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LITIGATING HUMAN RIGHTS: FAIR TRIAL AND INTERNATIONAL CRIMINAL JUSTICE

The Appellate Acquittals of Major F.X. Nzuwonemeye in the Ndindiliyimana ("Military II") Case[1] *at the International Criminal Court for Rwanda ("ICTR")*

By Beth S. Lyons*

I. BACKGROUND

On 1 October 1990, Tutsi rebels under the leadership of the Rwandan Patriotic Front invaded Rwanda from Uganda. On 6 April 1994, the plane carrying two Hutu Presidents – Juvenal Habyarimana of Rwanda and Cyprien Ntaryamira of Burundi – as well as high-level staff and its French crew was shot down near the Kigali Airport, on its return from Tanzania. Everyone on board was killed. [2]

In November 1994, the UN Security Counsel, by Resolution 955, established the International Criminal Tribunal for Rwanda ("ICTR") to prosecute persons responsible for serious violations of international humanitarian law, in order to contribute to national reconciliation and maintain peace.[3]

Two of the most high profile and complex cases at the ICTR were the *Military I*[4] and *Military II* cases, whose Co-Accused included high-level military officials in 1994. In the *Military II* case, the four Co-Accused were General Augustin Bizimungu, Chief of Staff of the Rwandan Army starting in mid-April 1994; General Augustin Ndindiliyimana, Chief of Staff of the *Gendarmerie nationale*; Major Francois-Xavier Nzuwonemeye, Commander of the Reconnaissance ("RECCE") Battalion; and Captain Innocent Sagahutu, Commander of Company "A" in the RECCE Battalion.

In the *Military II* indictment,[5] all four Co-Accused were charged with conspiracy to commit genocide (and all were acquitted of this charge by the Trial Chamber), but only Bizimungu and Ndindiliyimana

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[1] *Prosecutor v. Ndindiliyimana,* Case No. 00-56-A, Appeals Judgment (Int'l Crim. Trib. for Rwanda Feb. 11, 2014) [hereinafter *Ndindiliyimana Appeals Judgment*].

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[2] The shooting down of the plane is at the heart of the 1994 events, and appeared in the factual statement of the first *Military II* indictment (2002) in paragraph 5.1. The issue of who is responsible for this event has been a highly contested point for more than two decades. Although it is clearly within the temporal jurisdiction of the ICTR, and the Defense has presented evidence, which attributes responsibility to the RPF, no Trial Chamber has deliberated on it.

[3] S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8. 1994).

[4] *Prosecutor v. Bagosora*, Case No. 98-41-A, Appeals Judgment (Int'l Crim. Trib. for Rwanda Dec. 14, 2011) [hereinafter *Bagosora Appeals Judgment*].

[5] The Amended Indictment (August 23, 2004) for trial is found at the end of *Prosecutor v. Ndindiliyimana,* Case No. ICTR-00-56-T, Judgement and Sentence (Int'l Crim. Trib. for Rwanda May 17, 2011.

were charged with genocide. All four Co-Accused were also charged with various crimes against humanity and violations of Article 3 common to the Geneva Conventions and Additional Protocols II, but the specific events in support of these crimes differed for each CoAccused. Nzuwonemeye and Sagahutu were both charged with individual and superior responsibility for the killings of the Belgian UNAMIR soldiers ("Belgians") and the Rwandan Prime Minister Agathe Uwilingiyimana ("Prime Minister").

Nzuwonemeye was arrested in France in February 2000 and transferred to the ICTR in Arusha, Tanzania. The *Military II* trial began in September 2004 and ended in June 2009. The Trial Chamber rendered its Judgment in May 2011.

The Trial Chamber acquitted Nzuwonemeye of conspiracy to commit genocide (count 1), crime against humanity (rape) (count 6) and violation of Article 3 common to the Geneva Conventions and Additional Protocol II (rape, humiliation and degrading treatment) (count 8). He was found guilty of crime against humanity (murder) (count 4) and violation of Article 3 common to the Geneva Conventions and Additional Protocol II (murder) (count 7). He was sentenced to twenty years imprisonment.

Under count four (4) for crime against humanity, there were two key events for which Nzuwonemeye was indicted and subsequently convicted by the Trial Chamber: the murders of (a) the Belgian UNAMIR soldiers and (b) Prime Minister Agathe Uwilingiyimana on 7 April 1994. He was found guilty under the ICTR Statute ("Statute") Article 6(1)[6] for ordering and aiding and abetting under Article 6(3)[7] for superior responsibility for the crime of murder of the Prime Minister; the Trial Chamber entered a judgment of conviction under 6(1). He was found guilty under 6(3) for the crime of murder of the Belgians.

The Appeals Chamber acquitted Major F. X. Nzuwonemeye on 11 February 2014. It reversed all his Trial Chamber convictions for crime against humanity ("CAH") for the killings of the Belgians and the Prime Minister. The Appeals Chamber also reversed the conviction for violation of common Article 3, consistent with the underlying murder conviction reversals.

At the time of his acquittal, Nzuwonemeye had been incarcerated for about fourteen (14) years. Since then, although legally "free," he has had to live in a "safe house" under the care and custody of the U.N. in Arusha, Tanzania, because no country where he can safely live will accept him. He cannot exercise his right to liberty as a free person.

This article discusses the reversals in the *Ndindiliyimana* ("*Military II*") Appeals Judgment of Major Nzuwonemeye's convictions for modes of liability, based on fair trial (right to notice) and failure

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[6] ICTR Statute, Article 6(1): A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 2 to 4 of the present Statute, shall be individually responsible for the crime.

[7] ICTR Statute, Article 6(3): The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relive his or her superior of criminal responsibility if he or she knew or had reason to known that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

to provide a reasoned opinion. This judgment, where it holds that there were fair trial violations, is a significant contribution toward strengthening the jurisprudence in support, and defense, of fair trial as an international human right.

