Summary of the Judgement

1. Mr. Rutaganda was tried by Trial Chamber I of this Tribunal on the basis of an Indictment presented on 13 February 1996, and confirmed on 16 February 1996. The Indicment contained eight counts. The Trial opened on 18 March 1997 and ended on 17 June 1999, and the Trial Chamber Judgement and Sentence were delivered on 6 December 1999. The Trial Chamber convicted Mr. Rutaganda on the basis of Article 6(1) of the Statute of the Tribunal on three counts: Count 1, genocide; Count 2, extermination as a crime against humanity; and Count 7, murder as a crime against humanity. The convictions under Counts 1 and 2 rested on his distributing weapons and ordering or encouraging the recipients to kill Tutsis in Nyarugenge on 8, 15, and 24 April 1994; overseeing the detention and shooting of 14 people behind the Amgar garage in April 1994; participating in the killings at the Ecole Technique Officielle ("ETO school") on 11 April and then the killing of many of the survivors of that attack at Nyanza; and his personally murdering Emanuel Kayitare on 28 April. The conviction under Count 7 rested on the murder of Emanuel Kayitare. The Trial Chamber acquitted Rutaganda of the other five counts.

2. The Trial Chamber sentenced Mr. Rutaganda to a single sentence of life imprisonment. He and the Prosecution filed appeals on 5 and 6 January 2000, respectively.

3. During the pre-appeal proceedings, the Appeals Chamber was seized of numerous motions by the parties. In addition, on 5 January 2001, the Registrar granted a request by then Lead Defence Counsel, Ms. Tiphaine Dickson, to withdraw from the case for health reasons, and assigned Co-Counsel, Mr David Jacobs, as Lead Counsel. Professor Allan Hutchinson was assigned as Co-Counsel on 1 February 2001. On 13 March 2001, following a request by Lead

Counsel Jacobs, Mr. David Paciocco replaced Professor Hutchinson as Co-Counsel. Thereafter, the Appeals Chamber granted a number of requests for extension of time to complete the appeal filings.

4. The Appeals Chamber held a public hearing at the Seat of the Tribunal in Arusha on 4 and 5 July 2002. After the hearing on the merits, due to exceptional circumstances, the Appeals Chamber considered and ruled upon motions brought by Mr. Rutaganda for disclosure, pursuant to Rules 66(B) and 68, and for the admission of additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence. Moreover, in the interests of justice, the Appeals Chamber heard a witness during a public hearing on 28 February 2003 at the Seat of the International Criminal Tribunal for the former Yugoslavia in The Hague.

5. The Judgement handed down today covers the appeals lodged by both sides, as well as certain issues raised during the proceedings for the admission of additional evidence, in particular during the hearing of 28 February 2003.

[A. Standards of Review]

6. Although the standards of appellate review have not been contested by the parties, before considering the specific grounds of appeal, it is appropriate to recall them.

7. The burden is on the party raising a ground of appeal to identify the alleged error. The Appeals Chambers of both this Tribunal and the ICTY have repeatedly stressed that an appeal is not an opportunity to hear a case *de novo*. The general rule, therefore, is that the Appeals Chamber will only hear arguments on errors of law which invalidate the decision. With respect to alleged errors of fact, the party alleging the error of fact must prove two things: (1) that an error has been committed; and (2) that the error has occasioned a miscarriage of justice.

8. The Appeals Chamber "will not lightly disturb findings of fact by a Trial Chamber." Indeed, it is the Trial Chamber, as the first trier of fact, which has the power to examine the evidence adduced at the trial, to evaluate it, and to decide what weight to attribute to it. It is thus only when no reasonable trier of fact could have agreed with the Trial Chamber's factual conclusion that the Appeals Chamber will substitute its own finding for that of the Trial Chamber.

