PROSECUTION v. NSABIMANA ET AL

[Rwanda COURT OF APPEAL – RPA 00060/2021/CA (Rukundakuvuga, P.J., Gakwaya and Kamere J.) April 04, 2022]

Criminal law – Terrorism – Any person offering any kind of sponsoring of terrorism commits an act of terrorism – A person commanding, inciting, encouraging, sponsoring, organizing or procuring of any persons with the intent to commit terrorism, is not liable for such acts committed by others, he/she is rather held liable for having committed prior acts that facilitated the execution of subsequent acts of terrorism – Law nº69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing, article 2 – Law nº 46/2018 of 13/08/2018 on counter terrorism, article 2.

Criminal procedure – Guilty plea – A guilty plea is deemed valid if it leads to a reduction in penalties, provided that it is declared before the conclusion of the initial hearing, is unambiguous, demonstrates the accused's understanding of the seriousness of the acts and their consequences, includes expressions of remorse and apology, and shows the accused's willingness to make amends for the damage caused as expected.

Criminal procedure – Sentencing – It is the duty of every judge to take into account the circumstances surrounding the accused before, during, and after the commission of the crime, and to weigh them against the nature of the offense, its severity, and its impact on society – This discretion is exercised by the judge regardless of whether the offense in question is classified as a

felony or a misdemeanor – Law n^{o} 68/2018 of 30/8/2018 determining offences and penalties in general, articles 49 and 58.

Criminal procedure – Appeal – Cross-appeal – Cross-appeal is not permitted in criminal cases – Any appeal related to a criminal action must be filed as the main appeal within the specified time limit.

Facts: On September 20, 2021, the High Court, Chamber of International and Transborder Crimes, conducted the trial of case RP 00031/2019/HC/HCCIC at the first instance level. The accused individuals, namely Rusesabagina Paul, who held the position of president of MRCD-FLN, Nsabimana Callixte alias Sankara, who served as the 2nd vice-president and spokesperson, along with other individuals in command and troops within MRCD-FLN, were found guilty of various crimes. These crimes included committing and participating in acts of terrorism related to the attacks launched on Rwandan territory. These attacks resulted in the loss of human lives, destruction, looting of properties, and the deliberate burning of motor vehicles, including passenger buses. The Court also ordered them to jointly compensate for the damages caused. Among the convicted individuals in this case are also the military senior officers in FDLR, namely Nsanzubukire Félicien and Munyaneza Anastase.

The Prosecution, the accused, and the civil parties were dissatisfied with the ruling of the case and lodged an appeal to the Court of Appeal. The case before the Court of Appeal was heard in the absence of Rusesabagina Paul, as he voluntarily refused to appear despite being duly summoned.

Based on the submissions made by the parties to the court, both the parties and the Court reached an agreement regarding the main issues to be addressed during the hearing and the sequence

in which they would be addressed. The Court conducted the hearing and held debates on various issues, ultimately reaching decisions on each of them. The main issues discussed during the hearing are as follows:

i. Should Rusesabagina Paul, Nsabimana Callixte, and Nizeyimana Marc, as leaders in the MRCD-FLN organization, be punished for their role in the acts committed by the combatants of such organization, which included attacks launched on Rwandan territory as determined by the previous court? Alternatively, should they be punished for personally committing acts of terrorism?

The prosecution argues that regarding this issue, the acts of terrorism mentioned in Article 19, paragraph one of Law No. 46/2018 of 13/08/2018 on counter-terrorism, namely the act of terrorism, attempted commission, participation in, or support of terrorist acts, share the common term "acts of terrorism" as defined in Article 2, subparagraphs 4(a) and (b). They argue that this is why Nsabimana Callixte alias Sankara, Rusesabagina Paul, and Nizeyimana Marc, as part of the command of MRCD-FLN, are implicated in the acts committed by those combatants, as they provided financial support, authorized the carrying out of various attacks on Rwandan territory, and incited others to commit them. For this reason, the prosecution argues that they should be found guilty of committing acts of terrorism rather than being found guilty of participating in terrorism acts committed by those combatants, as held by the previous court.

