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Acquittals in *Mugenzi & Mugiraneza v. Prosecutor* Contribute To the Weak Legacy of the International Criminal Tribunal for Rwanda

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ACQUITTALS IN *MUGENZI & MUGIRANEZA v. PROSECUTOR* CONTRIBUTE TO THE WEAK LEGACY OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

ALISON AGNEW*

Abstract: In 2011, the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) found Justin Mugenzi and Prosper Mugiraneza guilty of conspiracy to commit genocide and direct and public incitement to commit genocide due to their roles in the removal and replacement of Jean-Baptiste Habyalimana as prefect of Butare in April 1994. In February 2013, the Appeals Chamber reversed these convictions and acquitted Mugenzi and Mugiraneza, determining that the appellants did not possess the requisite *mens rea* and genocidal intent. The ICTR's goal is to bring justice and reconciliation to Rwanda, but these acquittals demonstrate its institutional weakness. The Appeals Chamber's weak reasoning, simplistic view of the facts, and failure to take a strong stance against government leadership contributed to this weakness and may have a lasting impact on the ICTR's legacy.

INTRODUCTION

On February 4, 2013, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) reversed the convictions of Justin Mugenzi and Prosper Mugiraneza for conspiracy to commit genocide and direct and public incitement to commit genocide.¹ The court vacated both of their thirty-year sentences and ordered their immediate release.² This acquittal was the first appellate decision issued by the Appeals Chamber and it has important implications for the resolution of the ICTR's last outstanding appeal now that the ICTR has closed the majority of its cases.³

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¹ *Mugenzi & Mugiraneza v. Prosecutor*, Case No. ICTR-99-50-A, Judgement, ¶ 144 (Feb. 4, 2013).

² *See id.*

³ *See Report on the Completion Strategy of the International Criminal Tribunal for Rwanda* as at 5 Nov. 2014, transmitted by letter dated Nov. 19, 2014 from the President of the International Criminal Tribunal for Rwanda concerning the implementation of the completion strategy of the Tribunal, pursuant to resolution 1534, ¶ 3, U.N. Doc. S/2014/829 (Nov. 19, 2014) [hereinafter Report on the Completion Strategy]. As of November 2014, the ICTR completed all of its responsibilities for substantive cases at the trial level for all ninety-three persons indicted by the ICTR, and the plans for

The Appeals Chamber ruled that there was no undue delay from the eight-year trial and the nearly three years between the end of the hearings and the issuance of the decision.⁴ Additionally, the Appeals Chamber held that the prosecution violated its disclosure obligations by failing to reveal exculpatory material contained in witness testimony from other ICTR cases.⁵ These disclosure violations, however, did not materially impact the case nor prejudice the appellants.⁶

The Trial Chamber convicted Mugenzi and Mugiraneza for conspiracy to commit genocide based on their roles in the removal of Jean-Baptiste Habyalimana as prefect of the Butare province.⁷ The Appeals Chamber held that the Trial Chamber erred in its assessment of the evidence related to the appellants' *mens rea*.⁸ Specifically, the Trial Chamber erred in concluding that the only reasonable inference to be drawn from the evidence was that Mugenzi and Mugiraneza possessed the necessary *mens rea* for conspiracy to commit genocide.⁹ The Appeals Chamber also acquitted and reversed the convictions for direct and public incitement that were based on the appellants' attendance at the installation ceremony for Sylvain Nsabimana as the new prefect of Butare.¹⁰ The Appeals Chamber held that the Trial Chamber erred in concluding that the only reasonable inference that could be drawn was that Mugenzi and Mugiraneza knew that a speech given at the installation ceremony would incite the killing of Tutsis and that their presence at the ceremony demonstrated genocidal intent.¹¹

This Comment proceeds in three parts. Part I discusses the events that led to the arrest of Mugenzi and Mugiraneza, the legal standards for genocide in the ICTR, the Trial Chamber's convictions, and the grounds on which the appellants appealed. Part II explores the Appeals Chamber's decision to reverse the convictions. Part III argues that these acquittals demonstrate the institutional weakness of the ICTR and may indicate a trend of acquittals of government officials.

closing the Tribunal were nearly complete. *See id.* ¶¶ 3, 5. Ten cases were referred to national jurisdictions and the cases of three fugitives have been transferred to the International Residual Mechanism for Criminal Tribunals. *See id.* ¶ 3. Only one case comprising six separate appeals is pending before the Appeals Chamber, to be completed no earlier than August 2015. *See id.* ¶¶ 3, 14.

⁴ *See Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 33, 37.

⁵ *See id.* ¶¶ 63–64.

⁶ *See id.*

⁷ *Id.* ¶ 4.

⁸ *Id.* ¶ 93.

⁹ *Id.* ¶ 91.

¹⁰ *See id.* ¶ 142.

¹¹ *Id.* ¶ 138.