9. The latitude that a Trial Chamber has to evaluate evidence is counterbalanced by the obligation to produce a reasoned opinion in writing. However, the Trial Chamber is not obligated to explain every step in the reasoning behind each finding it makes. The issue as to how detailed the Trial Chamber must be in disclosing its reasoning is determined on a case-by-case basis. It cannot be expected that a Trial Chamber will make express reference to every piece of evidence admitted during the trial. When the Trial Chamber does not allude to some evidence, it is normally reasonable to presume that it nonetheless took such evidence into consideration. It is incumbent on the appellant to demonstrate that the Trial Chamber has disregarded an item of evidence.

[B.Grounds of Appeal – Rutaganda]

10. I will now turn to the grounds of appeal raised by Rutaganda.

<u>[1. Judicial Partiality]</u>

11. In his first ground of appeal, Rutaganda charged the Trial Chamber with creating an appearance of bias in its treatment of witnesses, including himself. In addition, the issue of a possible denial of equality of arms between the Appellant and the Prosecution is obliquely referred to in some of his contentions.

12. The Appeals Chamber recalls that impartiality is one of the duties that Judges pledge to uphold at the time they take up their office; and this applies

throughout the Judge's term of office in the Tribunal. This is a component of the right to a fair trial that is recognized in Articles 19 and 20 of the Statute.

13. As previously explained by the Appeals Chamber of both this Tribunal and the ICTR, there is a general rule that a Judge must not only be subjectively free from bias, but also do nothing which objectively gives rise to an appearance of bias. There exists an unacceptable appearance of bias if the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias. Thus, the question to be determined by the Appeals Chamber is whether the reaction of the hypothetical fair-minded observer (with sufficient knowledge of the circumstances to make a reasonable judgement) would be that the concerned Judge might not bring an impartial and unprejudiced mind to the issues arising in the case.

14. There is a presumption of impartiality which attaches to a Judge. It is for the Appellant to adduce sufficient evidence to satisfy the Appeals Chamber that the Judge in question was not impartial in his case. There is a high threshold to reach in order to rebut the presumption of impartiality.

15. The Appeals Chamber considered all but three of the allegations of bias raised by the Appellant by placing them in their proper context as appears from the trial record, so that the intent of the persons who made the impugned remarks and their effect may be understood. However, three of the allegations were not considered, in accordance with the standards for appellate review, either because the Appellant had not specifically referred the Appeals Chamber to the parts of the trial record which, in his view, support his claim, or because the Defence Appeal Brief simply repeated this claim without expanding further.

16. After thoroughly examining and placing the allegations of bias in their context, the Appeals Chamber finds that they were clearly unfounded. The Appeals Chamber has taken note of some unwarranted attitudes or erroneous assessments made by the Trial Chamber, but finds that these were not such as

would rebut the presumption of impartiality of the Judges. In the circumstances, they would not have led a reasonable observer with full knowledge of the facts to have legitimate fear of bias on the part of the Judges.

[2. General Errors of Law]

17. In his second ground of appeal, Rutaganda alleged ten general errors of law affecting the fairness of his trial. The alleged errors concern the right to cross-examine; the right to raise objections; hearsay evidence; expert evidence; the burden of proof; prior witness statements; assessment of witness credibility; the impact of trauma; the impact of social and cultural factors; and the editing of transcripts.

18. In assessing this ground of appeal, the Appeals Chamber has reviewed all of the pertinent parts of the record which Rutaganda cites in support of his claims. Extracts from transcripts to which reference was made in the submissions have been placed in their proper context so that the intent of the persons who made the impugned remarks and their effect may be understood.

19. Concerning the right to cross-examine witnesses, the Appeals Chamber finds that the Trial Chamber did not, as contended by Rutaganda, systematically prohibit leading questions during cross-examination; nor did it prevent his Counsel from challenging witnesses' answers. The interventions of the Trial Chamber cited by Rutaganda fall within the ambit of the Presiding Judge's role to prevent repetitive or confused questions, or to ensure that Counsel does not, through his questions to a witness, put words in the witness's mouth. The Appeals Chamber therefore finds this alleged error of law to be unfounded.

