer driver.
[135] T. 19 January 2005 p. 23.
[136] T. 19 January 2005 p. 25.
[137] T. 19 January 2005 p. 26.

Seromba's contention to the contrary. Whether the Trial Chamber correctly characterized Athanase Seromba's acts as aiding and abetting will be addressed in greater detail in the context of the Prosecution's appeal.

(ii) *Mens Rea*

56. The Appeals Chamber recalls that the Trial Chamber found Athanase Seromba guilty for his participation by *aiding and abetting*.[138] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[139] In particular, as correctly outlined by the Trial Chamber,[140] in cases of crimes requiring specific intent, such as genocide, it is not necessary to prove that the aider and abettor shared the *mens rea* of the principal, but that he must have known of the principal perpetrator's specific intent.[141]

57. The Appeals Chamber considers Athanase Seromba's argument regarding the alleged failure of the Trial Chamber to establish that he had "conceived the above-mentioned plan before the arrival of the Tutsi at the church"[142] to be without merit. First, as detailed above, there is no requirement of a "plan" in order to establish an intent to aid and abet genocide. Second, the Appeals Chamber does not consider that the Prosecution was required to establish that Athanase Seromba had the requisite *mens rea* to aid and abet genocide prior to the arrival of the Tutsi refugees at the church. Rather, only at the time that he provided support to the principal perpetrators through his acts found to have formed the *actus reus* in question, must he have known the specific intent of the perpetrators.[143]

58. The Appeals Chamber therefore finds that Athanase Seromba has failed to show any error in the Trial Chamber's analysis of the required mental element when finding that he had the requisite *mens rea* for aiding and abetting genocide.

59. With regard to Athanase Seromba's submissions relating to the Trial Chamber's findings on his *mens rea* for aiding and abetting the killing of refugees in Nyange church, the Appeals Chamber

[138] Trial Judgement, paras. 311, 322, 342, 366.
[139] *Nahimana et al.* Appeal Judgement, para. 482; *Ntagerura et al.* Appeal Judgement, para. 370; *Blagojevi} and Jokić* Appeal Judgement, para. 127; *Blagoje Simi}* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaški}* Appeal Judgement, para. 46.
[140] Trial Judgement, para. 309, referring, *inter alia*, to *Ntakirutimana* Appeal Judgement, paras. 500-502; *Krsti}* Appeal Judgement, paras. 134-140; *Krnojelac* Appeal Judgement, para. 52.
[141] *Ntakirutimana* Appeal Judgement, paras. 500, 501; *Blagojevi} and Jokić* Appeal Judgement, para. 127; *Blagoje Simi}* Appeal Judgement, para. 86; *Krsti}* Appeal Judgment, para. 140; *Krnojelac* Appeal Judgement, paras. 51, 52.
[142] Seromba's Appellant's Brief, para. 261.

considers that Athanase Seromba, by simply stating that "such preconceived reasoning […] has already been demolished in the Defence's previous submissions on the issue",[144] has failed to submit any argument capable of invalidating the Trial Chamber's decision in this regard. Athanase Seromba's submissions regarding his lack of *mens rea* for aiding and abetting the murders of refugees at the Nyange church are therefore without merit and will not be addressed further by the Appeals Chamber.

(c) Alleged Errors related to the Constitutive Elements of Genocide

60. Athanase Seromba submits that the Trial Chamber's findings that he aided and abetted the commission of genocide were based on mere speculation, considering that neither the Prosecution nor the Trial Chamber has set out his responsibility towards his parishioners.[145] He submits further that the Trial Chamber erred in finding that he could not have been unaware of the intention of the attackers, while no legal ties between him and the attackers had been established.[146] He concludes that no reasonable trier of fact could have found him guilty of genocide by aiding and abetting and that the Appeals Chamber should reverse his conviction.[147]

61. The Prosecution responds that, should Athanase Seromba's arguments relate to his responsibility as a superior, they must fail, as he was only charged and convicted pursuant to Article 6(1) of the Statute.[148] The Prosecution argues further that his claim should be summarily dismissed, as he has failed to explain why the Trial Chamber's finding is improper in law or in fact, only claiming, without substantiation, that the conclusion is based on erroneous findings of fact.[149]

62. The Appeals Chamber notes that it is unclear whether Athanase Seromba, when claiming that both the Trial Chamber and the Prosecution failed to "spell […] out [his] responsibility towards his parishioners",[150] refers to his criminal responsibility as a superior for the behaviour of his

[143] *Ntakirutimana* Appeal Judgement, paras. 500, 501; *Blagojevi} and Jokić* Appeal Judgement, para. 127; *Blagoje Simi}* Appeal Judgement, para. 86; *Krsti}* Appeal Judgment, para. 140; *Krnojelac* Appeal Judgement, paras. 51, 52.
[144] Seromba's Appellant's Brief, para. 268.
[145] Seromba's Appellant's Brief, paras. 269, 270, quoting Trial Judgement, paras. 341, 342.
[146] Seromba's Appellant's Brief, para. 270.
[147] Seromba's Appellant's Brief, para. 271. The Appeals Chamber notes further that, as far as Athanase Seromba claims that the facts underlying his conviction for genocide by aiding and abetting have not been proven, the Appeals Chamber has considered and dismissed his allegations regarding factual errors presented in connection with his Grounds of Appeal 3 to 7.
[148] Prosecution's Respondent's Brief, para. 197.
[149] Prosecution's Respondent's Brief, paras. 199, 200.
[150] Seromba's Appellant's Brief, para. 270.

parishioners,[151] or to a special responsibility he might have had to protect his Tutsi parishioners. Both claims are without merit.

63. Athanase Seromba has only been charged with individual criminal responsibility under Article 6(1) of the Statute and was found guilty by the Trial Chamber for his acts pursuant to this provision. He has not been charged as a superior responsible for the acts of subordinates under Article 6(3) of the Statute. The Trial Chamber was therefore not required to make any findings regarding any criminal responsibility he might have had for the acts of "the attackers and other militiamen",[152] in particular, whether he had a duty to prevent or punish criminal acts by any "subordinates" pursuant to Article 6(3) of the Statute.

64. The same holds true if Athanase Seromba's submission is read as referring to an alleged responsibility or duty he might have had towards the Tutsi refugees. The crime of aiding and abetting genocide for which he was convicted is not premised on any duty owed to the victims. Any "responsibility" Athanase Seromba may have had toward the Tutsi refugees is irrelevant to the analysis of his participation in the crime of genocide. This fact is only relevant for the assessment of possible aggravating circumstances in the determination of the sentence.[153]

65. With regard to Athanase Seromba's challenge to the Trial Chamber's finding relating to his awareness of the attackers' intent, based on his lack of legal ties with these attackers,[154] the Appeals Chamber finds this argument to be without merit. As outlined above, the relevant *mens rea* for aiding and abetting genocide is knowledge of the principal perpetrator's specific genocidal intent.[155] No specific ties between the aider and abettor and the principal perpetrators are required by law. Moreover, the Appeals Chamber considers that Athanase Seromba has failed to substantiate any error by the Trial Chamber when it found that "Athanase Seromba could not have been unaware of the intention of the attackers and other *Interahamwe* militiamen to commit acts of genocide against Tutsi refugees in Nyange parish".[156] It was not unreasonable for the Trial Chamber to conclude that due to the situation which prevailed throughout Rwanda and specifically based on the attacks he

[151] This is how the Prosecution seems to have understood Athanase Seromba's claim: Prosecution's Respondent's Brief, para. 197.
[152] Seromba's Appellant's Brief, para. 270.
[153] The Appeals Chamber notes that the Trial Chamber indeed took into account the status of Athanase Seromba as Catholic priest in charge of Nyange parish and the betrayal of trust associated with this status when determining his sentence (Trial Judgement, para. 390).
[154] Seromba's Appellant's Brief, para. 270.
[155] *Ntakirutimana* Appeal Judgement, paras. 500, 501; *Blagojevi} and Jokić* Appeal Judgement, para. 127; *Blagoje Simi}* Appeal Judgement, para. 86; *Krsti}* Appeal Judgment, paras. 140; *Krnojelac* Appeal Judgement, paras. 51, 52.
[156] Trial Judgement, para. 341.

personally witnessed, as established by the evidence before the Trial Chamber,[157] Athanase Seromba knew of the genocidal intent of the attackers and other *Interahamwe* militia.

3. Conclusion

66. Accordingly, the Appeals Chamber grants this ground of appeal in part and quashes the finding of the Trial Chamber that Athanase Seromba aided and abetted the causing of serious bodily or mental harm. The Appeals Chamber will further consider Athanase Seromba's liability for genocide under Count 1 of the Indictment in connection with Ground 1 of the Prosecution's appeal.

[157] Trial Judgement, Chapter II, sections 6.7, 6.8.

D. Alleged Errors relating to the Finding that Athanase Seromba Prevented Tutsi Refugees from Taking Food from the Parish Banana Plantation and that He Refused to Celebrate Mass for the Tutsi Refugees (Grounds of Appeal 3 and 4)

67. The Trial Chamber found that Athanase Seromba prevented the Tutsi refugees from going into the Parish banana plantation and refused to celebrate mass at the request of several refugees.[158] Based, *inter alia*, on these findings, the Trial Chamber concluded that Athanase Seromba contributed to the causing of serious bodily or mental harm, and it convicted him of aiding and abetting genocide.[159]

68. Athanase Seromba alleges several errors with respect to the Trial Chamber's findings.[160] Because the Appeals Chamber has granted in part Athanase Seromba's Ground of Appeal 8 and quashed all findings related to serious bodily or mental harm, the Appeals Chamber need not address any alleged errors underpinning those findings. To the extent that the credibility of certain witnesses is relevant to other grounds of appeal, the Appeals Chamber will address those questions, where necessary, in subsequent sections.

[158] Trial Judgement, paras. 95, 107.
[159] Trial Judgement, paras. 323, 326-331, 342, 372.
[160] Seromba's Notice of Appeal, paras. 17-25; Seromba's Appellant's Brief, paras. 68-99.

E. Alleged Errors relating to the Finding that Athanase Seromba Dismissed Four Tutsi Employees, One of Whom was Subsequently Killed (Ground of Appeal 5)

69. The Trial Chamber found that, on 13 April 1994, Athanase Seromba dismissed four Tutsi employees from the Nyange parish at a time when the security situation had become precarious.[161] One of the employees, Patrice, was turned away from the presbytery by Athanase Seromba and, upon his return the following day, was killed by attackers.[162] Based partly on these findings, the Trial Chamber found that Athanase Seromba assisted in the commission of acts causing serious bodily or mental harm to the Tutsi refugees as well as in the killing of Tutsi refugees[163] and convicted him for aiding and abetting genocide.[164] Athanase Seromba challenges these factual findings.[165] Although the Appeals Chamber has quashed all findings regarding serious bodily or mental harm, the Appeals Chamber will address each of Athanase Seromba's submissions as they pertain to his conviction for aiding and abetting genocide by assisting in killings, including that of Patrice, as well as to the proof of his genocidal intent.

1. Alleged Errors relating to Witness CBK

70. As summarized in the Trial Judgement, Prosecution Witness CBK testified that four Tutsi employees, Alex, Félicien, Gasore, and Patrice, who were "suspended from work" at the Nyange parish by Athanase Seromba, left the parish.[166] Witness CBK explained that they returned to the parish on 13 April 1994, but were turned away by Athanase Seromba who informed them that there was "no refuge for them" there.[167] The witness stated that the security situation had worsened considerably and any Tutsi who went outside ran the risk of being killed.[168] He testified that he saw Patrice, who was wounded in his arms and legs, in the rear courtyard of the presbytery.[169] The witness stated that he asked Athanase Seromba to help Patrice, but that Athanase Seromba refused and instead asked Patrice to leave the premises.[170] According to the witness, Athanase Seromba noticed that Patrice "delayed complying with his order" and asked the gendarmes to "forcefully

[161] Trial Judgement, paras. 114, 324.
[162] Trial Judgement, paras. 114, 324.
[163] Trial Judgement, paras. 324, 326, 328, 329, 331, 332, 335, 336, 338.
[164] Trial Judgement, para. 342.
[165] Seromba's Notice of Appeal, paras. 26-30; Seromba's Appellant's Brief, paras. 100-113.
[166] Trial Judgement, para. 108.
[167] Trial Judgement, para. 109.
[168] Trial Judgement, para. 109.
[169] Trial Judgement, para. 109.
[170] Trial Judgement, para. 109.

expel" him.[171] Witness CBK stated that subsequently he saw Patrice's "lifeless body" in the rear courtyard of the presbytery.[172]

71. Athanase Seromba raises three principal challenges to the Trial Chamber's assessment of Witness CBK's testimony. First, he submits that in assessing the evidence of Witness CBK, the Trial Chamber did not take into consideration the testimony of Defence Witness NA1 who had recruited some of the employees in question and who knew them well.[173]

72. The Prosecution responds that the Trial Chamber neither ignored nor misrepresented the evidence of Witness NA1.[174] It argues that Athanase Seromba has not disclosed what relevant evidence, if any, the Trial Chamber failed to acknowledge, and how such evidence could affect the impugned findings.[175]

73. The Trial Chamber found Witness CBK to be credible.[176] It noted that there was no contradiction between his testimony and his prior statements and that his account of how Athanase Seromba turned away Tutsi employees was "consistent and plausible", particularly in view of the circumstances which prevailed at Nyange parish in April 1994.[177] Contrary to Athanase Seromba's submission, the Trial Chamber indeed considered the testimony of Witness NA1 in reaching its finding on this point.[178] The Trial Chamber, however, concluded that Witness NA1 was not reliable in this regard because he only arrived at the parish after the events in question, on 15 April 1994.[179] The Trial Chamber also took into account that the witness "spoke in general terms" and that he admitted that he was not in a position to identify which employees were present at the parish when he arrived there.[180] Athanase Seromba has failed to show any error committed by the Trial Chamber in this regard.

74. Second, Athanase Seromba challenges the Trial Chamber's finding that Witness CBK was credible and argues that no reasonable trier of fact could have made this finding.[181] He argues that the Trial Chamber did not demonstrate the legal basis for such a finding and that the Trial Chamber's finding is based on "probability" and not "exactitude", which is "the only fact that may

[171] Trial Judgement, para. 109.
[172] Trial Judgement, para. 109.
[173] Seromba's Appellant's Brief, paras. 100-103.
[174] Prosecution's Respondent's Brief, para. 147.
[175] Prosecution's Respondent's Brief, para. 147.
[176] Trial Judgement, para. 112.
[177] Trial Judgement, para. 112.
[178] Trial Judgement, paras. 110, 111.
[179] Trial Judgement, para. 113.
[180] Trial Judgement, para. 113.
[181] Seromba's Appellant's Brief, para. 113.

be taken into account in criminal law".[182] He asserts that the Trial Chamber's finding should be proven beyond reasonable doubt and where there is doubt, the accused should benefit from this doubt.[183]

75. The Prosecution responds that the Trial Chamber did not content itself with the "plausibility" of Witness CBK's evidence.[184] It submits that the Trial Chamber found the witness credible only after having seen and heard him during a lengthy cross-examination and argues that it was only in addition to this finding that the Trial Chamber noted that the witness's account was coherent and believable in light of the overall circumstances.[185]

76. The Trial Chamber found that Witness CBK was credible and that his testimony was "consistent and plausible" in view of the circumstances that prevailed at Nyange parish in April 1994.[186] The Appeals Chamber considers that, when interpreted out of context, the use of the word "plausible", highlighted by Athanase Seromba, could be perceived as if the Trial Chamber did not make its finding based on the required standard of proof. Nonetheless, it is apparent from the Trial Chamber's approach as a whole, that it did not base its assessment on plausibility.

77. The Trial Chamber assessed the evidence of Witness CBK and determined that there was no contradiction between his testimony and his prior statements.[187] It also assessed the evidence of Defence Witness NA1 and found, as discussed above, that his testimony was not reliable on this point.[188] Based on this assessment, the Trial Chamber found that it had been "proved beyond a reasonable doubt" that Athanase Seromba dismissed four Tutsi employees from the parish, including Patrice who, upon returning to the parish the following day, was killed by attackers after having been turned away from the presbytery by Athanase Seromba.[189] While the Trial Chamber's use of the word "plausible" may be incorrect, this does not invalidate its reasoning and finding.[190] Athanase Seromba has failed to show that the Trial Chamber used an erroneous standard of proof or that no reasonable trier of fact could have found Witness CBK to be credible.

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[182] Seromba's Appellant's Brief, para. 113.
[183] Seromba's Appellant's Brief, para. 113. Athanase Seromba refers to the maxim "*in dubio pro reo*" in support of this submission.
[184] Prosecution's Respondent's Brief, para. 151.
[185] Prosecution's Respondent's Brief, para. 151, referring to Trial Judgement, para. 112.
[186] Trial Judgement, para. 112.
[187] Trial Judgement, para. 112.
[188] Trial Judgement, para. 113.
[189] Trial Judgement, para. 114.
[190] *See Kvo~ka et al.* Appeal Judgement, para. 472 (holding that "technically incorrect wording does not invalidate the argumentation of the Trial Chamber").

78. Third, Athanase Seromba submits that the Trial Chamber violated the legal principle "*unus testis, nullus testis*" by relying on the evidence of Witness CBK, as he was the only witness to testify that Athanase Seromba expelled the employees from the parish.[191]

79. The Appeals Chamber recalls that where a Trial Chamber relies on the evidence of a single witness, this alone does not render its finding erroneous. A witness's testimony need not be corroborated in order to have probative value[192] and a Trial Chamber has the discretion to decide in the circumstances of the case whether corroboration is necessary.[193] Athanase Seromba has failed to demonstrate that the Trial Chamber's reliance on the sole evidence of Witness CBK on this point was erroneous.

2. Alleged Errors relating to Witness NA1

80. As summarized in the Trial Judgement, Defence Witness NA1 testified that he arrived at Nyange parish on 15 April 1994, where he had previously worked between 1992 and 1993.[194] He stated that none of the employees of the parish had been dismissed.[195] Under cross-examination, he testified that he had no idea which employees were among the refugees and that he was not in a position to know who was an employee of the parish and who was not.[196]

81. Athanase Seromba submits that the Trial Chamber erred in attaching "no credibility" to the "precise, coherent and consistent" testimony of Witness NA1.[197] He argues that the Trial Chamber "distorted" the evidence of Witness NA1 given during his cross-examination by "decontextualizing" it.[198] He also claims that the Trial Chamber erroneously referred to certain statements as having been given during cross-examination while, in fact, the witness had made those statements during examination-in-chief.[199]

82. The Appeals Chamber notes that Athanase Seromba refers to the following passage in support of his submission that the Trial Chamber distorted the testimony of Witness NA1:

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[191] Seromba's Appellant's Brief, para. 113.
[192] *See Nahimana et al.* Appeal Judgement, para. 633; *Muhimana* Appeal Judgement, paras. 49, 159, 207; *Gacumbitsi* Appeal Judgement, para. 72; *Kajelijeli* Appeal Judgement, para. 170; *Semanza* Appeal Judgement, para. 153; *Niyitegeka* Appeal Judgement, para. 92; *Rutaganda* Appeal Judgement, para. 29; *Musema* Appeal Judgement, paras. 36-38; *Kvo~ka et al*. Appeal Judgement, para. 576.
[193] *Muhimana* Appeal Judgement, para. 49. *See also Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92.
[194] Trial Judgement, para. 110.
[195] Trial Judgement, para. 110.
[196] Trial Judgement, para. 111.
[197] Seromba's Appellant's Brief, para. 110.
[198] Seromba's Appellant's Brief, paras. 105, 106.
[199] Seromba's Appellant's Brief, para. 107.

> Q. Thank you. Thank you for those details, Witness NA1. We are seeking the truth. But did you ever get to know that Father Seromba dismissed any employee of the parish because of the fact that they belonged to the Tutsi ethnic group? Did you ever get to know of any such thing?
>
> A. This is something that I'm hearing for the first time. No member of the staff of Nyange parish was ever dismissed. Alexis was a Tutsi; I found him there. Furthermore, I saw him amongst the refugees in April. He even greeted me. As for Papias, […] I left him at parish when I left the parish. Now, the cowherd is someone whom I found at the parish, but these cows could not leave the parish compound because it was not possible for them to do so during these incidents, these events. Now, when I came back to Nyange in April I realised there was [*sic*] no new recruits amongst the staff of the parish and I also realised that amongst the staff members […] there was no change. Everyone […] was still there.
>
> Q. Thank you. Thank you, Witness. Witness NA1, did you see at the parish when you arrived on the 15th of April or did you leave an employee there, Froduald Maniraguha?
>
> […]
>
> THE WITNESS:
>
> When I arrived at the parish, as I have said, I was received at the parish refectory. The cowherd was probably amongst the refugees who were at the parish. I wasn't able to distinguish him from those refugees. It's possible that those refugees were -- it's possible that these people were among the many refugees who had sought refuge at the parish, but I did not look for them because I wasn't there in order to take a census of the staff of the parish.[200]

83. The Appeals Chamber understands Athanase Seromba's submission to be that this testimony was tendered in response to questions about the "cowherds" as well as a person called Frodouard Maniraguha[201] and that he suggests that the Trial Chamber erroneously interpreted it in relation to other employees at the parish when it observed that:

> During cross-examination, Witness NA1 explained, *inter alia*, that he had no idea which employees were to be found among the refugees. He also stated that he was not there to take a census of the parish, nor was he in any position to know who was an employee of the parish and who was not.[202]

The Appeals Chamber disagrees with the interpretation of Witness NA1's testimony as submitted by Athanase Seromba. It is apparent that the Trial Chamber's statement was *inter alia* based on the following testimony tendered by Witness NA1 under cross-examination, which was, however, incorrectly cited in the Trial Judgement:[203]

> BY MR. MOSES:

[200] T. 7 December 2005 pp. 16, 17 (closed session).
[201] Seromba's Appellant's Brief, paras. 106, 107. At the hearing (T. 7 December 2005 p. 17), the English interpreter stressed that "Counsel is not spelling the names so it's very difficult to pronounce what pronunciation he's making", which might explain the difference in the spelling of Frodouard Maniraguha's name.
[202] Trial Judgement, para. 111 (footnotes omitted).
[203] *See* Trial Judgement, paragraph 111, footnote 206 where this testimony is incorrectly cited as "Transcript, 7 December 2005, p. 10 (closed session)". It should have been cited as "Transcript of 8 December 2005, p. 10 (closed session)".

> Q. All right. Just a few matters I want to get some confirmation about arising from your testimony in evidence in-chief yesterday.
>
> First of all, regarding the employees at the parish, would you agree with me that when you arrived on the 15th, Patrice, Felicien, Alexis, and Gasore were no longer working at the parish, no longer working?
>
> A. When I had left the parish, […] these people [were] working in the parish. When I returned on that day, I was not in a position to know who was or who wasn't employed by the parish. However, I should add that I saw some of these people at the parish when I arrived, when I returned there.[204]

Accordingly, the Appeals Chamber does not accept the contention that the Trial Chamber distorted Witness NA1's testimony. The Appeals Chamber agrees with Athanase Seromba that the Trial Chamber also relied on Witness NA1's testimony given during examination-in-chief, but mistakenly referred to this testimony as given under cross-examination.[205] However, he has failed to demonstrate how this mistake would have any bearing on the finding of the Trial Chamber that the witness's testimony was not reliable.