I. BACKGROUND

A. Arrests of Mugenzi and Mugiraneza

On April 6, 1994, Rwandan President Juvénal Habyarimana, a Hutu, died when his plane was shot down.¹² The interim government established after the President's death, comprised mostly of Hutus, believed that the Rwandan Patriotic Front, a group of Tutsi rebels, was responsible for the attack.¹³ In response, the interim government adopted a policy of executing Tutsis and those who sympathized with them.¹⁴ Throughout 1994, and especially between April and July, approximately 800,000 Rwandans were killed.¹⁵

Justin Mugenzi served as the Minister of Trade and Industry in the interim government.¹⁶ Prosper Mugiraneza served as the Minister of Public Service and Professional Training until he was appointed Minister of Civil Service.¹⁷ As of early April 1994, there had been some killings of Tutsis in the province of Butare, but the violence was localized and less extensive than in other parts of Rwanda.¹⁸ On April 17, 1994, members of the interim government, including Mugenzi and Mugiraneza, met and removed Jean-Baptiste Habyalimana, a moderate Tutsi, from his post as the prefect of Butare.¹⁹ Some members of the interim government believed that Habyalimana opposed the targeted killings of Tutsis.²⁰ Two days later, Mugenzi and Mugiraneza attended an installation cer-

¹² See ALISON DES FORGES, LEAVE NONE TO TELL THE STORY 6 (Human Rights Watch 1999), available at <http://www.hrw.org/reports/pdfs/r/rwanda/rwanda993.pdf>, archived at <http://perma.cc/G439-3267>; Ronald Sullivan, *Juvenal Habyarimana, 57, Ruled Rwanda for 21 Years*, N.Y. TIMES (Apr. 7, 1994), <http://www.nytimes.com/1994/04/07/obituaries/juvenal-habyarimana-57-ruled-rwanda-for-21-years.html>, archived at <http://perma.cc/G6LP-43Y4>. When Europeans began to arrive in Rwanda in the late 19th century, two groups of Rwandans were beginning to emerge—the Tutsi were wealthy pastoralists holding much of the power and the Hutu were cultivators comprising the majority of the population. See DES FORGES, *supra*, at 33. As the Belgians colonized Rwanda, they gave the Tutsi elite a monopoly on power, widening the rift between the Tutsi and Hutu. See *id.* at 36. Following a violent anti-Tutsi revolution from 1959 to 1962 and the end of Belgian rule in 1962, the Hutus seized power. See *id.* at 39.

¹³ See *Rwanda: How the Genocide Happened*, BBC NEWS (May 17, 2011), <http://www.bbc.com/news/world-africa-13431486>, archived at <http://perma.cc/J6TN-2TTL>.

¹⁴ See DES FORGES, *supra* note 12, at 5–6; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, INT'L CRIMES DATABASE, <http://www.internationalcrimesdatabase.org/Case/787/Mugenzi-and-Mugiraneza> (last visited Jan. 11, 2015), archived at <http://perma.cc/7U3F-3H8S>.

¹⁵ See DES FORGES, *supra* note 12, at 14–15.

¹⁶ *Mugenzi & Mugiraneza v. Prosecutor*, Case No. ICTR-99-50-A, Judgement, ¶ 2 (Feb. 4, 2013).

¹⁷ *Id.* ¶ 3.

¹⁸ *Id.* ¶¶ 65, 74.

¹⁹ *Id.* A prefect is an administrative position for each region of Rwanda. See Des Forges, *supra* note 12, at 8, 336. During the genocide, prefects received orders from the prime minister and would pass orders down to lower-level *burgomasters*, who called meetings and mobilized the population. See *id.*

²⁰ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 65. Members of the interim government perceived Habyalimana as opposing the killing of Tutsis because he issued a joint communiqué condemning the ethnically-motivated violence and he had made statements indicating that Butare

emony for the new prefect of Butare, Sylvain Nsabimana.²¹ At that ceremony, Interim President Théodore Sindikubwabo delivered a speech calling for the killing of Tutsis.²² Following the ceremony, the killings in Butare increased and became more widespread.²³

On April 6, 1999, Mugenzi and Mugiraneza were arrested in Cameroon and on May 12, 1999, an indictment was issued against them.²⁴ Their case was transferred to the International Criminal Tribunal for Rwanda (ICTR) in July 1999.²⁵ Mugenzi and Mugiraneza were charged, along with two other defendants, with nine counts of acts related to genocide and crimes against humanity.²⁶ Their trial began in November 2003 and closed in June 2008, with closing arguments presented in December 2008.²⁷

B. Standards for Genocide in the ICTR

The United Nations General Assembly first defined genocide in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.²⁸ When the ICTR was established, this definition was expressly included in the Statute of the ICTR.²⁹ Articles 2 and 3 of the Statute also establish the Tribunal's ability to prosecute people for punishable acts and crimes against hu-

would avoid the problems of violence experienced in other regions. *See* Prosecutor v. Bizimungu, Case No. ICTR-99-50-T, Judgement and Sentence, ¶ 1243 (Sept. 30, 2011) *rev'd sub nom. Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A (Feb. 4, 2013).

²¹ *See* Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶¶ 95–96.

²² *See id.*; DES FORGES, *supra* note 12, at 692. During his speech, Interim President Sindikubwabo said, “Jokes, laughing, taking things lightly, indifference, all must for the time being give way to ‘work.’” *Id.* Des Forges explains that “work” was a euphemism for killing Tutsis. *See* DES FORGES, *supra* note 12, at 692.

²³ *See* Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶ 74; DES FORGES, *supra* note 12, at 680–82, 687.

²⁴ Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶ 18.

²⁵ *Id.*

²⁶ *See* Prosecutor v. Bizimungu, Case No. ICTR-99-50-I, Indictment, 61–80 (May 7, 1999), *rev'd sub nom. Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A (Feb. 4, 2013); Grandison et al., *Updates from the International and Internationalized Criminal Courts*, 19 HUM. RTS. BRIEF 49, 51 (2012).

²⁷ *See* Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶ 18.