20. Concerning the right to raise objections, the Appeals Chamber finds that, contrary to Rutaganda's claims, the approach adopted by the Trial Chamber during trial does not constitute an error of law. The Appeals Chamber notes, incidentally, that contrary to Rutaganda's assertion, the trial record shows that

the parties, notably the Defence, were able, where appropriate, including periods outside the cross-examination of witnesses, to voice their objections relating to the presentation of evidence by the other party. Furthermore, Rutaganda raised a number of objections during the trial relating to the presentation of evidence by the Prosecution by way of motion. Accordingly, the position adopted by the Trial Chamber preserved, in a fair manner, the right of the parties to bring to the notice of the Chamber any objections they had to the presentation of evidence by the other party.

21. Rutaganda's third allegation under this ground of appeal relates to hearsay evidence. He takes issue with the Trial Chamber for having allegedly admitted such evidence on a number of occasions without any caution. The Appeals Chamber recalls that Rule 89(C) of the Rules confers on the Trial Chamber a broad discretion to admit any relevant evidence which it deems to have probative value, including hearsay evidence. This discretion is not unlimited; however, the standard to be met before ruling any evidence inadmissible is high. After considering all of the examples cited by Rutaganda, the Appeals Chamber concludes that Rutaganda has not shown that the Trial Chamber misapprehended the standards set forth in Rule 89 of the Rules or that it failed to assess the cited hearsay evidence with the necessary caution.

22. In his fourth allegation, Rutaganda submits that the Trial Chamber erred in allowing three expert witnesses to give opinions outside their areas of expertise. However, an examination of the examples on which Rutaganda relies — again placed in their context — shows that this allegation is unfounded. The Appeals Chamber recalls in this regard that the assessment of the credibility of expert evidence falls to the trier of fact. It is clear that the Trial Chamber judges in this case did not overstep their discretion.

23. As a fifth allegation, the Appellant contends that the Trial Chamber misapprehended the principles governing the burden of proof and violated the presumption of innocence. After reviewing the Judgement, and placing the

examples cited by the Appellant in context, the Appeals Chamber finds that the Trial Chamber did not violate the presumption of innocence or fail to require the Prosecution to establish the Appellant's guilt beyond a reasonable doubt.

24. Sixthly, the Appellant submits that the Trial Chamber erred by improperly minimizing the significance of the contradictions between the prior statements of witnesses and their in-court testimony. After a review of the record, the Appeals Chamber holds that the Trial Chamber did not commit an error.

25. Finally, as regards the remaining allegations of errors under this ground, those relating to the impact of trauma, the impact of social and cultural factors, the assessment of witness credibility, and the editing of the transcript, the Appeals Chamber, after considering the submissions, and reviewing the trial record and Trial Chamber Judgement, finds the errors alleged to be unfounded.

[3. Alibi and Related Errors]

26. In his third ground of appeal, Rutaganda raised a number of issues both of fact and law concerning the treatment of his alibi defence by the Trial Chamber. He contends that the ultimate erroneous finding of the Trial Chamber that the alibi was concocted and an afterthought not only undermines the convictions on the offences for which the alibi was presented, but also calls into question the integrity of the entire trial because it shows that the Trial Chamber's assessment of Rutaganda's credibility as a whole was improperly weakened by its rejection of his alibi claim. The Appeals Chamber has first considered whether the Trial Chamber erred in rejecting the alibi. Only thereafter did it consider whether such error generally affected the findings of the Trial Chamber.

27. It should be recalled that at the ICTR, the procedure to be followed if an accused intends to present an alibi in his defence is covered by Rule 67 of the Rules. Rule 67 (A)(ii) is satisfied when the Defence has notified the Prosecution

of the required particulars of the alibi, without necessarily producing the evidence. There is no requirement under Rule 67(A)(ii) for the Defence to notify the Chamber in addition to the Prosecutor of its intent to enter an alibi defence.