84. Finally, Athanase Seromba submits that the Trial Chamber erred by not finding credible the "precise, coherent and consistent testimony" of Witness NA1.[206] The Appeals Chamber notes that rather than find Witness NA1 not credible, as Athanase Seromba submits, the Trial Chamber found that his testimony was not reliable as to whether the four parish employees were dismissed. The Trial Chamber explained its finding as follows:

> Witness NA1 only arrived in Nyange parish on 15 April 1994 and, therefore, could not properly testify on events he did not witness. Furthermore, it observes that the witness spoke in general terms, as his testimony focussed simply on staff changes which were made between the time he left Nyange in 1993 and when he returned in April 1994. Finally, as the witness himself admits, he was in no position to identify employees present at the time he arrived at the church, due to the very large number of refugees and attackers that were on the premises.[207]

Athanase Seromba has not shown any error in this reasoning or in the conclusion of the Trial Chamber that it could not rely on Witness NA1's testimony in making its finding relating to the dismissal of the four Tutsi employees and the subsequent death of one of them.

3. Alleged Error in Finding that Athanase Seromba Dismissed Four Tutsi Employees

85. Athanase Seromba submits that the Trial Chamber's finding that he dismissed Tutsi employees from the parish is "specious" and "speculative" as it raises the question why he would

[204] T. 8 December 2005 p. 10 (closed session).
[205] *See* Trial Judgement, paragraph 111, footnote 205, which cites "Transcript of 7 December 2005, p. 19 (closed session)".
[206] Seromba's Appellant's Brief, para. 110.
[207] Trial Judgement, para. 113 (footnote omitted).

have done so while he was welcoming Tutsi refugees into the presbytery and considering that he was to move to another parish shortly.[208]

86. The Trial Chamber made the impugned finding upon a careful consideration of the testimonies of Witnesses CBK and NA1. Athanase Seromba has challenged the Trial Chamber's assessment of these testimonies. That challenge was not successful. As Athanase Seromba has not undermined the basis for the Trial Chamber's finding, it cannot be considered to be speculative. Consequently, Athanase Seromba's contention on this point is rejected.

4. Conclusion

87. This ground of appeal is dismissed in its entirety.

[208] Seromba's Appellant's Brief, paras. 111, 112.

F. Alleged Erroneous Findings relating to the Deaths of Tutsi Refugees (Ground of Appeal 6)

88. The Trial Chamber found that Athanase Seromba had turned away several refugees from the presbytery, including Meriam, and that Meriam was subsequently killed by attackers.[209] Athanase Seromba challenges this finding.[210] Although the Appeals Chamber has quashed all findings regarding serious bodily or mental harm, the Appeals Chamber will address each of Athanase Seromba's submissions as they pertain to his conviction for aiding and abetting genocide by assisting in killings, including that of Meriam.

89. Athanase Seromba notes that rather than turn refugees away, he had received them, including Meriam, at the presbytery at the outset of the events.[211] He submits that in finding that he turned refugees away, the Trial Chamber erroneously relied on the sole testimony of Prosecution Witness CBJ who was "in the 30 metre-high church tower, in a crowd of 5000 attackers and 1500 Tutsi refugees in an area that was particularly noisy due to the presence of many attackers, screams and gunfire".[212] Additionally, Athanase Seromba argues that the Trial Chamber disregarded the evidence of Defence Witness NA1, who testified that the refugees were "all over" the church compound, even in the presbytery, which suggests that nobody turned them away, and Defence Witness FE55, who corroborated the fact that Athanase Seromba did not turn away any refugee from the presbytery.[213]

90. The Prosecution responds that Athanase Seromba has failed to show any error in the Trial Chamber's assessment of the evidence or that it was unreasonable for it to rely on the evidence, particularly of Prosecution Witnesses CBJ and CBK.[214] It submits that the finding that Athanase Seromba expelled Meriam and other refugees from the presbytery while the killings were underway is supported by evidence and is consistent with Athanase Seromba's overall acts and conduct during the genocide.[215] The Prosecution agrees that Athanase Seromba accommodated Meriam and some other refugees at the presbytery, but points out that following a meeting on 14 April 1994, he chased them away from the presbytery and repelled them when they tried to seek refuge at the presbytery during attacks on 15 April 1994.[216] The Prosecution recalls Witness CBJ's testimony

[209] Trial Judgement, paras. 201, 325.
[210] Seromba's Notice of Appeal, paras. 31-33; Seromba's Appellant's Brief, paras. 144-151.
[211] Seromba's Appellant's Brief, para. 149.
[212] Seromba's Appellant's Brief, para. 146 (emphasis in original).
[213] Seromba's Appellant's Brief, paras. 146, 150.
[214] Prosecution's Respondent's Brief, paras. 153, 162.
[215] Prosecution's Respondent's Brief, paras. 153, 154, 160, 161.
[216] Prosecution's Respondent's Brief, para. 159.

that the attackers killed these refugees immediately after they were expelled from the presbytery courtyard.[217]

91. Athanase Seromba challenges the Trial Chamber's finding that he turned away several refugees from the presbytery and that one of these refugees, Meriam, was subsequently killed, *inter alia*, on the basis that the Trial Chamber relied on the evidence of a single witness in making this finding and therefore violated what he considers to be the applicable rule, namely "*unus testis nullus testis*".[218] A review of the Trial Judgement shows that the Trial Chamber relied on the evidence of two witnesses, Witnesses CBJ and CBK, in determining that Meriam was killed after she had been turned away from the presbytery.[219] The Trial Chamber accepted Witness CBJ's account of Meriam's death.[220] This witness testified that Meriam was beaten in front of the secretariat and dragged up to the church by Muringanyi while Fulgence Kayishema held her by the head which he banged against the ground in the courtyard.[221] The Trial Chamber also accepted Witness CBK's testimony that Fulgence Kayishema killed Meriam by banging her head against the bricks while Athanase Seromba, who was present, did nothing to stop him.[222]

92. The Appeals Chamber notes that the Trial Chamber relied on the evidence of a single witness, Witness CBJ, when it determined that Athanase Seromba had turned away several refugees, including Meriam, from the presbytery.[223] The witness testified that Meriam was one of the "privileged Tutsi[s]" whom Athanase Seromba had welcomed into the presbytery but that he had subsequently expelled her after a meeting on 14 April 1994.[224] He further testified that following the attacks on 15 April 1994, Meriam returned to the presbytery but was once again expelled by Athanase Seromba.[225] Under this ground of appeal, Athanase Seromba does not challenge the credibility of this evidence, but contends that it should not be relied upon because it is the evidence of a single witness. The Appeals Chamber recalls that a witness's testimony need not be corroborated in order to have probative value.[226] A Trial Chamber has the discretion to decide in

[217] Prosecution's Respondent's Brief, para. 159.
[218] Seromba's Appellant's Brief, para. 148.
[219] Trial Judgement, paras. 193, 194, 201. The Trial Chamber also considered that Witnesses CBJ, CBK, CBT, BZ2, and FE55 confirmed Meriam's death (Trial Judgement, para. 199).
[220] Trial Judgement, para. 201.
[221] Trial Judgement, paras. 193, 201.
[222] Trial Judgement, paras. 194, 201.
[223] Trial Judgement, paras. 193, 201.
[224] Trial Judgement, para. 193.
[225] Trial Judgement, para. 193.
[226] *See Nahimana et al.* Appeal Judgement, para. 633; *Muhimana* Appeal Judgement, paras. 49, 159, 207; *Gacumbitsi* Appeal Judgement, para. 72; *Kajelijeli* Appeal Judgement, para. 170; *Semanza* Appeal Judgement, para. 153; *Niyitegeka* Appeal Judgement, para. 92; *Rutaganda* Appeal Judgement, para. 29; *Musema* Appeal Judgement, paras. 36-38; *Kvo~ka et al*. Appeal Judgement, para. 576.

the circumstances of each case whether corroboration is necessary.[227] The Appeals Chamber finds that Athanase Seromba has failed to show that the Trial Chamber committed an error in its reliance on the sole evidence of Witness CBJ to find that Athanase Seromba turned away refugees, including Meriam, from the presbytery.[228]

93. Athanase Seromba argues that the Trial Chamber erred in relying on the evidence of Witness CBJ because he observed the events from a 30 metre-high church tower while there was a crowd of 5,000 attackers and 1,500 refugees, and it was particularly noisy. The Appeals Chamber observes that the Trial Chamber specifically took into consideration the fact that Witness CBJ had witnessed the events from the church tower when it assessed his evidence.[229] Athanase Seromba has failed to show that the Trial Chamber erred in accepting Witness CBJ's testimony.

94. Athanase Seromba submits that the Trial Chamber erred in finding that he turned away from the presbytery several refugees, including Meriam, by disregarding Defence Witness NA1's testimony that refugees were "all over" the church compound, including the presbytery.[230] Although the Trial Chamber did not specifically discuss Witness NA1's testimony in relation to Athanase Seromba's turning away refugees from the presbytery,[231] it was not obligated to set forth every step of its reasoning or to cite every piece of evidence it considered.[232] The Appeals Chamber notes that Witness NA1 testified that, when he arrived at the parish on 15 April 1994, "there were many people" in the presbytery.[233] The transcript further reveals that, when specifically questioned about Meriam, Witness NA1 stated:

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[227] *Muhimana* Appeal Judgement, para. 49. *See also Kajelijeli* Appeal Judgement, para. 170, citing *Niyitegeka* Appeal Judgement, para. 92.
[228] Athanase Seromba also argues that the Ruhengeri Court of Appeal had found that the evidence of Witnesses CBS, CBJ and CBN lacked credibility (Seromba's Appellant's Brief, para. 88). The Appeals Chamber notes that this issue was discussed at trial and that the judgement in question was admitted into evidence (Ex. D.21; T. 6 October 2004 p. 44). The Appeals Chamber considers that the assessment of the witnesses' credibility by the Ruhengeri Court of Appeal does not impact on the assessment of their credibility by the Trial Chamber in the present case. The Trial Chamber was entitled to make its own finding as to the credibility of the witnesses and the reliability of their evidence based upon its own observation of the witnesses and its own evaluation of their evidence (*cf. Niyitegeka* Appeal Judgement, para. 168).
[229] Trial Judgement, para. 234. The Trial Chamber found that "from the church tower, it was physically impossible to hear the conversation […] at the parish secretariat" and that Witness CBJ's testimony as to the remarks which Athanase Seromba made to the bulldozer driver could not be deemed reliable due to his location. However, the Trial Chamber accepted his testimony concerning events that the witness could see from his location. *See* Trial Judgement, paras. 201, 234.
[230] Seromba's Appellant's Brief, para. 146. Athanase Seromba allegedly quotes Witness NA1's testimony that there were refugees in the presbytery, referring to the transcripts of 7 December 2005, without providing full references.
[231] Trial Judgement, paras. 195-198.
[232] *See, e.g., Simba* Appeal Judgement, para. 143; *Gacumbitsi* Appeal Judgement, para. 115.
[233] T. 7 December 2005 p. 14 (closed session).

> Regarding Miriam's [*sic*] transfer, I can't say anything about it. When I wasn't at Nyange, I didn't know what was going on there. I wasn't there. I have nothing to say about Miriam's [*sic*] transfer, therefore.[234]

The Appeals Chamber considers that the Trial Chamber was free to consider that Witness NA1's testimony did not contradict Witness CBJ's evidence that Athanase Seromba turned away several refugees, including Meriam, from the presbytery.

95. Athanase Seromba argues that Defence Witness FE55 "corroborates the fact" that he never turned away any refugees from the presbytery and, in support, refers to the following excerpt of the witness's testimony:[235]

> Q: […] You mentioned Gatare and a certain Miriam [*sic*] who allegedly were killed on the 15th of April, 1994, did you hear that Father Athanase Seromba was the one who handed them to the assailants?
>
> A: […] As for Miriam [*sic*], I heard that she had gone out and when grenades were launched some Tutsis locked themselves in and Miriam was not able to go in with the others. So she stayed outside of the church, and that is where she was killed. I never heard that it was Father Seromba who had handed these people over. […][236]

This testimony does not contradict the Trial Chamber's finding, based on evidence it considered credible, that Athanase Seromba turned away refugees, including Meriam, from the presbytery. The fact that Witness FE55 "never heard" that it was Athanase Seromba who had "handed these people over" does not show that the Trial Chamber's finding that Athanase Seromba turned away Meriam and other refugees from the presbytery was unreasonable.

96. Finally, the Appeals Chamber is not persuaded by Athanase Seromba's argument that there was no reason for him to spontaneously receive the refugees, including Meriam, at the presbytery and then later turn them away. This argument is speculative and, consequently, is incapable of undermining the evidence of Witness CBJ on which the Trial Chamber relied.

97. In view of the foregoing, the Appeals Chamber finds that Athanase Seromba has not demonstrated that the Trial Chamber erred in finding that Athanase Seromba turned away refugees from the presbytery, including Meriam, who was subsequently killed by attackers. Accordingly, this ground of appeal is dismissed.

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[234] T. 7 December 2005 p. 22 (closed session).
[235] Seromba's Appellant's Brief, para. 150.
[236] T. 12 April 2006 pp. 37-38.

G. Alleged Errors relating to Athanase Seromba's Role in the Destruction of Nyange Church (Ground of Appeal 7)

98. The Trial Chamber found that Athanase Seromba "held discussions with the authorities and accepted their decision to destroy [Nyange] church."[237] The Trial Chamber further found that his utterances encouraged the bulldozer driver to destroy the church and that he indicated to the driver "the fragile side of the church."[238] The Trial Chamber concluded that Nyange church was destroyed on 16 April 1994, by means of a bulldozer.[239] It found that Athanase Seromba's conduct substantially contributed to the destruction of the church which resulted in the death of more than 1,500 Tutsi refugees.[240] On this basis, the Trial Chamber convicted Athanase Seromba of aiding and abetting genocide as well as extermination as a crime against humanity.[241] Under this ground of appeal, Athanase Seromba raises challenges concerning an alleged defect in the form of the Indictment as well as the Trial Chamber's assessment of the evidence.[242]

1. Alleged Defect in the Form of the Indictment

99. Athanase Seromba submits that the Trial Chamber erred in finding that the authorities informed him of their decision to destroy Nyange church and that he accepted this decision, as the Indictment did not plead such an allegation.[243] He argues that this allegation was also not made in the Prosecution's Pre-Trial or Closing Brief, nor in its closing arguments and that, therefore, the Trial Chamber erred in convicting him of extermination as a crime against humanity on this basis.[244] Athanase Seromba contends that he was not afforded the opportunity to present his submissions in relation to this matter and that his "right to make full answer and defence" was therefore violated.[245]

100. As noted above, the charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.[246] The Appeals Chamber has held that where it is alleged that the accused planned, instigated, ordered, or aided and abetted the planning, preparation, or execution of the alleged

[237] Trial Judgement, para. 364.
[238] Trial Judgement, para. 364.
[239] Trial Judgement, paras. 283, 284.
[240] Trial Judgement, paras. 334, 364, 365.
[241] Trial Judgement, paras. 334, 335, 337, 338, 342, 364, 366-368, 371.
[242] Seromba's Notice of Appeal, paras. 34-37; Seromba's Appellant's Brief, paras. 152-212.
[243] Seromba's Appellant's Brief, paras. 154, 155, 158, 159.
[244] Seromba's Notice of Appeal, para. 37; Seromba's Appellant's Brief, paras. 154, 155.
[245] Seromba's Notice of Appeal, para. 37.
[246] *Simba* Appeal Judgement, para. 63; *Muhimana* Appeal Judgement, paras. 76, 167, 195. *See also Gacumbitsi* Appeal Judgement, para. 49; *Ndindabahizi* Appeal Judgement, para. 16.

crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[247] An indictment lacking this precision is defective; however, such defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.[248]

101. The Indictment taken alone does not allege that Athanase Seromba was informed of the decision taken by the authorities to destroy the church and that he accepted this decision. Count 4 of the Indictment and the concise statements of facts for Count 4 read:

> The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase SEROMBA with ***EXTERMINATION as a CRIME AGAINST HUMANITY,*** *as stipulated in Article 3(b) of the Statute,* in that on or between the dates of 7 April 1944 [*sic*] and 20 April 1994, in KIBUYE *prefecture*, Rwanda, Athanase SEROMBA was responsible for killing persons, or causing persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:
>
> *Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.
>
> 48. On or about 13 April 1994, the Interahamwe and the militia surrounding the Parish, launched an attack against the refugees in the Church. The attackers having been pushed away and out of the Church, to a place named *"la statue de la Sainte Vièrge"*. The attackers threw a grenade causing many deaths among the refugees. The survivors quickly tried to return to the Church, but Father Athanase SEROMBA ordered that all doors be closed, leaving many refugees outside (about 30) to be killed.
>
> 49. On or about 15 April 1994, Father Athanase SEROMBA ordered or planned, abetted and encouraged the destruction of the Church with more than 2,000 Tutsis trapped inside, causing their deaths.
>
> 50. After the destruction of the Church, most of the Tutsi[s] from KIVUMU commune were killed, and in July 1994 there was no Tutsi[s] known in KIVUMU commune.[249]

102. The allegation that Athanase Seromba was informed of the decision to destroy the church and that he accepted this decision is a material fact which the Trial Chamber took into account in convicting him of extermination as a crime against humanity under Count 4 of the Indictment.[250] However, this allegation was not specifically pleaded in Count 4 of the Indictment and the Indictment was therefore defective in this regard.

103. In raising this defect for consideration by the Appeals Chamber, Athanase Seromba does not submit that he objected to it earlier. When an appellant raises a defect in an indictment for the first

[247] *Ntagerura et al.* Appeal Judgement, para. 25.
[248] *Simba* Appeal Judgement, para. 64; *Muhimana* Appeal Judgement, para. 76. *See also Gacumbitsi* Appeal Judgement, para. 49; *Ntagerura et al.* Appeal Judgement, paras. 28, 65.
[249] Indictment, paras. 48-50.

time on appeal, he bears the burden of showing that his ability to prepare his defence was materially impaired.[251] Athanase Seromba has not met this burden; his Appellant's Brief makes no mention of previous objections to the particular defect in the Indictment considered here.

104. In any event, the Appeals Chamber considers that this defect in the Indictment was cured by timely, clear, and consistent information by the Prosecution. Annex III of the Final Pre-Trial Brief[252] contained a summary of Prosecution Witness CDL's statement, the relevant part of which stated:

> On 16 April 1994, CDL heard Ndungutse, Kanyarugika [*sic*], Ndahimana and Kayishema telling Seromba, that the only way of killing all Tutsi refugees in Nyange church was to destroy the church. CDL heard Seromba giving the others the permission to destroy the church. CDL witnessed Seromba telling them to start destroying the church by the back side of the church instead of the tower side, which was strong.[253]

105. The Prosecution indicated in the Final Pre-Trial Brief, next to the annexed summary of Witness CDL's statement, that the testimony of Witness CDL would be used to prove extermination as a crime against humanity, among other crimes.[254] This summary put Athanase Seromba on notice that, as a basis for the charge that he had committed a crime against humanity, he had allegedly been informed of the decision to destroy the church and had accepted this decision by permitting the church to be destroyed. The Appeals Chamber has previously held that a pre-trial brief can, in certain circumstances, cure a defect in an indictment.[255] The Appeals Chamber finds this to be the case in the present instance. The information provided in the summary of Witness CDL's statement was clear and was consistent with the allegation in Count 4 of the Indictment that "Father Athanase SEROMBA ordered or planned, abetted and encouraged the destruction of the church". The Prosecution filed its Final Pre-Trial Brief on 27 August 2004, more than three weeks prior to the commencement of the trial.[256] As such, the Final Pre-Trial Brief provided timely, clear, and consistent information of the missing material fact and thereby cured the defect in the Indictment. Accordingly, this sub-ground of appeal is dismissed.

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[250] Trial Judgement, paras. 364, 366-368.
[251] *Gacumbitsi* Appeal Judgement, para. 49; *Niyitegeka* Appeal Judgement, para. 200; *Kvočka et al.* Appeal Judgement, para. 35.
[252] Prosecution Final Pre-Trial Brief, 27 August 2004 (Confidential) ("Final Pre-Trial Brief").
[253] Final Pre-Trial Brief, Annex III p. 10, R.P. 2387.
[254] Final Pre-Trial Brief, Annex III p. 10, R.P. 2387.
[255] *Muhimana* Appeal Judgement, paras. 82, 201, 223, citing *Gacumbitsi* Appeal Judgement, paras. 57, 58; *Naletili} and Martinovi}* Appeal Judgement, para. 45; *Ntakirutimana* Appeal Judgement, para. 48.
[256] *See* Trial Judgement, Annex I, paras. 17, 19.

2. Alleged Errors in the Assessment of the Evidence

106. Athanase Seromba submits that he "neither gave the order to destroy Nyange church, nor spoke to the bulldozer driver impelling him to destroy the church".[257] In support of his submission, he alleges errors in the Trial Chamber's assessment of the relevant evidence. The Appeals Chamber recalls that the Trial Chamber found that the Prosecution did not prove beyond reasonable doubt that Athanase Seromba gave the order to destroy the church.[258] The Trial Chamber found, however, that he was informed of the decision to destroy the church, that he accepted this decision and encouraged the bulldozer driver to destroy the church.[259]

(a) Witness CBJ

107. As summarized in the Trial Judgement, Prosecution Witness CBJ testified to a conversation between Athanase Seromba and the bulldozer driver during which the bulldozer driver asked Athanase Seromba whether he accepted that the church be destroyed.[260] The witness explained that Athanase Seromba removed an object from his pocket and handed it to the bulldozer driver who then started demolishing the church.[261]

108. Athanase Seromba submits that Witness CBJ lacked credibility on whether he urged the bulldozer driver to destroy the church.[262] He refers to Witness CBJ's testimony as to the conversation between himself and the bulldozer driver, and argues that it was impossible for this witness to have heard, with such precision, the words spoken in the course of that conversation,[263] since the witness was in the church tower.[264]

109. The Prosecution responds that Athanase Seromba's submission should be dismissed.[265] His attack on Witness CBJ's credibility focuses only on the alleged impossibility of this witness's having heard Athanase Seromba's utterances from the church tower.[266] The Prosecution observes that the Trial Chamber did not rely on Witness CBJ's evidence in this regard.[267]

[257] Seromba's Appellant's Brief, para. 160.
[258] Trial Judgement, para. 267.
[259] Trial Judgement, paras. 268, 269.
[260] Trial Judgement, para. 210.
[261] Trial Judgement, para. 211.
[262] Seromba's Appellant's Brief, para. 171.
[263] Seromba's Appellant's Brief, para. 170.
[264] Seromba's Appellant's Brief, para. 169.
[265] Prosecution's Respondent's Brief, para. 168.
[266] Prosecution's Respondent's Brief, para. 168.
[267] Prosecution's Respondent's Brief, para. 168.

110. The Trial Chamber found that Witness CBJ was credible with regard to Athanase Seromba's attendance at a meeting on 16 April 1994,[268] as well as with regard to Athanase Seromba's giving an object to the bulldozer driver.[269] Athanase Seromba does not challenge these findings under this ground of appeal. Rather, he challenges the credibility of Witness CBJ in view of the witness's testimony concerning his conversation with the bulldozer driver. In this regard, the Trial Chamber found Witness CBJ's "testimony on the remarks [Athanase] Seromba made to the bulldozer driver not to be reliable" due to the distance between the church tower where the witness was located and the parish secretariat near which the conversation took place.[270] Consequently, the Trial Chamber did not rely on this testimony for the finding in question. Rather, the Trial Chamber relied on the testimony of Witnesses CBK and CDL in finding that Athanase Seromba made utterances to the bulldozer driver which encouraged him to destroy the church.[271] The Appeals Chamber recalls that it is not unreasonable for a Trial Chamber to accept some parts of a witness's testimony while rejecting others.[272] Consequently, Athanase Seromba has not shown an error in the Trial Chamber's evaluation of Witness CBJ's testimony.