While addressing this issue, Nsabimana Callixte alias Sankara stated to the Court that the previous court did not make an error in holding the accused liable based on article 19 of Law n^{o}. 46/2018 of 13/08/2018 on counter-terrorism. The reason he puts

forward is that the said article belongs to the section that specifically addresses offenses and penalties related to acts of terrorism. Therefore, according to him, when classifying the offenses with which the accused are charged, they should be considered under this section, rather than under the general provisions on definitions, the section of which article 2 that the prosecution relied on belongs. In that context, Nsabimana Callixte alias Sankara stated that as a spokesperson, he should not be held accountable for military operations in which he had no involvement. He argued that there were individuals responsible for such operations who had been reintegrated into civilian life.

ii. Another issue examined by the Court pertains to whether the previous Court made an error in finding Rusesabagina Paul, Nsabimana Callixte alias Sankara, and Nizeyimana Marc not guilty of the offense of forming an irregular armed group.

The debates regarding this issue were centered around determining whether the accused in this case, in addition to the offense of joining the terrorism organization for which they were found guilty, should also be declared guilty of forming an irregular armed group as stipulated in Article 459 of the Organic Law Nº. 01/2012/OL of 2/5/2012 instituting the penal code.

The Prosecution disagrees with the previous court's ruling that the offense of forming an irregular armed group requires the intention to conquer Rwanda by foreign states and the use of mercenaries at the time of its commission. According to the Prosecution, when considering Article 459 of the Organic Law Nº. 01/2012/OL of 02/05/2012 instituting the penal code, the legislator did not provide for both instances as constitutive elements of the offense of forming an irregular armed group that the High Court considered for their acquital.

Kwitonda André argues that the Prosecution's ground of appeal should not be given merit as it solely cites the use of precedents and fails to acknowledge that the High Court's decision to acquit the accused was not solely based on precedents. According to Kwitonda André, the High Court took into account the motive of the accused individuals in addition to precedents.

While responding to this ground, the Court of Appeal addressed other related debates and provided the following answers:

a. What happens when there are two different case laws that establish different positions on a similar issue? Would the subsequent ruling be considered as having overturned the existing position, even if it did not mention anything about the previous case?

b. Is it necessary for the offense of formation of an irregular armed group to involve foreign troops or the intention to hand over the Rwandan territory to foreign countries?

iii. Another question is to determine whether Rusesabagina Paul is guilty of the offense of sponsoring terrorism as provided by Law N°. 69/2018 of 31/08/2018 on the prevention and punishment of money laundering and terrorism financing.

The objective of the debates on this issue is to determine whether Rusesabagina Paul, after being found guilty of the offenses of committing and participating in acts of terrorism, should also have been found guilty of the offense of sponsoring terrorism as argued by the prosecution at the appeal level.

Another issue examined by the Court of Appeal is to determine whether Rusesabagina Paul, Nizeyimana Marc, Nsanzubukire Félicien, Munyaneza Anastase, Nsengimana Herman, Kwitonda André, Nshimiyimana Emmanuel, Ndagijimana Jean Chrétien,

Hakizimana Théogène, and Mukandutiye Angelina admitted to the charges to the extent of benefiting from the penalty reduction.

The Court of Appeal examined the characteristics of a valid guilty plea that may benefit the accused with a penalty reduction, as provided for by Article 59, subparagraph (1°) of Law n°. 68/2018 of 30/8/2018, determining offenses and penalties in general.

iv. Another question is to determine whether the first instance court was allowed to reduce the penalty below the minimum provided by the law for Rusesabagina Paul, Nsabimana Callixte alias Sankara, Nizeyimana Marc, Nikuzwe Siméon, Ntabanganyimana Joseph, Niyirora Marcel, Iyamuremye Emmanuel, Nsengimana Herman, Kwitonda André, Nshimiyimana Emmanuel, Ndagijimana Jean Chrétien, Hakizimana Théogène, and Mukandutiye Angelina on the grounds of mitigating circumstances.