²⁸ *See* Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948, 78 U.N.T.S. 277, S. Exec. Doc. O, 81-1 (1949). Article II provides that:

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) [k]illing members of the group; (b) [c]ausing serious bodily or mental harm to members of the group; (c) [d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) [i]mposing measures intended to prevent births within the group; (e) [f]orcibly transferring children of the group to another group.

Id.

²⁹ S.C. Res. 955, Annex, Statute of the International Criminal Tribunal for Rwanda art. 2, U.N. Doc. S/RES/955 (Nov. 8, 1994).

manity, with the goal of bringing justice and contributing to the restoration of peace and national reconciliation.³⁰

In addition to being charged for specific acts, individuals may be charged with varying levels of criminal responsibility.³¹ A responsible individual is defined under Article 6(1) as “a person who planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of a [defined crime].”³² Individuals may also be responsible under a theory of superior liability, as defined in Article 6(3):

The fact that any of the [defined crimes] was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know 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.³³

A person’s official position in government does not relieve him of criminal responsibility nor mitigate any punishment.³⁴

C. Judgment and Sentence of the Trial Chamber

In the Trial Chamber, the prosecution made a strong effort to place blame on individuals within the interim government for all aspects of the genocide.³⁵ Mugenzi and Mugiraneza were each indicted on nine charges: (a) conspiracy to commit genocide; (b) genocide; (c) complicity in genocide; (d) direct and public incitement to commit genocide; (e) murder as a crime against humanity; (f) extermination as a crime against humanity; (g) rape as a crime against humanity; (h) violence to life, health, and physical or mental well-being of civilians; and (i) outrages upon personal dignity.³⁶

³⁰ See *id.*, at pmbi., arts. 2(3), 3. Punishable acts include genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide. *Id.* art. 2(3)(a)–(e). Article 3 defines crimes against humanity as “crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.” *Id.* art. 3. They include murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial, and religious grounds, and other inhumane acts. *Id.* art. 3(a)–(i).

³¹ See *id.* art. 6(1)–(3).

³² *Id.* art. 6(1).

³³ See *id.* art. 6(3).

³⁴ *Id.* art. 6(2).

³⁵ See generally Prosecutor v. Bizimungu, Case No. ICTR-99-50-I, Indictment, 61–80 (May 7, 1999), *rev’d sub nom. Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A (Feb. 4, 2013) (listing extensive set of facts and charges against Mugenzi and Mugiraneza).

³⁶ *Id.* Mugenzi and Mugiraneza were charged with violating Articles 2(3)(a)–(c), 2(3)(e), 3(a), 3(b), 3(g), 4(a), and 4(e) of the ICTR Statute and several provisions of the Geneva Conventions. See *id.*

The prosecution brought each charge on the basis of both direct, individual responsibility under Article 6(1) of the Statute and superior responsibility under Article 6(3) of the Statute.³⁷ The prosecution argued that the appellants were liable under Article 6(3) for the genocide as a whole because they were governmental ministers “criminally liable for the acts perpetrated by a range of subordinates.”³⁸ The prosecution urged the Trial Chamber to “break new ground” and recognize that the appellants’ “charismatic power over a population based on the history and sociological make-up of that community [could] be sufficient foundation for finding a superior-subordinate relationship,” particularly given the manner in which the appellants were perceived by society and the power they exerted.³⁹ The Trial Chamber, however, rejected the prosecution’s theory of superior responsibility because the prosecution relied on “general evidence” about the role of the accused, which is not sufficient to impose responsibility under Article 6(3).⁴⁰

On September 30, 2011, two years and ten months after the close of the trial, the Trial Chamber found Mugenzi and Mugiraneza guilty of two of the nine initial counts.⁴¹ First, the appellants were found guilty of conspiracy to commit genocide due to their roles in the removal of Habyalimana as prefect of Butare.⁴² The Trial Chamber determined that a joint criminal enterprise existed among the interim government, including Mugenzi, Mugiraneza, and Interim President Sindikubwabo, to kill Tutsis.⁴³ The court concluded that Mugenzi, Mugiraneza, and others who convened at a cabinet meeting on April 17, 1994 decided to remove Habyalimana “with the intention to undercut the real and symbolic resistance [he] posed to the targeted killing of Tutsi civilians inhabiting or seeking refuge in Butare” and possessed genocidal intent when making this decision.⁴⁴

The Trial Chamber also found Mugenzi and Mugiraneza guilty of direct and public incitement to commit genocide due to their roles in the installation ceremony of Nsabimana and the inflammatory speech calling for the killing of Tutsis given by Interim President Sindikubwabo.⁴⁵ The court found that the speech was an instruction to engage in the killing of Tutsis, was made with

³⁷ See *id.*

³⁸ See Prosecutor v. Bizimungu, Case No. ICTR-99-50-T, Judgement and Sentence, ¶ 1878 (Sept. 30, 2011) *rev'd sub nom. Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A (Feb. 4, 2013); Grandison et al., *supra* note 26, at 52.

³⁹ See *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1879; Grandison et al., *supra* note 26, at 52.

⁴⁰ See *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1881; Grandison et al., *supra* note 26, at 52.

⁴¹ See *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1988.

⁴² See *id.*

⁴³ See *id.* ¶¶ 1945, 1947; Grandison et al., *supra* note 26, at 52.

⁴⁴ See *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1246.