(b) Witness CBK

111. As summarized in the Trial Judgement, Prosecution Witness CBK testified to a conversation between Athanase Seromba and the bulldozer driver.[273] He stated that the bulldozer driver asked Athanase Seromba whether he should destroy the church and that Athanase Seromba told him: "Destroy it."[274]

112. Athanase Seromba submits that it was unreasonable for the Trial Chamber to accept Witness CBK's testimony that he spoke with the driver before the destruction of the church.[275] He argues that Witness CBK testified that at the time the church was being demolished the witness was at the parish secretariat with him.[276] According to him, Witness CBK testified that Athanase Seromba stated that "I should move further away from here, so that the church doesn't collapse on me."[277] Athanase Seromba argues that this statement implies that he must have been standing at a distance where he could have been affected by the destruction of the church and from where he was able to

[268] Trial Judgement, paras. 210, 234.
[269] Trial Judgement, paras. 211, 234.
[270] Trial Judgement, para. 234.
[271] Trial Judgement, paras. 236, 239, 269.
[272] *Simba* Appeal Judgement, para. 212; *Kamuhanda* Appeal Judgement, para. 248, citing *Kupreškić et al.* Appeal Judgement, para. 333.
[273] Trial Judgement, para. 213.
[274] Trial Judgement, para. 213.
[275] Seromba's Appellant's Brief, para. 175.
[276] Seromba's Appellant's Brief, para. 172.

converse with the bulldozer driver.[278] But, he notes that, as Witness CBK himself testified, he was at the parish secretariat, at least fifty metres from the church.[279] Consequently, Athanase Seromba claims that Witness CBK's testimony is "unrealistic".[280]

113. Athanase Seromba also argues that Witness CBK should have been discredited because when he was asked under cross-examination "who issued the order to fetch the bulldozer" he replied that he did not know.[281] Athanase Seromba notes that when it was put to the witness that in his prior written statements of "24 October, 19 and 20 November 2002" he had stated that the decision to bring the bulldozers was taken by Kayishema and Rushema, the witness "merely" answered that "it is easy to forget."[282]

114. The Prosecution responds that Athanase Seromba gives a "truncated version" of Witness CBK's evidence which cannot affect the decision under appeal.[283]

115. The Trial Chamber found Witness CBK to be credible in relation to the conversation between the bulldozer driver and Athanase Seromba[284] and found that the bulldozer driver asked Athanase Seromba three times whether he should destroy the church.[285] Athanase Seromba's argument that Witness CBK's testimony lacks credibility must be considered in the context of the witness's entire testimony. Witness CBK testified to the arrival of the bulldozer and stated that the bulldozer driver asked Athanase Seromba "thrice, 'Should we destroy this church'"[286] to which Athanase Seromba answered:

> "Destroy the church. We, the Hutu, are many in number and, furthermore, in the house of God. Demons have gotten in there", that we the Hutus were many in number and that we were going to build another.[287]

Witness CBK then testified that:

> The driver started demolishing the church, and when Seromba saw that the church was going to collapse, he said, "I think I better escape before the church falls on me. I should move away further from here, so that the church doesn't collapse on me."[288]

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[277] Seromba's Appellant's Brief, para. 172, referring to T. 19 October 2004 p. 26 (closed session).
[278] Seromba's Appellant's Brief, para. 173.
[279] Seromba's Appellant's Brief, paras. 172, 173.
[280] Seromba's Appellant's Brief, para. 173.
[281] Seromba's Appellant's Brief, para. 174.
[282] Seromba's Appellant's Brief, para. 174.
[283] Prosecution's Respondent's Brief, para. 172.
[284] Trial Judgement, para. 236.
[285] Trial Judgement, para. 236.
[286] T. 19 October 2004 p. 25 (closed session).
[287] T. 19 October 2004 pp. 25-26 (closed session).
[288] T. 19 October 2004 p. 26 (closed session).

The witness was asked "[w]here were you when the church was being destroyed" to which he answered that he was with Athanase Seromba "in front of the secretariat where -- that is where [Athanase] Seromba was standing".[289] Witness CBK's testimony is clear on the sequence of events, indicating that Athanase Seromba first conversed with the bulldozer driver then, once the demolition started, he stated that he should move away from the church. The witness then located Athanase Seromba in front of the secretariat while the church was being destroyed. Athanase Seromba's submissions on this point do not show any error on the part of the Trial Chamber.

116. Athanase Seromba further argues that Witness CBK should have been discredited because of the difference between his testimony and pre-trial statements as to who issued the order to bring in the bulldozer, and also because of his failure to adequately explain this discrepancy.[290] The Appeals Chamber notes the cross-examination on this issue, which proceeded as follows:

> MR. MONTHÉ:
> Madam President, I would like to have read to the witness, with your leave, this statement of the 24th of October 2002, K026024, page K0260231, beginning of the paragraph.
>
> […]
>
> Q. This is what is stated in this statement: "I was very close to them. I could hear what they were talking about […]. I had nothing else to do on that day. I was standing in the corridor next to the wall near the secretariat. Kayishema told Rushema to have them bring the bulldozer to destroy the church. I saw the assistant *bourgmestre* Rushema leave the vehicle with Rwamasirabo. Before telling Rushema to go and get the bulldozer, he discussed with intellectuals present."
> Witness, this is my question to you: Why today do you tell the Chamber that you do not know who sent for the bulldozer, who gave the order that the bulldozer be brought?
>
> A. This is why I say I no longer remember who gave the order. It is human. One can forget easily. To err is human.
>
> Q. The only problem is you forget what you want to forget, it seems.
>
> A. You are not looking at the situation properly.
>
> Q. I thank you. You at least admit that Kayishema sent for that bulldozer. Do you admit that that is what you stated in your statement?
>
> A. That is correct.[291]

The Appeals Chamber has previously stated that it is within a Trial Chamber's discretion to accept or reject a witness's testimony, after seeing the witness, hearing the testimony, and observing him or her under cross-examination.[292] In the present case, Witness CBK provided an explanation for not recalling on the stand who had sent for the bulldozer. Furthermore, once the content of his pre-

[289] T. 19 October 2004 p. 26 (closed session).
[290] Seromba's Appellant's Brief, paras. 174, 175.
[291] T. 20 October 2004 pp. 15-16 (closed session).

trial statement was put to the witness, he acknowledged that "Kayishema sent for the bulldozer", confirming his pre-trial statement. This does not demonstrate a discrepancy between the witness's prior written statement and his testimony in court. In any event, a Trial Chamber has the discretion to accept a witness's evidence, notwithstanding inconsistencies between the evidence and his prior statements, as it is up to the Trial Chamber to determine whether an alleged inconsistency is sufficient to cast doubt on the witness's credibility.[293] Athanase Seromba has failed to show that a reasonable Trial Chamber would have rejected Witness CBK's explanation and found that the witness was not credible. Consequently, Athanase Seromba has failed to show any error in the Trial Chamber's acceptance of, and reliance on, Witness CBK's evidence.

(c) Witness CDL

117. As summarized in the Trial Judgement, Prosecution Witness CDL testified that on 16 April 1994, he witnessed a discussion between Athanase Seromba and the *bourgmestre* who then conversed with other authorities who decided to use bulldozers to destroy the church.[294] According to the witness, these authorities then went to see Athanase Seromba about destroying the church and he told them: "'If you have no other means, bring the bulldozers then, and destroy the church.'"[295] The witness further testified that Athanase Seromba advised the bulldozer drivers to start demolishing the church from the sacristy side, which he indicated was "the fragile or weak part".[296]

118. Athanase Seromba states that Witness CDL was "an important factual witness" who stated that the decision to use the bulldozer to destroy the church was taken by the authorities.[297] He notes that the witness did not accuse him of ordering the destruction of the church and that "[i]f anything, he merely asserted that [Athanase] Seromba accepted the authorities' decision."[298] Athanase Seromba further submits that Witness CDL was not credible when he testified that Athanase Seromba spoke with the bulldozer driver, urging him to destroy the church, and also when the witness testified that Athanase Seromba advised the drivers to demolish the church, starting with the sacristy because the testimony of this witness illustrates that the only place where the witness saw him was the parish secretariat.[299]

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[292] *Akayesu* Appeal Judgement, para. 147.
[293] *Rutaganda* Appeal Judgement, para. 443. *See also Musema* Appeal Judgement, para. 89; *^elebi}i* Appeal Judgement, para. 497; *Kupreški} et al.* Appeal Judgement, para. 156.
[294] Trial Judgement, para. 217.
[295] Trial Judgement, para. 217.
[296] Trial Judgement, para. 218.
[297] Seromba's Appellant's Brief, para. 182.
[298] Seromba's Appellant's Brief, paras. 183, 184.
[299] Seromba's Appellant's Brief, paras. 185, 186.

119. The Trial Chamber found Witness CDL to be credible and accepted his testimony as to the meeting between Athanase Seromba and others during which he accepted the decision to destroy the church, as well as his account that Athanase Seromba indicated the weak side of the church to the bulldozer drivers.[300]

120. Witness CDL testified that:

> The drivers were using a way of destroying -- of using these bulldozers. They were trying to destroy the church from one side, and they saw that it was difficult, and Father Seromba advised the bulldozer's driver to go and start from the side of the sacristy.[301]

The witness confirmed this statement when he testified that:

> As I have already said, he was showing the fragile or weak part that one needed to start in order to kill the Tutsis, and he was talking -- they were talking with the father. Nothing was done without his consent. At least, he did not show any desire to come to the assistance of the refugees in question.[302]

Athanase Seromba asserts that "one cannot lend any credibility" to this statement because Witness CDL did not provide a detailed account of the place where he provided the advice and also because the witness's testimony shows that the parish secretariat was the only place where the witness saw him.[303] Witness CDL testified that he saw Athanase Seromba at the parish secretariat on 15 April 1994 when the witness arrived at the church.[304] The witness also indicated that he saw him at the parish secretariat at 7.30 a.m. on 16 April 1994.[305] Witness CDL was not questioned as to Athanase Seromba's exact location within the church compound when he advised the bulldozer driver on the demolition of the church, and the witness did not provide this detail on his own.[306] This is not sufficient to show that Witness CDL's testimony on this point was unreliable and that the Trial Chamber erred in accepting it.

(d) Witness CBR

121. As summarized in the Trial Judgement, Prosecution Witness CBR testified that, on 16 April 1994, he saw the authorities meet with Athanase Seromba at the church and that after this meeting the attack on the church began.[307] The witness further testified that Athanase Seromba was not the

[300] Trial Judgement, para. 239.
[301] T. 19 January 2005 p. 25.
[302] T. 19 January 2005 p. 26.
[303] Seromba's Appellant's Brief, para. 186.
[304] T. 19 January 2005 p. 16 (closed session), T. 19 January 2005 pp. 42, 43.
[305] T. 19 January 2005 p. 22.
[306] *See* T. 19 January 2005 pp. 3-64, pp. 9-17, 36-39 (closed session); T. 20 January 2005 pp. 2-27, pp. 13-15, 23-27 (closed session).
[307] Trial Judgement, paras. 219, 240.

one leading the attacks, but that before the authorities gave any instructions to the attackers they had to speak with Athanase Seromba.[308]

122. Athanase Seromba submits that Witness CBR's testimony does not indicate that he ordered the destruction of the church or that he held a conversation with the bulldozer driver on 16 April 1994.[309] He argues that the Prosecution failed to prove beyond reasonable doubt that he had a conversation with the bulldozer driver, during which he encouraged him to destroy the church.[310]

123. The Prosecution responds that although Witness CBR testified that Athanase Seromba was not leading the attackers, this does not contradict his evidence that the authorities had to hold discussions with Athanase Seromba before instructing the assailants.[311]

124. Athanase Seromba's submission that Witness CBR's testimony does not indicate that he ordered the destruction of the church is not relevant since the Trial Chamber did not find that he ordered the destruction of the church, but rather that he was informed by the authorities of their decision to destroy the church and that he accepted this decision.[312]

125. Furthermore, Athanase Seromba's argument that Witness CBR's testimony does not indicate that he held a conversation with the bulldozer driver is immaterial. The Trial Chamber did not rely on his evidence in this regard. Rather, the Trial Chamber based its finding about Athanase Seromba's conversation with the bulldozer driver on the evidence of Witnesses CBK and CDL.[313] Consequently, Athanase Seromba has failed to show that the Trial Chamber committed any error in relation to its assessment of, or reliance on, Witness CBR's evidence.

(e) Witness FE32

126. As summarized in the Trial Judgement, Defence Witness FE32, the bulldozer driver who demolished the church, testified that it was "Kayishema" and not Athanase Seromba who forced him to demolish the church and that "Védaste Murangwabugabo and Anastase Rushema led the operations on 16 April 1994".[314] The witness also testified that Athanase Seromba "ran up to

[308] Trial Judgement, para. 219.
[309] Seromba's Appellant's Brief, para. 192.
[310] Seromba's Appellant's Brief, para. 193.
[311] Prosecution's Respondent's Brief, para. 170.
[312] Trial Judgement, para. 268.
[313] Trial Judgement, paras. 236, 239.
[314] Trial Judgement, para. 220.

complain" to Rushema about the demolition of the church and that Athanase Seromba was "powerless in the face of such a situation".[315]

127. Athanase Seromba submits that the Trial Chamber erred in finding Defence Witness FE32 not credible.[316] He argues that the discrepancies between the witness's testimony and his prior statements arose as a result of duress and manipulation.[317]

128. The Prosecution responds that Athanase Seromba's present submissions merely repeat arguments unsuccessfully advanced at trial, without showing how the Trial Chamber's finding was erroneous.[318]

129. The Trial Chamber found that Witness FE32 was not credible with regard to the events of 16 April 1994 due to the numerous contradictions both within his prior statements and his testimony, as well as the contradictions between his prior statements and his testimony.[319] In reaching this finding, the Trial Chamber considered in detail the arguments Athanase Seromba now advances under this sub-ground of appeal. It also took into consideration that Witness FE32 was unable to provide any explanation concerning the numerous contradictions[320] and held that the Defence did not adduce any evidence that the prior statements were obtained under duress.[321] The Appeals Chamber notes that on appeal Athanase Seromba has not substantiated his claims that Witness FE32's statements were made under duress. Rather, he underpins his allegation with a general reference to "the conditions of confinement in Rwandan prisons and the atmosphere of terror which prevails in that country".[322] This is insufficient to demonstrate any error in the finding of the Trial Chamber.

130. Accordingly, the Appeals Chamber is not satisfied that Athanase Seromba has demonstrated that the Trial Chamber erred in finding Witness FE32 not credible.

3. Conclusion

131. This ground of appeal is dismissed in its entirety.

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[315] Trial Judgement, para. 220.
[316] Seromba's Appellant's Brief, para. 209.
[317] Seromba's Appellant's Brief, paras. 199-208; AT. 26 November 2007 p. 48.
[318] Prosecution's Respondent's Brief, para. 175.
[319] Trial Judgement, para. 243.
[320] Trial Judgement, para. 254.
[321] Trial Judgement, para. 255.
[322] Seromba's Appellant's Brief, para. 208.

H. Alleged Errors relating to the Conviction for Extermination as a Crime against Humanity (Ground of Appeal 9)

132. The Trial Chamber found that Athanase Seromba "held discussions with the authorities and accepted their decision to destroy the [Nyange] church."[323] The Trial Chamber further found that he encouraged the bulldozer driver to destroy the church and gave advice to the driver concerning "the fragile side of the church."[324] The Trial Chamber concluded that Athanase Seromba's conduct substantially contributed to the destruction of the church which led to the death of 1,500 Tutsi refugees.[325] On the basis of these findings, the Trial Chamber convicted Athanase Seromba of aiding and abetting extermination as a crime against humanity.[326] Under this ground of appeal, Athanase Seromba challenges this legal finding.[327]

1. Arguments relating to the Applicable Law

133. In his submissions, Athanase Seromba details his understanding of the applicable law regarding extermination as a crime against humanity and defines the elements of this crime, as confirmed, in his view, by the jurisprudence of the Tribunal and that of the ICTY.[328]

134. The Prosecution responds that Athanase Seromba's submissions largely consist of a basic restatement of the law and that they do not raise any legal or factual error that would merit the reversal of his conviction.[329]

135. The Appeals Chamber considers that Athanase Seromba has failed to specify any error allegedly committed by the Trial Chamber in its analysis of the relevant legal provisions. In this context, the Appeals Chamber recalls that, on appeal, the parties must limit their arguments to alleged legal errors that could invalidate the decision of the Trial Chamber and to alleged factual errors that could result in a miscarriage of justice. These criteria are set forth in Article 24 of the Statute and are well established by the Appeals Chambers of this Tribunal and of the ICTY.[330] The

[323] Trial Judgement, para. 364.
[324] Trial Judgement, para. 364.
[325] Trial Judgement, paras. 364, 365.
[326] Trial Judgement, paras. 364, 366-368, 371. Athanase Seromba was also convicted of aiding and abetting genocide for this conduct. *See* Trial Judgement, paras. 334, 335, 337, 338, 342.
[327] Seromba's Notice of Appeal, paras. 38, 39; Seromba's Appellant's Brief, paras. 273-296.
[328] Seromba's Appellant's Brief, paras. 273-291.
[329] Prosecution's Respondent's Brief, paras. 183, 188.
[330] *Simba* Appeal Judgement, para. 8; *Ndindabahizi* Appeal Judgement, paras. 8-10; *Ntagerura et al.* Appeal Judgement, paras. 11, 12; *Gacumbitsi* Appeal Judgement, paras. 6-8; *Kajelijeli* Appeal Judgement, para. 5; *Semanza* Appeal Judgement, paras. 7, 8; *Musema* Appeal Judgement, para. 15; *Kayishema and Ruzindana* Appeal Judgement, para. 177; *Akayesu* Appeal Judgement, paras. 178, 179. For jurisprudence under Article 25 of the ICTY Statute, *see Blagojević and Jokić* Appeal Judgement, para. 6; *Brđanin* Appeal Judgement, para. 8; *Gali}* Appeal Judgement, para. 6; *Blagoje Simi}* Appeal Judgement, para. 7; *Staki}* Appeal Judgement, para. 7; *Kvo~ka et al.* Appeal Judgement, para. 14;

Appeals Chamber will therefore only address those submissions which specifically challenge the Trial Judgement and which could potentially invalidate the findings of the Trial Chamber.

136. In particular, the Appeals Chamber notes that Athanase Seromba's arguments regarding his conviction for extermination as a crime against humanity do not challenge the Trial Chamber's findings that all elements necessary to establish the occurrence of this specific crime were fulfilled.[331] While, as noted above, Athanase Seromba discusses at length his understanding of the constitutive elements of crimes against humanity, his arguments do not challenge the Trial Chamber's findings in relation to the general requirements of the crime, but focus on the Trial Chamber's findings that relate to his own participation in this crime. The Appeals Chamber will therefore limit its assessment to whether the Trial Chamber erred when finding that it had been proven beyond reasonable doubt that Athanase Seromba aided and abetted extermination as a crime against humanity, in view of Athanase Seromba's submissions that the elements of *actus reus* and *mens rea* had been erroneously established.

2. Alleged Errors relating to the *Actus Reus* and *Mens Rea* Elements of Extermination as a Crime against Humanity

(a) Actus Reus

137. Athanase Seromba submits that the Trial Chamber erred in finding that his conduct constituted the required *actus reus* to establish his responsibility for extermination, pursuant to Article 3 of the Statute.[332] He recalls his previous arguments relating to alleged errors in the Trial Chamber's factual findings which formed the basis for his conviction for this crime and submits, in particular, that he never accepted an order regarding the demolition of Nyange church[333] and that he was unaware of the issuance of any such order.[334] He further submits that he did not encourage the

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Vasiljevi} Appeal Judgement, para. 5; *see also Kunarac et al.* Appeal Judgement, paras. 35-48; *Kupre{ki} et al.* Appeal Judgement, paras. 21-41; *^elebi}i* Appeal Judgement, paras. 434, 435; *Furund`ija* Appeal Judgement, paras. 34-40.

[331] The Trial Chamber found, in particular, that the attack against the Tutsis in Kivumu *commune* in April 1994, culminating in the destruction of Nyange church was "widespread" and "systematic", and that "the attack was directed against the Tutsi civilian population that had sought refuge in Nyange Church on discriminatory grounds" (Trial Judgement, para. 369).

[332] Seromba's Appellant's Brief, paras. 292-294, quoting Trial Judgement, paras. 364, 365.

[333] The Appeals Chamber notes that there is an error in the translation of Seromba's Appellant's Brief which, at paragraph 294 reads: "the Appellant *never took order from anyone* regarding the demolition of the church" – this statement differs from the French text ("*l'appellant n'avait jamais accepté l'ordre de qui que ce soit*"), as well as from the translation of the Trial Judgement, paragraph 364, which also reads "and *accepted the decision taken by them* to destroy the church" (emphasis added).

[334] Seromba's Appellant's Brief, para. 294. *See supra* Ground of Appeal 7 of Athanase Seromba's appeal where these arguments have been addressed by the Appeals Chamber.

bulldozer driver to demolish the church and stresses that he did not speak with him prior to the destruction of the church.[335]

138. The Prosecution responds that Athanase Seromba merely relies on his previous arguments regarding alleged erroneous factual findings and argues that he has failed to identify any error of law allegedly committed by the Trial Chamber.[336]

139. The Appeals Chamber recalls that the *actus reus* for aiding and abetting extermination as a crime against humanity comprises of acts specifically directed to assist, encourage, or lend moral support to the perpetration of this crime and that such support must have a substantial effect upon the perpetration of the crime.[337] In the present case, the Trial Chamber found that Athanase Seromba held discussions with the communal authorities and accepted their decision to destroy the church.[338] Moreover, the Trial Chamber found that Athanase Seromba encouraged the bulldozer driver to destroy the church and that he indicated its fragile side to the driver.[339] In support of this ground of appeal, Athanase Seromba refers to his arguments which challenged these factual findings.[340] The Appeals Chamber recalls its finding that it was not unreasonable for the Trial Chamber to rely on the testimonies of Witnesses CBJ, CBK, CDL, and CBR,[341] and that the Trial Chamber did not err in rejecting the testimony of Witness FE32 when making the impugned factual findings.[342] The Appeals Chamber has therefore already found that Athanase Seromba's challenge to the underlying factual findings is without merit.[343]

140. The Appeals Chamber considers that the finding of the Trial Chamber, which characterized Athanase Seromba's conduct as aiding and abetting the crime of extermination, is also subject to an appeal by the Prosecution and for practical reasons will be discussed there. Given that the Prosecution appeal on this point is granted, Athanase Seromba's arguments cannot succeed. Accordingly this sub-ground is dismissed.

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[335] Seromba's Appellant's Brief, para. 294.
[336] Prosecution's Respondent's Brief, paras. 187, 188.
[337] *Ntakirutimana* Appeal Judgement, para. 530.
[338] Trial Judgement, para. 364. The Appeals Chamber notes that the Trial Chamber used the words "approved" and "accepted" interchangeably to describe Athanase Seromba's conduct. *See* Trial Judgement, paras. 239, 268, 334, 264, 367, 382.
[339] Trial Judgement, para. 364. The Appeals Chamber notes that while the English translation of the Trial Judgement reads "Seromba even gave advice to the bulldozer driver concerning the fragile side of the church", the French text states that Seromba indicated (in the sense of providing information about) the fragile side of the church ("*Seromba a même donné des indications au conducteur du bulldozer sur le côté fragile de l'église*") (emphasis added). *See also* Trial Judgement, para. 269.
[340] Seromba's Appellant's Brief, para. 294.
[341] *See supra* Athanase Seromba's Ground of Appeal 7.
[342] *See supra* Athanase Seromba's Ground of Appeal 7.
[343] *See supra* Athanase Seromba's Ground of Appeal 7.

(b) Mens Rea

141. The Appeals Chamber notes that the Prosecution, in its appeal, relies on the Trial Chamber's findings regarding Athanase Seromba's *mens rea* for aiding and abetting extermination. The Appeals Chamber will therefore proceed to address Athanase Seromba's challenges to these findings.