28. The Appeals Chamber has reviewed the record and concludes that prior to the commencement of the trial, a notice had in fact been given by the Appellant of an alibi for 6 and 12 April 1994. The Trial Chamber therefore erred in fact in when it found that there was no notice of alibi for this period. However, in the view of this Chamber, the error is not of such a nature that it occasioned a miscarriage of Justice. The Appellant was not prevented from relying on the alibi at trial. As regards the alibi for 11 April 1994, the Appeals Chamber finds that the Trial Chamber did not err in finding that the Appellant had not presented a notice of alibi.

29. Notwithstanding the holding of the Trial Chamber that no notice of alibi had been provided prior to the commencement of trial, the Defence was able to raise the alibi and present evidence in support thereof during the proceedings. This is evident in the Judgement, to the extent that the finding that the Appellant was present and participated in the events on 11 April 1994 was amply sustained by the evidence.

30. Finally, the Chamber finds that the Appellant's argument that the findings in paragraphs 139, 297 and 298 of the Trial Chamber Judgement concerning the Appellant's credibility led the Trial Chamber to disregard his testimony on every charge is without merit.

31. The Appellant also contends in this ground of appeal that the Trial Chamber erred in law by refusing to admit into evidence the "Tingi-Tingi" witness statements, which were relevant to the alibi. He submits that the Trial Chamber applied the wrong test to the admission of hearsay evidence by requiring the Defence to establish the reliability and authenticity of the statements. As the Appeals Chamber has previously noted, it is settled

jurisprudence that the reliability of a statement is relevant to its admissibility and that where a piece of evidence is lacking in terms of indicia of reliability it may be deemed inadmissible.

32. The Appeals Chamber finds, after reviewing the record, that contrary to the assertions of the Appellant, the Trial Chamber did not apply an erroneous standard in excluding the "Tingi-Tingi" witness statements as hearsay evidence.

33. The Appeals Chamber also finds to be without merit the Appelant's further argument that the Trial Chamber erred by preventing the Defence from establishing a foundation for the reliability of the statements through the testimony of witness DD.

34. Finally, the Appellant submits that the Trial Chamber erred in law by allowing the Prosecution to use three non-disclosed documents during its cross-examination and that the Trial Chamber thereby failed to apply the principle of equality of arms by requiring the Appellant to observe a different standard than the Prosecution. Again, after a full consideration of the record, the Appeals Chamber finds that the Appellant has not established that the Trial Chamber committed any errors of law such as to invalidate the judgement.

[4. Distribution of Weapons]

35. In his fourth ground of appeal, the Appellant has appealed against the findings of the Trial Chamber relating to his participation in the distribution of weapons on 8, 5 and 24 April 1994.

36. The Appeals Chamber considered first the Appellant's submission that the Trial Chamber erred in convicting him on the basis of three acts under a count that he argues alleged only one act.

37. It should be recalled that the fundamental purpose of an Indictment is to provide the accused with a description of the charges against him with sufficient particularity to enable him to mount his defence. It is therefore incumbent on

the Prosecution to state in the Indictment the material facts underpinning the charges, although the degree of specificity required and the materiality of the facts are dependent on the nature of both the Prosecution case and the criminal act charged.

38. Paragraph 10 of the Indictment alleged that the Appellant had distributed weapons "on or about 6 April 1994." In light of the phrase "on or about," the Appeals Chamber finds that it was not unreasonable for the Trial Chamber to consider evidence at trial which showed that the Appellant had distributed weapons on three occasions in April 1994. The reasonableness of that approach is all the clearer when this paragraph is read in conjunction with other paragraphs of the Indictment relating to the crimes alleged to have been committed.

39. As a second group of errors of law and fact under this ground of appeal, the Appellant submits that the Trial Chamber erred in its assessment of the evidence supporting the findings of distribution of weapons. Specific reference is made by the Appellant to the testimonies of witnesses Q, T, U and J. After reviewing the record, the Appeals Chamber rejects the Appellant's submissions concerning witnesses Q, U, and J. With respect to the evidence presented by Witness T, although there appear to be some inconsistencies as to the details of his brother's killing, these do not call into question the probative value of his testimony on this point. Viewed in light of Witness T's testimony as a whole, the Appeals Chamber finds that the Appellant has not shown that no reasonable trier of fact would have found the witness reliable.