⁴⁵ See *Mugenzi & Mugiraneza v. Prosecutor*, Case No. ICTR-99-50-A, Judgement, ¶ 4 (Feb. 4, 2013); *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1988.

genocidal intent, and was made “in furtherance of [the] criminal purpose” of the joint criminal enterprise to kill Tutsis.⁴⁶ Because Mugenzi and Mugiraneza were present at the installation ceremony and involved in the decision to remove Habyalimana, the Trial Chamber found they possessed the same genocidal intent as Sindikubwabo and that they had “substantially and significantly contributed” to the incitement of genocide.⁴⁷

The Trial Chamber sentenced Mugenzi and Mugiraneza to thirty years of imprisonment and acquitted their co-defendants.⁴⁸

D. Grounds for Appeal

Mugenzi and Mugiraneza filed notices of appeal in November 2011 challenging their convictions and sentences.⁴⁹ Oral arguments were presented on October 8, 2012.⁵⁰ Mugenzi appealed on eighteen grounds, requesting the Appeals Chamber to vacate his convictions and acquit him, or alternatively, significantly reduce his sentence.⁵¹ Mugiraneza appealed on seven grounds, requesting the Appeals Chamber acquit him or dismiss the indictment with prejudice, or alternatively, grant a retrial or substantial reduction of his sentence.⁵² Mugenzi and Mugiraneza both argued that their right to a fair trial was violated because of undue delay in the proceedings and because the prosecution violated its obligations under Rule 68 of the ICTR’s Rules of Procedure and Evidence to disclose exculpatory evidence.⁵³

The appellants also challenged the findings of the Trial Chamber with regard to their role in the removal of Habyalimana as prefect of Butare.⁵⁴ Mugenzi and Mugiraneza alleged that the Trial Chamber erred in its assessment of the reasons for the removal and in finding that they had the requisite specific genocidal intent for a conviction of conspiracy to commit genocide.⁵⁵

⁴⁶ See *Bizimungu*, Case No. ICTR-99-50-T, ¶ 1984; Grandison et al., *supra* note 26, at 52.

⁴⁷ See *Bizimungu*, Case No. ICTR-99-50-T, ¶¶ 1985–1986; Grandison et al., *supra* note 26, at 52.

⁴⁸ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 4–5; *Bizimungu*, Case No. ICTR-99-50-T, ¶¶ 1988, 2021–2022.

⁴⁹ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 6–7, Annex A ¶ 3.

⁵⁰ See *id.* ¶ 9, Annex A ¶ 13.

⁵¹ *Id.* ¶ 6.

⁵² *Id.* ¶ 7.

⁵³ See *id.* ¶¶ 20–24, 38, 40–41. Rule 68 provides, *inter alia*, that, “the Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.” ICTR, Rules of Procedure and Evidence R. 68, U.N. Doc. ITR/3/REV.1 (June 29, 1995), available at http://www.unictr.org/sites/unictr.org/files/legal-library/130410_rpe_en_fr.pdf, archived at <http://perma.cc/59WN-NF88>. Mugenzi and Mugiraneza filed various motions asking the Appeals Chamber to order the prosecution to disclose exculpatory evidence, including transcripts from other ICTR cases, and to sanction the prosecution for failing to disclose this evidence. See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 10.

⁵⁴ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 77, 83.

⁵⁵ See *id.* ¶ 77.

Specifically, they contended that the Trial Chamber incorrectly determined that Habyalimana was removed because the members of the interim government present at the installation speech supported genocide in Butare.⁵⁶ Moreover, they argued that the Trial Chamber erred in finding that the only reasonable explanation for the removal of Habyalimana was his opposition to the genocide, ruling out alternative explanations, and that guilt was the only reasonable inference to be drawn from the evidence.⁵⁷

Additionally, Mugenzi and Mugiraneza challenged their convictions for direct and public incitement of genocide and the Trial Chamber's conclusions that they participated in a joint criminal enterprise to kill Tutsis in Butare and substantially and significantly contributed to the incitement of genocide by attending the installation ceremony on April 19, 1994.⁵⁸ The Trial Chamber had found that the appellants participated in the installation ceremony on April 19, 1994 where Interim President Sindikubwabo spoke, Sindikubwabo possessed both genocidal intent and intent to directly and publicly incite genocide when giving his speech, and appellants had the same genocidal intent as Sindikubwabo.⁵⁹ The appellants argued that the Trial Court erred in finding they possessed the necessary *mens rea* for direct and public incitement because they did not know in advance the contents of Sindikubwabo's speech.⁶⁰

II. DISCUSSION

After hearing the appellants' challenges, the Appeals Chamber reversed the convictions of Mugenzi and Mugiraneza for conspiracy to commit genocide and direct and public incitement to commit genocide.⁶¹

A. Fairness of the Proceedings

As an initial matter, the Appeals Chamber determined that there was no unfairness in the proceedings.⁶² The court concluded that there was neither undue delay nor any prejudice from the eight-year trial conducted by the Trial Chamber.⁶³ The court determined that the prosecution's decision to jointly

⁵⁶ *See id.*

⁵⁷ *See id.* ¶¶ 78, 83.

⁵⁸ *See id.* ¶¶ 95–96.

⁵⁹ *See id.* ¶¶ 129, 135.

⁶⁰ *See id.* ¶¶ 130–132.

⁶¹ *See Mugenzi & Mugiraneza v. Prosecutor*, Case No. ICTR-99-50-A, Judgement, ¶ 144 (Feb. 4, 2013).

⁶² *See Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 64.