II. INTRODUCTION: FAIR TRIAL AS A HUMAN RIGHT

The ICTR Statute, Article 20, contains the minimum rights of fair trial, and mirrors the rights of the International Covenant on Civil and Political Rights ("ICCPR"), Article 14 and other human rights instruments,[8] including the Universal Declaration on Human Rights ("UDHR"), Article 10, which articulates the principles of fair trial.[9] In 1993, the World Conference on Human Rights in Vienna declared that "all human rights are universal, indivisible and interrelated."[10] Its Declaration refers to the "fundamental freedoms," reaffirming the rights and freedoms within the Charter of the U.N., the UDHR, the ICCPR and International Covenant on Economic, Social and Cultural Rights ("ICESCR"), and embodies the principles of fair trial, including the presumption of innocence. This makes the right to fair trial a human right.

Make no mistake, a criminal defendant – in any court or tribunal - is presumed guilty and must prove his or her innocence. This is what the *Military II* case was about – proving the innocence of Major F.X. Nzuwonemeye before the Trial Chamber, which ultimately convicted him.

But the Appeals Judgment, in essence, re-imposed the presumption of innocence, and demanded that the Prosecution and Trial Chamber adhere to the basic, fundamental rights of fair trial – starting with the obligation of the Prosecution to plead, and its burden to prove beyond a reasonable doubt, each and every element of the crime and mode of liability charged, and the obligation of the Trial Chamber to make findings on the elements of *mens rea* and *actus reus*, in respect to the crimes and modes of liability charged.

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By any standard – legally, factually and logistically – the *Military II* case remains as one of the most complex, politically charged cases heard at the ICTR.

The accountability of military leaders for international crimes, such as genocide, crimes against humanity and war crimes is undisputedly one of the most contentious areas of litigation in international criminal law. But the volatility of this case exceeds the normal (and expected) contention because of the implications of the legal findings in the political context:

- at trial, all four co-Accused were acquitted of conspiracy to commit genocide, legally refuting the Rwandan government's theory that the 1994 genocide was planned;

[8] European Convention on Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 14; Rome Statute of the International Criminal Court (ICC), Articles 66 and 67; Universal Declaration of Human Rights, Article 10; African (Banjul) Charter on Human and Peoples' Rights, Article 7; U.S. Constitution, 6th Amendment; ICTR Statute, Article. 20; ICTY Statute, Article 21.

[9] Universal Declaration of Human Rights, Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.

[10] Vienna Declaration and Programme of Action, adopted in 1993, para . 5.

- on appeal, two co-Accused, General Ndindiliyimana and Major F.X. Nzuwonemeye were acquitted. Nzuwonemye's acquittals were for counts based on the killings of the Belgian UNAMIR soldiers[11] and of the former Prime Minister Agathe Uwilingiyimana – both highly publicized events which occurred on 7 April, the day after the Rwandan President Habyarimana's plane was shot down, and which affected the Rwandan and international communities.

In fact, acquittals for these events were among those cited in a Rwandan civil society petition, addressed to the President of the UN Security Council, and circulated about a month after the appellate judgment. The petition demanded "a serious investigation on professional conduct and real motives of Judge Meron (the Presiding Judge, ICTR Appeals Chamber)."[12]

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The "numbers" associated with this case speak to its magnitude: the trial indictment – which was the fourth amended indictment – contained twenty (20) pages, covering eight (8) counts for four co-Accused. The trial started in September 2004 and ended in June 2009. The Trial Judgment, which ran 569 pages, was rendered in May 2011;[13] the Appeals Judgment was rendered in February 2014.

In June 2009, the then ICTR President Dennis Byron emphasized in his report to the Security Council that the *Military II* case was one of the two largest multi-accused trials,[14] and presented formidable challenges to a Tribunal at the end of its time-line for the "Completion Strategy." In his report the following year in 2010, Judge Byron cited the number of court days (365), admitted exhibits (965) and witnesses (216) in the military case (referring to *Military II*), as well as the loss of the Judgment Coordinator before the expected judgment date, as the basis for requesting more time for the "Completion Strategy."[15]

Perhaps it would come then as no surprise that the *Military II* Trial Judgment was replete with errors, ranging from factual misrepresentations of transcripts to legal errors in the indictment to the absence of reasoned opinion in support of legal elements of crimes and forms of liability for which there were convictions.[16] While a certain number of minor errors (typographical, citations, etc.) is statistically to

[11] It was the Defense position that the Belgian UNAMIR soldiers were not civilians, but military soldiers. The Indictment and Appeals Judgment refer to them as peacekeepers; the Trial Judgment refers to them as soldiers.

[12] I do not know what action, if any, was taken on the Petition. The Petition can be accessed on the Rwandan Civil Society Forum website found at http://www.rcsprwanda.org/IMG/pdf/Petition_ICTR_Meron_EN.pdf.

[13] On 17 May 2011, the Trial Chamber rendered its oral judgment in the case *Ndindiliyimana*. On 17 June 2011, the Trial Chamber filed its written judgment.

[14] President Dennis Byron, *Report of President Dennis Byron to Security Council*, at 7, U.N. Doc. S/PV.6134 (June 4, 2009).

[15] *Id.* at 7, U.N. Doc. S/PV.6342 (June 18, 2010).

[16] Although it is clear that the Presiding Judge signed off on the Trial Judgment, it is worth noting that only one of the ALO's (Associate Legal Officers), who worked on the judgment, had sat through the trial; the rest had not worked for Chambers on this trial, and, based on my information, others were just

be expected, the Judgment's myriad factual and legal errors are titanic. In fact, Appeals Judge Tuzmukhamedov referred to the "extraordinary magnitude and gravity" of the errors in respect to Nzuwonemeye and Sagahutu [which] "pervade the entire reasoning of the Trial Judgment."[17]

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In this context, an article analyzing the Appeals Judgment is a behemoth undertaking. It is a "mission impossible" to faithfully summarize all the legal holdings and the reasoning in their support. Focusing on pieces or sections of the Judgment sounds like a reasonable approach, but for the fact that there are few areas, which are distinct and stand-alone.

I have chosen to focus on the legal findings regarding Nzuwonemeye's acquittals in respect to modes of liability for two key events – the killings of the Belgian UNAMIR soldiers and Prime Minister Agathe Uwilingiyimana – and to identify the fundamental legal reasoning in the Appeals Chamber's holdings. From the point of view of an analysis of the defense in this case, this makes perfect sense: in the parlance of defense attorneys, this was basically a "who did it (and how)" case, and not a "what happened" case.