Concerning this ground, the Prosecution argues that the previous court misinterpreted Article 60 of Law N°. 68/2018 of 30/8/2018 determining offenses and penalties in general, while reducing the penalties for the accused. The Prosecution points out that Articles 47 and 48 of the same law prohibit the judge from deciding the case contrary to the law and state that no penalty reduction can be granted outside the circumstances and modalities provided by the law. Consequently, the prosecution finds that the previous court, without considering the provisions of the law regarding penalty reduction, reduced the penalty below the minimum based on previous cases decided by the Supreme Court and the Court of Appeal. However, according to Article 95 of the Constitution, which establishes the hierarchy of the law, the prosecution believes that court decisions do not take precedence over legislation. Accordingly, if the law exists and is clear, it should

be followed unless there is a Supreme Court decision declaring that the law is inconsistent with the Constitution. Furthermore, even in the absence of such a decision, a position contrary to the law should not be adopted.

All the accused concerned by this ground of appeal appeared before the court with their legal counsel and stated that the previous Court had found that the mitigating circumstances were present. They argued that denying the benefit of penalty reduction below the minimum penalty is contradictory to the principle of fair justice provided by Article 29 of the Constitution of the Republic of Rwanda.

They argue that in delivering fair justice, a judge should not only rely on the provisions of the law, but also consider court decisions. They refer to the position set by the Supreme Court in the judgment RS/INCOST/SPEC/00003/2019/SC rendered on 4/12/2019 in the case between Kabasinga Florida and the Government of Rwanda, the judgment RPA 00031/2021/CA rendered by the Court of Appeal on 28/2/2020 in the case between the Prosecution and Nsafashwanayo Jean de Dieu, and the judgment RPA 00031/2021/CA rendered on 28/10/2021. These judgments establish that preventing the judge from granting penalty reduction amounts to a violation of the principle of fair justice.

v. The Court of Appeal re-examined whether the previous Court erred in granting a reduced penalty to Rusesabagina Paul, Munyaneza Anastase, and Mukandutiye Angelina on the basis that they were first-time offenders, despite the fact that the charges against them are felonies.

Debates on this ground are based on determining whether the gravity of the offense should serve as a barrier to granting a

penalty reduction in favor of the accused, particularly when they are first-time offenders.

vi. It also examined the admissibility of cross-appeals in criminal cases.

Debates regarding this ground relate to the cross-appeal filed by the defendants, who raised the fact that the Law relating to criminal procedure is silent on the matter of cross-appeals. They argued that the law states that in cases where matters are not explicitly mentioned, reference should be made to the law relating to civil, commercial, labor, and administrative procedure, which do provide for this type of remedy.

vii. Determining whether the civil actions, for which court fees or proof of exemption were submitted after the commencement of the hearing, may be admitted.

Debates regarding this ground were raised by the appellants, who criticized the appealed judgment for admitting the claims for damages filed by the civil parties and commencing the hearing before the payment of court fees. They argue that the fees were paid by the civil parties only after the defendants raised the issue.

viii. Determining whether the convicts of terrorism offenses, who were not present at the crime scene where the offenses were committed by the terrorism organization of which they are members, should be held liable for damages caused by the combatants of such organization.

Debates regarding this ground were initiated by the suspects who argue that they should only be held liable for damages resulting from the attacks in which they personally participated.

ix. Concerning the issue of overturning a decision made at the first instance level in the form of the court's discretion.

In the context of criminal actions, debates regarding this ground centered around determining whether the Court would grant a penalty reduction at the appeal level when the defendants do not hold any blame toward the previous Court, apart from alleging that the penalty was not sufficiently reduced.

x. Regarding the suspension of the penalty requested by some of the defendants.