⁶³ *See id.* ¶¶ 33, 37. Judge Robinson dissented from the majority's finding that there was no undue delay. *See Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, at 56, ¶¶ 1, 5 (Robinson, J., partially dissenting). According to Judge Robinson, the two year and ten month delay between the close of the trial and the issuance of the trial judgment was substantial and violated the appellants' right to a trial without undue delay. *See id.*

charge four senior government officials, resulting in a large, lengthy, and complex case, did not improperly prolong the trial.⁶⁴ Moreover, Mugenzi and Mugiraneza did not demonstrate any error in the Trial Chamber's finding that the length of the proceedings did not amount to undue delay.⁶⁵

Additionally, the Appeals Chamber held that the prosecution violated its disclosure obligations under Rule 68 by failing to disclose exculpatory material from other cases as soon as possible.⁶⁶ Although the disclosure violations affected the conduct of the proceedings, they did not materially impact the case nor prejudice the appellants.⁶⁷

B. Conspiracy to Commit Genocide

The Appeals Chamber acquitted and reversed the convictions for conspiracy to commit genocide based on the appellants' role in the removal of Habyalimana.⁶⁸ The Appeals Chamber held that the Trial Chamber erred in its assessment of the evidence related to the appellants' *mens rea*.⁶⁹ The Trial Chamber was presented with evidence that Habyalimana was removed for administrative reasons, rather than for his objections to the genocide.⁷⁰ The Appeals Chamber noted that these considerations did not eliminate the possibility that Mugenzi and Mugiraneza agreed to remove Habyalimana for political or administrative reasons.⁷¹ As a result, the Trial Court erred in concluding that the only reasonable inference to be drawn from the evidence surrounding

⁶⁴ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 37.

⁶⁵ See *id.* ¶ 33.

⁶⁶ See *id.* ¶¶ 63–64.

⁶⁷ See *id.*

⁶⁸ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 94. Judge Liu, dissenting, would have upheld the convictions for conspiracy to commit genocide. See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, at 61, ¶¶ 5–6 (Liu, J., dissenting). According to Judge Liu, the appellants did not sufficiently demonstrate that the Trial Chamber erred when ruling out evidence suggesting that Habyalimana's dismissal was motivated by concerns other than the killing of Tutsis. See *id.*

⁶⁹ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 94. The Statute does not explicitly define the *mens rea* for genocide; as a result, the ICTR is left to determine the *mens rea* for each mode of liability for genocide. See Michael G. Karnavas, *Is the Emerging Jurisprudence on Complicity in Genocide Before the International Ad Hoc Tribunals a Moving Target in Conflict with the Principle of Legality?*, in *THE CRIMINAL LAW OF GENOCIDE: INTERNATIONAL, COMPARATIVE AND CONTEXTUAL ASPECTS* 97, 98–99 (Ralph Henham & Paul Behrens eds., 2007). Generally, the ICTR considers the *mens rea* for genocide to require intent or knowledge. See Paul Behrens, *The Mens Rea of Genocide*, in *ELEMENTS OF GENOCIDE* 70, 71–73 (Paul Behrens & Ralph Henham eds., 2013).

⁷⁰ See *Mugenzi & Mugiraneza*, Case No. 99-50-A, ¶¶ 89–91. Additional reasons provided for Habyalimana's removal included an agreement between political parties to switch control over Butare with another province, Habyalimana's failure to attend key meetings, and Habyalimana's alleged connections with a rebel group of Tutsis. See *id.*

⁷¹ See *id.*

Habyalimana's removal was that Mugenzi and Mugiraneza possessed the necessary *mens rea* for conspiracy to commit genocide.⁷²

C. Direct and Public Incitement to Commit Genocide

The Appeals Chamber also acquitted and reversed the convictions for direct and public incitement because of the appellants' attendance at the installation ceremony for Nsabimana as the new prefect of Butare.⁷³ The Appeals Chamber held that the Trial Chamber erred in concluding that the only reasonable inference that could be drawn from the evidence was that Mugenzi and Mugiraneza knew the speech at the installation ceremony would incite the killing of Tutsis and that their presence at the ceremony demonstrated genocidal intent.⁷⁴ Based on the record, no reasonable trier of fact could exclude the possibility that Mugenzi and Mugiraneza attended the ceremony as a result of obligations arising from their positions or additional reasons other than the "common criminal purpose" of killing Tutsis.⁷⁵

D. Unraveling the Trial Chamber's Circular Reasoning

The Trial Chamber relied on its conclusions about the appellants' involvement in the decision to remove Habyalimana to support its conclusions about the appellants' involvement in the installation ceremony, and vice-versa.⁷⁶ In the Appeals Chamber, the interrelatedness of these conclusions undercut the findings that Mugenzi and Mugiraneza possessed the necessary *mens rea* for either conspiracy or direct and public incitement.⁷⁷

The Trial Chamber found that Mugenzi and Mugiraneza possessed the *mens rea* for direct and public incitement because of their participation in the installation ceremony.⁷⁸ This finding strengthened the Trial Chamber's conclusion that they also possessed the *mens rea* for conspiracy to commit genocide by removing Habyalimana.⁷⁹ The Appeals Chamber, however, found that the Trial Chamber lacked sufficient evidence to determine that the appellants had the *mens rea* for direct and public incitement because it could not determine

⁷² See *id.* The Trial Chamber based its findings regarding the removal of Habyalimana on circumstantial, rather than direct, evidence. See *id.* ¶ 88. As the Appeals Chamber explained, a conviction for conspiracy to commit genocide may be based on circumstantial evidence, but where an inference of guilt is drawn from the circumstantial evidence, the inference must be the only reasonable inference available from the evidence. See *id.*

⁷³ See *id.* ¶ 142.