142. Athanase Seromba submits that the Trial Chamber's finding that the *mens rea* for aiding and abetting extermination has been proven beyond reasonable doubt is contrary to "the pertinent statements" of Witnesses PA1 and FE32 and is inconsistent with the "trend of events".[344] He further submits that the Trial Chamber erred in law in finding him responsible for committing a crime against humanity because he, at no time, conceived or endorsed a plan to destroy "his church".[345]

143. The Prosecution responds that Athanase Seromba merely reiterates his arguments related to previously raised and addressed alleged factual errors and that he fails to identify any alleged error of law capable of invalidating the decision.[346]

144. The Appeals Chamber has already found that the Trial Chamber had not erred in finding that Witness FE32 was not credible.[347] In light of this, the Appeals Chamber considers that the Trial Chamber did not err in not relying on Witness FE32's testimony for its factual findings which formed the basis for its legal findings that Athanase Seromba possessed the requisite *mens rea* for aiding and abetting extermination as a crime against humanity.

145. With regard to Witness PA1, the Appeals Chamber notes that the Trial Chamber found Witness PA1 not to be credible, having considered that his testimony and prior statements as to the events of 16 April 1994 contained many contradictions.[348] However, in his Appellant's Brief, Athanase Seromba does not challenge the conclusion that Witness PA1 was not credible. Consequently, the Appeals Chamber finds that Athanase Seromba has not demonstrated how the Trial Chamber erred in not relying on the testimony of Witness PA1 when it found that he possessed the requisite *mens rea* for aiding and abetting extermination as a crime against humanity.

146. In order to assess whether the Trial Chamber erred in establishing Athanase Seromba's *mens rea* in relation to the destruction of Nyange church, the Appeals Chamber recalls that the requisite

[344] Seromba's Appellant's Brief, paras. 295, 296, referring to Trial Judgement, paras. 367, 368.
[345] Seromba's Appellant's Brief, para. 296.
[346] Prosecution's Respondent's Brief, paras. 187, 188.
[347] *See supra* Athanase Seromba's Ground of Appeal 7.
[348] Trial Judgement, paras. 262-264.

mens rea for aiding and abetting the crime of extermination is knowledge that the acts performed by the aider and abettor assist the commission of the crime of extermination committed by the principal perpetrator(s).[349] This standard was correctly applied by the Trial Chamber. Indeed, the Trial Chamber first considered that Athanase Seromba could not have been unaware of the legitimising effect his words would have on the actions of the communal authorities and the bulldozer driver,[350] before finding that he had the requisite knowledge that his approval of the authorities' decision to destroy the church and his encouraging words to the bulldozer driver would substantially contribute to the destruction of the church and the death of the numerous refugees inside.[351]

147. These legal conclusions are consistent with and are based on the Trial Chamber's factual findings, which the Appeals Chamber has previously considered not to be unreasonable:[352] namely that Athanase Seromba, while not himself giving the order to destroy the church,[353] had accepted such a decision by the communal authorities,[354] and that he had encouraged the bulldozer driver to destroy the church.[355] The Appeals Chamber considers that these findings are not disturbed by Athanase Seromba's claim that he did not endorse a plan to destroy "his" church, as this was "his working tool".[356] Athanase Seromba's statements made to the driver of the bulldozer show clearly that he was not concerned by the destruction of the Nyange church, given his indication that a new church would be built,[357] and the Trial Chamber accordingly found that Athanase Seromba assured the bulldozer driver that such a new church would be built by the Hutus.[358]

148. Moreover, with regard to Athanase Seromba's more general claim that the Trial Chamber's factual findings are "inconsistent with the trend of events"[359] and led to erroneous legal findings, the Appeals Chamber finds that Athanase Seromba has failed to substantiate this assertion. In any event, considering that the Appeals Chamber has already found that the factual findings on which the Trial Chamber based its legal conclusions were not unreasonable, and that the Trial Chamber did not err in applying the correct legal standard to assess his *mens rea* based on these factual

[349] *Ntakirutimana* Appeal Judgement, para. 530.
[350] Trial Judgement, para. 367.
[351] Trial Judgement, para. 367.
[352] *See supra* Athanase Seromba's Ground of Appeal 7.
[353] Trial Judgement, para. 267.
[354] Trial Judgement, para. 268.
[355] Trial Judgement, para. 269.
[356] Seromba's Appellant's Brief, para. 296.
[357] *See* Trial Judgement, para. 213, quoting testimony of Witness CBK, T. 19 October 2004 pp. 25, 26 (closed session) and T. 20 October 2004 pp. 15, 17 (closed session). *See also* Trial Judgement, para. 236.
[358] Trial Judgement, para. 269.
[359] Seromba's Appellant's Brief, para. 296.

findings, Athanase Seromba's argument that the Trial Chamber's legal findings are erroneous is without merit.

149. Finally, the Appeals Chamber rejects Athanase Seromba's assertion that the Trial Chamber erred in law in convicting him of extermination as a crime against humanity because he did not conceive or endorse a plan to destroy the church. As the Appeals Chamber has recognized in other cases, while the existence of a plan can be evidentially relevant, it is not a separate legal element of a crime against humanity and, in particular, the proof of a plan is not a prerequisite to a conviction for extermination.[360]

150. The Appeals Chamber therefore finds that Athanase Seromba has failed to show any error in the Trial Chamber's analysis of the required mental element when establishing his *mens rea* for aiding and abetting extermination as a crime against humanity. Accordingly, this sub-ground of appeal is dismissed. Whether the Trial Chamber correctly characterized Athanase Seromba's *mens rea* merely as knowledge will be addressed in greater detail in the context of the Prosecution's appeal.

3. Conclusion

151. For the foregoing reasons, this ground of appeal is dismissed in its entirety. The Appeals Chamber will further consider Athanase Seromba's liability for extermination as a crime against humanity under Count 4 of the Indictment in connection with Ground 1 of the Prosecution's appeal.

[360] *See Gacumbitsi* Appeal Judgement, para. 84. *See also Semanza* Appeal Judgement, para. 269; *Kunarac et al.* Appeal Judgement, para. 98; *Krstić* Appeal Judgement, para. 225; *Blaškić* Appeal Judgement, para. 120.

IV. THE APPEAL OF THE PROSECUTION

A. Alleged Errors relating to Committing, Ordering, and Planning Genocide as well as Extermination as a Crime against Humanity (Ground of Appeal 1)

152. Athanase Seromba was convicted for aiding and abetting genocide as well as extermination as a crime against humanity.[361] The Trial Chamber held that Athanase Seromba incurred criminal responsibility only for aiding and abetting[362] and reasoned that,

> […] the Prosecution has not proved beyond reasonable doubt that Seromba planned or committed the massacres of Tutsi refugees. With respect to participation by instigating or by ordering, the Prosecution has not proved that Athanase Seromba had the specific genocidal intent or *dolus specialisis* [*sic*] (specific intent) to incur liability under these two modes of participation. More specifically, in relation to ordering, the Chamber finds that the Prosecution has not established that Accused Athanase Seromba exercised effective control over the principal perpetrators of the crimes.[363]

Consequently, the Trial Chamber did not enter convictions for the charges of committing, ordering, and planning genocide or extermination as a crime against humanity, which the Prosecution challenges under this ground of appeal.[364]

153. The Prosecution submits that the Trial Chamber committed errors of law and fact in concluding that Athanase Seromba had not committed, ordered, and planned the crimes of genocide or extermination as a crime against humanity through his participation in the massacres at Nyange parish between 6 and 20 April 1994.[365]

154. The Appeals Chamber will address in turn the Prosecution's three sub-grounds of appeal challenging the Trial Chamber's factual and legal findings as to the modes of participation for which Athanase Seromba was found not responsible. The related issue of sentencing will be addressed in the Prosecution's Ground of Appeal 3.

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[361] Trial Judgement, paras. 314-342, 352-371. The Appeals Chamber notes that the wording in paragraph 371 of the English translation of the Trial Judgement, that "Athanase Seromba *committed* a crime against humanity (extermination)" (emphasis added), results from a translation error. In the French original, this paragraph mentions Athanase Seromba's responsibility for extermination as a crime against humanity without specifying the mode of liability ("*[L]a Chambre considère établi au-delà de tout doute raisonnable à l'encontre de l'accusé Athanase Seromba le crime d'extermination constitutif de crime contre l'humanité visé au chef d'accusation*").
[362] Trial Judgement, para. 311.
[363] Trial Judgement, para. 312 (footnote omitted).
[364] Prosecution's Notice of Appeal, paras. 1-8; Prosecution's Appellant's Brief, paras. 17-74.
[365] Prosecution's Appellant's Brief, para. 17; AT. 26 November 2007 p. 4.

1. Alleged Errors relating to the Commission of Genocide

155. With respect to committing as mode of participation in crimes, the Trial Chamber in this case stated that

> "committing" means the direct physical or personal participation of the accused in the perpetration of a crime or the culpable omission of an act that was mandated by a rule of criminal law.[366]

The Trial Chamber found that the Prosecution has not proved beyond reasonable doubt that Athanase Seromba committed the massacres of Tutsi refugees.[367]

156. The Prosecution submits that the Trial Chamber's approach to the concept of direct participation in the material elements of the crime of genocide does not take into consideration that Athanase Seromba acted through others, which amounts to direct participation in the crime, namely "committing" as a mode of liability set out in Article 6(1) of the Statute.[368] In the Prosecution's opinion, the Trial Chamber's findings in this regard are inconsistent with the Appeals Chamber's recent jurisprudence holding that the concept of commission of the crime of genocide cannot be restricted to the physical killing of individuals, but that it also includes other acts such as being present, supervising and directing a massacre, and separating Tutsis so they can be killed.[369]

157. The Prosecution presents a number of factual conclusions reached in the Trial Judgement which, in its view, should have led the Trial Chamber to conclude that Athanase Seromba participated directly in the material elements of the crime of genocide,[370] and possessed the specific intent to destroy the Tutsi group as such.[371] Specifically, the Prosecution highlights the Trial Chamber's findings with regard to, *inter alia*, Athanase Seromba's presence during the massacres;[372] his instruction to the gendarmes to prevent the Tutsi refugees from taking bananas from the parish plantation;[373] his instructions to stop the killings and remove the bodies before massacres resumed;[374] his agreement with the authorities' decision to bulldoze the church and his direction and supervision of the bulldozing;[375] his position of authority in the parish;[376] and his

[366] Trial Judgement, para. 302.
[367] Trial Judgement, para. 312.
[368] Prosecution's Appellant's Brief, para. 30.
[369] Prosecution's Appellant's Brief, paras. 31-40, quoting *Gacumbitsi* Appeal Judgement, paras. 59-61. AT. 26 November 2007 p. 7.
[370] Prosecution's Appellant's Brief, para. 42; AT. 26 November 2007 p. 7.
[371] Prosecution's Appellant's Brief, para. 45; AT. 26 November 2007 pp. 5-6.
[372] Prosecution's Appellant's Brief, para. 42 a.
[373] Prosecution's Appellant's Brief, para. 42 b.
[374] Prosecution's Appellant's Brief, para. 42 b.
[375] Prosecution's Appellant's Brief, paras. 42 e, 42 f.
[376] Prosecution's Appellant's Brief, para. 42 c.

decision to expel Tutsi employees and refugees from the parish and the subsequent death of two of them.[377]

158. The Prosecution submits that the context of the events in which Athanase Seromba participated was such that, taken together with his "acts and utterances", it should have led the Trial Chamber to conclude that he had the requisite specific intent for the crime of genocide.[378] In this regard the Prosecution stresses several factual findings in the Trial Judgement including Athanase Seromba's refusal to celebrate mass for the Tutsi refugees,[379] his expelling of Tutsi refugees from the church, and the death of Meriam.[380]

159. Athanase Seromba responds that the Prosecution misinterpreted the findings of the Trial Chamber with regard to his participation in the commission of the crime of genocide.[381] He argues that his acts were motivated by a good intention and that they did not amount to the commission of genocide.[382]Athanase Seromba further argues that the Prosecution is attempting to extend the concept of commission of a crime through an inaccurate use of the *Tadi}* and *Gacumbitsi* Appeal Judgements.[383] More specifically in relation to the latter, Athanase Seromba submits that it cannot be used as a precedent since he did not commit any crime.[384]

160. Furthermore, Athanase Seromba contests the Prosecution's interpretation of a number of facts upon which its appeal is based[385] and concludes that there is no support for the Prosecution's contention that he possessed genocidal intent and committed acts of genocide.[386]

161. The Appeals Chamber recalls that

> [i]n the context of genocide, however, "direct and physical perpetration" need not mean physical killing; other acts can constitute direct participation in the *actus reus* of the crime.[387]

The jurisprudence makes clear that "committing" is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime.[388] The question of whether an accused acts with his own hands, *e.g.* when killing people, is not the only relevant

[377] Prosecution's Appellant's Brief, para. 42 d.
[378] Prosecution's Appellant's Brief, paras. 27-29.
[379] Prosecution's Appellant's Brief, para. 45 b.
[380] Prosecution's Appellant's Brief, para. 45 c.
[381] Seromba's Respondent's Brief, para. 49.
[382] Seromba's Respondent's Brief, paras. 47-49.
[383] Seromba's Respondent's Brief, paras. 54-58; AT. 26 November 2007 p. 18.
[384] Seromba's Respondent's Brief, para. 60.
[385] Seromba's Respondent's Brief, para. 64.
[386] Seromba's Respondent's Brief, para. 67.
[387] *Gacumbitsi* Appeal Judgement, para. 60.
[388] *See Gacumbitsi* Appeal Judgement, para. 60; *Ndindabahizi* Appeal Judgement, para. 123.

criterion.[389] The Appeals Chamber therefore finds, Judge Liu dissenting, that the Trial Chamber erred in law by holding that "committing" requires direct and physical perpetration of the crime by the offender. To remedy this error, the Appeals Chamber will apply the correct legal standard—*i.e.*, whether Athanase Seromba's actions were "as much an integral part of the genocide as were the killings which [they] enabled."[390] In so doing, it will determine whether, as the Prosecution has argued on appeal, the Trial Chamber's factual conclusions and the evidence contained in the trial record support the conclusion that Athanase Seromba became a principal perpetrator of the crime itself by approving and embracing as his own the decision to commit the crime and thus should be convicted for committing genocide.[391]

162. The Appeals Chamber considers that the law should be applied to the factual findings of the Trial Chamber, taken as a whole. It is on this basis that the Appeals Chamber will determine the proper mode of liability under Article 6(1) of the Statute. In cases of ambiguity reference may be made, pursuant to Rules 109 and 118(A) of the Rules, to the record on appeal.

163. As a preliminary matter, the Appeals Chamber observes that the Trial Chamber found Athanase Seromba guilty of genocide by aiding and abetting killing Tutsi refugees for two different acts: for the killing of Tutsi refugees by means of destroying the Nyange church, and for the killing of members of the Tutsi group in relation to the expulsion of employees and refugees, *inter alia*, Patrice and Meriam. The Appeals Chamber will address the Prosecution's challenges regarding these separate convictions in turn.

(a) Athanase Seromba's Conviction for Aiding and Abetting Genocide by Means of Destroying the Church

164. The attacks against the Tutsi refugees at Nyange parish resumed in the morning of 16 April 1994, after the *bourgmestre* had given a signal by shooting at the refugees.[392] When it became apparent that it was impossible to destroy the church by using bullets and grenades, Kayishema,

[389] "Committing" is not limited to physical perpetration of a crime. *See, e.g.,* ARCHBOLD: CRIMINAL PLEADING, EVIDENCE AND PRACTICE (2007), §18-7; *Bundesgerichtshof* [BGH] [(German) Federal Supreme Court of Justice] 26 July 1994, *Entscheidungen des Bundesgerichtshofs in Strafsachen* [BGHSt] 40, 218 (236).
[390] *Gacumbitsi* Appeal Judgement, para. 60.
[391] *Cf. Blagojević and Jokić* Appeal Judgement, para. 8; *Blagoje Simić* Appeal Judgement, para. 9; *Naletilić and Martinović* Appeal Judgement, para. 10. The Appeals Chamber also recalls Rule 118(A) of the Rules which provides that "the Appeals Chamber shall pronounce judgement on the basis of the record on appeal and on any additional evidence as has been presented to it". Rule 109(A) of the Rules provides that "[t]he record on appeal shall consist of the trial record, as certified by the Registrar".
[392] Trial Judgement, para. 238; T. 19 January 2005 pp. 22-23, 62 (Witness CDL); T. 20 January 2005 p. 3 (Witness CDL).

Ndahimana, Kanyarukiga, Habarugira and other persons decided to use bulldozers instead.[393] They turned to Athanase Seromba, explaining that there were no other means left to destroy the church to reach the refugees, and offered him the option to use the bulldozers.[394] Athanase Seromba stated: "If you have no other means, bring the bulldozers then, and destroy the church".[395]

165. The authorities then called for bulldozer driver Witness FE32 and ordered him to destroy the church.[396] He, however, did not immediately accept that order of the authorities and turned to Athanase Seromba to receive instructions from him.[397] He asked Athanase Seromba three times whether he should destroy the church, and each time Athanase Seromba answered in the affirmative. Athanase Seromba emphasized that "[d]emons ha[d] gotten in there [the church]"[398] and that when "there are demons in the church, it should be destroyed."[399] Athanase Seromba also pointed to the part of the church where he should start.[400]

166. Paragraph 213 of the Trial Judgement recounts the relevant testimony of Witness CBK as follows:

> "[…] he [the bulldozer driver] asked Father Seromba thrice: 'Should we destroy this church?' And then Father Seromba answered, 'Destroy the church. We, the Hutu, are many in number and, furthermore, in the house of God. Demons have gotten in there…that we, the Hutus, were many in number and that we were going to build another'".
>
> "Anastase asked Seromba: 'Do you want me to destroy this church?' And he put the question to him three times. And he told him, 'Destroy it.' […] Furthermore, he stated that: 'We, the Hutus, are many and we can build another church'."
>
> "[…] the driver who came to destroy the church asked him on three occasions, three times, if he should destroy the church. Now, he said, 'Destroy it!'".
>
> "It was Anastase who asked Father Seromba whether the church would be destroyed and Seromba told him: 'you can destroy it. There are many of us. We can rebuild it. When there are demons in the church, it should be destroyed'."[401]

167. Having received Athanase Seromba's agreement with the decision to destroy the church, the driver accordingly proceeded to destroy the church,[402] which necessarily caused the deaths of

[393] Trial Judgement, paras. 217, 239.
[394] T. 19 January 2005 pp. 23, 61 (Witness CDL).
[395] Trial Judgement, paras. 217, 239.
[396] Witness CDL, regarded credible by the Trial Chamber, stated the following: "After the *bourgmestre* spoke with Father Seromba, when he agreed to the proposal, not much time elapsed because Kayishema and the others went to bring the bulldozers, and a few moments later the bulldozers reached the church" (T. 19 January 2005 p. 23).
[397] Trial Judgement, para. 269.
[398] Trial Judgement, para. 213, quoting T. 19 October 2004 pp. 25-26 (closed session) (Witness CBK).
[399] Trial Judgement, para. 213, quoting T. 20 October 2004 p. 17 (closed session) (Witness CBK).
[400] Trial Judgement, para. 269. The Appeals Chamber has already considered and rejected Athanase Seromba's submission that he could not have known the fragile side of the church. *See supra* Discussion and Conclusions of Ground 8 of Seromba's Appeal.
[401] Trial Judgement, para. 213 (footnotes omitted).

approximately 1,500 Tutsis who had sought refuge in the church and entrusted Athanase Seromba with their safety.[403]

168. With respect to the conversation between Athanase Seromba and the bulldozer driver, it is important to note the Trial Chamber's findings that Athanase Seromba was the acting priest at Nyange parish in April 1994, and was known and respected in the Catholic community of Nyange.[404] From the established facts, the Appeals Chamber takes the view that priests were held in high regard by the population of Nyange parish and Athanase Seromba was someone whom the population respected and obeyed. In this regard, Witness CBK testified in response to questioning by Prosecution counsel:

> Q. In Nyange *commune*, how were priests viewed by the population?
>
> A. A priest was someone held in high esteem by the population, by the people. He was very respected and loved by the citizenry. In short, personally, I was keen to respect a priest more than I would respect a *bourgmestre*, and I think I show more respect to a priest than to a *bourgmestre*.
>
> Q. And why would more respect be shown to the priest than to the *bourgmestre*?
>
> A. I will give you an example for an illustration. The *bourgmestre* can tell me, "Kill someone," and if I kill that person, I know that that would be a crime. And after that crime, I can go to confess to the priest. And because of the authority conferred upon him, he can absolve me. But if the priest who were supposed to hear my confession himself asked me to kill somebody, I would consider that the crime I have -- I would have committed is not a crime as such since he is the one who normally should hear my confession and is the same person who should have given me the order to murder.
>
> Q. Witness, I have asked you a general question with respect to how priests were viewed in Nyange *commune*. I will now ask you specifically to Father Seromba: how was Father Seromba viewed in Nyange *commune* before the massacres?
>
> A. He didn't spend much time at our parish, but we believed that he was a father who was coming to teach us the word of God. We believed that we had found somebody who was very important and who was very spiritual and who was coming to help us to grow spiritually.
>
> Q. Therefore, Witness, can you tell us whether Father Seromba was a priest that other persons would obey and listen to?
>
> A. Yes, I believe that this was a person that could be listened to and respected by the population.[405]

169. Furthermore, Witness CDL, who the Trial Chamber found credible, testified that nothing was done without the consent of Athanase Seromba.[406] In this context, the Appeals Chamber considers the finding of the Trial Chamber, based on the testimony of Defence Witness FE13 who

[402] Trial Judgement, para. 269.
[403] Trial Judgement, paras. 284, 285. *See also* in this context the testimony of Witness CDL, T. 19 January 2005 p. 61.
[404] Trial Judgement, paras. 38, 390. *See* T. 19 October 2004 p. 42 (closed session).
[405] *See* T. 19 October 2004 p. 42 (closed session).
[406] Trial Judgement, para. 218.

the Trial Chamber found credible, that at a meeting by the communal authorities held on 11 April 1994 and which dealt with the "security situation" in the *commune*, a letter by Athanase Seromba was read out[407] in which he informed the *bourgmestre* that he would not attend but "that he would adhere to the decisions that would be taken because he was ready to cooperate with the authorities in order to solve the security problem in the *commune*."[408]

170. Tellingly, the Trial Chamber itself correctly summarized the criminal conduct at paragraphs 239 and 269 of the Trial Judgement where it found the following:

> The Chamber considers that Witness CDL is also credible as to two other alleged events: first, the meeting held by Athanase Seromba, Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons, during which Seromba approved the decision to destroy the church, saying: "If you have no other means of doing it, bring these bulldozers and destroy the church", and secondly, the advice that Seromba gave to the drivers concerning the fragile side of the church.[409]
>
> […]
>
> The Trial Chamber also finds that the Prosecution has established beyond reasonable doubt that Athanase Seromba said such words to bulldozer driver FE32 as would encourage him to destroy the church. The Chamber notes that when bulldozer driver FE32 received the order from the authorities to destroy the church, he asked Seromba whether he should destroy the church. Seromba answered in the affirmative, assuring to the witness that Hutu would be able to build it again. Furthermore, the Trial Chamber finds that Seromba gave advice to the bulldozer drivers concerning the fragile side of the church.[410]

171. On the basis of these underlying factual findings, the Appeals Chamber finds that Athanase Seromba approved and embraced as his own the decision of Kayishema, Ndahimana, Kanyarukiga, Habarugira, and other persons to destroy the church in order to kill the Tutsi refugees. It is irrelevant that Athanase Seromba did not personally drive the bulldozer that destroyed the church. What is important is that Athanase Seromba fully exercised his influence over the bulldozer driver who, as the Trial Chamber's findings demonstrate, accepted Athanase Seromba as the only authority, and whose directions he followed. The Appeals Chamber finds, Judge Liu dissenting, that Athanase Seromba's acts, which cannot be adequately described by any other mode of liability pursuant to Article 6(1) of the Statute than "committing", indeed were as much as an integral part of the crime of genocide as the killings of the Tutsi refugees.[411] Athanase Seromba was not merely an aider and abetter but became a principal perpetrator in the crime itself.