40. Consequently, the Appeals Chamber denies the Appellant's ground of appeal against the findings concerning distribution of weapons.

[5. Amgar Garage]

41. Under his next ground of appeal, the Appellant has submitted that the Trial Chamber committed a number of errors of fact and law in finding him

responsible for the murders at Amgar garage. In essence, the Appellant argues that the Trial Chamber erred in its assessment of the testimonies of witnesses Q, T and BB, and that it misapprehended the evidence of a number of Defence witnesses.

42. The Appeals Chamber has fully reviewed the alleged inconsistencies in the witnesses' statements, the conduct of the Trial Chamber, and its assessment of the evidence. Although some inconsistencies subsisted, these were minor and were not such as to call into question the findings of the Trial Chamber. Likewise, interventions by the Trial Chamber Judges which the Appellant cited as being improper, when placed in context, appear to have been reasonable in the circumstances. Moreover, a number of the issues raised by the Appellant in this ground of appeal were raised under other grounds of appeal, where they have been dealt with accordingly. Consequently, the Appeals Chamber denies this ground of appeal.

[6. ETO and Nyanza]

43. In his next ground of appeal, Mr. Rutaganda submits that the Trial Chamber committed a number of legal and factual errors in finding him guilty of the massacres of Tutsi refugees at the École Technique Officielle ("ETO School") and Nyanza on 11 and 12 April 1994. The Appellant argues that the Trial Chamber erred by finding the testimonies of a number of witnesses credible.

44. After the appeal had been put into deliberations, the Appellant was permitted, because of exceptional circumstances, to present additional evidence pursuant to Rule 115 of the Rules. The parties and a witness were heard during a hearing held at The Hague on 28 February 2003.

45. The Appeals Chamber finds that the Appellant has failed to show that the Trial Chamber did not take into account alleged inconsistencies within the evidence or that the Trial Chamber relied unreasonably on the testimony of

witness W to speculate on the presence of the Appellant on the road to Nyanza. The Appeals Chamber has also considered the arguments of the Appellant that the Trial Chamber misapprehended the evidence of witnesses H and DD in finding that he participated in the massacres of refugees at ETO. The Appeals Chamber has reviewed the record and finds that the assertions of the Appellant that witness H demonstrated animus, that he was ready to make suppositions, and that there existed other general problems and inconsistencies in his testimony are unsubstantiated.

46. The Appeals Chamber has also considered the Appellant's arguments with respect to alleged inconsistencies between and within the testimonies of Witnesses A, H and W about the massacre at Nyanza. After a review of the record, the Appeals Chamber notes that although there may be minor discrepancies on some of the facts, these are not such to call into question the credibility of the witnesses. The Appeals Chamber finds that the Trial Chamber did not err in its assessment of the evidence of these witnesses concerning the events at Nyanza.

47. Finally, in this ground of appeal, the Appeals Chamber has considered the additional evidence presented by the Appellant, including the testimony of Professor Guichaoua, and the impact, if any, it could have had on the decision of the Trial Chamber in relation to the murders at ETO and Nyanza. The Appeals Chamber finds that the Appellant has not shown that no reasonable trier of fact could have found the Appellant guilty of participation in the murders at ETO and Nyanza. The Appeals Chamber rejects this ground of appeal.

[7. The Killing of Emmanuel Kayitare]

48. In his next ground of appeal, the Appellant contends that the Trial Chamber committed a number of factual and legal errors in finding him guilty of the killing of Emmanuel Kayitare. In particular, the Appellant argues that

the Trial Chamber erred in assessing the testimonies of Witnesses AA and U, and, more specifically, by finding in paragraphs 336 and 337 of the Judgement that their testimonies corroborated each other.