⁷⁴ See *id.* ¶ 138.

⁷⁵ See *id.* ¶ 139.

⁷⁶ See *id.* ¶¶ 92, 140.

⁷⁷ See *id.*

⁷⁸ See *id.* ¶¶ 129, 134.

⁷⁹ See *id.* ¶ 92.

that the appellants knew what would be said at the ceremony.⁸⁰ As a result, the Appeals Chamber determined that the appellants' participation in the installation ceremony undermined, rather than reinforced, the finding that they possessed the *mens rea* for conspiracy to commit genocide.⁸¹

Similarly, the Trial Chamber used its findings that Mugenzi and Mugiraneza acted with genocidal intent when removing Habyalimana to strengthen its conclusion that the appellants would have known the contents of the speech at the installation ceremony and thus had the *mens rea* for direct and public incitement to commit genocide.⁸² The Appeals Chamber, however, reversed the finding that they removed Habyalimana to further the killings, which undermined the conclusion that they possessed the *mens rea* for direct and public incitement because of their participation in the installation ceremony.⁸³

III. ANALYSIS

The International Criminal Tribunal for Rwanda (ICTR) was established with two primary goals: to render justice and to contribute to reconciliation following the genocide in Rwanda.⁸⁴ For those affected by the genocide, the prosecution of responsible individuals would “contribute to the process of national reconciliation and to the restoration and maintenance of peace, as well as ensur[e] that such violations [of international humanitarian law] are halted and effectively redressed.”⁸⁵ Yet the acquittals of Justin Mugenzi and Prosper Mugiraneza do not help meet these goals because the findings of culpability gradually weakened at each stage of the case.⁸⁶ The weakness of the reasoning

⁸⁰ See *id.* ¶¶ 138–139.

⁸¹ See *id.* ¶ 92.

⁸² See *id.* ¶ 140.

⁸³ See *id.*

⁸⁴ See Cecile Aptel, *Closing the U.N. International Criminal Tribunal for Rwanda: Completion Strategy and Residual Issues*, 14 NEW ENG. J. INT'L & COMP. L. ANN. 169, 185 (2008).

⁸⁵ Simone Monasebian, *Africa, International Criminal Courts, and Peace Building: Reflections on the Experience of Ad-Hoc and Mixed Tribunals*, 101 AM. SOC'Y INT'L L. PROC. 148, 149 (2007). The ICTR goes further to adopt a strong “never again” stance in holding individuals responsible for the atrocities of the genocide:

It is usually individuals in power or authority that can in practice commit genocide and crimes against humanity. This is the first time high-ranking individuals have been called to account before an international court of law for massive violations of human rights in Africa. The Tribunal's work sends a strong message to Africa's leaders and warlords.

General Information, U.N. INT'L CRIM. TRIBUNAL FOR RWANDA, <http://207.150.203.251/AboutICTR/GeneralInformation/tabid/101/Default.aspx> (last visited Jan. 11, 2015), archived at <http://perma.cc/8CRK-CPJD>.

⁸⁶ See Aptel, *supra* note 84, at 185. The Prosecution attempted to impose liability on Mugenzi and Mugiraneza for nine crimes, but the Trial Chamber convicted them of only two of the nine crimes. See *Prosecutor v. Bizimungu*, Case No. ICTR-99-50-T, Judgement and Sentence, ¶ 1988 (Sept. 30, 2011)

used by the courts, the Appeals Chamber's simplistic view of the facts, and the Appeals Chamber's failure to take a strong stance against government leadership contributed to this gradual weakening.⁸⁷ As a result, these acquittals add to the overall weakness of the ICTR's legacy as it completes its closing and transitions to its residual mechanism.⁸⁸

First, both the Trial Chamber and the Appeals Chamber used weak or circular reasoning to bolster their conclusions regarding the appellants' culpability for the genocide.⁸⁹ When examining the evidence and convicting Mugenzi and Mugiraneza, the Trial Chamber made its conclusions dependent upon each other, making it easier for the Appeals Chamber to subsequently undercut the findings of culpability.⁹⁰ The Trial Chamber's finding that Mugenzi and Mugiraneza possessed the necessary *mens rea* for conspiracy to commit genocide supported its finding that the appellants possessed the necessary *mens rea* for direct and public incitement; the Trial Chamber's findings regarding direct and public incitement supported its findings regarding conspiracy to commit genocide.⁹¹ The circular reasoning that strengthened the conclusions in the Trial Chamber actually weakened the conclusions in the Appeals Chamber.⁹² The Appeals Chamber's decision to overturn the Trial Chamber's findings regarding conspiracy withdrew support for the findings about direct and public incitement.⁹³ At the same time, when the Appeals Chamber overturned the findings about direct and public incitement, the conclusions regarding conspiracy were also undermined.⁹⁴ If the Trial Chamber's conclusions had been independent of each other, then the reasoning underlying each conviction could have stood on its own.⁹⁵ As a result, the Appeals Chamber could have affirmed one conviction without also affirming the other.⁹⁶

Moreover, the Appeals Chamber used vague reasoning when rejecting the conclusions of the Trial Chamber, in contrast with the appellate standard of the

rev'd sub nom. Mugenzi & Mugiraneza v. Prosecutor, Case No. ICTR-99-50-A (Feb. 4, 2013). Ultimately, the Appeals Chamber completely acquitted both of the appellants. See Mugenzi & Mugiraneza v. Prosecutor, Case No. ICTR-99-50-A, Judgement, ¶ 144 (Feb. 4, 2013).