172. The Appeals Chamber observes, Judge Liu dissenting, that Athanase Seromba's conduct was not limited to giving practical assistance, encouragement or moral support to the principal

[407] Trial Judgement, paras. 74, 75.
[408] *See also* T. 7 April 2006 p. 18.
[409] Trial Judgement, para. 239.
[410] Trial Judgement, para. 269.
[411] *Cf. Gacumbitsi* Appeal Judgement, para. 60.

perpetrators of the crime, which would merely constitute the *actus reus* of aiding and abetting.[412] Quite the contrary, the findings of the Trial Chamber allow for only one conclusion, namely, that Athanase Seromba was a principal perpetrator in the killing of the refugees in Nyange church. The Appeals Chamber therefore finds that Athanase Seromba's conduct can only be characterized as "committing" these crimes.

173. The Appeals Chamber recalls that an accused evinces the requisite *mens rea* for committing a crime when he acts with an intent to commit that crime.[413] This stands in contrast to the *mens rea* for aiding and abetting, which "is indicated by the requirement that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act."[414]

174. The Appeals Chamber finds, Judge Liu dissenting, that the only reasonable conclusion to be drawn is that, by his acts, Athanase Seromba intended that the approximately 1,500 Tutsi refugees be killed. Therefore, the *mens rea* requirement for committing is satisfied. The Appeals Chamber is satisfied that the acts of Athanase Seromba were not carried out merely with the knowledge that they would assist in the killing of the refugees.

175. The Appeals Chamber now turns to the Prosecution's submission that the Trial Chamber erred by finding that Athanase Seromba did not have the required specific intent to incur liability for genocide. The Appeals Chamber recalls that in addition to intent and knowledge as regards the material elements of the crime of genocide, the mental element of the crime also requires that the perpetrator have acted with the specific intent to destroy a protected group as such in whole or in part.[415]

176. The Trial Chamber correctly held that genocide is a crime requiring specific intent,[416] and that this intent may be proven through inference from the facts and circumstances of a case.[417] In this case, the Trial Chamber, in line with the Appeals Chamber's previous holdings,[418] stated that

> the specific intent of genocide may be inferred from certain facts or indicia, including but not limited to (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a

[412] *Blaškić* Appeal Judgement, para. 46.
[413] *Blagoje Simić et al.* Trial Judgement, para. 137.
[414] *Kayishema and Ruzindana* Appeal Judgement, para. 186.
[415] GERHARD WERLE, PRINCIPLES OF INTERNATIONAL CRIMINAL LAW 207 (2005), referring *inter alia* to *Akayesu* Trial Judgement, para. 497 *et seq.* and *Jelisić* Appeal Judgement, paras. 45, 50 *et seq*.
[416] Trial Judgement, para. 319.
[417] Trial Judgement, para. 320. *See, e.g., Nahimana et al.* Appeal Judgement, para. 524; *Gacumbitsi* Appeal Judgement, para. 40; *Rutaganda* Appeal Judgement, para. 525; *Kayishema and Ruzindana* Appeal Judgement, para. 159.
[418] For examples of relevant facts and circumstances from which the specific intent may be inferred, *see also Gacumbitsi* Appeal Judgement, paras. 40, 41; *Rutaganda* Appeal Judgement, para. 525.

> country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.[419]

177. The Appeals Chamber finds, Judge Liu dissenting, that while the Trial Chamber correctly set out the applicable law, it erred in concluding that the Prosecution had not proved that Athanase Seromba acted with the required specific intent. The Appeals Chamber particularly notes that, in any event at least on 16 April 1994, Athanase Seromba approved and joined the decision of Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons to destroy the church when no other means were available to kill the Tutsis who were seeking refuge inside.[420] Further, Athanase Seromba advised the bulldozer driver on where the weakest side of the church was and directed him to destroy the church, assuring him that it would be Hutus who would be able to rebuild it.[421] The Appeals Chamber notes that this in effect meant killing the Tutsis inside the church. Indeed, Athanase Seromba knew that there were approximately 1,500 Tutsis in the church and that the destruction of the church would necessarily cause their death.

178. Moreover, on two occasions, already before the destruction of the church on 16 April 1994, Athanase Seromba turned away Tutsi refugees from the presbytery, whereupon two of them were killed.[422] With respect to these factual findings, the Trial Chamber relied on the testimony of several witnesses. Witness CBJ, who the Trial Chamber deemed credible with respect to the circumstances of Meriam's death,[423] testified as follows:

> At the beginning, when people started fleeing and taking refuge at the church, she took refuge in the church after the death of Habyarimana. But on the 14th -- or before the 14th of April 1994, Father Seromba -- the girls from Miriam's family and the people who were educated, in particular the teachers -- so Father Seromba had given to these people lodgings, accommodation at the *presbytery*. But on the 14th, when they held the meeting, the purpose of which was to decide on our being killed, he sent away these people to whom he had provided accommodation. So Miriam and her family joined us in the church. I was together with Miriam and her family in the church. And on the 15th, the doors were opened for us and we came out. And after having gotten outside, during the attacks, Miriam went to the same building in which she was before, and Father Seromba, once again, sent her -- sent away the people who were in the rear court to the *presbytery*, and where these people were coming out, they were being shot at. Miriam was captured after she had been sent away by Father Seromba. She was beaten up in front of the secretariat, and I saw people bring her to the front of the church. I didn't quite observe the scene, but subsequently I saw

[419] Trial Judgement, para. 320.
[420] Trial Judgement, para. 268.
[421] Trial Judgement, paras. 239, 269.
[422] Trial Judgement, paras. 193, 201, 202. As a further indicia for Athanase Seromba's *mens rea vis-à-vis* the Tutsis, the Appeals Chamber notes that four of the parish's six employees were dismissed by him on 13 April 1994, all of them Tutsis. The remaining employees were Hutus. *See* Trial Judgement, para. 114.
[423] Trial Judgement, para. 201.

her mortal remains, that is the mortal remains of Miriam. Her clothes had been stripped off. She was treated very shabbily, and that is what I can say that I saw about Miriam.[424]

179. Furthermore, Witness CBK, one of the witnesses who the Trial Chamber deemed credible with respect to the circumstances of Gatare's death, testified:

> A. Gatare had hidden behind the presbytery. And Seromba, who was on the upper level of the presbytery, discovered him and asked Gatare to come out. Gatare refused and Seromba asked one of his watchmen to get him out, and he was killed behind the rear courtyard of the presbytery.
>
> […]
>
> Q. When Gatare the teacher was killed, where was Father Seromba?
>
> A. Father Seromba was at the upper level of the presbytery building.
>
> Q. Did Father Seromba do anything to protect Gatare the teacher from being killed?
>
> A. I saw nothing. He did nothing.
>
> Q. Did Father Seromba do anything to prevent the killing of Gatare, who was the worker at the *commune*?
>
> A. He did nothing. Gatare asked for forgiveness from Father Seromba, and he was saying, "People of the king, why do you" -- "why are you against me?"
>
> Q. You spoke, Witness -- sorry. When Gatare was saying this, where were you?
>
> A. I was in the kitchen. Seromba came to get Gatare out.
>
> Q. Where exactly was Gatare when Seromba came to get him out?
>
> A. Gatare had just left the rear courtyard. He was in the kitchen, and Gatare said, "Why are you against me, people of the king?" And Seromba ordered that he be taken out.[425]

180. Moreover, the Trial Chamber referred to the testimony of Witness CBR, who it deemed credible,[426] CBR testified that on 15 April 1994, already before the destruction of the church on 16 April 1994, Athanase Seromba ordered that the "*saleté*"[427] lying on the ground be removed. By "*saléte*" Athanase Seromba alluded to the bodies of the Tutsi refugees that had been killed during the attacks launched on 15 April 1994.[428] As such left undisturbed by the Trial Chamber, CBR's

[424] T. 12 October 2004 p. 9.
[425] T. 19 October 2004, pp 30-31 (closed session).
[426] Trial Judgement, para 179.
[427] The Appeals Chamber notes that this word is constantly used in the French original of the Trial Judgement, whereas the translation sometimes refers to "filth" and on other occasions to "rubbish."
[428] Trial Judgement, para. 164.

account of the events was in essence confirmed by Witness CNJ,[429] also found credible by the Trial Chamber.[430] Consequently, the Trial Chamber found at paragraph 191 of the Trial Judgement that,

> it has been proven beyond a reasonable doubt that on 15 April 1994, Athanase Seromba asked the assailants, who were preparing to attack the Tutsi in the presbytery courtyard, to stop the killings and to first remove the bodies. The Chamber also finds that the attacks against Tutsi refugees resumed after the bodies had been removed.

In this context, the Appeals Chamber also recalls again the testimony of Witness CBK, on which the Trial Chamber relied, upheld by the Appeals Chamber,[431] in that Athanase Seromba stated: "Destroy the church. We, the Hutu, are many in number and, furthermore, in the house of God. Demons have gotten in there."[432]

181. Having reviewed the Trial Chamber's findings of fact and the underlying transcripts of witness testimony, the Appeals Chamber finds that no reasonable trier of fact could have reached the conclusion that Athanase Seromba did not have genocidal intent.

182. The Appeals Chamber finds that Athanase Seromba crossed the line separating aiding and abetting from committing genocide and became a principal perpetrator in the crime itself. To hold the contrary is both to misunderstand the applicable concepts and to give a premium to technicalities. The Appeals Chamber therefore finds, Judge Liu dissenting, that the Trial Chamber erred by failing to convict Athanase Seromba for "committing" genocide.

(b) Athanase Seromba's Conviction for Aiding and Abetting Genocide in relation to the Expulsion of Tutsi Employees and Refugees, including Patrice and Meriam

183. The Trial Chamber found that Athanase Seromba turned Tutsi employees and Tutsi refugees out of Nyange parish and thereby assisted in the killing of several Tutsi refugees, including Patrice and Meriam.[433] It found that in light of the security situation that prevailed in Nyange parish, he could not have been unaware that he thereby substantially contributed to their being killed by the attackers.[434] The Trial Chamber found that based on this conduct, Athanase Seromba aided and

[429] *See* T. 24 January 2005 p. 14 ("[…] Father Seromba prevented us from entering and he told us, first of all, remove the dead bodies that were in front of the secretariat. […] These were the Tutsis whom we were pursuing. […]").
[430] Trial Judgement, paras. 165, 180.
[431] *See supra*, paras. 115, 116.
[432] T. 19 October 2004 pp. 25-26 (closed session) (emphasis added).
[433] Trial Judgement, para. 332.
[434] Trial Judgement, para. 336.

abetted the killing of refugees in Nyange church,[435] and found him guilty of aiding and abetting genocide.[436]

184. The Appeals Chamber is not convinced that, based on these factual findings, it was unreasonable for the Trial Chamber to find that Athanase Seromba aided and abetted in the killing of the refugees, including Meriam and Patrice, instead of finding him guilty of "committing".[437] The Appeals Chamber observes that the circumstances of this case are similar to those in the *Gacumbitsi* case, where the Appeals Chamber found that Sylvestre Gacumbitsi, by expelling his tenants who were subsequently killed, and "knowing that by so doing he was exposing them to the risk of being targeted by Hutu attackers on grounds of their ethnic origin" aided and abetted murder.[438] The Appeals Chamber therefore affirms the Trial Chamber's finding that Athanase Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam, which are separate acts from the killings resulting from the destruction of the church.

(c) Conclusion

185. For the foregoing reasons, the Appeals Chamber grants this sub-ground of appeal in part, finding, Judge Liu dissenting, that Athanase Seromba committed genocide, by virtue of his role in the destruction of the church in Nyange Parish. The Appeals Chamber unanimously affirms that Athanase Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam.

2. Alleged Errors relating to the Commission of Extermination as a Crime against Humanity

186. The Trial Chamber found that the destruction of the Nyange church, which caused the death of 1,500 Tutsi refugees, constituted extermination as a crime against humanity.[439] With regard to Athanase Seromba's involvement in these events, the Trial Chamber concluded that through his conduct, he "substantially contributed to the destruction of Nyange church".[440] Moreover, the Trial Chamber stated the following:

> Athanase Seromba could not have been unaware of the legitimising effect his words would have on the actions of the communal authorities and the bulldozer driver. Furthermore, the Chamber finds that [Athanase] Seromba knew perfectly well that his approval of the authorities' decision to

[435] Trial Judgement, para. 338.
[436] Trial Judgement, para. 342.
[437] *Gacumbitsi* Appeal Judgement, para. 124.
[438] *Gacumbitsi* Appeal Judgement, para. 124.
[439] Trial Judgement, paras. 365, 369.
[440] Trial Judgement, para. 364.

> destroy Nyange church and his encouraging words to the bulldozer driver, would substantially contribute to the destruction of the church and the death of the numerous refugees inside.[441]
>
> Furthermore the Chamber finds that Accused Athanase Seromba had knowledge of the widespread and systematic nature of the attack and the underlying discriminatory grounds. The Chamber is satisfied that Seromba also knew that the crime of extermination committed against the Tutsi refugees was part of that attack.[442]

Consequently, the Trial Chamber found that it had been proven that Athanase Seromba possessed the *mens rea* for aiding and abetting extermination as a crime against humanity.[443]

187. The Prosecution asserts that the arguments already developed with respect to the commission of the crime of genocide also apply to Athanase Seromba's commission of extermination as a crime against humanity.[444] The Prosecution submits that given the Trial Chamber's findings with respect to Athanase Seromba's awareness of the existence of a widespread or systematic attack against the Tutsi ethnic group and his conduct, the only reasonable conclusion was that he participated directly in the material elements of the crime of extermination and that he did so with the requisite intent.[445] The Prosecution relies on the *Ndindabahizi* Appeal Judgement, in which, in its view, the Appeals Chamber tacitly endorsed the Trial Chamber's conclusion that extermination can be committed indirectly.[446]

188. Athanase Seromba opposes the Prosecution's arguments regarding his alleged commission of extermination as a crime against humanity on the ground that the *Ndindabahizi* Appeal Judgement is inapplicable to his case since Emmanuel Ndindabahizi was not convicted for aiding and abetting the commission of crimes.[447]

189. The Appeals Chamber recalls that extermination as a crime against humanity under Article 3(b) of the Statute is the act of killing on a large scale.[448] The Appeals Chamber stresses that in the jurisprudence of both *ad hoc* Tribunals, the necessary *actus reus* underlying the crime of extermination consists of any act, omission, or combination thereof which contributes directly or

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[441] Trial Judgement, para. 367.
[442] Trial Judgement, para. 370.
[443] Trial Judgement, paras. 368, 371.
[444] Prosecution's Appellant's Brief, para. 50.
[445] Prosecution's Appellant's Brief, para. 51.
[446] Prosecution's Appellant's Brief, para. 37.
[447] Seromba's Respondent's Brief, para. 68. The Appeals Chamber notes that this position is inaccurate. Emmanuel Ndindabahizi was in fact convicted for aiding and abetting genocide as well as extermination and murder as crimes against humanity. *See Ndindabahizi* Appeal Judgement, paras. 4, 5.
[448] *Ntakirutimana* Appeal Judgement, para. 516. The Appeals Chamber recalls that the act of killing must occur within the context of a widespread or systematic attack against the civilian population for national, political, ethnic, racial or religious grounds.

indirectly to the killing of a large number of individuals.[449] Therefore, as the Appeals Chamber has previously considered in the *Ndindabahizi* Appeal Judgement, for the *actus reus* of extermination to be fulfilled, it is sufficient that the accused participated in measures *indirectly* causing death.[450] The Appeals Chamber will therefore now turn to assess whether Athanase Seromba's acts as established by the Trial Chamber amount to acts underlying the commission of extermination.

190. Notwithstanding the confinement of the *Gacumbitsi* dictum regarding committing to genocide, the Appeals Chamber, Judge Liu dissenting, can find no reason why its reasoning should not be equally applicable to the crime of extermination. The key question raised by the *Gacumbitsi* dictum is what other acts can constitute direct participation in the *actus reus* of the crime. As noted above, the Appeals Chamber is satisfied that the acts of Athanase Seromba set out in the Judgement were sufficient to constitute direct participation in the *actus reus* of the crime of genocide, and is equally satisfied that the same acts are sufficient to constitute direct participation in the crime of extermination, in line with the *Ndindabahizi* Appeal Judgement, as discussed above. With respect to Athanase Seromba's *mens rea*, the Appeals Chamber is satisfied that the role he played in the events that led to the destruction of the church, his knowledge that such destruction would inevitably result in the death of a large number of Tutsi civilians,[451] as well as his awareness of the widespread and systematic attack against the Tutsi population[452] occurring at the time, all demonstrate that he possessed the required intent to commit extermination. The Appeals Chamber, therefore, finds, Judge Liu dissenting, that the Trial Chamber erred in concluding that Athanase Seromba had not committed extermination as a crime against humanity.[453]

191. The Appeals Chamber therefore grants this sub-ground of appeal.

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[449] *See, inter alia, Br|anin* Trial Judgement, para. 389; *Blagojević and Jokić* Trial Judgement, para. 573. *See also Ndindabahizi* Trial Judgement, para. 479.
[450] *Ndindabahizi* Appeal Judgement, para. 123 and fn. 268.
[451] Trial Judgement, para. 367.
[452] Trial Judgement, para. 370.
[453] *See Staki}* Appeal Judgement at paragraph 59, where the ICTY Appeals Chamber stated the following:

> To avoid such uncertainty and ensure respect for the values of consistency and coherence in the application of the law, the Appeals Chamber must intervene to assess whether the mode of liability applied by the Trial Chamber is consistent with the jurisprudence of this Tribunal. If it is not consistent, the Appeals Chamber must then determine whether the Trial Chamber's factual findings support liability under another, established mode of liability […].

3. Alleged Errors relating to the Planning and Ordering of Genocide as well as Extermination as a Crime against Humanity

192. With respect to planning and ordering as modes of participation in crimes, the Trial Chamber in this case stated that

> [p]articipation by "planning" presupposes that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. With respect to this mode of participation, the Prosecution must demonstrate that the level of participation of the accused was substantial and that the planning was a material element in the commission of the crime.[454]

The Trial Chamber further stated that

> [p]articipation by "ordering" presupposes that a person in a position of authority orders another person to commit an offence. This mode of participation implies the existence of a superior-subordinate relationship between the person who gives the order and the one who executes it. A formal superior-subordinate relationship is, however, not required. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship involving an accused's effective control over the direct perpetrators.[455]

193. The Trial Chamber found that the Prosecution had not proven that Athanase Seromba planned the massacres of Tutsi refugees.[456] Moreover, with regard to participation by ordering, the Trial Chamber ruled that the Prosecution had neither proven that Athanase Seromba possessed the specific intent for genocide nor that he exercised effective control over the principal perpetrators of the crimes.[457]

194. With respect to Athanase Seromba's responsibility for planning genocide as well as extermination as a crime against humanity, the Prosecution submits that the Trial Chamber correctly defined the term "planning", but failed to properly assess Athanase Seromba's criminal responsibility in this regard.[458] The Prosecution submits that Athanase Seromba's actions show consistency with a "plan of action" conducted with genocidal intent,[459] and that Athanase Seromba played a substantial role in the execution of such plan.[460] In support of this submission, the Prosecution argues that Athanase Seromba, Fulgence Kayishema, and other authorities prepared and executed the plan to destroy the church in which more than 1,500 Tutsis had taken refuge;[461] that Fulgence Kayishema and other authorities were present when Athanase Seromba said that if

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[454] Trial Judgement, para. 303 (footnotes omitted).
[455] Trial Judgement, para. 305 (footnotes omitted).
[456] Trial Judgement, para. 312.
[457] Trial Judgement, para. 312.
[458] Prosecution's Appellant's Brief, para. 68; AT. 26 November 2007 pp. 7-8.
[459] Prosecution's Appellant's Brief, para. 71.
[460] Prosecution's Appellant's Brief, para. 72.
[461] AT. 26 November 2007 pp. 7-8.

they had no other means they should bring the bulldozers, and that Athanase Seromba directed the bulldozer driver to "hit the church at the weak side".[462]

195. Athanase Seromba responds that the Prosecution's contention with regard to his participation in the planning of the genocidal events that took place in Nyange parish relies only on a philosophical construction motivated by the Prosecution's strong will to include him in a "so-called" plan.[463]

196. The Prosecution's submission on this point is readily dismissed. While the Prosecution maintains that there was a "plan of action", none of the factual findings referred to by the Prosecution supports a finding that there existed a genocidal plan in which Athanase Seromba took part. Similarly, the Prosecution did not point to any evidence on the record which would allow the Appeals Chamber to conclude that the Trial Chamber erred in its assessment of the evidence in this regard or in its conclusion that the Prosecution had not proven beyond reasonable doubt that Athanase Seromba planned the massacres of Tutsis.

197. With regard to Athanase Seromba's responsibility for ordering genocide as well as extermination, whilst agreeing with the Trial Chamber that the superior-subordinate relationship required to establish this form of participation in a criminal offence does not need to be formal, the Prosecution contests the Trial Chamber's finding according to which such relationship can only be established by proving "effective control" over the subordinates.[464] In the Prosecution's opinion, such an approach constitutes an error of law since it shows confusion between Articles 6(1) and 6(3) of the Statute.[465]

198. The Prosecution further submits that the facts of the present case show that Athanase Seromba had authority over those who committed the attacks against the Tutsi refugees[466] and that this authority was sufficient to establish that Athanase Seromba could concretely order genocidal acts such as, *inter alia*, the demolition of the church and the expelling of Tutsi refugees from the parish.[467] In this regard, the Prosecution argues that Athanase Seromba had authority because of his position as the "priest in charge of Nyange church" as well as his position in society;[468] and that the

[462] AT. 26 November 2007 pp. 7-8.
[463] Seromba's Respondent's Brief, para. 76.
[464] Prosecution's Appellant's Brief, para. 58; AT. 26 November 2007 pp. 4-5. The Prosecution argues that this approach was rejected by the Appeals Chamber in two previous cases (Prosecution's Appellant's Brief, paras. 58-60, quoting *Kamuhanda* Appeal Judgement, para. 75; *Gacumbitsi* Appeal Judgement, para. 181).
[465] Prosecution's Appellant's Brief, para. 58; AT. 26 November 2007 pp. 4-5.
[466] Prosecution's Appellant's Brief, para. 64.
[467] AT. 26 November 2007 p. 5.
[468] AT. 26 November 2007 p. 36.