The Court of Appeal analyzed the provisions of Article 64, paragraph one of Law Nº. 68/2018 of 30/8/2018 determining offenses and penalties in general. It observed that the text raises doubts, especially considering that the Kinyarwanda version does not express the same thing as the other versions. Additionally, the expression "irangizarubanza ku gihano itegeko riteganyiriza igifungo" used in the provision is not clear, as it refers to the offense for which the penalty is specified rather than the actual penalty for which the punishment is provided. The Court clarified that the suspension of the penalty should be understood to depend on the imprisonment penalty of a period less than five (5) years determined by the Court, rather than depending on the offense for which the law provides an imprisonment penalty of over five (5) years.

Held: 1. A person who commands, incites, encourages, sponsors, organizes, or procures others to commit criminal acts with the intention of facilitating the commission of terrorism is not punished for the acts committed by those other individuals. Instead, they are punished for their own acts that preceded and facilitated the execution of acts of terrorism. Therefore, Rusesabagina, Nsabimana, and Nizeyimana, as leaders in the MRCD-FLN organization forum, are found guilty of acts of

terrorism rather than participating in the acts committed by the combatants under their command.

2. Although the act of overruling should ideally be done explicitly, it can also be done implicitly. A position lastly adopted with regard to a given legal issue prevails over the previous position on the same particular issue.

3. The admission of guilt becomes valid to the extent of benefiting the accused with the penalty reduction if it is declared before the closure of the hearing at first instance, is unequivocal, the accused understands the gravity of the acts and their consequences, expresses regret, apologizes, and is ready to restore the damage caused as expected from him/her.

4. Every judge should, at the time of sentencing, consider the well-being status of the accused before, during, and after the commission of the crime, and correlate it with the circumstances of its commission, its gravity, and the impact it had on society. The judge exercises such discretion even if the offense of which the suspect is accused consists of a felony or a misdemeanor.

5. Due to the nature of criminal cases, which does not allow for cross appeals, any appeal related to a criminal action should be filed as the main appeal within the prescribed time limit.

6. A party claiming damages in a criminal case is allowed to file a civil action at any time, as long as they fulfill the requirements for filing such an action before the closing of the hearing at the first instance stage.

7. The suspension of a penalty involves the modality of executing the imprisonment penalty imposed by a judge. The judge may grant the suspension even if the convict did not request it, taking into consideration the pronounced penalty, personal circumstances, and gravity of the committed offense.

Consequently, there is nothing that prevents the convict at the first instance from requesting the suspension of the penalty for the first time at the appeal level.

Appeal lodged by the prosecution partially granted;
Cross appeal filed by Kwitonda, Ndagijimana, Hakizimana and Nikuzwe dismissed;
Appeal lodged by Nsabimana with merit;
Appeal lodged by Nsabimana with merit in part;
Appeals lodged by Nizeyimana, Nsengimana, Nshimiyimana, Matakamba, Ntibiramira, Byukusenge, Shabani, Bizimana, Niyirora, Iyamuremye, Mukandutiye, Nsanzubukire and Munyaneza lack merit.

Statutes and statutory instruments referred to:

Law nº 027/2019 of 19/9/2019 relating to criminal procedure, articles 11, 12, 16, 116, 154, 181 and 183.

Law nº69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing, article 2.

Law nº 46/2018 of 13/08/2018 on counter terrorism as amended and complmented to date, articles 2, 18, 19 and 38.

Law nº 68/2018 of 30/8/2018 determining offences and penalties in general as amended to date, articles 28, 33, 47, 49, 54, 55, 58, 59, 60 and 64.

Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 65 and 73.

Law nº 15/2004 of 12/6/2004 relating to evidence and its production, articles 3 and 104.

Instructions nº 001/2021 of 15/03/2021 of the President of the Supreme Court regulating the publication of the caselaws in the law report, article 9(2 and 3);

Organic Law nº 01/2012/0L of 2/5/2012 instituting the penal code (repealed), articles 77, 85, 459 and 503;

Decree-Law nº 21/77 of 18/08/1977 instituting the penal code (repealed), articles 97 and 163.

Cases referred to:

Re GLIHD, RS/INCONST/SPEC 00004/2019/SC, rendered by the Supreme Court on 04/12/2019.