⁸⁷ See Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶¶ 92, 140; Aptel, *supra* note 84, at 186–87; Maria Beg, *ICTR Overturns Genocide Conviction of Two Former Rwandan Ministers*, 21 INT'L L. STUDENTS ASS'N Q. 12, 13 (2013).

⁸⁸ See Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶¶ 92, 140; Report on the Completion Strategy, *supra* note 3, ¶¶ 3–5; Aptel, *supra* note 84, at 187; Beg, *supra* note 87, at 13.

⁸⁹ See Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶¶ 92, 140.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*; Jean-Christophe Nsanzimana, *Rwanda: ICTR's Weak Legacy Further Tarnished by Acquittals*, ALL AFRICA (Feb. 10, 2013), <http://allafrica.com/stories/201302110192.html>, archived at <http://perma.cc/RFR9-F8LV>.

⁹⁶ See Mugenzi & Mugiraneza, Case No. ICTR-99-50-A, ¶¶ 92, 140; Nsanzimana, *supra* note 95.

ICTR.⁹⁷ The Appeals Chamber is not to lightly overturn findings of fact made by the Trial Chamber.⁹⁸ The Appeals Chamber should only interfere “where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous . . . [T]he erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.”⁹⁹ Given how deferential this standard is to the Trial Chamber that received the evidence, the Appeals Chamber’s acquittal of both of the appellants is surprising.¹⁰⁰

The Appeals Chamber held that the Trial Chamber erred in concluding that the only reasonable inference to be drawn from the circumstantial evidence surrounding the removal of Habyalimana was that Mugenzi and Mugiraneza possessed the necessary *mens rea* for conspiracy to commit genocide.¹⁰¹ Given the magnitude of the evidence reviewed by the Trial Chamber and the numerous indicators that Habyalimana was viewed as opposing the killing of Tutsis in Butare, it seems unlikely that “no reasonable trier of fact could have reached the same finding” that the appellants’ participation in the decision to remove Habyalimana contributed to the conspiracy to commit genocide in Butare.¹⁰² The Appeals Chamber interpreted the appellate standard loosely and gave little deference to the factual findings of the Trial Chamber.¹⁰³

Second, the Appeals Chamber adopted a simplistic view of the facts—an approach inconsistent with the decision of the Trial Chamber.¹⁰⁴ The Trial Chamber considered the facts, including communications indicating that Habyalimana was perceived as opposing the killing of Tutsis, and rejected al-

⁹⁷ See e.g., *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 91 (“The Appeals Chamber is not convinced . . . that the considerations identified by the Trial Chamber eliminate . . . reasonable possibilit[ies] . . .”).

⁹⁸ See *id.* ¶ 14.

⁹⁹ *Id.* The Statute of the ICTR provides that the Appeals Chamber shall hear appeals on the grounds of “[a]n error of fact which has occasioned a miscarriage of justice.” S.C. Res. 955, *supra* note 29, art. 24.

¹⁰⁰ See Mark C. Fleming, *Appellate Review in the International Criminal Tribunals*, 37 TEX. INT’L L.J. 111, 136 (2002) (explaining that the Appeals Chamber should only overrule trial court’s judgment where disagreement is so foundational that it must arise out of more than a mere difference in interpreting the live evidence). See also *Mugenzi & Mugiraneza*, Case No. 99-50-A, ¶¶ 91–93, 138–140 (reviewing Trial Chamber’s detailed findings of fact, but finding error in Trial Chamber’s conclusions).

¹⁰¹ See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 91.

¹⁰² See *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, at 61, ¶¶ 3–6 (Liu, J., dissenting) (reasoning that Appeals Chamber’s conclusions were “without foundation” and appellants did not demonstrate that Trial Chamber erred by giving insufficient weight to evidence).

¹⁰³ See Fleming, *supra* note 100, at 153–54. Fleming explains that when reviewing a Trial Chamber’s factual findings, the Appeals Chamber “must be prepared to forego appellate review” because, in these situations, “the interests of criminal justice require that disagreements between the two chambers not necessarily result in a victory for the Appeals Chamber’s view.” See *id.* at 154; see also *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 90–91 (reviewing Trial Chamber’s detailed findings of fact, but finding error in Trial Chamber’s conclusions).

¹⁰⁴ See Beg, *supra* note 87, at 13.

ternative explanations for the appellants' actions.¹⁰⁵ The Appeals Chamber, however, took the appellants' proposed alternative arguments at face value and disagreed with the Trial Chamber's factual findings.¹⁰⁶ As a result of this simplified view, the Appeals Chamber has a tendency to overturn the Trial Chambers' decisions and exonerate the leadership of the interim government from any culpability, thereby "systematically dismantling its legacy" of securing justice after the genocide.¹⁰⁷

Lastly, the acquittal of two high-level, influential governmental figures has denied justice for the victims of the genocide and their families.¹⁰⁸ Many victims and their families seek to hold the individuals who perpetrated the genocide accountable and to punish them.¹⁰⁹ The ICTR, however, has largely been focused on the prosecution of high-level individuals and those in government leadership, such as Mugenzi and Mugiraneza.¹¹⁰ On the one hand, the prosecution of government ministers, particularly individuals like Mugenzi and Mugiraneza who held significant sway over the general population, may contribute to a larger feeling that justice is being done.¹¹¹ On the other hand, it is more difficult for the ICTR to hold government leaders responsible because there were many intermediate steps or individuals between the appellants and the actual acts of genocide.¹¹² Meanwhile, the lower-level individuals who directly committed acts of genocide largely remain unprosecuted.¹¹³ Acquitting

¹⁰⁵ See *id.*; Nsanzimana, *supra* note 95; see also *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 90–91 (discussing Trial Chamber's consideration of reasons for Habyalimana's removal and its rejection of alternative explanations).