The modes of liability – individual criminal responsibility and superior responsibility – were the legal lynchpins of the Appeals Chamber's reversal of the Trial Chamber's convictions. The Appeals Chamber reversed the 6(3) conviction for the murder of the Belgians based on fair trial grounds (the lack of notice) and also affirmed the legal notion that the element of knowledge could not be based on strict liability. In respect to the murder of the Prime Minister, the Appeals Chamber reversed 6(1) aiding and abetting based on fair trial grounds (the lack of notice), and 6(1) ordering based on failure to provide a reasoned opinion on the legal elements of liability, and the ensuing insufficiency of the evidence.

III. MODES OF LIABILITY AND THE INDICTMENT

At the ICTR, the Prosecution usually charged the government and military leaders with conspiracy to commit genocide, and a form of individual criminal liability, which is known as participation in a joint criminal enterprise ("JCE"). [18] In addition, both civilian and military leaders were charged with command or superior responsibility liability.

At the heart of command responsibility is the question: were the crimes committed because a government policy or military order was implemented? Or, were the crimes the responsibility of "rogue" soldiers or units or government officials? This is the issue for the Prosecution to prove beyond a reasonable doubt.

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out of law school and/or had very limited experience, if any, in the practice of criminal law in the courtroom.

[17] *Prosecutor v. Ndindiliyimana,* Case No. ICTR-00-56-A, Partly Dissenting Opinion of Judge Tuzmukhamedov, ¶ 3 (Int'l Crim. Trib. for Rwanda Feb. 11, 2014). http://www.unictr.org/sites/unictr.org/files/case-documents/ictr-00-56/appeals-chamberjudgements/en/140211.pdf.

[18] In the *Military II* case, the Trial Chamber made no findings on JCE liability for Nzuwonemeye. In fact, the forms of JCE were alleged for the first time after the Prosecution (and Defense) concluded its cases, in the Prosecution Closing Brief, paras. 1654-62.

The Appeals Chamber reversed Nzuwonemeye's convictions for crime against humanity and violations of Article 3 common to the Geneva Conventions and Additional Protocol II: he was acquitted of 6(3) liability for the murders of the Belgian UNAMIR soldiers and of 6(1) (ordering and aiding and abetting) and 6(3) liability for Prime Minister Agathe Uwilingiyimana.

These acquittals were based, for the most part, on the failure of the Prosecution to provide adequate notice of forms of liability charged in the indictment, and the failure of the Trial Chamber to make findings on fundamental elements of the modes of liability. These holdings of the Appeals Chamber affirmed three core elements of fair trial:

- the right to notice for an Accused person;
- the right to have each and every element of the crimes and mode of liability charged, and proved beyond a reasonable doubt, which is closely linked to, and co-dependent on
- the presumption of innocence.[19]

The appellate jurisprudence underscored the fair trial rights of an Accused or defendant, even in cases where the crimes charged are among the most heinous offenses.

This jurisprudence demonstrates judicial courage to be fair under the law – especially in the politically explosive trials connected to the Rwandan events of 1994, and the murders of persons, the Belgians and the Prime Minister, who were of great significance to the international community in 1994.

The words of Chief Justice Robert H. Jackson are echoed in the Appeals Chamber's holdings: that ". . .fairness is not a weakness. . .[but] an attribute of strength."[20] He cautioned: *We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our*

[19] *Prosecutor v. Ntagerura*, Case No. ICTR-99-46-A, Appeals Judgment, ¶ 175 (Int'l Crim. Trib. for Rwanda July 7, 2006) ("...the presumption of innocence requires that each fact on which an accused's conviction is based must be proved beyond a reasonable doubt. . .if one of the links is not proved beyond a reasonable doubt, the chain will not support a conviction") [hereinafter *Ntagerura Appeals Judgment*]; ICTR Statute, Rule 87(A); *see also*, U.S. Const. Amend. 14; *Jackson v. Virginia*, 443 U.S. 307 (1979) (holding due process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, defines as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offence); *In re Winship*, 397 U.S. 358 (1970) (finding a "reasonable doubt," at a minimum, is one based upon "reason" at *Jackson v. Virginia, supra.,* at 317).

[20] Chief of Counsel for the United States, in his Opening Statement before the International Military Tribunal at Nuremburg Statement, 21 November 1945.

task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.[21]

IV. THE APPEALS JUDGMENT

A. Reversals Regarding the Prime Minister

The Appeals Chamber reversed the Trial Chamber's conviction for crime against humanity for the murder of the Prime Minister under 6(1) (for aiding and abetting) based on an uncured pleading defect in the indictment;[22] for 6(1) (for ordering) based on insufficiency of the Chamber's findings, starting with its failure to provide a reasoned opinion and make express findings on *mens rea* and *actus reus* of liability for ordering;[23] and on multiple evidentiary errors.[24]

In respect to 6(3) liability for the Prime Minister's murder, the Appeals Chamber held that the Trial Chamber erred in finding that RECCE soldiers "participated in the attack on and killing of" the Prime Minister, and reversed the finding of 6(3) liability for both Nzuwonemeye and Sagahutu.[25] The 6(3) reversal for Nzuwonemeye for the Prime Minister was not based on lack of notice.

B. Reversal Regarding Belgian Soldiers

For the Belgians, the Appeals Chamber reversed the Trial Chamber's conviction under 6(3) based on lack of notice. The Appeals Chamber held that the indictment was defective and uncured, because it failed to plead any specific conduct to support the second and third elements of superior responsibility (knowledge and failure to prevent or punish) of 6(3),[26] and that "simply restat[ing] the language of Article 6(3). . .does not set out material facts underpinning the relevant criminal conduct of his subordinates, his knowledge and the failure to punish specifically with regard to the killing of the Belgian peacekeepers."[27] Since Nzuwonemeye was not adequately informed of the allegations against him, it "was not open to the Trial Chamber to convict him pursuant to 6(3)."[28]

V. THE APPELLATE REVERSALS AFFIRMED FUNDAMENTAL FAIR TRIAL RIGHTS

The significance of the reversals of 6(3) and 6(1) (ordering and aiding and abetting) is that they affirmed international human rights jurisprudence (a) that the Prosecution must prove beyond a reasonable doubt each and every element of the crime and mode of liability charged; and (b) the fundamental principles of notice, starting with the indictment as the charging instrument.