Prosecution v. Ingabire Umuhoza et al., RPA 0255/12/CS rendered by the Supreme Court on 13/12/2013.

Prosecution v. Habyarimana, RPA 0224/12/CS, rendered by the Supreme Court on 13/01/2017.

Prosecution v. Ndererimana, RPA 0249/13/CS rendered by the Supreme Court on 16/09/2016.

Prosecution v. Mpiranya, RPA 0343/10/CS rendered by the Supreme Court on 27/02/2015.

Prosecution v. Mushayidi, RPA 0298/10/CS, rendered by the Supreme Court on 24/02/2012.

Peosecution v. Musangamfura, RPAA 00381/2020/CA rendered by the Court of Appeal on 18/3/2022.

Prosecution v. Nzafashwanimana, RPAA 00032/2019/CA rendered by the Court of Appeal on 28/02/2022.

Vojislav Šešelj, IT-03-67-R77.2-A, rendered by ICTY (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber) on 19/ 05/2010.

Prosecutor v. Kambanda, n˚ ICTR-97-23-S, rendered by International Criminal Tribunal for Rwanda (ICTR) on 4/09/1998.

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Antoine Rubbens, L'instruction criminelle et la procédure pénale, Tome III, Larcier, Bruxelles, 1965, p. 265, n° 259.

Bernard Bouloc, Droit pénal général, 26e édition, Dalloz, Paris, 2019, p. 591, n° 791

Christiane Hennau et Jacques Verhaegen, Droit pénal général, 3e édition, Bruylant, Bruxelles, 2003.

Harald Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, p. 291.

Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006.

Nyabirungu mwene Songa, Droit pénal général zaïrois, DES, Kinshasa, 1989, p. 340.

Judgment

I. BACKGROUND OF THE CASE

[1] The prosecution accused: NSABIMANA Callixte alias Sankara, NSENGIMANA Herman, RUSESABAGINA Paul, NIZEYIMANA Marc, BIZIMANA Cassien alias Passy, MATAKAMBA Jean Berchmas, SHABANI Emmanuel, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, NIKUZWE Siméon, NTABANGANYIMANA Joseph, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, IYAMUREMYE Emmanuel, NIYIRORA Marcel, NSHIMIYIMANA Emmanuel, KWITONDA André, HAKIZIMANA Théogène, NDAGIJIMANA Jean Chrétien, MUKANDUTIYE Angelina and NSABIMANA Jean Damascène alias Motard before the High Court, Chamber of

International and transborder Crimes. Each individual is charged with various offenses;

[2] The charges include: Formation of or joining an irregular armed group, membership to a terrorist group, terrorism for political purposes, sponsoring terrorism. They also include terrorist acts causing death, abduction as an act of terrorism, armed robbery as an act of terrorism, deliberate arson against another person's house, transport means or properties as an act of terrorism, intentional assault or battery as an act of terrorism, attempt to murder as an act of terrorism. In addition, they include donating, receiving, or inciting to receive proceeds from terrorism, conspiracy, and incitement to commit terrorism. And finally, they include spreading false information or harmful propaganda with the intent to cause a hostile international opinion against the Rwandan Government, denial of genocide, minimization of genocide, maintaining relations with a foreign government with intent to wage war, and fraudulent acquisition or production and the use of forged documents and papers issued by a competent authority.

[3] The case was assigned the docket number RP 00031/2019/HC/HCCIC, and 98 people who were affected by some of the acts for which the accused are prosecuted filed for damages within the criminal proceedings. In the course of the hearing, one of the suspects, namely RUSESABAGINA Paul, withdrew from the case and refused to appear. The case was heard in his absence, and the verdict was pronounced on 20/9/2021.