¹⁰⁶ See *Beg*, *supra* note 87, at 13; Nsanzimana, *supra* note 95; see e.g., *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶ 91.

¹⁰⁷ See *Beg*, *supra* note 87, at 13; Nsanzimana, *supra* note 95.

¹⁰⁸ See *Beg*, *supra* note 87, at 13. For example, the Ibuka genocide survivor's group has criticized the judgment, stating, "The acquittal is another nail in the coffin of the victims of the genocide, and a smack in the face for survivors of the genocide too." See *id.*; see also Nsanzimana, *supra* note 95.

¹⁰⁹ See *Aptel*, *supra* note 84, at 187.

¹¹⁰ See *id.*

¹¹¹ See *id.* ("While the prosecution of the leadership is important for historical records and for showing 'the bigger picture' of the crimes, it may be less relevant for the victims."). The prosecution of Mugenzi and Mugiraneza contributes to the clarification of this "bigger picture" because they served as ministers in the interim government. See *id.* When prosecuting Mugenzi and Mugiraneza, the prosecution urged the Trial Chamber to recognize the appellants' "charismatic power" over the Rwandan population as grounds for a superior-subordinate relationship. See *Prosecutor v. Bizimungu*, Case No. ICTR-99-50-T, Judgment and Sentence, ¶ 1879 (Sept. 30, 2011) *rev'd sub nom.* *Mugenzi & Mugiraneza v. Prosecutor*, Case No. ICTR-99-50-A, (Feb. 4, 2013). Mugenzi and Mugiraneza were entrenched in the hierarchical structure of the interim government and had "awesome power that cut across the social spectrum." See *id.*

¹¹² See *Aptel*, *supra* note 84, at 187.

¹¹³ See *id.* For many victims and their families, this is extremely unsatisfying. See *id.* What is important for victims and their families is to hold people accountable and punish those who committed acts of genocide. See *id.* Victims and victims' families often have difficulty accepting that their relatives' executioners remain free simply because they were not part of the leadership responsible for the genocide. See *id.*

responsible individuals in government leadership and leaving low-level perpetrators unprosecuted leaves no one to take the blame, undercutting the ICTR's goal of reconciliation for victims and their families.¹¹⁴

The Appeals Chamber must deal with issues similar to those in *Mugenzi & Mugiraneza* as it resolves the last remaining case of six appeals.¹¹⁵ If the Appeals Chamber continues to read the facts simplistically and depart from the deferential appellate standard, it is possible that additional acquittals of high-level government leaders are to come, which would further threaten the ICTR's ability to achieve its goals of justice and reconciliation.¹¹⁶

CONCLUSION

In acquitting Justin Mugenzi and Prosper Mugiraneza for conspiracy to commit genocide and direct and public incitement to commit genocide, the Appeals Chamber gave vague reasons for overturning the convictions, refused to be deferential to the Trial Chamber, and adopted a simplistic view of the facts. These acquittals mark a missed opportunity for the ICTR to take a strong stance and determine that individuals within government leadership played a significant role in the perpetration of the Rwandan genocide. Though the International Criminal Tribunal for Rwanda (ICTR) aims to bring justice and reconciliation to Rwanda, the acquittals fall short of these goals and represent another piece of the weak institutional legacy of the ICTR. If the Appeals Chamber retains the approach adopted in *Mugenzi & Mugiraneza v. Prosecutor*, more acquittals of government leaders may be on the way and the ICTR's legacy may be weakened forever.

¹¹⁴ See *id.*; Nsanzimana, *supra* note 95.

¹¹⁵ See *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-T, Summary of Judgment and Sentence, ¶¶ 6–7, 9–11 (June 24, 2011). *Prosecutor v. Nyiramasuhuko* involves the appeals of Pauline Nyiramasuhuko, the Minister of Women's Development, and Sylvain Nsabimana, the prefect of Butare who took office on April 19, 1994, along with four others. See *id.* ¶ 2. Nyiramasuhuko allegedly agreed to the decision to remove Habyalimana and conspired with the interim government before the installation ceremony for Nsabimana. See *id.* ¶¶ 6–7. Among other things, she was found guilty of conspiracy to commit genocide, but not guilty of direct and public incitement to commit genocide. See *id.* ¶¶ 38, 41. Nsabimana allegedly agreed with the plans of the interim government, but he was found not guilty of conspiracy and direct and public incitement. See *id.* ¶¶ 60, 63. These six appeals are to be completed no earlier than August 2015. See Report on the Completion Strategy, *supra* note 3, ¶¶ 3, 14.

¹¹⁶ See Beg, *supra* note 87, at 13; Fleming, *supra* note 100, at 154; see also *Mugenzi & Mugiraneza*, Case No. ICTR-99-50-A, ¶¶ 91–93, 138–140; *Nyiramasuhuko*, Case No. ICTR-98-42-T, ¶¶ 6–7.