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[21] *Id.* (emphasis added).
[22] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at 185-190, 254.
[23] *Id.* at 292-93.
[24] *Id.* at 292-312.
[25] *Id.* at 320-21.
[26] *Id.* at 237-241, 254.
[27] *Id.* at 238. [28]
at 240.
Id.

In respect to the legal elements of 6(3), the Appeals Judgment followed its precedential holdings that (a) the *mens rea* standard for the knowledge element of command responsibility is not based on strict liability and the element of knowledge has to be proved beyond a reasonable doubt;[28] and that each legal element must allege the specific conduct required:

> . . .[P]roper notice requires the Prosecution to plead: *the conduct of the accused* by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and *the conduct of the accused* by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[29]

Under the ICTR Statute, Article 20, an Accused has the right to be notified of the charges of against him or her. The indictment must allege material facts in support of both the substantive crime and the mode of liability charged.[30] These material facts answer the questions of who, where, when, what, to whom, by what means and why.[31]

The Appeals Judgment affirmed the holding in *Ntagerura* that defects in the indictment are a post-conviction issue: "Where the allegations are 'grossly deficient' and violate a defendant's right to fair trial, defects in the indictment are post-trial issues."[32]

The Appeals Chamber's preliminary analysis of the alleged defects in the indictment illustrates its approach: if you deliberate on the basic or fundamental issues first, there may be no need to make determinations on every issue raised, as these issues may, in fact, become moot. The Appeals Chamber found that there were fundamental, uncured defects in the indictment in respect to both forms of liability: 6(3) and 6(1) (aiding and abetting), and held they were grounds for reversal. However, the Appeals Chamber either rejected or dismissed many of the grounds, which the Defense litigated under notice, including some of the defects in the indictment.

C. Right to Notice of Theory of the Case

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[28] *Prosecutor v. Delalic*, Case No. IT-96-21-A, Appeals Judgment, ¶ 239 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 20, 200l) [hereinafter *Delalic Appeals Judgment*].

[29] *Prosecutor v. Muvunyi*, Case No. 2000-55A-A, Appeals Judgment, ¶ 44 (Int'l Crim. Trib. for Rwanda Aug. 29, 2008) (emphasis added) (footnotes omitted) [hereinafter *Muvunyi Appeals Judgment*].

[30] *Prosecutor v. Ntagerura*, Case No. ICTR-99-46-T, Trial Judgment, ¶ 31 (Int'l Crim. Trib. for Rwanda Feb. 25, 2004) ("The mode and extent of an accused's participation in an alleged crime are always material facts that must be clearly set forth in an indictment") [hereinafter *Ntagerura Trial Judgment*].

[31] *See Prosecutor v. Ntagerura*, Case No. ICTR-99-46-T, Trial Judgment Separate Opinion of Judge Dolenc, ¶ 21 (Int'l Crim. Trib. for Rwanda Feb. 25, 2004) ("In practical terms, the material facts of the crime answer the following seven questions, which guide any criminal investigation, prosecution and judgment: Who (is the alleged perpetrator); Where; When; What (was committed or omitted): Whom to (victim); What mean; and Why (motive). Answers to these seven questions are necessary in order to individualize the Accused, the alleged crime, the mode of the Accused's participation, and the form of his criminal responsibility").

[32] *Ntagerura Trial Judgment*, *supra* note 32; judgment affirmed, *Prosecutor v. Ntagerura*, Case No. ICTR99-46-T, Appeals Judgment (Int'l Crim. Trib. for Rwanda July 7, 2006).

The Appeals Chamber's analysis emphasized that the notice requirement under fair trial includes the obligation of the Prosecution to provide consistent notice of its theory in the case, so that an Accused can prepare and carry out his or her defense.

The Appeals Chamber's analysis of notice was not limited to the four corners of the indictment; it examined the theory of the Prosecution's case presented in other statements and pleadings, and deliberated as to whether this theory was consistent throughout the trial. In its analysis and findings, the Prosecution's change in theory of the case, and its failure to articulate its theory, were paramount.[33] This holding affirmed the jurisprudence in *Kupreskic*: that the Prosecution is expected to know its case before it goes to trial and its theory of the case is not malleable, to be adjusted as the evidence emerges during trial. [34]

The Appeals Chamber identified the Prosecution's (a) failure to articulate its theory and (b) change in theory of its case as grounds for reversal in its Judgment.

D. Failure to Articulate Its Theory Regarding 6(1) (aiding and abetting) (Prime Minister)

The Appeals Chamber reversed the 6(1) conviction for aiding and abetting the murder of the Prime Minister as a CAH and serious violation of CA3, because Nzuwonemeye lacked proper notice.[36] The Chamber further pointed out that:

> *Thus, up until the end of the proceedings, the Prosecution did not unequivocally indicate that its theory of the case against Nzuwonemeye was that he aided and abetted the killing of the Prime Minister. It therefore comes as no surprise that Nuwonemeye made no attempt at trial to refute such an allegation.*[35]

E. Change in theory Regarding 6(3) (the Belgians)

The Appeals Chamber reversed the Trial Chamber's 6(3) conviction based on both lack of notice, as well as a change in theory. The Appeals Chamber held that notice was not provided by simply repeating the statutory elements of the mode of liability,[36] and reversed the 6(3) convictions for the murders of the Belgians based on lack of notice and change in theory.

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[33] For a discussion of these issues in another case, *see* Dissenting Opinion of J. Van den Wyngaert, regarding notice of change in mode of liability, *Situation in the DRC in the Case of The Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07 (May 20, 2013).

[34] *Prosecutor v. Kupreskic*, Case No. IT-95-16-A, Appeals Judgment, ¶ 92 (Int'l Crim. Trib. for the Form Yugoslavia Oct. 23, 2001): The Prosecution is expected to know its case before it goes to trial. It is not acceptable for the Prosecution to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds." (internal footnotes omitted) [36] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 190.

[35] at ¶ 189.

[36] at ¶ 236.