[4] In the analysis conducted by the previous Court, it was determined that in relation to the offense of forming or joining an irregular armed group, the accused individuals were found not guilty. This decision was based on the understanding that the acts

they were accused of did not constitute offenses against state security or other countries, and that their actions were not carried out with the intent to support an armed attack by irregular armed forces. It was also determined that in relation to the offense of sponsoring terrorism, for which RUSESABAGINA Paul was charged, the constituent acts were punishable under two different legal instruments1. On one hand, they were punishable as a separate offense of sponsoring terrorism, and on the other hand, sponsoring terrorism was considered one of the acts of terrorism. After analyzing these laws, the previous Court concluded that the acts for which he was charged should be punished as acts of terrorism, rather than being treated as a separate offense of sponsoring terrorism.

[5] In its decision, the High Court, Chamber of International and transborder Crimes held that:

> NSABIMANA Callixte alias Sankara has been found guilty of the offense of membership in a terrorist group, as well as the offenses of committing and participating in acts of terrorism, denial of genocide, minimization of genocide, and fraudulent acquisition or production and the use of forged documents and papers issued by competent authority. He is not guilty of the offenses of formation of an irregular armed group, maintaining relations with a foreign government with intent to wage war, donating, receiving or inciting to receive proceeds from terrorism, terrorism for political purposes, conspiracy and incitement to commit terrorism, and

[1] The Law nº69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing as well as the Law nº 46/2018 of 13/08/2018 on counter terrorism as amended to date consider it as an act of terrorism.

spreading false information or harmful propaganda with intent to cause a hostile international opinion against the Rwandan government. He was sentenced to a penalty of twenty (20) years of imprisonment, and the court ordered the seizure of the passport and telephone that were in his possession at the time of his apprehension.

RUSESABAGINA Paul is guilty of the offences of membership in a terrorist group and participation in acts of terrorism, but he is not guilty of the offence of formation of an irregular armed group. He has been sentenced to twenty-five (25) years of imprisonment.

NIZEYIMANA Marc is guilty of the offence of membership in a terrorist group and the offence of committing and participating in acts of terrorism. However, he is not guilty of the offence of formation of an irregular armed group and maintaining relations with a foreign Government with intent to wage a war. He has been sentenced to twenty (20) years of imprisonment.

BIZIMANA Cassien alias Passy is guilty of the offences of membership in a terrorist group, committing and participating in acts of terrorism, illegal use of explosives or any noxious substance in a public place, conspiracy, and incitement to commit terrorism. However, he is not guilty of the offences of formation of or joining an irregular armed group. Therefore, he has been sentenced to twenty (20) years of imprisonment.

MATAKAMBA Jean Berchmas, SHABANI Emmanuel, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, and NSABIMANA Jean Damascène are guilty of the offences of membership in a terrorist group,

committing and participating in acts of terrorism, illegal use of explosives or any noxious substance in a public place, and conspiracy and incitement to commit terrorism. Therefore, they have been sentenced to twenty (20) years of imprisonment.

NIKUZWE Siméon has been found guilty of the offence of membership in a terrorist group and has been sentenced to ten (10) years of imprisonment.

NSANZUBUKIRE Félicien, MUNYANEZA Anastase, and HAKIZIMANA Théogène have been found guilty of the offence of membership in a terrorist group. However, they have been acquitted of the charge of formation of an irregular armed group. Consequently, they have been sentenced to five (5) years of imprisonment.

NTABANGANYIMANA Joseph, NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, and MUKANDUTIYE Angelina have been found guilty of the offence of membership in a terrorist group, but not guilty of the offence of formation of an irregular armed group. Consequently, NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, and MUKANDUTIYE Angelina have been sentenced to five (5) years of imprisonment each. NTABANGANYIMANA Joseph, NSHIMIYIMANA Emmanuel, and NDAGIJIMANA Jean Chrétien have been sentenced to three (3) years of imprisonment each.