Trial Chamber's acceptance of the evidence of Witness CDL shows that nothing was done without the consent of Athanase Seromba.[469]

199. The Prosecution finally submits that Athanase Seromba's order was pivotal.[470] The Prosecution points out that the bulldozer driver did not obey the order emanating from the authorities, but instead turned to Athanase Seromba and only proceeded to destroy the church when Athanase Seromba told him to do so.[471]

200. Athanase Seromba responds that he never ordered the destruction of the Nyange church and that the Prosecution itself had recognized this fact.[472] He argues that at the commencement of the events on 6 April 1994, he had been assigned to another parish,[473] and, as vicar, only replaced the parish priest at Nyange parish.[474] Since he never had any authority in Nyange parish, he could not have given any order.[475] Moreover, he submits that he did not know the attackers who came from outside the commune and he could not have had any authority over people he did not know.[476] Athanase Seromba further contests the jurisprudence invoked by the Prosecution in support of its submission, stating that in the cited cases the factual circumstances were different.[477] Finally, he challenges the Trial Chamber's finding that he gave advice to the bulldozer driver concerning the fragile side of the church, arguing that this would have been impossible since he was not an architect and had not been there when the church was built.[478]

201. The Appeals Chamber recalls that

> […] superior responsibility under Article 6(3) of the Statute is a distinct mode of responsibility from individual responsibility for ordering a crime under Article 6(1) of the Statute. Superior responsibility under Article 6(3) of the Statute requires that the accused exercise "effective control" over his subordinates to the extent that he can prevent them from committing crimes or punish them after they committed the crimes. To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act.[479]

[469] AT. 26 November 2007 p. 5.
[470] AT. 26 November 2007 p. 40.
[471] AT. 26 November 2007 p. 38.
[472] Seromba's Respondent's Brief, para. 71. *See also id.*, paras. 73, 74.
[473] AT. 26 November 2007 p. 16.
[474] AT. 26 November 2007 pp. 22, 25.
[475] Seromba's Respondent's Brief, para. 72. Athanase Seromba also submits that he was not the leader of those who had attacked the parish (AT. 26 November 2007 p. 17).
[476] AT. 26 November 2007 pp. 20, 29.
[477] Seromba's Respondent's Brief, para. 72.
[478] AT. 26 November 2007 p. 26.
[479] *Kamuhanda* Appeal Judgement, para. 75 (footnotes omitted).

202. In light of the above, the Appeals Chamber finds that the Trial Chamber erred in law when it considered effective control as an element necessary to prove that Athanase Seromba participated in the crimes by "ordering", within the meaning of Article 6(1) of the Statute.

203. The Appeals Chamber now turns to the question whether Athanase Seromba ordered the commission of genocide as well as extermination as a crime against humanity. The Trial Chamber found that Athanase Seromba "prohibited refugees from going into the Parish banana plantation to get food [and] ordered gendarmes to shoot at any refugees who ventured there".[480] It is, however, clear from the Trial Judgement that the Trial Chamber considered that Athanase Seromba's "order" to the gendarmes to shoot at any refugee who ventured into the banana plantation was a mere reinforcement of his prohibition against refugees getting food from the plantation.[481] Furthermore, the Trial Chamber rejected the Prosecution's allegations that Athanase Seromba ordered "[the locking of] the doors of the church, leaving outside approximately 30 refugees who were subsequently killed",[482] "ordered the *Interahamwe* and militiamen to attack the refugees",[483] ordered the destruction of Nyange church,[484] and ordered the burial of bodies after the destruction of the church.[485]

204. In light of the factual conclusions made by the Trial Chamber, which were not disturbed on appeal, the Appeals Chamber finds that the Prosecution did not demonstrate that Athanase Seromba's conduct constituted the *actus reus* necessary to prove his participation by ordering the commission of genocide or extermination as a crime against humanity. Therefore, the Appeals Chamber finds that the Trial Chamber did not err in concluding that Athanase Seromba had not ordered genocide or extermination as a crime against humanity.

205. Consequently, this sub-ground of appeal is dismissed.

4. Conclusion

206. For the foregoing reasons the Appeals Chamber grants this ground of appeal in part, finding that Athanase Seromba committed genocide as well as extermination a crime against humanity by virtue of his role in the destruction of the church in Nyange Parish and the consequent death of the

[480] Trial Judgement, para. 95.
[481] *See* Trial Judgement, para. 327.
[482] Trial Judgement, para. 126.
[483] Trial Judgement, para. 153.
[484] Trial Judgement, para. 267. The Appeals Chamber has already considered and rejected Athanase Seromba's submission that he could not have known the fragile side of the church. *See supra* Ground 8 of Athanase Seromba's Appeal.
[485] Trial Judgement, para. 290.

approximately 1,500 Tutsi refugees sheltering inside. The Appeals Chamber therefore affirms the Trial Chamber's finding that Athanase Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam, which are separate acts from the killings resulting from the destruction of the church.

B. Alleged Errors relating to Conspiracy to Commit Genocide (Ground of Appeal 2)

207. The Prosecution charged Athanase Seromba with conspiracy to commit genocide on the basis of the allegation that on or between 6 and 20 April 1994 in Kivumu *préfecture*, Rwanda, he agreed with Grégoire Ndahimana, *bourgmestre* of Kivumu *commune*, Fulgence Kayishema, police inspector of Kivumu *commune*, Télesphore Ndungutse, Gaspard Kanyarukiga, and other persons unknown to the Prosecution, to kill or to cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group.[486]

208. The Trial Chamber found that the Prosecution had not established beyond reasonable doubt that: (1) Athanase Seromba participated in meetings with the communal authorities on 11 and 12 April 1994; [487] (2) Athanase Seromba held meetings with the communal authorities on 10, 15, and 16 April 1994 for the purpose of planning the extermination of Tutsi refugees in Nyange parish;[488] or that (3) Athanase Seromba prepared a list of Tutsis who were sought, that he ordered or supervised the attack against the refugees on 15 April 1994, or that he ordered the destruction of Nyange church on 16 April 1994.[489] The Trial Chamber further found that Athanase Seromba's prohibition of Tutsi refugees seeking food in the banana plantation and his refusal to celebrate mass for these refugees were insufficient to establish the existence of a conspiracy to commit genocide.[490] Consequently, the Trial Chamber concluded that the Prosecution had not proven beyond reasonable doubt that Athanase Seromba conspired with other persons to commit genocide as alleged in Count 3 of the Indictment.[491]

209. The Prosecution submits that the Trial Chamber erred in law and in fact when it found Athanase Seromba not guilty of conspiracy to commit genocide.[492] It argues that the elements of *actus reus* and *mens rea* for this crime were manifest in the facts that were accepted by the Trial Chamber.[493]

210. The Prosecution submits that the Trial Chamber committed an error of fact in failing to properly "evaluate all the evidence" and that, when all the admissible evidence is considered, no reasonable trier of fact could relieve Athanase Seromba of culpability for conspiracy to commit

[486] Trial Judgement, para. 344; Indictment, Count 3.
[487] Trial Judgement, para. 349, referring to Trial Judgement, Chapter II, sections 4.3, 5.6.
[488] Trial Judgement, para. 349, referring to Trial Judgement, Chapter II, sections 4.2, 6.4, 7.4.
[489] Trial Judgement, para. 350, referring to Trial Judgement, Chapter II, sections 3.4, 6.5, 6.7, 7.4.
[490] Trial Judgement, para. 350.
[491] Trial Judgement, para. 351.
[492] Prosecution's Notice of Appeal, para. 10; Prosecution's Appellant's Brief, para. 75.
[493] Prosecution's Appellant's Brief, para. 76.

genocide.[494] It also submits that the Trial Chamber erred in law and in fact when it concluded, contrary to its own factual findings, that it had not been established beyond reasonable doubt that Athanase Seromba had participated in meetings with the communal authorities on certain specified days.[495]

211. Finally, the Prosecution cites the *Nahimana et al.* and *Niyitegeka* Trial Judgements and argues that it is possible to convict an accused for both genocide and conspiracy to commit genocide on the basis of the same facts.[496]

212. The Appeals Chamber will examine these submissions in turn.

1. Alleged Errors relating to the *Actus Reus*

(a) Participation in Meetings

213. The Prosecution alleges that the Trial Chamber erred in law and in fact when it concluded, contrary to its own factual findings, that the Prosecution did not establish beyond reasonable doubt that Athanase Seromba had participated in meetings with communal authorities on 10, 11, 12, 15, and 16 April 1994.[497]

214. The Appeals Chamber notes that the Trial Chamber found that the Prosecution had not proven beyond reasonable doubt that Athanase Seromba had participated in meetings with the communal authorities on 11 and 12 April 1994.[498] The Prosecution fails to substantiate, based on the factual findings of the Trial Chamber, how the Trial Chamber erred in its conclusion that Athanase Seromba did not participate in these meetings.

215. The Appeals Chamber further notes that the Trial Chamber found that on 10 April 1994, Athanase Seromba participated in a parish council meeting in Nyange parish,[499] but that the evidence of a second meeting on the same date and at the same place, during which the decision to kill Tutsis was allegedly taken,[500] was not credible.[501] The Trial Chamber found, with regard to the

[494] Prosecution's Appellant's Brief, para. 77.
[495] Prosecution's Appellant's Brief, para. 77.
[496] Prosecution's Appellant's Brief, para. 97. The Prosecution mistakenly notes that, in *Niyitegeka*, the Trial Chamber "[...] found the accused guilty of both conspiracy and conspiracy to commit genocide". The reading of the entire paragraph reveals that this is a typographical error.
[497] Prosecution's Appellant's Brief, para. 77.
[498] Trial Judgement, para. 349, referring to its factual findings in Chapter II, Section 4.3 with regard to the meeting of 11 April 1994 and to Chapter II, Section 5.6 with regard to the meeting of 12 April 1994.
[499] Trial Judgement, para. 66.
[500] Trial Judgement, para. 63.
[501] Trial Judgement, para. 65.

alleged meetings held on 15 April 1994, that it had been proven that "meetings or discussions" were held between Athanase Seromba and communal authorities but that it had not been established that the purpose of these meetings or discussions was to plan the extermination of the Tutsis.[502] Finally, with regard to the alleged meetings held on 16 April 1994, the Trial Chamber found that a meeting between Athanase Seromba and other persons was held during which he was informed of the decision by the authorities to destroy the church, which he accepted.[503] The Appeals Chamber finds that the Prosecution has failed to demonstrate how the Trial Chamber erred in reaching these findings or how it erred in finding that it had not been proven beyond reasonable doubt that Athanase Seromba held meetings with the communal authorities "for the purpose of planning the extermination of Tutsi refugees in Nyange parish".[504]

(b) Proof of the *Actus Reus* by Express Agreement

216. The Prosecution submits that although the Trial Chamber did not acknowledge the existence of an express agreement, such agreement did exist on the evidence accepted by the Trial Chamber.[505] It argues that based on the Trial Chamber's own findings, Athanase Seromba agreed with the plan of the other officials to demolish the church using one or more bulldozers, in his final meeting with the authorities on 16 April 1994.[506] In this regard, the Prosecution recalls the testimony of Witness CBK, as assessed by the Trial Chamber in paragraph 236 of the Trial Judgement, in particular the witness's account of the statement made by Fulgence Kayishema.[507] The Prosecution claims that Athanase Seromba was in full agreement with Fulgence Kayishema's "suggestion" and implemented this agreement by determining the easiest way of fulfilling "this

[502] Trial Judgement, para. 140. This finding of the Trial Chamber relates, *inter alia*, to the day of 15 April 1994, *see* title of the section "Events of 14 to 15 April 1994 in Nyange parish", Trial Judgement, p. 36.
[503] Trial Judgement, para. 268. *See* Trial Judgement, paras. 234 (Witness CBJ was found "credible as to two alleged events namely that Seromba and other persons held a meeting on 16 April 1994 [...]", 236 (Witness CBK was found "credible as regards a meeting allegedly held on the morning of 16 April 1994 and attended by Athanase Seromba and other persons. During that meeting, Kayishema allegedly said that it was necessary to destroy the church tower in order to kill Tutsi intellectuals hiding inside [...]".), 239 (Witness CDL was found credible "as to two other alleged events: first, the meeting held by Athanase Seromba, Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons, during which Seromba approved the decision to destroy the church [...]"), 242 (Witness CBR was found credible "with respect to another event: the discussions and meetings between Athanase Seromba and the authorities on 16 April 1994").
[504] Trial Judgement, para. 349.
[505] Prosecution's Appellant's Brief, para. 85.
[506] Prosecution's Appellant's Brief, para. 85.
[507] Prosecution's Appellant's Brief, para. 85. The Prosecution cites the Trial Judgement, para. 236 where it states what Kayishema allegedly said "that it was necessary to destroy the church tower to kill Tutsi intellectuals hiding inside". The Appeals Chamber notes that the Prosecution erroneously refers to Witness CBR instead of Witness CBK.

plan" and by indicating the "weak side" of the church to the bulldozer driver, and instructing him to demolish the church from that side.[508]

217. Athanase Seromba does not directly respond to this submission, but refers to the Prosecution's reliance on the *Nahimana et al.* case, and argues that he shared no plan with the attackers and the administrative authorities.[509]

218. The Appeals Chamber recalls that conspiracy to commit genocide, under Article 2(3)(b) of the Statute, requires "an agreement between two or more persons to commit the crime of genocide".[510] This agreement constitutes the *actus reus*.[511] The Prosecution claims that such an agreement existed in the Trial Chamber's findings. In this respect, the Appeals Chamber notes the following analysis by the Trial Chamber:

> The Chamber […] considers Witness CBK to be credible as regards a meeting allegedly held on the morning of 16 April 1994 and attended by Athanase Seromba and other persons. During that meeting, Kayishema allegedly said that it was necessary to destroy the church tower in order to kill Tutsi intellectuals hiding inside. The Chamber also finds the witness credible with respect to the conversation between the bulldozer driver and Seromba in the course of which the driver asked Seromba three times whether he should destroy the church. Seromba allegedly responded in the affirmative. The testimony of the witness is plausible, given that he was very close to the persons in question when these events occurred.[512]

The Trial Chamber then found, based on the totality of the evidence, that Athanase Seromba was informed by the authorities of their decision to destroy the church which he subsequently accepted.[513] Contrary to the Prosecution's contention, the Trial Chamber's acceptance of Witness CBK's testimony regarding Fulgence Kayishema's statement does not necessarily support a finding of a conspiratorial agreement between Fulgence Kayishema, the other authorities, and Athanase Seromba to kill Tutsi refugees at Nyange church. In the view of the Appeals Chamber, the Prosecution has failed to show that the only conclusion that could be drawn by a reasonable trier of fact on the basis of this evidence, was the existence of an agreement which constituted the required *actus reus* for conspiracy to commit genocide.

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[508] Prosecution's Respondent's Brief, para. 86.
[509] Seromba's Respondent's Brief, para. 83.
[510] *Nahimana et al.* Appeal Judgement, para. 894, quoting *Ntagerura et al.* Appeal Judgement, para. 92. *See also Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.
[511] *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92; *Kajelijeli* Trial Judgement, paras. 787, 788; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 191.
[512] Trial Judgement, para. 236. The Appeals Chamber notes that the English version of the Trial Judgement erroneously uses the word "allegedly" in the findings in this paragraph.
[513] Trial Judgement, paras. 233-269.

(c) Proof of the *Actus Reus* by Circumstantial Evidence

219. The Prosecution contends that, even in the absence of evidence of an express agreement, a reasonable trier of fact could have inferred the existence of conspiracy only on the basis of the evidence on the record.[514] It argues that Athanase Seromba's actions and the events that transpired at the parish between 11 and 16 April 1994, would have led a reasonable trier of fact to infer the existence of a concerted and coordinated plan of action.[515] To support its assertion that an agreement can be proven not only by establishing the existence of a formal and express agreement but also by circumstantial evidence, the Prosecution refers to the *Nyiramasuhuko et al.*, *Nahimana et al.*, *Bagosora et al.*, and *Niyitegeka* cases.[516]

220. Athanase Seromba responds that none of these cases can be used to support the Prosecution's argument. He points out that the trial judgement in *Nahimana et al.* is pending appeal,[517] that the trial in the *Bagosora et al.* case is still in progress,[518] and that no similarity exists between the *Niyitegeka* case and his case.[519]

221. As stated above, the *actus reus* of conspiracy to commit genocide is the making of an agreement between two or more persons to commit genocide. This *actus reus* can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on other evidence.[520] However, as in any case where the Prosecution intends to rely on circumstantial evidence to prove a particular fact upon which the guilt of the accused depends, the finding of the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence.[521]

222. The Appeals Chamber will now consider whether the Prosecution has established that the only reasonable inference from the evidence adduced at trial was that Athanase Seromba participated in a conspiracy to commit genocide.

[514] Prosecution's Appellant's Brief, paras. 87, 88.
[515] Prosecution's Appellant's Brief, para. 87.
[516] Prosecution's Appellant's Brief, paras. 84, 87, 92, 93.
[517] Seromba's Respondent's Brief, paras. 82, 92.
[518] Seromba's Respondent's Brief, para. 92.
[519] Seromba's Respondent's Brief, paras. 84, 85.
[520] *Nahimana et al.* Appeal Judgement, para. 896.
[521] *See Nahimana et al.* Appeal Judgement, para. 896; *Ntagerura et al.* Appeal Judgement, paras. 306, 399; *Stakić* Appeal Judgement, para. 219; *Krstić* Appeal Judgement, para. 41; *Vasiljević* Appeal Judgement, paras. 120, 128, 131; *Čelebići* Appeal Judgement, para. 458.

223. In support of its contention that Athanase Seromba was part of a conspiracy to commit genocide, the Prosecution is relying on the following facts:[522] (1) his presence during all the attacks; (2) his instructions to the assailants to perform genocidal acts (the deprivation of food, cleaning of the "filth", the ejection of injured Tutsi refugees from "relative safety to death") given in agreement with the other authorities; (3) his presence with the communal authorities after the meeting on 16 April 1994 and the fact that the authorities conferred with him before giving any instructions;[523] (4) his order to the gendarmes to remove the bodies before continuing the attack which they obeyed;[524] and (5) his "agreement" to the demolition of the church, the manner in which it was destroyed, and the reason for its destruction. The Prosecution adds that Athanase Seromba's behaviour indicates that "he was part of a plan of action to continue with the attacks, and, where necessary […] had the power to stop the attacks and then order them to continue".[525]

224. The Appeals Chamber notes that the Trial Chamber did not find that Athanase Seromba ordered or supervised the attack against the refugees on 15 April 1994 or that he ordered the destruction of Nyange church on 16 April 1994.[526] Also, the Trial Chamber found that the facts established against Athanase Seromba namely, his prohibition of Tutsi refugees from seeking food in the banana plantation and his refusal to celebrate mass for the Tutsi refugees were not sufficient in themselves to establish the existence of a conspiracy to commit genocide.[527] The Appeals Chamber is not persuaded that the only inference to be drawn from the other facts on the record is that Athanase Seromba had conspired with the communal authorities to commit genocide. Consequently, the Appeals Chamber considers that the Trial Chamber did not commit any error in this regard. In view of this conclusion, the Appeals Chamber need not address the Prosecution's submissions relating to the *mens rea*.[528]

2. Conclusion

225. The Prosecution has failed to show that the Trial Chamber erred in not convicting Athanase Seromba for conspiracy to commit genocide. The Appeals Chamber, therefore, need not consider the Prosecution's submission that convictions for genocide and conspiracy to commit genocide

[522] Prosecution's Appellant's Brief, paras. 88, 89.
[523] The Prosecution is relying on Witness CBR's testimony.
[524] The Prosecution refers to paragraphs 164 and 179 of the Trial Judgement.
[525] Prosecution's Appellant's Brief, para. 89.
[526] Trial Judgement, para. 350, referring to Trial Judgement, Chapter II, sections 3.4, 6.5, 6.7, 7.4.
[527] Trial Judgement, para. 350.
[528] Prosecution's Appellant's Brief, paras. 92, 93.

could be sustained on the same set of facts.[529] For the reasons stated above, this ground of appeal is dismissed.

[529] Prosecution's Appellant's Brief, paras. 80, 94-97. Furthermore, the Prosecution failed to raise this submission in its Notice of Appeal.

V. SENTENCING (ATHANASE SEROMBA'S GROUND OF APPEAL 10 AND PROSECUTION'S GROUND OF APPEAL 3)

226. The Trial Chamber found Athanase Seromba guilty of aiding and abetting genocide (Count 1) and extermination as a crime against humanity (Count 4), and sentenced him to a single sentence of 15 years' imprisonment.[530] Athanase Seromba and the Prosecution appeal this sentence. The Appeals Chamber granted, in part, Ground 1 of the Prosecution's appeal, holding that Athanase Seromba's role in the destruction of the church amounted to the commission of genocide as well as extermination as a crime against humanity. The Appeals Chamber has also upheld the conviction for aiding and abetting genocide based on the expulsion of the Tutsi employees and refugees, and has quashed the finding of the Trial Chamber that Athanase Seromba aided and abetted the causing of serious bodily and mental harm. In view of this, the Appeals Chamber will quash the sentence imposed by the Trial Chamber and will enter a new sentence. Consequently, the appeals against the sentence of 15 years' imprisonment imposed by the Trial Chamber will not be considered. However, the Appeals Chamber will review the arguments made in these appeals, particularly those relating to the Trial Chamber's assessment of the aggravating and mitigating factors, which the Appeals Chamber will take into account when determining a new sentence.

227. The Prosecution submits that if Grounds 1 and 2 of its appeal are upheld, the Appeals Chamber should intervene and correct the Trial Chamber's error in imposing a sentence manifestly inappropriate to the particular gravity of the crimes committed and Athanase Seromba's individual responsibility.[531] It argues that the maximum sentence of imprisonment for the remainder of Athanase Seromba's life is warranted, as there are no significant mitigating circumstances that could justify the imposition of a lesser sentence.[532] Athanase Seromba responds, without elaboration, that "it is incorrect for the Prosecution to contend that the only sentence he deserves is imprisonment for the remainder of his life".[533]

228. The relevant provisions on sentencing are Articles 22 and 23 of the Statute and Rules 99 to 106 of the Rules. Both Article 23 of the Statute and Rule 101 of the Rules contain general guidelines for Trial Chambers, directing them to take into account the following factors in sentencing: the gravity of the offence; the individual circumstances of the convicted person; the general practice regarding prison sentences in the courts of Rwanda; and aggravating and mitigating

[530] Trial Judgement, para. 372 and Disposition.
[531] Prosecution's Appellant's Brief, para. 151.
[532] Prosecution's Appellant's Brief, para. 152.
[533] Seromba's Respondent's Brief, para. 142.

circumstances.[534] Trial Chambers are vested with a broad discretion in determining an appropriate sentence, due to their obligation to individualize the penalties to fit the circumstances of the convicted person and the gravity of the crime.[535]

229. Athanase Seromba submits that the Trial Chamber's consideration of the "breach of trust" was incorrect.[536] The Appeals Chamber notes that the Trial Chamber concluded that Athanase Seromba's "status" and his betrayal of the trust which was placed in him by the Tutsi refugees constituted aggravating circumstances.[537] In arriving at this conclusion, the Trial Chamber stated that:

> Athanase Seromba, a Catholic priest, was in charge of Nyange parish at the time of the events referred to in the Indictment. The Accused was known and respected in the Catholic community of Nyange. The Chamber recalls that it has been established that many Tutsi[s] from Kivumu *commune* sought refuge in Nyange church in order to escape attack. The Chamber considers as an aggravating circumstance the fact that the Accused took no concrete action whatsoever to earn the trust of those persons who believed they were safe by seeking refuge at Nyange parish.[538]

230. The Appeals Chamber recalls that the abuse of a position of influence and authority in society can be taken into account as an aggravating factor in sentencing.[539] In the present case, the Trial Chamber established that Athanase Seromba was acting as a priest at Nyange parish during April 1994[540] and that during this period Tutsi refugees sought refuge at the parish.[541] In this context, the Trial Chamber considered the Prosecution's averment that Athanase Seromba betrayed the trust of his parishioners[542] and found that his status and his "betrayal of trust" constituted aggravating circumstances.[543] This finding is not based on Athanase Seromba's position as a priest, as such, but rather on his abuse of a position of trust. The Appeals Chamber finds no error in this.