49. The Appeals Chamber has reviewed the record and finds, in relation to the Trial Chamber's findings in paragraph 336 of the Judgement pertaining *inter alia* to the conducting of house-to-house searches by *Interahamwe* in the Agakingiro neighbourhood, the taking of Tutsi to the Hindi Mandal near Amgar garage, and the presence of the Appellant, that contrary to the finding of the Trial Chamber, the testimony of Witness AA is not corroborated by that of Witness U on most of the material elements.

50. The Appellant also raised a number of inconsistencies in the testimonies of Witnesses AA and U to challenge the validity of the Trial Chamber findings in paragraph 337 of the Judgement as regards the circumstances surrounding the killing of Emmanuel Kayitare, a Tutsi, by the Appellant. After reviewing the testimonies of Witnesses AA and U, the Appeals Chamber is of the view that there exist numerous inconsistencies on such matters as the date and time of the killing, the arrival and presence of the Appellant at the scene of the killing, the events immediately preceding and following the killing, and the attire and weapons of the Appellant.

51. The Appeals Chamber concludes that no reasonable trier of fact could have found, as did the Trial Chamber, that the testimonies of witnesses U and AA were corroborative, and that, taken together, they established beyond a reasonable doubt that the Appellant killed Emmanuel Kayitare as alleged in paragraph 18 of the Indictment. Consequently, the Appeals Chamber quashes the conviction of the Appellant under Count 7 murder as a crime against humanity.

[8. The *Interahamwe za MRND*]

52. In his next ground of appeal, the Appellant submits that the Trial Chamber committed factual errors in its findings concerning his role within the *Interahamwe* and *Interahamwe za MRND*. The Appellant contends that the Trial Chamber erred by failing to distinguish between the *Interahamwe za MRND* and the *Interahamwe,* assuming that the *Interahamwe za MRND* continued to exist after 6 April 1994 and played a role in the atrocities, and concluding that the Appellant was in a position of responsibility in the *Interahamwe*.

53. The record shows that substantial evidence was indeed presented before the Trial Chamber on the *Interahamwe* and *Interahamwe za MRND,* and on the participation of the "*Interahamwe*" in the massacres during the relevant periods. However, despite this evidence and the references to *Interhamwe* and *Interhamwe za MRND* in the Indictment, the Appeals Chamber notes that the Appellant was neither charged with nor tried for crimes based on his leadership role in the *Interhamwe* or *Interhamwe za MRND*. It is clear from both the Indictment and the Trial Chamber Judgement that the Appellant was indicted, tried and convicted for his direct participation in the events. His arguments that the *Interahamwe za MRND* ceased to exist after 6 April 1994, and that the Trial Chamber erred in failing to distinguish between the *Interhamwe* and *Interhamwe za MRND* are thus, in the view of the Appeals Chamber, beside the point.

54. Finally, the Appellant's submissions concerning the Trial Chamber's findings as to his position of authority have been considered by the Appeals Chamber in the section of its Judgement concerning the conviction for genocide.

[9. Genocide]

55. The Appellant's last ground of appeal concerns his conviction for genocide. The Appellant advances three main arguments. The first is that the Trial Chamber erred in law by using the wrong test to determine whether the

Appellant had the requisite *dolus specialis* to commit genocide; the second is that the Trial Chamber erred in fact by finding that the Appellant had the intention necessary to commit genocide; and the third is that the Trial Chamber erred in fact by finding that the mass killings in Rwanda in April and May 1994 constituted genocide.

56. In relation to the first argument, the Appeals Chamber finds that the Appellant misinterpreted both the legal test adopted by the Trial Chamber and the facts and circumstances that the Trial Chamber considered in its assessment of specific intent. The approach of the Trial Chamber was clearly consistent with that generally accepted by the *ad hoc* Tribunals. It is clear particularly from paragraph 399 of the Trial Chamber's Judgement that the Trial Chamber found the Appellant possessed the specific intent required for genocide based on his own conduct, specifically his participation in massacres of Tutsis and his having ordered and encouraged others to commit crimes against Tutsis. The Trial Chamber clearly noted that the victims were selected because of their membership in the Tutsi group. The Trial Chamber's references to the broader context of widespread genocidal acts came only after it had satisfied itself that the Appellant's own conduct established that he acted with the required specific intent. There is thus no merit in the Appellant's argument that the Trial Chamber inferred his intent solely on the basis of the actions of others.