Id.

Id.

VI. ACQUITTAL FOR 6(3) FOR THE BELGIANS

The appellate reversals of Nzuwonemeye's conviction for 6(3) in respect to the Belgians affirmed that (1) proper notice must include a legally consistent Prosecution theory; (2) command or superior responsibility cannot be based on strict liability; and (3) each and every element of the mode of liability must be proved beyond a reasonable doubt.

The Appeals Chamber found the indictment was defective in respect to the pleading of 6(3) and the killing of the Belgians.[37] The Appeals held that the indictment was defective, because it failed to plead "any specific conduct by which Nzuwonemeye could have been found to have known of the involvement of his soldiers against the Belgian peacekeepers and failed to take punitive measures."[38] It found also that the *chapeau* paragraphs for murder "merely repeat[ed] the language of Article 6(3) of the Statute."[39] In addition, the Appeals Chamber found that the Prosecution made no mention of Nzuwonemeye's superior responsibility in its Opening Statement, and that reference to "failure to punish" in respect to all the Accused in the Prosecution's opening statement was "too general and vague" to provide notice.[40]

The Appeals Chamber noted that the Trial Chamber convicted Nzuwonemeye for the killing of the Belgian peacekeepers, because his immediate subordinate, Sagahutu, instructed two corporals to put down the resistance at Camp Kigali from the Belgians and provided or approved the use of an MGL from his office.[41] However, the particulars of the crime found in the indictment, para. 105 failed to plead any specific conduct by which Nzuwonemeye "could have been found to have known of the involvement of his soldiers in the attack against the Belgian peacekeepers and failed to take punitive measures."[42] This holding affirms that the *mens rea* standard for 6(3) liability is not based on strict liability, and the element of knowledge has to be proved beyond a reasonable doubt.[43]

Similarly, specific conduct must be alleged to fulfill the notice requirement for the "prevent or punish" element of 6(3) liability. The Appeals Chamber, following its jurisprudence in *Muvunyi I*, affirmed that the mere tracking in the indictment of the statutory language of 6(3) was insufficient to provide the notice of the specific conduct alleged.[44]

The Appeals Chamber, moreover, held that this defect in pleading was "not cured by timely, clear and consistent information:"[45]

- the Prosecution's Pre-Trial Brief (referring to para. 116) was insufficient to cure the defect, because it does not provide material facts to support the allegations of criminal conduct of

[37] *Id.* at ¶ 237.
[38] *Id.* at ¶ 237; *See generally id.* at ¶ 233-241.
[39] *Id.* at ¶ 236.
[40] *Id.* at ¶ 239.
[41] *Id.* at ¶ 237.
[42] *Id.* at ¶ 237.
[43] *Delalic Appeals Judgment*, supra note 30, at ¶ 239.
[44] *Muvunyi Appeals Judgment*, *supra* note 31, at ¶ 44 ("*Muvunyi I*").
[45] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 239.

Nzuwonemeye's subordinates, knowledge and failure to punish regarding the killing of the Belgians;[46] and

- noting that the Prosecution's Opening Statement made no mention of Nzuwonemeye's responsibility as a superior for the killing of the Belgian peacekeepers, because it was "too general and vague for Nzuwonemeye to deduce on which basis the Prosecution intended to establish his liability for the specific crimes [regarding killing the Belgians]."[47]

The Appeals Chamber pointed to the Prosecution's change in theory. It stated that when the Prosecution "finally did elaborate" on Nzuwonemeye's 6(3) liability at the end of trial, *"it argued a different case than that which was ultimately accepted by the Trial Chamber."*[48] The Prosecution emphasized that Nzuwonemeye failed to stop the attacks on the Belgian peacekeepers and alleged that he knew of them, because (a) he was present at the scene and (b) ordered Sagahutu to use armored vehicles to shoot at them. The only problem with the Prosecution's position was that all these claims were rejected by the Trial Chamber.[49] The Trial Chamber convicted on failure to punish based on the location of attack and hierarchical structures within RECCE and not a "failure to stop" theory.[50] In sum, Nzuwonemeye's conviction for 6(3) in respect to the Belgians was reversed on defects in the indictment and lack of notice of the Prosecution's theory of the case.

It is important to note that whether a defect in the indictment was cured was the decisive legal issue on appeal, and a number of arguments on defective pleading in the indictment were raised by the Defense. The Appeals Chamber agreed that there were defects in the pleading of the elements of knowledge[51] and prevent or punish[52] as identified by the Defense, but it also found that these defects

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[46] *Id.* at ¶ 238.

[47] *Id.* at ¶ 239.

[48] *Id.* at ¶ 240 (emphasis added).

[49] *Id.* at ¶ 240 n.580 (*Prosecutor v. Ndindiliyimana*, Case No. ICTR-00-56-T, ¶¶ 1875, 1876 and 1888 (Int'l Crim. Trib. for Rwanda May 17, 2011).

[50] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 240. The Appeals Chamber stated that:

> . . .Instead of pursing a conviction for failure to punish on the basis that, due to the location of the attack and the hierarchical structures within the Reconnaissance Battalion, Nzuwonemeye had reason to know of his subordinates involvement in the killing of the Belgian peacekeepers, the Prosecution emphasized Nzuwonemeye's failure to stop, i.e. prevent the further attack while it was ongoing and alleged that he actually knew of it because he was present at the scene and even ordered Sagahutu to use armoured vehicles to shoot at the peacekeepers. All these claims were rejected by the Trial Chamber. This lends further support to the conclusion that Nzuwonemeye was not adequately informed of the allegations against him and that it was not open to the Trial Chamber to convict him pursuant to Article 6(3) of the Statute in relation to the killing of the Belgian peacekeepers. (footnotes omitted).

Note: To make any sense out of the Trial Chamber's holding, it is important to realize that the Trial Chamber "constructed" a two-stage theory of the attack on the Belgians. This was to accommodate the evidence that (a) Nzuwonemeye was at a meeting at a different location in the camp in the morning during the attack; and (b) returned to his office through the camp around noontime or 12:30 p.m.

[51] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 206.

[52] *Id.* at ¶ 211.

Id.