231. The Prosecution submits that the Trial Chamber erred in considering the individual circumstances of the case. It argues that the Trial Chamber relied on extraneous and irrelevant factors in mitigation of the sentence against Athanase Seromba, giving mitigating factors excessive

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[534] *Čelebići* Appeal Judgement, para. 716; *Galić* Appeal Judgement, para. 392; *Bralo* Sentencing Appeal Judgement, para. 7; *Blagojević and Jokić* Appeal Judgement, para. 320. In addition, Trial Chambers are obliged to take into account the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the Statute and in Rule 101(B)(iv) of the Rules.
[535] *Nahimana et al.* Appeal Judgement, paras. 1037, 1046; *Ndindabahizi* Appeal Judgement, para. 132, referring to *Semanza* Appeal Judgement, para. 312.
[536] Seromba's Notice of Appeal, para. 42.
[537] Trial Judgement, para. 390.
[538] Trial Judgement, para. 390 (footnotes omitted).
[539] *Ndindabahizi* Appeal Judgement, para. 136. *See also Akayesu* Appeal Judgement, paras. 414, 415; *Ntakirutimana* Appeal Judgement, para. 563; *Kamuhanda* Appeal Judgement, paras. 347, 348.
[540] Trial Judgement, para. 38.
[541] Trial Judgement, para. 54.
[542] Trial Judgement, para. 387.
[543] Trial Judgement, para. 390.

weight, whilst not taking into proper consideration the aggravating factors.[544] Furthermore, with regard to Athanase Seromba's character and personal circumstances, the Prosecution argues that they should have been considered as aggravating factors, rather than mitigating circumstances.[545] The Prosecution also argues that the Trial Chamber erred when it failed to consider "the massive killing" of Tutsi refugees during the destruction of the church as an aggravating factor and by not giving sufficient weight to the fact that Athanase Seromba abused his position of authority in the Nyange parish.[546]

232. Athanase Seromba responds that an accused's good character has consistently been treated as a mitigating factor by the Trial Chambers.[547] He argues that voluntary surrender is a mitigating factor which is acknowledged by the Prosecution[548] and that the Trial Chamber was correct in taking into account his age.[549] Athanase Seromba further responds that the killing of the Tutsi refugees during the destruction of the church formed the basis for his conviction and argues that it therefore cannot be taken into consideration as an aggravating factor.[550] He also argues that the Prosecution "seems to forget that the Appellant was not in charge of the Nyange Parish".[551]

233. The Appeals Chamber notes that the Trial Chamber found, with respect to the individual circumstances of Athanase Seromba, that "his training as a priest and his experience within the church should have enabled him to understand the reprehensible nature of his conduct during the events."[552] The Trial Chamber also noted that he had only been at the Nyange parish for a relatively short period of time and that he was only a curate in the parish during the events who "was put in charge of the parish because there was no parish priest there."[553] The Trial Chamber specifically identified as aggravating circumstances the status of Athanase Seromba and his betrayal of trust.[554] Finally, the Trial Chamber determined that Athanase Seromba's good reputation,[555] voluntary surrender,[556] and young age[557] were mitigating circumstances in the determination of his sentence.

[544] Prosecution's Appellant's Brief, paras. 114-137.
[545] Prosecution's Appellant's Brief, paras. 119-121; AT. 26 November 2007 pp. 8, 9.
[546] Prosecution's Appellant's Brief, paras. 117-118; AT. 26 November 2007 p. 8.
[547] Seromba's Respondent's Brief, para. 123.
[548] Seromba's Respondent's Brief, paras. 125, 126.
[549] Seromba's Respondent's Brief, paras. 134, 135.
[550] Seromba's Respondent's Brief, paras. 117, 118.
[551] Seromba's Respondent's Brief, para. 120.
[552] Trial Judgement, para. 385.
[553] Trial Judgement, para. 386 (footnote omitted).
[554] Trial Judgement, para. 390.
[555] Trial Judgement, para. 395.
[556] Trial Judgement, paras. 396-398.
[557] Trial Judgement, para. 399.

234. The Appeals Chamber finds that the Prosecution has failed to substantiate its allegations regarding aggravating circumstances. The Prosecution merely affirms that insufficient weight was given to the listed factors and that the killing of Tutsi refugees during the destruction of the church should have been considered as an aggravating circumstance, without putting forth any evidence or concrete arguments in support of this assertion. The Prosecution has therefore failed to demonstrate that the Trial Chamber erred in its assessment of the aggravating factors.

235. With regard to the consideration of the good reputation of Athanase Seromba as a mitigating factor, the Trial Chamber did not specify the weight it gave to this mitigating circumstance. The Appeals Chamber therefore reiterates the finding made in the *Semanza* Appeal Judgement that

> […] it was within the Trial Chamber's discretion to take into account as mitigation in sentencing the Appellant's previous good character […]. [T]he Appeals Chamber notes that in most cases the accused's previous good character is accorded little weight in the final determination of determining the sentence. However, in this case, the Trial Chamber does not indicate how much weight, if any, it attaches to the Appellant's previous character and accomplishments. Thus, it is not clear that these mitigating factors unduly affected the sentence, given the nature of the offences. Consequently the Appeals Chamber finds no discernible error on the part of the Trial Chamber.[558]

236. Turning to the voluntary surrender of Athanase Seromba, the Appeals Chamber notes that, in its Appellant's Brief, the Prosecution failed to support its contention that voluntary surrender, in the absence of other factors, may only carry limited weight or no weight at all as a mitigating factor.[559] In any event, the Appeals Chamber does not consider this proposition to be accurate. To the contrary, voluntary surrender, alone or in conjunction with other factors, has been considered as a mitigating circumstance in a number of cases before the Tribunal and before the ICTY.[560] Furthermore, the Appeals Chamber cannot accept the Prosecution's argument regarding conduct following surrender,[561] since facilitation of the proceedings by an accused after his or her surrender is irrelevant to the evaluation of voluntary surrender as a mitigating factor.[562] Consequently, the Prosecution has failed to demonstrate that the Trial Chamber abused its discretion in considering Athanase Seromba's voluntary surrender in mitigation of the sentence.

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[558] *Semanza* Appeal Judgement, para. 398 (footnote omitted).
[559] Prosecution's Appellant's Brief, paras. 131, 132.
[560] *See Rutaganira* Sentencing Judgement, para. 145; *Serushago* Sentencing Judgement, para. 34; *Bralo* Sentencing Judgement, para. 61; *Deronjić* Sentencing Judgement, para. 266; *Babić* Sentencing Judgement, para. 86; *Strugar* Trial Judgement, para. 472; *Bla{ki}* Appeal Judgement, para. 701; *Miodrag Joki}* Sentencing Judgement, para. 73; *Blagoje Simi} et al*. Trial Judgement, para. 1086; *Plavšic* Sentencing Judgement, para. 84; *Milan Simić* Sentencing Judgement, para. 107.
[561] Prosecution's Appellant's Brief, paras. 134, 135.
[562] *See Blagoje Simi}* Appeal Judgement, para. 258, *a contrario*.

237. Finally, with regard to Athanase Seromba's age at the time of the events, the Appeals Chamber notes that the Trial Chamber's reference to the age of Athanase Seromba[563] could be misunderstood. The Appeals Chamber therefore deems it necessary to clarify that age of thirty-one years cannot serve as a mitigating factor, *i.e.* Athanase Seromba's age at the time when he committed the crimes. Given the vagueness of the Trial Chamber's language, the Appeals Chamber merely needs to clarify that point. As the Appeals Chamber substitutes a new sentence for that imposed by the Trial Chamber, the Appeals Chamber need not consider the impact of any potential error.

238. The Appeals Chamber itself considers that the crimes for which Athanase Seromba has been convicted are egregious in scale and inhumanity. Furthermore, the Appeals Chamber stresses that Athanase Seromba knew that approximately 1,500 refugees were in the church and that they were bound to die or be seriously injured as a consequence of his approval that the church be bulldozed, knowing that the refugees had come to the church seeking safety.

239. Recalling that the Appeals Chamber has granted in part Ground 1 of the Prosecution's appeal, convicting Athanase Seromba of committing genocide as well as extermination as a crime against humanity based on his role in the destruction of the church, and that it has upheld his conviction for aiding and abetting genocide based on the expulsion of the Tutsi refugees and employees, and having taken into consideration the extraordinary gravity of the crimes as well as the mitigating and aggravating circumstances, the Appeals Chamber, Judge Liu dissenting, imposes a sentence of imprisonment for the remainder of Athanase Seromba's life.

[563] Trial Judgement, para. 399.

VI. DISPOSITION

240. 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 hearing on 26 November 2007;

SITTING in open session;

AFFIRMS, unanimously, the Trial Chamber's dismissal of Count 2 of the Indictment (Complicity in Genocide) and the acquittal of Athanase Seromba as regards Count 3 of the Indictment (Conspiracy to Commit Genocide);

ALLOWS, unanimously, Athanase Seromba's Ground of Appeal 8, in part; and **QUASHES**, unanimously, the Trial Chamber's finding that Athanase Seromba aided and abetted genocide by substantially contributing to the causing of serious bodily or mental harm by prohibiting the Tutsi refugees from getting food from the Nyange Parish's banana plantation and by refusing to celebrate mass for them;

DISMISSES Athanase Seromba's appeal in all other respects;

ALLOWS, in part, by majority, Judge Liu dissenting, the Prosecution's Ground of Appeal 1; **HOLDS**, by majority, Judge Liu dissenting, that Athanase Seromba committed genocide as well as extermination as a crime against humanity, by virtue of his role in the destruction of the church in Nyange Parish; and **AFFIRMS**, unanimously, the Trial Chamber's finding that Athanase Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam, which are separate acts from the killings resulting from the destruction of the church;

QUASHES, unanimously, the sentence of fifteen years' imprisonment and **ENTERS**, by majority, Judge Liu dissenting, a sentence of imprisonment for the remainder of Athanase Seromba's life, subject to credit being given under Rule 101(D) of the Rules for the period already spent in detention from 6 February 2002;

DISMISSES the Prosecution's appeal in all other respects;

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

ORDERS, in accordance with Rules 103(B) and 107 of the Rules, that Athanase Seromba is to

remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

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

_____	_____	_____
Mohamed Shahabuddeen	Patrick Robinson	Liu Daqun
Presiding Judge	Judge	Judge

_____	_____
Theodor Meron	Wolfgang Schomburg
Judge	Judge

Judge Liu appends a partially dissenting opinion.

Done this 12th day of March 2008 at Arusha, Tanzania.

[Seal of the Tribunal]

VII. DISSENTING OPINION OF JUDGE LIU

1. I am unable to agree with the finding of the majority of the Appeals Chamber ("Majority") in which it finds an error on the part of the Trial Chamber for not convicting Seromba of committing genocide and extermination. Citing the G*acumbitsi* Appeal Judgment, the Majority points out that, "[t]he jurisprudence makes clear that 'committing' is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime."[1] I am unable to agree with the Majority for the reasons stated below.

2. First, the Appeals Chamber in *Gacumbitsi* did not say, as implied by the Majority that "committing" *per se* is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime, but that,

> *[i]n the context of genocide*, […] "direct and physical perpetration" need not mean physical killing; other acts can constitute direct participation in the *actus reus* of the crime.[2]

Therefore, with respect to committing extermination, the Majority has erroneously found error on the part of the Trial Chamber by taking a principle that is applicable to genocide and turning it into a general principle, even to the extent of applying it to committing extermination.[3] Furthermore, there are authorities within the jurisprudence of the Appeals Chamber of this Tribunal and the ICTY to support the definition of "committing" stated by the Trial Chamber,[4] which have not been overturned on the basis of cogent reasons in the interests of justice, yet the Majority has in this case decided to find it erroneous. With respect, there is clearly something wrong with this approach.

3. Regarding genocide, unlike Athanase Seromba, Sylvestre Gacumbitsi had been convicted by the Trial Chamber for committing, ordering, and instigating genocide based on a number of factual findings.[5] In the relevant portion of the *Gacumbitsi* Appeal Judgement, the Appeals Chamber was merely required to determine whether, if it were to disregard one allegation of murder, the other facts would still lead to the conclusion that the accused had committed genocide.[6]

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[1] Appeal Judgment, para. 161.
[2] *Gacumbitsi* Appeal Judgement, para. 60 (footnote omitted) (emphasis added).
[3] Appeal Judgement, para. 190. I note that in applying the said principle to "committing extermination", the Majority states simply and without further analysis, that "[n]otwithstanding the confinement of the *Gacumbitsi* dictum regarding committing to genocide, the Appeals Chamber can find no reason why its reasoning should not be equally applicable to the crime of extermination. The key question raised by the *Gacumbitsi* dictum is what other acts can constitute direct participation in the *actus reus* of the crime."
[4] *Kayishema and Ruzindana* Appeal Judgement, para. 187; *Tadi}* Appeal Judgement, para. 188; *Krsti}* Trial Judgement, para. 601; *Kunarac* Trial Judgement, para. 390.
[5] *See Gacumbitsi* Trial Judgement, paras. 280, 284, 285, 288.
[6] *Gacumbitsi* Appeal Judgement, para. 59.

4. In my humble view, the situation in the present case needs to be distinguished from that in the *Gacumbitsi* Appeal Judgement. As the Appeals Chamber noted in *Gacumbitsi*, Sylvestre Gacumbitsi was present at the crime scene to supervise and direct the massacre, and he actively participated in the massacre by separating the Tutsi refugees so that they could be killed.[7] The Appeals Chamber considered that Sylvestre Gacumbitsi played a "central role" in the crimes for which he was convicted.[8] In the present case, Athanase Seromba played a different role. While he accepted the decision of the communal authorities to destroy the church, spoke with a bulldozer driver and uttered words that encouraged him to destroy the church, even giving advice as to the weak side of the church,[9] Athanase Seromba did not "supervise" or "direct" the massacre and he played no role in any separation of Tutsi refugees so that they could be killed.

5. Athanase Seromba's acts are not comparable to those in the *Gacumbitsi* case, however, where the convicted person supervised and directed the massacre and separated Tutsi refugees for the killing. Therefore, it is my view that there is a substantial difference in the nature and degree of involvement in the crimes of Sylvestre Gacumbitsi and Athanase Seromba. Even taking into account the context prevailing at the time of the events that occurred in Nyange parish, the factual findings contained in the Trial Judgement do not, in my respectful view, show a direct and active participation[10] in the genocidal acts that were taking place in the parish.

6. Secondly, by finding error in the Trial Chamber's restatement of the definition of "committing", the Majority confuses "committing" *simpliciter* with other forms of committing, some of which are not recognised in the practice of this Tribunal. Foremost among these forms of "committing" in question is joint criminal enterprise ("JCE"). The Majority repeatedly highlights and emphasizes that committing is not limited to physical perpetration[11] without, however, pointing out a very crucial point: that in this Tribunal, where there is no physical perpetration of the offence, commission has only ever been extended within the context of a JCE and that such JCE should be pleaded.[12]

7. In the *Tadi}* Appeal Judgement, the Appeals Chamber held that, under JCE whoever contributes to the commission of crimes by a group of persons or some members of a group, in

[7] *Gacumbitsi* Appeal Judgement, para. 61.
[8] *Gacumbitsi* Appeal Judgement, para. 206.
[9] Trial Judgement, para. 269.
[10] *See Gacumbitsi* Appeal Judgement, para. 61.
[11] Appeal Judgement, para. 161, fn. 389.
[12] The fact that "committing" is not limited to physical perpetration of a crime is trite within the jurisprudence of this tribunal as participation in a JCE does not require that the accused commit the *actus reus* of a specific crime provided in the Statute.

execution of a common criminal purpose, may be held to be criminally liable.[13] The Majority's reasoning in support of its new conclusion rings surprisingly close to that by the *Tadi}* Appeal Chamber, even though no mention is made of a common purpose. Although Athanase Seromba has not been charged with committing crimes by JCE and has not been found to have physically perpetrated them, the Majority considers whether he "became a principal perpetrator of the crime itself by approving and embracing as his own the decision to commit the crime and thus should be convicted for committing genocide."[14] It is also noteworthy that this approach does not require the satisfaction of criteria for a JCE, and in fact, it is not clear what the criteria for this approach are, if any.

8. Thirdly, it is widely recognized that in various legal systems, however, "committing" is interpreted differently such that co-perpetratorship and indirect perpetratorship are also recognized as forms of "committing".[15] Co-perpetrators pursue a common goal, either through an explicit agreement or silent consent, which they can only achieve by co-ordinated action and shared control over the criminal conduct. Each co-perpetrator must make a contribution essential to the commission of the crime.[16] Indirect perpetration on the other hand requires that the indirect perpetrator uses the direct and physical perpetrator as a mere "instrument" to achieve his goal, *i.e.*, the commission of the crime. In such cases, the indirect perpetrator is criminally responsible because he exercises control over the act and the will of the direct and physical perpetrator.[17] The Majority reasoned that "Ғiğt is irrelevant that Athanase Seromba did not personally drive the bulldozer that destroyed the church" in order to find Athanase Seromba responsible for committing genocide, and that, "[w]hat is important is that Athanase Seromba fully exercised his influence over the bulldozer driver who, as the Trial Chamber's findings demonstrate, accepted Athanase Seromba as the only authority, and whose directions he followed."[18] Evident in this reasoning is the attribution of liability for "committing" to the "perpetrator behind the perpetrator"[19] without the

[13] *Tadi}* Appeal Judgement, para. 191.
[14] Appeal Judgement, para. 161.
[15] *Gacumbitsi* Appeal Judgement, Separate opinion of Judge Schomburg, para. 16.
[16] *Gacumbitsi* Appeal Judgement, Separate opinion of Judge Schomburg, para. 17 and fn. 31, referring to C. Roxin, *Täterschaft und Tatherrschaft*, 7th edn. (2000), pp. 275-305. *See* also K. Ambos, in: O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (1999), Art. 25 marginal no. 8.
[17] *Gacumbitsi* Appeal Judgement, Separate opinion of Judge Schomburg, para. 18 and fn. 33, referring to C. Roxin, *Täterschaft und Tatherrschaft*, 7th edn. (2000), pp. 142-274. *See* also K. Ambos, in: O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (1999), Art. 25 marginal no. 9.
[18] Appeal Judgement, para. 171.
[19] *Gacumbitsi* Appeal Judgement, Separate opinion of Judge Schomburg, para. 20 and fn. 36 ("As indirect perpetratorship focuses on the indirect perpetrator's control over the will of the direct and physical perpetrator, it is sometimes understood to require a particular "defect" on the part of the direct and physical perpetrator which excludes his criminal responsibility.")

obvious characterization of Athanase Seromba's conduct as co-perpetratorship or indirect perpetratorship.

9. Whilst the Majority's approach would make it much easier to hold criminally liable as a principal perpetrator those persons who do not directly commit offences, this approach is inconsistent with the jurisprudence. In the *Staki}* Appeal Judgement, the Appeals Chamber held that the Trial Chamber erred in conducting its analysis of the responsibility of the appellant within the framework of co-perpetratorship, and unanimously and unequivocally said of co-perpetratorship that, "[t]his mode of liability, as defined and applied by the Trial Chamber, does not have support in customary international law or in the settled jurisprudence of this Tribunal, which is binding on the Trial Chambers."[20] Consequently, the Appeals Chamber concluded that it "is not valid law within the jurisdiction of this Tribunal."[21]

10. Similarly, it has been recognized that the notion of both co-perpetration and indirect perpetration may be included in the Statute of the International Criminal Court ("ICC").[22] However, I note that Article 25(3)(a) of the ICC Statute provides,

> [A person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person] (a) Commits such a crime, whether as an individual, *jointly with another or through another person*, regardless of whether that other person is criminally responsible". [23]

What the above Article shows is that this Tribunal unlike that of the ICC does not define "committing" as "committing through another person". Thus, the difference in the two statutes is accountable for the divergence in principle.

11. Fourthly, the Majority's factual conclusions are not all based on findings of fact that have been made by the Trial Chamber. Instead, in order to reach its conclusion that Athanase Seromba was responsible for committing genocide and extermination, the Majority consistently supplements the Trial Chamber's findings with the testimony of witnesses simply because the "Trial Chamber found them to be credible." As a result, the Appeal Judgement is replete with direct transcript testimony from which the Trial Chamber has not made specific findings of fact. There are various problems with this approach, first and foremost of which is that it runs contrary to one of the

[20] *Staki}* Appeal Judgement, para. 62.
[21] *Staki}* Appeal Judgement, para. 62.
[22] *Gacumbitsi* Appeal Judgement, Separate Opinion of Judge Schomburg, para. 21, referring to *Prosecutor v. Thomas Lubanga Dyilo*, Decision Concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr. Thomas Lubanga Dyilo, ICC-01/04-01/06, 24 February 2006, Annex I: Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58, para. 96.
[23] (Emphasis added).

cardinal principles of the Appeals Chamber: that, "the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber"[24] because the Appeals Chamber is not in a position to assess the demeanour of a witness and the entirety of the evidence.[25] The Majority's supplementation of the Trial Chamber's findings defeats the purpose of this principle, especially in view of the fact that the Appeals Chamber has no way of knowing why the Trial Chamber decided not to make findings on the said portions of witnesses' testimonies.[26]

12. Another fundamental principle in the jurisprudence of this Tribunal and the ICTY is that only where the evidence relied upon by the Trial Chamber could not have been accepted by any reasonable trier of fact or where the evaluation of the evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[27] In the present case, the Appeals Chamber has not assessed whether the findings of fact could not have been accepted by any reasonable trier of fact or whether the Trial Chamber's evaluation of evidence is "wholly erroneous" before disturbing them in this manner.

13. To illustrate this point, I provide the following examples where the Majority disturbs the Trial Chamber's findings:

a) In paragraph 165 and 166 the Appeals Chamber quotes the evidence of Witness CBK to the effect that Athanase Seromba had emphasized that "[d]emons ha[d] gotten in there [the church]"[28] and that when "there are demons in the church, it should be destroyed."[29] The problem is that although the Trial Chamber referred to this evidence in its summary of evidence relating to Witness CBK, no such factual finding was made by the Trial Chamber. This is even more so in that Witness CBK was not the only credible witness to testify to Athanase Seromba's words to the bulldozer driver. For example, Witness CDL heard Athanase Seromba tell the bulldozer driver to destroy the church, but did not hear Athanase Seromba's emphasizing the presence of demons.[30] Clearly, the Trial Chamber was not comfortable or did not deem it necessary to make such a finding. Surprisingly, the Majority

[24] *Kupreski}* Appeal Judgement, para. 30. *See Staki}* Appeal Judgement, para. 10; *Gali}* Appeal Judgement, para. 9.
[25] *Staki}* Appeal Judgement, para. 206.
[26] This is even more so in that it is settled in the jurisprudence of this Tribunal that a Trial Chamber may find some parts of a witness's testimony credible and rely on them, while rejecting other parts as not credible, *Ntakirutimana* Appeal Judgement, para. 184.
[27] *Stakić* Appeal Judgement, para. 10; *Kvočka et al.* Appeal Judgement, para. 19, citing *Kupreškić et al.* Appeal Judgement, para. 30. *See also Kordi} and ^erkez* Appeal Judgement, para. 19, fn. 11; *Blaškić* Appeal Judgement, paras 17-18.
[28] Trial Judgement, para. 213, quoting T. 19 October 2004 pp. 28-29 (closed session) (Witness CBK).
[29] Trial Judgement, para. 213, quoting T. 20 October 2004 p. 19 (closed session) (Witness CBK).

takes the liberty to do so without making a finding that the Trial Chamber's factual findings could not have been accepted by any reasonable trier of fact or that the evaluation of the evidence is "wholly erroneous".

b) At paragraph 168, the Majority finds that, "priests were held in high regard by the population of Nyange parish and Athanase Seromba was someone whom the population respected and obeyed." In support of this fact, the Majority relies on the closed session testimony of Witness CBK that was not relied upon by the Trial Chamber. The Appeals Chamber did not have a chance to observe witness CBK's demeanour and other factors going to his credibility on this particular point, yet it feels comfortable enough to make this new finding. Also, the Majority draws conclusions from the evidence without full reasoning. For example, it finds, without explanation that "Witness CDL, who the Trial Chamber found credible, testified that nothing was done without the consent of Athanase Seromba."[31] Apart from the fact that the Trial Chamber did not make this finding, this statement is taken out of context and used in support of the Majority's finding that Athanase Seromba was someone whom the population respected and obeyed, without first determining why it is that Witness CDL held this view.

c) In addition, despite the fact that the Trial Chamber found that the Prosecution had not proven beyond reasonable doubt that Athanase Seromba had handed over Anicet Gatare to the gendarmes,[32] the Majority, simply because Witness CBK was "found credible", reproduces and relies on the circumstances of his death in an attempt to show *mens rea* for committing genocide.[33] The Majority also relies on witness testimony to the effect that Athanase Seromba referred to the dead bodies of Tutsi refugees as "*saleté*".[34] Once again, since the Trial Chamber did not make this finding of fact, it is not clear why the Majority feels obliged to take that liberty.