57. Regarding the second argument, the Appeals Chamber finds that the Appellant did not show that the Trial Chamber failed to consider evidence of his conduct which tended to show that the Appellant did not possess the intent required to commit genocide. Moreover, after a review of the submissions of the Appellant, the Appeals Chamber is of the view that the evidence upon which the Trial Chamber based its findings establishes beyond reasonable doubt that the Appellant possessed the specific intent to destroy the Tutsi group.

58. Finally, the Appeals Chamber finds the third argument of the Appellant to be without merit.

[C. Prosecution's Ground of Appeal : War Crimes]

59. In its sole ground of appeal, the Prosecution challenges the Trial Chamber's acquittal of Rutaganda on Counts 4 and 6 of the Indictment. Those counts charged violations of common Article 3 of the Geneva Conventions based on Rutaganda's participation in the killings at ETO and Nyanza. The Trial Chamber acquitted Rutaganda on the ground that the Prosecution had failed to establish the required nexus between the crimes committed by Rutaganda and the armed conflict.

60. In defining the elements required for conviction under Counts 4 and 6, the Trial Chamber held that there must be a nexus between the offences and an armed conflict satisfying the requirements of common Article 3 of the Geneva Conventions and of Article 1 of Additional Protocol II to the Geneva Conventions. The Prosecution asserts that it does not challenge the definition of the nexus requirement used by the Trial Chamber. Rather, the Prosecution argues that, based on the evidence presented at trial, no reasonable trier of fact could have concluded that the crimes charged in Counts 4 and 6 of the indictment had not been shown beyond a reasonable doubt either to have been closely related to the armed conflict or to have been committed in conjunction with the armed conflict.

61. The Appeals Chamber approves the definition of the nexus requirement as explained by the ICTY Appeals Chamber in its *Kunarac* Judgement. According to that definition, "the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established … that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict." It is only necessary to explain two matters. First, the expression

"under the guise of the armed conflict" does not mean simply at the same time as an armed conflict and in any circumstances created in part by the armed conflict. For example, if a non-combatant takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime. Second, the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one. Particular care is needed when the accused is a non-combatant.

62. After reviewing the record and the Judgement, the Appeals Chamber finds that no reasonable trier of fact could have concluded that there did not exist a nexus between the armed conflict in Rwanda and the crimes committed by Rutaganda at ETO and Nyanza. Indeed, in its Judgement, the Trial Chamber found that the Prosecution had established a nexus between the ETO and the Nyanza killings and the armed conflict. Given the Trial Chamber's conclusions *inter alia* that Rutaganda participated directly in those killings, that he exercised *de facto* authority over the *Interahamwe*, that the *Interahamwe* were armed with guns, grenades and cudgels, that the *Interahamwe*, participated in the ETO and Nyanza massacres alongside soldiers, and that the victims were persons protected by common Article 3 to the Geneva Conventions, the Appeals Chamber concludes that no reasonable trier of fact could have failed to find beyond a reasonable doubt that a nexus existed between Rutaganda's participation in the particular killings charged in Count 4 and 6 and the armed conflict.

63. Concluding that no reasonable trier of fact could have made all the factual findings reached by the Trial Chamber but still have concluded that the Prosecution had failed to establish beyond a reasonable doubt a nexus between Rutaganda's participation in the ETO and Nyanza killings and the armed conflict, the Appeals Chamber finds that the Trial Chamber erred as a matter

fact. The Trial Chamber's erroneous conclusion concerning the required nexus supplied the only basis for its acquittal of Rutaganda on Counts 4 and 6. Correction of the error would thus require entry of convictions on both counts, and the error is therefore one "which has occasioned a miscarriage of justice." The Appeals Chamber therefore accepts the Prosecution's ground of appeal and convicts Mr. Rutaganda on Counts 4 and 6.