Id.

were cured and hence, rejected these grounds of appeal.[53] In respect to the "prevent or punish" element, where the Appeals Chamber found that the "facts are neither pleaded in the Indictment nor mentioned in the Prosecution Pre-Trial Brief or opening statement. . .[but] considers that a careful reading ot (sic) the Prosecution Pre-Trial Brief would have allowed Nzuwonemeye to understand that he was alleged to have failed to take the necessary measures to prevent or punish the crime."[54] Significantly, the defect of change in theory was uncured and one of the reasons for reversal of 6(3).

In its analysis of whether proper notice is given, the Appeals Chamber has continued to carve out a wide berth of Prosecution statements and documents which are capable of curing a defective indictment – the Prosecution pre-trial brief, witness statements, opening statements at trial, etc. This expansive perspective can whittle away at the fundamental importance of the indictment as a charging instrument, since it gives the Prosecution an opportunity to cure a defect through multiple means. However, when there is a reversal based on a defect in the indictment, as there is here, it showcases the depths of the deficiency in the Prosecution's case.

VII. ACQUITTALS FOR 6(3) AND 6(1) (ORDERING) FOR THE PRIME MINISTER

The Appeals Chamber reversed the Trial Chamber's finding that Nzuwonemeye and Sagahutu were liable under 6(3) for the killing of the Prime Minister.[55] The Appeals Chamber held that "a superior may only be held liable for the crimes of his subordinates *if the latter are proved to have actually participated in crimes*,"[56] and that the "Trial Chamber erred in finding that the Reconnaissance Battalion ["RECCE"] soldiers 'participated in the attack on and killing of' the Prime Minister."[57] In a footnote, it referenced its analysis and findings in the Appeals Judgment in a prior section, at paras. 301-312, in the section on 6(1) ordering.

The significance of the Appeals Chamber's reversal of 6(3) liability for the murder of the Prime Minister is two fold: (a) the underlying legal analysis is based on, and incorporates, its holdings in respect to 6(1); and (b) it is based on insufficiency of evidence grounds.

- The "incorporation approach" illustrates that the analysis – in some cases – of the two modes of liability (6(1) and 6(3)) can be legally interrelated; and
- The Appeals Chamber's detailed evidentiary analysis through the gateway of the Trial Chamber's failure to give a reasoned opinion shows that, even on appeal, evidentiary errors can be grounds for reversal.

F. No "Margin of Deference"

In this case, the Appeals Chamber, holding a rarely assumed posture for an appellate court, made a detailed sufficiency analysis of the evidence. In most appellate courts, deference is usually reserved for the Trial Chamber, which has heard the evidence and observed the demeanor of the witness. It is generally the rule that the Appeals Chamber owes a "margin of deference" to the Trial Chamber's evaluation of evidence, unless it is shown that the Trial Chamber committed an error of law or fact

[53] at ¶ 208-09.
[54] at ¶ 211.
[55] *Id.* at ¶ 321.
[56] *Id.* at ¶ 320 (emphasis added).
[57] *Id.* at ¶ 320.

warranting the Appeals Chamber's intervention.[58] However, where the Trial Chamber's approach leads to an unreasonable assessment of the facts in the case, it is necessary to consider if the Trial Chamber erred in its choice of method of assessment of the evidence, or its application of the method to the evidence, which may have occasioned a miscarriage of justice.[59]

In egregious legal situations, for example, in *Muvunyi I*,[60] the Appeals Chamber will intervene and deliberate on evidentiary issues. This is what happened here. Stemming from its finding that the Trial Chamber failed to provide a reasoned opinion on the elements of liability, the Appeals Chamber proceeded to examine the evidence *de novo*. It stated:

> *. . .the Trial Chamber's failure to make mens rea and actus reus findings in relation to Nzuwonemeye's and Sagahutu's liability for ordering amounts to a failure to provide a reasoned opinion….which allows the Appeals Chamber to consider the relevant evidence and factual findings in order to determine whether a reasonable trier of fact could have found beyond a reasonable doubt that the requisite actus reus and mens rea were established in relation to Nzuwonemeye's and Sagahuts's liability for ordering under Article 6(1) of the Statute.*[61]

The Appeals Chamber based this finding on its analysis of the insufficiency of the evidence, which it addressed under the section on 6(1) ordering.[62] In respect to 6(1) ordering, it concluded that the Trial Chamber failed to make sufficient findings to establish the elements necessary to establish Nzuwonemeye's and Sagahutu's liability for ordering the killing of the Prime Minister, and that the legal and factual errors it identified resulted in a miscarriage of justice. Moreover, no reasonable trier of fact could have found that RECCE soldiers "participated in the attack on and killing of" the Prime Minister on the basis of the trial record. The Appeals reversed the convictions for 6(1) ordering for both Nzuwonemeye and Sagahutu.[63]

Although the Appeals Chamber makes separate holdings in respect to 6(3) and 6(1) (ordering) liability, its reasoning for 6(3) incorporates its analysis of 6(1) (ordering). Under the conclusion for 6(3), it states:

> *As discussed above, the Appeals Chamber has found that the Trial Chamber erred in finding Nzuwonemeye and Sagahutu liable under Article 6(1) of the Statute for ordering the killing of the Prime Minister, and Sagahutu liable for aiding and abetting this crime. Of particular significance, the Appeals Chamber emphasized the Trial Chamber's failure to make necessary findings as to the elements supporting each mode of liability. . .* [64]

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[58] *See Rutaganda v. Prosecutor*, Case No. ICTR-96-3-A, Appeals Judgment, ¶ 28 (Int'l Crim. Trib. for Rwanda May 26 ,2003).

[59] *See Ntagerura Appeals Judgment*, *supra* note 20, at ¶ 398.

[60] *Muvunyi Appeals Judgment*, *supra* note 31.

[61] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 293.

[62] *Id.* at ¶ 301-12.

[63] *Id.* at ¶ 312.

[64] *Id.* at ¶ 320. Note: 6(1) aiding and abetting was also reversed for Nzuwonemeye, but on different grounds than Sagahutu. Nzuwonemeye's reversal was based on defects in the indictment (*See*, *infra*.)

Id.

Id.