14. Lastly, the Majority's application of the facts is worth mentioning. The Majority finds that Athanase Seromba's approval of the decision to destroy the church,[35] and his encouragement of the

[30] Trial Judgement, paras 217, 238, 239.
[31] Appeal Judgement, para. 169, referring to Trial Judgement, para. 218.
[32] Trial Judgement, para. 179.
[33] Appeal Judgement, para. 179.
[34] Appeal Judgement, para. 180.
[35] Appeal Judgement, para. 171. Although the Majority refers to Seromba's "approval" of the decision to destroy the church, I note that in making its factual findings, the Trial Chamber found that he "accepted" the decision (S*ee* paras 268, 334). This is also consistent with the transcript of Witness CDL's testimony which says that "Father Seromba accepted their decision" (*See* T. 19 January 2005, p. 25).

bulldozer driver to destroy the church made him a principal perpetrator.[36] With respect to my learned colleagues, I disagree. As noted by the Majority, it is well established in the jurisprudence of this Tribunal and the ICTY that acts of assistance, encouragement or moral support to the principal perpetrators of a crime constitute aiding and abetting.[37] For some reason however, in the present case, the Majority chooses to hold that his acts "cannot be adequately described by any other mode of liability pursuant to Article 6(1) of the Statute than 'committing'" since they "were as much as an integral part of the crime of genocide as the killings of the Tutsi refugees."[38] It is not clear if by doing so, the Majority is now introducing a new standard for "committing", but even if this is the case, not only is it not supported by any jurisprudence – even *Gacumbitsi* which, as I indicated above, is not applicable – but it is also a "catch-all" definition which could be applicable to any form of participation. It is hard to imagine any type of participation, even accessory, that would not be "integral" to a particular crime, particularly if it has been found to have "substantially contributed" to the crime.

15. What the Majority also fails to mention is whether its conclusion that he "approved and embraced as his own"[39] the decision to destroy the church is based on the cumulative effect of his acts or on the individual effect of each of his acts. In my view, the lack of detailed reasoning most likely lies in the following: individually, none of his acts can be said to amount to anything other than aiding and abetting; and cumulatively, it sounds as if the Majority is applying JCE or some other mode of liability which is not applicable in this Tribunal. In addition, the lack of reasoning shows that this form of "committing" is not recognized in customary international law.

16. Furthermore, regarding Athanase Seromba's *mens rea*, the Majority has failed to substantiate its reasoning in support of a finding of specific intent. In support of a finding that he possessed the required genocidal intent, the Majority refers to his acceptance of the decision to destroy the church,[40] his advise to the bulldozer driver as to the weakest side of the church and concludes that this indicates that he "knew that there were approximately 1,500 Tutsis in the church and that the destruction of the church would necessarily cause their death."[41] There is one material

[36] Appeal Judgement, para. 171.
[37] Appeal Judgement, para. 172.
[38] Appeal Judgement, para. 171, citing the *Gacumbitsi* Appeal Judgement, para. 60.
[39] Appeal Judgement, para. 171.
[40] Appeal Judgement, para. 177. I note that while the Appeals Chamber says, that, "Athanase Seromba *approved and joined* the decision of Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons to destroy the church when no other means were available to kill the Tutsis who were seeking refuge inside" (emphasis added) referring to Trial Judgement, para. 268, the said paragraph of the Trial Judgement actually says, " Ftğhe Chamber, however, finds that the Prosecution has proved beyond a reasonable doubt that Athanase Seromba was informed by the authorities of their decision to destroy the church and that *he accepted* the decision." (Emphasis added).
[41] Appeal Judgement, para. 177.

element missing from this reasoning: mere knowledge that the destruction of the church would necessarily cause the death of approximately 1,500 Tutsi refugees does not exactly correlate with "an intention to destroy in whole or in part" the Tutsis. In addition, the Majority refers to the fact that Athanase Seromba turned away Tutsi refugees from the presbytery and that two of them were killed, which evidence is correctly used, in any case, to support a finding of aiding and abetting genocide.[42]

17. Having expressed my disagreement with the Majority, I do agree that the Trial Chamber erred in the exercise of its sentencing discretion. Athanase Seromba was convicted of aiding and abetting genocide and extermination which are clearly, in and of themselves, very serious crimes. However, the circumstances of this case are especially egregious in that, as stated by the Majority, as a priest of Nyange Parish, he held himself out as a person of trust during the period the Tutsis sought refuge at the parish.[43] Not only did Athanase Seromba betray that trust, but he went further than that. A full assessment of the gravity of the offence would have shown the especially grave nature of his offences which involved in the death of approximately 1,500 human beings. Since the Trial Chamber did consider this point,[44] it is clear that the Trial Chamber simply did not give it adequate weight. I would therefore, in principle, support an increase in Athanase Seromba's sentence, short of a term of imprisonment for the remainder of his life.

18. In conclusion, I disagree with the Majority that the Trial Chamber erred in finding that Athanase Seromba's participation in crimes amounted to aiding and abetting genocide and extermination. The Majority's extension of the definition of "committing" is not only inconsistent with the jurisprudence of this Tribunal and that of the ICTY, but has been applied by the Majority without any indication of the criteria or legal basis. This Judgement marks a turning point in the jurisprudence of this Tribunal. It has opened the door for an accused to be convicted of committing an offence, where there is no direct perpetration of the *actus reus* of the offence, and where the essential elements of JCE have not been pleaded and proved by the Prosecution, as the accused's acts can in any case be subsumed by this new definition of "committing". Not only is it regrettable for the accused, but it is against his right to legal certainty, particularly at this point in the Tribunal's existence. It is for these reasons that I dissent from the views of the Majority.

Done in both English and French, the English text being authoritative.

Dated this 12th day of March 2008

[42] Appeal Judgement, para. 184.
[43] Appeal Judgement, para. 230.
[44] Trial Judgement, para. 382.

Arusha, Tanzania

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Liu Daqun
Judge

[Seal of the Tribunal]

VIII. ANNEX A: PROCEDURAL BACKGROUND

1. The main aspects of the appeal proceedings are summarized below.

A. Notices of Appeal and Briefs

2. Trial Chamber III pronounced judgement in this case on 13 December 2006 and rendered it in writing on 19 December 2006. Both parties appealed.

1. Athanase Seromba's Appeal

3. Athanase Seromba filed his Notice of Appeal on 19 January 2007.[1] On 22 March 2007, the Appeals Chamber ordered that the filing of his Notice of Appeal be recognized as validly done.[2] On 3 April 2007, Athanase Seromba filed his Appellant's Brief as a confidential document.[3] He also filed a motion in which he conceded that his Appellant's Brief did not comply with the Practice Direction on the Length of Briefs and requested the Trial Chamber to find the Appellant's Brief to be admissible.[4] The Prosecution did not respond to this motion but filed a separate motion in which it objected to the filing of the Appellant's Brief on the ground that it impermissibly included new grounds and sub-grounds of appeal that had not been set out in the Notice of Appeal, and that it differed substantially from the Notice of Appeal in order, numbering, structure, and content.[5] On 6 June 2007, the Appeals Chamber granted, in part, Athanase Seromba's motion. It also granted the Prosecution's Motion Objecting to the Appellant's Brief and struck Chapters 3, 5, and 6(2)(I.D) from the Appellant's Brief, and ordered Athanase Seromba to file a public version of the Appellant's Brief.[6] On 20 June 2007, Athanase Seromba filed a public version of his amended

[1] *Acte d'appel d'Athanase Seromba*, 19 January 2007.
[2] Order Concerning the Filing of the Notice of Appeal, 22 March 2007. The Appeals Chamber issued that order in response to a request filed by Athanase Seromba on 16 February 2007 (*Mémoire complémentaire de la Défense à l'Acte d'appel du Père Athanase Seromba sur le fondement de l'Article 7 ter du Règlement de procédure et de preuve et du paragraphe 11 de la Directive pratique relative aux conditions formelles applicables au recours en appel contre un jugement*, 16 February 2007).
[3] *Mémoire d'appel,* 3 April 2007.
[4] *Requête accompagnant le mémoire d'appel du Père Athanase Seromba*, 5 April 2007.
[5] Prosecutor's Urgent Motion Objecting to the Filing of Athanase Seromba's Appellant's Brief, 20 April 2007. Athanase Seromba responded to the motion on 14 May 2007 (*Requête en réponse de la Défense à la requête du Procureur tendant à faire rejeter le mémoire d'appel d'Athanase Seromba*, 14 May 2007), having been granted an extension of time in which to do so (Decision on « *Requête de la Défense aux fins de prorogation de délai de dépôt de la réponse à la requête du Procureur intitulée* 'Prosecutor's Urgent Motion Objecting to the Filing of Athanase Seromba's Appellant's Brief' *sur le fondement des Articles 116 du Règlement de procédure et de preuve et 20.4 du Statut du Tribunal* », 8 May 2007). On 16 May 2007 the Prosecution filed its Reply (*Réplique du Procureur à la "Requête en réponse de la Défense à la requête du Procureur tendant à faire rejeter le mémoire d'appel d'Athanase Seromba"*, 16 May 2007).
[6] Decision on "Motion Accompanying Athanase Seromba's Appellant's Brief" and "Prosecutor's Urgent Motion Objecting to the Filing of Athanase Seromba's Appellant's Brief", 6 June 2007, para. 17. The Appeals Chamber considered that the decision was without prejudice to Athanase Seromba seeking to amend his Notice of Appeal by way of motion pursuant to Rule 108 of the Rules (para. 13).

Appellant's Brief.[7] On 28 June 2007, Athanase Seromba filed a motion seeking leave to amend his Notice of Appeal to include the grounds and sub-grounds of appeal which had been struck from his Appellant's Brief by the Appeals Chamber.[8] On 26 July 2007, the Appeals Chamber dismissed the motion.[9]

4. On 12 June 2007, the Prosecution filed its Respondent's Brief.[10] Athanase Seromba filed his Brief in Reply on 25 October 2007,[11] having been granted an extension of time to reply within fifteen days of receiving the French translation of the Prosecution's Respondent's Brief.[12]

2. The Prosecution's Appeal

5. The Prosecution filed its Notice of Appeal on 11 January 2007 and its Appellant's Brief on 26 March 2007.[13] Athanase Seromba filed his Respondent's Brief on 2 July 2007.[14] On 16 July 2007, the Prosecution filed its Brief in Reply.[15]

6. On 31 July 2007, Athanase Seromba filed a Corrigendum to his Respondent's Brief.[16] On 28 August 2007, the Pre-Appeal Judge ordered that only those changes contained in the Corrigendum correcting grammatical, syntactical or typing errors, or citing new references would be accepted.[17]

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[7] *Mémoire d'appel du Père Athanase Seromba modifié suivant Décision de la Chambre d'appel du 6 juin 2007 notifiée à la Défense le 7 juin 2007*, 20 June 2007. This brief also excluded the grounds and sub-grounds of appeal that had been struck by the Appeals Chamber in its 6 June 2007 decision, even though Athanase Seromba was not directed to do so. A corrigendum to the English translation of the amended Appellant's Brief was filed on 13 August 2007, rectifying the date of the Brief reflected in the translation (Father Athanase Seromba's Appeal Brief Amended Pursuant to the Appeals Chamber's Decision of 6 June 2007 Notified to the Defence on 7 June 2007 – Corrigendum, 13 August 2007).

[8] *Requête de la Défense en extrême urgence aux fins d'obtenir une modification des moyens d'appel contenus dans son acte d'appel initial sur le fondement de l'article 2 de la Directive pratique aux conditions formelles applicables au recours en appel contre un jugement, article 108 du Règlement de procédure et de preuve et 20.4 A) du Statut*, 29 June 2007.

[9] Decision on Defence Extremely Urgent Motion to Vary the Grounds of Appeal Contained in its Notice of Appeal, 26 July 2007.

[10] Prosecution Respondent's Brief, 12 June 2007.

[11] *Mémoire en Réplique de l'Appelant*, 25 October 2007.

[12] Decision on Motion for Extension of Time for Filing of Defence Brief in Reply, 12 July 2007. The French translation of the Prosecution's Respondent's Brief was served on the Defence on 9 October 2007 (Information to the Appeals Chamber concerning proof of service to Defence Counsel of "*Mémoire en Réponse du Procureur*", filed by the Registry on 11 October 2007. The Registry erroneously refers to 9 October 2006 as the date of service. Annexes C and D of the Registry's submission however reflect that the French translation was served on the Defence on 9 October 2007).

[13] Prosecutor's Notice of Appeal, 11 January 2007; Prosecution Appellant's Brief, 26 March 2007.

[14] *Mémoire en réponse de l'Intimé Athanase Seromba,* 2 July 2007. On 12 July 2007, the Appeals Chamber recognized the filing of Athanase Seromba's Respondent's Brief as validly done (Decision on Defense Motion for Extension of the Time-Limit for Filing Athanase Seromba's Respondent's Brief, 12 July 2007).

[15] Prosecution's Brief in Reply to "*Mémoire en réponse de l'Intimé Athanase Seromba*" [Rule 113 of the Rules of Procedure and Evidence], 16 July 2007.

[16] *Corrigendum au Mémoire en Réponse de l'Intimé Athanase Seromba*, 31 July 2007. The Prosecution filed a response on 6 August 2007 (*Réponse de l'Appelant au 'Corrigendum au Mémoire en Réponse de l'Intimé Athanase Seromba' du 30 juillet 2007*, 6 August 2007).

[17] Order Concerning the "*Corrigendum au Mémoire en Réponse de l'Intimé Athanase Seromba*", 28 August 2007.

B. Assignment of Judges

7. On 14 February 2007, the following Judges were assigned to hear the appeal: Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Liu Daqun, Judge Theodor Meron, and Judge Wolfgang Schomburg.[18] On 12 March 2007, having been elected as Presiding Judge in the present appeal, Judge Mohamed Shahabuddeen issued an order designating himself as the Pre-Appeal Judge in this case.[19] On 7 November 2007, Judge Patrick Robinson was assigned to replace Judge Mehmet Güney on the Bench in this case.[20]

C. Hearing of the Appeals

8. Pursuant to a Scheduling Order of 26 October 2007,[21] the Appeals Chamber heard the parties' oral arguments on 26 November 2007 in Arusha, Tanzania. Athanase Seromba made use of the possibility granted to him to personally address the Appeals Chamber at the end of the hearing.

[18] Order Assigning Judges to a Case before the Appeals Chamber, 14 February 2007.
[19] Order Designating a Pre-Appeal Judge, 12 March 2007.
[20] Order Replacing a Judge in a Case before the Appeals Chamber, 7 November 2007. *See also* Order Temporarily Assigning a Judge to the Appeals Chamber, IT/253, 7 November 2007.
[21] Scheduling Order, 26 October 2007.

IX. ANNEX B: CITED MATERIALS AND DEFINED TERMS

A. Jurisprudence

1. ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement")

The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-A, Judgement, 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (Reasons), 3 July 2002 ("*Bagilishema* Appeal Judgement")

Gacumbitsi

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement, 17 June 2004 ("*Gacumbitsi* Trial Judgement")

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kajelijeli

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 ("*Kajelijeli* Trial Judgement")

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("*Kajelijeli* Appeal Judgement")

Kamuhanda

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-95-54A-A, Judgement, 19 September 2005 ("*Kamuhanda* Appeal Judgement")

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, ICTR-95-1-T, Judgement, 21 May 1999 ("*Kayishema and Ruzindana* Trial Judgement")

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

Muhimana

The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Judgement and Sentence, 28 April 2005 ("*Muhimana* Trial Judgement")

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-1, Judgement, 21 May 2007 ("*Muhimana* Appeal Judgement")

Musema

The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000 ("*Musema* Trial Judgement")

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement, 16 November 2001 ("*Musema* Appeal Judgement")

Nahimana et al.

Ferdinand Nahimana, Jean-Bosco Barayagwiza et Hassan Ngeze c. Le Procureur, Case No. ICTR-99-52-A, *Arrêt*, 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Ndindabahizi

The Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-01-71-I, Judgement and Sentence, 15 July 2004 ("*Ndindabahizi* Trial Judgement")

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement, 16 January 2007 ("*Ndindabahizi* Appeal Judgement")

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May

2003 ("*Niyitegeka* Trial Judgement")

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement, 9 July 2004 ("*Niyitegeka* Appeal Judgement")

Ntagerura et al.

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe, Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004 ("*Ntagerura et al.* Trial Judgement")

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe, Case No. ICTR-99-46-A, Judgement, 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement and Sentence, 21 February 2003 ("*Ntakirutimana* Trial Judgement")

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement, 26 May 2003 ("*Rutaganda* Appeal Judgement")

Rutaganira

The Prosecutor v. Vincent Rutaganira, Case No. ICTR-95-1C-T, Judgement and Sentence, 14 March 2005 ("*Rutaganira* Sentencing Judgement")

Semanza

The Prosecutor v. Laurent Semanza, Case No. 97-20-T, Judgement and Sentence, 15 May 2003 ("*Semanza* Trial Judgement")

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement, 20 May 2005 ("*Semanza* Appeal Judgement")

Serushago

The Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, Sentence, 5 February 1999, ("*Serushago* Sentencing Judgement")

Simba

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement, 27 November 2007 ("*Simba* Appeal Judgement")

2. ICTY

Babi}

Prosecutor v. Milan Babi}, Case No. IT-03-72-S, Sentencing Judgement, 29 June 2004 ("*Babić* Sentencing Judgement")

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement, 17 May 2005 ("*Blagojević and Jokić* Trial Judgement")

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement, 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaški}

Prosecutor v. Tihomir Bla{ki}, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaški}* Appeal Judgement")

Bralo

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-S, Sentencing Judgement, 7 December 2005 ("*Bralo* Sentencing Judgement")

Prosecutor v. Miroslav Bralo, Case No. IT-95-17-A, Judgement and Sentencing Appeal, 2 April 2007 ("*Bralo* Sentencing Appeal Judgement")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement, 1 September 2004 ("*Brđanin* Trial Judgement")

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement, 3 April 2007 ("*Brđanin* Appeal Judgement")

Čelebići

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement")

Deronjić

Prosecutor v. Miroslav Deronjić, Case No. IT-02-61-S, Sentencing Judgement, 30 March 2004 ("*Deronjić* Sentencing Judgement")

Furund`ija

Prosecutor v. Anto Furund`ija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furund`ija Appeal Judgement")

Galić

Prosecutor v. Stanislav Gali}, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Gali}* Appeal Judgement")

Jelisić

Prosecutor v. Goran Jelisi}, Case No. IT-95-10-A, Judgement, 5 July 2001 ("*Jelisić* Appeal Judgement")

Miodrag Jokić

Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004 ("*Miodrag Jokić* Sentencing Judgement")

Kordić and ^erkez

Prosecutor v. Dario Kordić and Mario ^erkez, Case No. IT-95-14/2, Judgement, 17 December 2004 ("*Kordić and ^erkez* Appeal Judgement")

Krajišnik

The Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, Judgement, 27 September 2006

("*Krajišnik* Trial Judgement")

Krnojelac

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003 ("*Krnojelac* Appeal Judgement")

Krsti}

Prosecutor v. Radislav Krsti}, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krsti}* Appeal Judgement")

Kunarac et al.

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23&IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac et al*. Appeal Judgement")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić et al*. Appeal Judgement")

Kvo~ka et al.

Prosecutor v. Miroslav Kvo~ka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvo~ka et al*. Appeal Judgement")

Limaj et al.

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-T, Judgement, 30 November 2005 ("*Limaj et al.* Trial Judgement")

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement, 27 September 2007 ("*Limaj et al.* Appeal Judgement")

Naletili} and Martinovi}

Prosecutor v. Mladen Naletili} and Vinko Martinovi}, Case No. IT-98-34-A, Judgement, 3 May 2006 ("*Naletili} and Martinovi}* Appeal Judgement")

Blagoje Simić (et al.)

Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić, Case No. IT-95-9-T, Judgement, 17 October 2003 ("*Blagoje Simić et al.* Trial Judgement")

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement, 28 November 2006 ("*Blagoje Simić* Appeal Judgement")

Milan Simić

Prosecutor v. Milan Simić, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 ("*Milan Simić* Sentencing Judgement")

Staki}

Prosecutor v. Milomir Staki}, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Staki}* Appeal Judgement")

Strugar

Prosecutor v. Pavle Strugar, Case No. IT-01-42-T, Judgement, 31 January 2005 ("*Strugar* Trial Judgement")

Tadić

Prosecutor v. Duško Tadi} a/k/a "Dule", Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadi}* Appeal Judgement")

Vasiljević

Prosecutor v. Mitar Vasiljevi}, Case No. IT-98-32-A, Judgement, 25 February 2004 ("*Vasiljevi}* Appeal Judgement")

B. Defined Terms and Abbreviations

***ad hoc* Tribunals**

See "ICTR" and "ICTY"

AT.

Appeals Hearing Transcript (English)

Defence Closing Brief

The Final Trial Brief of the Defence of Athanase Seromba ("*Mémoire en Défense du Père Athanase Seromba*") was filed in French on 22 June 2006 and a corrigendum ("*Corrigendum aux Conclusions Finales de la Défense*") was filed on 26 June 2006.

Ex. D

Defence Exhibit

Ex. P

Prosecution Exhibit

Final Pre-Trial Brief

Pre-Trial Brief of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda (Filed Pursuant to Rule 73(B)(i)*bis* of the Rules of Procedure and Evidence) was filed in English on 27 August 2004. A corrigendum was filed on 7 September 2004.

fn.

Footnote

ICTR

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

Practice Direction on Formal Requirements for Appeals from Judgement

Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005

Prosecution's Appellant's Brief

Prosecution Appellant's Brief, filed on 26 March 2007

Prosecution's Notice of Appeal

Prosecutor's Notice of Appeal, filed on 11 January 2007

Prosecution's Reply Brief

Prosecution's Brief in Reply to "*Mémoire en Réponse de l'Intimé Athanase Seromba*" (Rule 113 of the Rules of Procedure and Evidence), filed on 16 July 2007

Prosecution's Respondent's Brief

Prosecution Respondent's Brief, filed on 12 June 2007

R.P.

Registry Page

Seromba's Appellant's Brief

Athanase Seromba's Appellant's Brief, filed in French (*"Mémoire d'Appel"*) on 3 April 2007

Seromba's Notice of Appeal

Athanase Seromba's Notice of Appeal, filed in French ("*Acte d'Appel d'Athanase Seromba"*) on 19 January 2007

Seromba's Reply Brief

Athanase Seromba's brief in reply to Prosecution's Respondent's Brief, filed in French (*"Mémoire en Réplique de l' Appelant")* on 22 October 2007

Seromba's Respondent's Brief

Athanase Seromba's brief in response to the Prosecution's appeal, filed in French (*"Mémoire en Réponse de l' Intimé Athanase Seromba"*) on 2 July 2007

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

T.

Trial Transcript (English)

Trial Judgement

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-T, rendered on 13 December 2006

Statute

Statute of the International Criminal Tribunal for Rwanda established by Security Council Resolution 955

Wall build on the ruins of Nyange Church, April 2002 (Exh. P 2-07)