[D. Reconsideration of the Sentence]

64. Although Rutaganda withdrew his ground of appeal in relation to the sentence imposed, he indicated in his submissions that were the Appeals Chamber to quash one or more of the convictions against him but not all of them, it should reconsider whether the sentence remained appropriate in the circumstances. The Prosecution, for its part, presented no arguments on sentencing, given that Rutaganda had already been sentenced to life imprisonment.

65. As a result of the revised verdicts in respect of Counts 4, 6 and 7, the Appeals Chamber is competent to determine whether the factual assessment of the Trial Chamber in determining the sentence is still valid. The Appeals Chamber has reviewed the basis of the Trial Chamber's determination of the sentence, including the weight it accorded to any mitigating and aggravating factors. In the view of the Appeals Chamber, any sentence should reflect the totality of the crimes committed by a person and be proportional to both to the gravity of the crimes and to the gravity of the conduct of the person convicted.

66. The Appeals Chamber recalls that the Trial Chamber found that the killings at ETO and Nyanza claimed more than three thousand victims. The Appeals Chamber is therefore of the opinion that the acquittal under Count 7 of the Indictment for the killing of Emmanuel Kayitare has an impact on the gravity of the crimes and conduct on which the Trial Chamber based itself in determining the sentence that is too small to affect the sentence.

67. Consequently, the Appeals Chamber holds that there are no grounds to revise the sentence of Georges Rutaganda.

I shall now read the operative paragraph of the Appeals Chamber's Judgement, and at this point I would invite Mr. RUTAGANDA to stand. The disposition at the end of the Judgement is as follows:

For the foregoing reasons, THE APPEALS CHAMBER :

NOTING Rule 24 of the Statute and Rule 118 of the Rules of Procedures and Evidence;

CONSIDERING the respective written submissions of the parties and the arguments they presented at the hearing of 4 and 5 July 2002 and at the hearing of 28 February 2003;

SITTING publicly;

UNANIMOUSLY ALLOWS the sixth ground of appeal filed by the Appellant Georges Rutaganda relative to his conviction on Count 7 of the Indictment (murder as a crime against humanity) and QUASHES the conviction upon that count;

ALLOWS, with a majority of its members (Judge Pocar dissenting), the appeal filed by the Prosecutor against Georges Rutaganda's acquittal of murder as a violation of common Article 3 of the Geneva Conventions, under Counts 4 and 6 of the Indictment;

RECALLS that the Prosecution has abandoned its second ground of appeal;

UNANIMOUSLY DISMISSES the Appellant's other grounds of appeal;

UNANIMOUSLY ENTERS a verdict that Georges Rutaganda is not guilty upon Counts 7 of the Indictment (murder as a crime against humanity);

ENTERS, with a majority of its members (Judge Pocar dissenting) , a verdict that Georges Rutaganda is guilty upon Counts 4 and 6 of the Indictment (murder as a violation of common Article 3 of the Geneva Conventions);

UNANIMOUSLY CONFIRMS that Georges Rutaganda is guilty on Count 1 (genocide) and Count 2 (extermination as a crime against humanity);

CONFIRMS the sentence of life imprisonment;

STATES that the present Decision shall be enforced immediately pursuant to Rule 119 of the Rules of Procedures and Evidence.

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

Theodor Meron	**Fausto Pocar**	**Claude Jorda**
President	**Judge**	**Judge**

Mohammed Shahabuddeen	**Mehmet Güney**
Judge	**Judge**

President Meron and Judge Jorda have filed a separate opinion.
Judge Pocar has filed an opinion dissenting in part.
Judge Shahabuddeen has filed a separate opinion.

This 26th Day of May,
At Arusha, Tanzania.

On the basis of the Judgement handed down today, Mr. Rutaganda should remain in detention under the custody of the Tribunal under present conditions until further order of the Tribunal.

This hearing is adjourned.