The basis for examining the evidence stems from the failure of the Trial Chamber to provide a reasoned opinion on the elements of liability. It then proceeded to assess the Trial Chamber's conclusions, based on the trial record and determine if a reasonable trier of fact could have reached the same conclusions. The Appeals Chamber held that:

- "No reasonable trial chamber could have considered Nzuwonemeye's and Sagahutu's deployment of the RECCE Battalion soldiers to the vicinity of the Prime Minister's residence to reinforce the Presidential Guard as proof of the requisite elements of ordering liability Article 6(1) of the Statute;"[65]
- There was no evidence cited by the Trial Chamber that Nzuwonemeye or Sagahutu had issued an order for RECCE to kill the Prime Minister;[66]
- The Trial Chamber failed to identify what conduct by RECCE had a "direct and substantial" effect on the killing of the Prime Minister and did not specify the nature of the soldiers' participation;[69]
- The Trial Chamber's finding that RECCE soldiers "participated in the attack on and killing of" the Prime Minister could not be substantiated by the hearsay and circumstantial evidence from indirect witnesses on whom the Trial Chamber relied;[67] No reasonable trier of fact could have concluded that Corporal Afrika (a RECCE member) shot the Prime Minister, based on (a) the Prosecution evidence (which was only from indirect witnesses, i.e. they did not observe the killing, but only heard about it later in time); and (b) the Trial Chamber found the sole direct witness (presented by the Defense), who had observed the killing, had not raised reasonable doubt, yet failed to discredit his evidence;[68]
- No reasonable trier of fact could have found that that the evidence of Prosecution witnesses DA and HP reflects that they were "eyewitnesses to the "involvement of RECCE in the attack that resulted in the Prime Minister's death," as stated by the Trial Chamber;[69] and
- The hearsay and circumstantial evidence of DA and HP "reflected their opinion that RECCE soldiers 'participated in the attack on and killing of' the Prime Minister," but the Trial Chamber made no express findings on this evidence, failed to identify if the conduct had a "direct and substantial" impact on the killing and failed to assess the evidence in light of its own requirement that DA's evidence had to be collaborated, or in light of the Defense evidence to the contrary.[73]

The Appeals Chamber's analysis and conclusions in respect to indirect, circumstantial and hearsay evidence in this event are particularly important; they are objectively in stark contrast to the credence too often given by some trial judgments to deficient Prosecution evidence and the legal hazards, which result from this evidence.[70]

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[65] at ¶ 297.

[66] at ¶ 300.

[67] *Id.* at ¶ 302-04; 309-10.

[68] *Id.* at ¶ 302-04. The Defense witness testified that that a soldier from ESM (not a RECCE unit) was responsible for killing the Prime Minister.

[69] *Id.* at ¶ 305 -08. [73]
Id. at ¶ 309-11.

[70] *See* PROFESSOR NANCY COMBS, FACT-FINDING WITHOUT FACTS, THE UNCERTAIN EVIDENTIARY

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As a defense attorney, I would argue that any one of these errors is grievous and prejudicial to the rights of the Accused. But taken in their aggregate, these evidentiary errors resulted in a miscarriage of justice, as the Appeals Chamber held.[71] Moreover, they raise fundamental questions about what the Trial Chamber heard as it listened to the evidence, and how it processed the evidence with the law to reach its conclusions. The Appeals Chamber's detailed assessment and critique of the Trial Chamber's conclusions stand as a powerful rebuke to its judicial functions.

VIII. ACQUITTAL OF AIDING AND ABETTING AS A FORM OF 6(1) FOR THE PRIME MINISTER

The Appeals Chamber found that the Trial Chamber erred in convicting Nzuwonemeye for aiding and abetting the killing of the Prime Minister, because he lacked proper notice of this form of responsibility and reversed Nzuwonemeye's conviction for 6(1) (aiding and abetting) for her killing.[72]

The Appeals Chamber found that the indictment was defective, because no material facts were pleaded to support aiding and abetting.[73] The Appeals Chamber noted that none of the factors identified in the Trial Chamber's conclusion – communications, sending of supplies and issuing operational instructions – appeared in the indictment, and no particular conduct nor the *mens rea* necessary to establish the elements for aiding and abetting were included in the indictment.[74] Moreover, it also found that this defect was not cured with timely, clear and consistent information.[79] As a result, the Appeals Chamber reversed Nzuwonemeye's conviction for aiding and abetting as a crime against humanity and violation of Article 3 Common to the Geneva Convention and of Additional Protocol II in respect to the murder of the Prime Minister.

Interestingly, the Appeals Chamber's analysis did not end with the indictment. It continued its analysis, finding that the Prosecution's Pre-Trial Brief and its witness statements failed to provide notice,[75] and that the Prosecution Closing Brief did not submit any evidence of Nzuwonemeye's

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FOUNDATIONS OF INTERNATIONAL CRIMINAL CONVICTIONS (2010); *see also* Beth S. Lyons, *"Enough is Enough: The Illegitimacy of International Criminal Convictions: A Review Essay of Fact Finding Without Facts," 13* J. OF GENOCIDE RESEARCH 287 (2011).

[71] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 312.

[72] *Id.* at ¶ 190. Note, Sagahutu's ground of appeal on notice re the Prime Minister was dismissed, because he failed to meet the burden of demonstrating that his defense was materially impaired by the defects he identified in the pleading of this form of liability. *Id.* at ¶ 191-97.

[73] *Id.* at ¶ 193.

[74] *Id.* at ¶ 185-86. [79]

Id. at ¶ 187

[75] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 187.

Id.

Id.

assistance in the killing of the Prime Minister.[76] In addition, the Prosecution did not ask the Trial Chamber to enter a conviction for aiding and abetting.[82]

Hence, the Appeals Chamber observed that "…up until the end of the proceedings, the Prosecution did not unequivocally indicate that its theory of the case against Nzuwonemeye was that he aided and abetted the killing of the Prime Minister" and concluded that "[i]t therefore comes as no surprise that Nzuwonemeye made no attempt at trial to refute such an allegation."[77] Thus, it appears that the Appeals Chamber extended its analysis of lack of notice to its logical conclusion in this case from a defective, uncured indictment to the Prosecution's "hidden" theory of the case for aiding and abetting.

The essence of the Appeals Chamber's holdings was technical legal arguments in respect to the jurisprudence on notice and fair trial rights. The Appeals Chamber did not reach the Defense arguments on the underlying factors, which were cited by the Trial Chamber as indicative of aiding and abetting – communications, location, sending of supplies and issuing operational orders. It should be noted that these were the same factors cited by the Trial Chamber in support of its conclusion that "the killing of the Prime Minister was an organized military operation carried out with the authorization of senior military officers."[78] The Defense had challenged the evidentiary basis of this conclusion. However, it was not addressed by the Appeals Chamber, because the fundamental notice error rendered it a moot issue.

IX. THE LEGAL MANTRA OF PRESERVATION

The Appeals Chamber's different treatment of notice objections by Nzuwonemeye and Sagahutu illustrates the importance of preservation of objections for appeal. As every appellate lawyer knows, the appeal begins in the pre-trial stage of a case: making (and preserving) objections for the future.

Nzuwonemeye had preserved the objection to pleading of the forms of liability since 2001, and had made a timely challenge to previous defective indictments.[79] Although Nzuwonemeye was eventually tried on a fourth amended indictment, with different counsel than he had at the inception of the case, objections on defects in the indictment had been preserved from the beginning. In the Appeals Judgment, it recalled, for example, the objections made by the Nzuwonemeye Defense in 2001, 2007, 2008 and in its Closing Brief (2009) that the indictment "'simply tracks the language" of Article 6(1) of the Statute without providing the necessary material facts."[80]

The Trial Chamber found, however, that Sagahutu had not made a specific and timely objection at trial.[81] This meant that the Appeals Chamber could not avail itself of the same defect in the same indictment as a ground for reversal, because he had not demonstrated that the preparation of his defense was materially impaired.[82] However, the Appeals Chamber reversed Sagahutu's 6(1)

[76] *Id.* at ¶ 188. [82] *Id.* at ¶ 189.
[78] at ¶ 2093.
[79] *Id.* at ¶ 177-78.
[80] *Id.* at ¶ 177.
[81] *Id.* at ¶ 196.
[82] *Id.* at ¶ 197.

conviction for aiding and abetting the killing of the Prime Minister because of the factual and legal errors, which resulted in a miscarriage of justice.[83]

The practical legal implication is that in the case of Nzuwoneye, the burden of proof rested with the Prosecution: "the Prosecution has to show that Nzuwonemeye's ability to prepare his defense was not materially impaired by the insufficient pleading of this responsibility for ordering."[84] However, where there is no preservation underneath, an objection may still be raised on appeal, but the burden rests with the Defense, not the Prosecution:[85]

> *When an appellant raises a defect in the indictment for the first time on appeal, then the appellant bears the burden of showing that his ability to prepare his defense was materially impaired. Where, however, an accused had already raised the issue of lack of notice before the Trial Chamber, the burden rests on the Prosecution to demonstrate on appeal that the accused's ability to prepare a defense was not materially impaired. All of this is subject to the inherent jurisdiction of the Appeals Chamber to do justice in the case.*[86]

This is what happened in the case of Sagahutu: the burden of proof rested with him, the Accused.[87]

[83] *Id.* at ¶ 319.
[84] *Id.* at ¶ 178.
[85] *Id.* at ¶ 195-97 (regarding Sagahutu).
[86] *Ntagerura Appeals Judgment*, *supra* note 20, at ¶ 31 (footnotes omitted).
[87] *Ndindiliyimana Appeals Judgment*, *supra* note 1, at ¶ 191-97.
Id.
Id.

X. CONCLUSION

The *Military II* case was a complex and sometimes, convoluted case with myriad factual and legal issues. The Trial Chamber could not "sort out" the law and the facts in a manner, which accurately reflected the jurisprudence and the evidence at trial. The "sorting out" process was, out of legal necessity, delegated to the Appeals Chamber.

But what is important about the Appeals Judgment is that, at the end of the day, it focused on the "basic issues." Especially the fundamental fair trial issue of notice, and deliberated on the evidentiary arguments in the context of the right to a reasoned opinion. Its legal approach reminded me, as a trial lawyer, that it only takes a single reversal of a fundamental legal error to acquit.[88]

The Appeals Judgment, to the extent that it supports fair trial rights, is a judgment in furtherance of human rights. Its contribution to international human rights law needs to be recognized. We can seize on some of its holdings regarding Nzuwonemeye as standing for fairness, if belatedly, in the judicial process.

But the Appeals Judgment also objectively raises the questions: what was the Trial Chamber doing or thinking for so many years? And, how could fundamental errors exist for such a long period of time? These are queries, which go to the overall fairness and legitimacy of the Tribunal, a question, which was not on the "deliberations table" for the Appeals Chamber in its Judgment. But this is at the heart of the struggle for international justice.

I have long held the view that the ICTR's legitimacy has been compromised by "victor's justice:" investigating and prosecuting only Hutus, and not RPF/Tutsis in respect to the crimes committed in 1994, in violation of the mandate of Security Council Resolution 955 to prosecute both sides of the conflict.

But I also recognize that within the proceedings at the ICTR, we needed to struggle for the rights of fair trial, as well as defend against the elements of the crimes and forms of liability charged. In fact, the two – process and substance – are inter-related and co-dependent.

The *Ndindiliyimana* Appeals Judgment serves as a reminder of the centrality of the struggle for fair trial, especially in international criminal defense. But it is also critical to remember that the Appeals Chamber's holdings were based on a record of intensive defense litigation over a decade. The appellate

[88] In its Appeal, the Defense raised numerous issues under seven general grounds, with multiple errors within each ground. Nzuwonemeye's Appellant's Brief included: fair trial violations; legal errors related to burden of proof; legal and factual errors in re Count 4 – the murder of the Prime Minister; the murder of the Belgians UNAMIR soldiers; errors re Count 7; errors re findings of guilt and convictions of the Appellant; and errors in sentencing. Most of these were not addressed in the Appeals Judgment, and some were rejected and dismissed as grounds of appeal.

acquittals of Major Nzuwonemeye give us another legal tool for the future legal battles, which, unfortunately, will inevitably take place.