[6] Concerning the claim for damages, the previous Court held that all the defendants, except NSANZUBUKIRE Félicien and MUNYANEZA Anastase, should be jointly liable for paying the civil parties in the following manner:

NSENGIYUMVA Vincent, damages amounting to 21,500,000Frw,

HAVUGIMANA Jean-Marie Vianney, 600,000 Frw,

BAPFAKURERA Vénuste, 600,000 Frw,

RUGERINYANGE Dominique and NTABARESHYA Dative, 5,000,000 Frw each,

HABYARIMANA Jean-Marie Vianney, 300,000Frw,

INGABIRE Marie Chantal, 10,000,000Frw,

SHUMBUSHA Damascène, 300,000Frw,

NSABIMANA Anastase, 300,000Frw

MUKASHYAKA Joséphine, 10,000,000Frw

SIBORUREMA Vénuste, 300,000Frw,

NGENDAKUMANA David, 300,000Frw,

NDUTIYE Yussuf, 7,000,000Frw,

OMEGA Express Ltd, 164,700,000Frw,

ALPHA Express Company Ltd, 80,100,000Frw,

RUDAHUNGA Ladislas, 7,690,200Frw,

KIRENGA Darius, UMURIZA Adéline, SHUMBUSHO David and RUDAHUNGA Dieudonné under guardianship by RUDAHUNGA Ladislas, 2,000,000 Frw each of them,

KAREGESA Phénias, 5,500,000 Frw,

NYIRAYUMVE Eliane, 10,500,000 Frw,

NGIRABABYEYI Désiré 2,500,000 Frw,

HABIMANA Zerothe, 2,500,000 Frw,

NIYONTEGEREJE Azèle, 2,000,000 Frw,

KAYITESI Alice, 2,000,000 Frw,

NYIRANDIBWAMI Mariane, 5,000,000 Frw,

UWAMBAJE Françoise, 10,000,00 Frw,

Five children of MUKABAHIZI Hilarie under guardianship by MBONIGABA Richard namely MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANKUNDIYE Alphonsine, UZAYISENGA Liliane and HABAKUBAHO Adéline, 5,000,000Frw for each of them,

Seven siblings of MUKABAHIZI Hilarie namely MBONIGABA Richard, VUGABAGABO Jean-Marie Vianney, MURENGERANTWALI Donat, HAKIZIMANA Denis, RWAMIHIGO Alexis, NYIRANGABIRE Valérie and SEMIGABO Déo, 2,000,000Frw for each of them.

NKURUNZIZA Jean Népomuscène, 3,000,000 Frw,

NSABIMANA Joseph, 3,000,000 Frw,

RUTAYISIRE Félix, 4,000,000 Frw,

MAHORO Jean Damascène, 5,000,000 Frw,

NZEYIMANA Paulin, 2,000,000 Frw.

[7] It was held that no damages are awarded to the following civil parties in relation to the attacks launched in Nyungwe forest, in Kitabi Sector: YAMBABARIYE Védaste, NYAMINANI Daniel, MUGISHA GASHUMBA Yves, BWIMBA Vianney and NTIBAZIYAREMYE Samuel.

[8] It also held that no damages are awarded to the following civil parties from Nyabimata Sector: HABIMANA Viateur, NGIRUWONSANGA Venuste, BENINKA Marceline, NYIRAMINANI Mélanie, NYIRAHORA Godelive, RUHIGISHA Emmanuel, MUYENTWALI Cassien, BANGAYANDUSHA Jean-Marie Vianney, NSABIMANA Straton, SEBAGEMA Simon, BARAYANDEMA Viateur, KARERANGABO Antoine, NYIRAGEMA Joséphine, NSAGUYE Jean, NYIRAZIBERA Dative, NDIKUMANA Viateur, NDIKUMANA Callixte, NYIRASHYIRAKERA Théophila, KANGABE Christine, NANGWAHAFI Callixte, NYIRAHABIMANA Vestine, NYIRAMANA Bellancille and HABYARIMANA Damascène.

[9] It was decided that the following people from Ruheru Sector are not awarded damages: MANARIYO Théogène, GASHONGORE Samuel, NZABIRINDA Viateur, NIYOMUGABA, NDAYISENGA Edouard, BIGIRIMANA Fanuel, BARAGAMBA, RUTIHUNZA Enos, BARIRWANDA Innocent, NSABIYAREMYE Pascal, HABIMANA Innocent, SEBARINDA Emmanuel, NZAJYIBWAMI Yoramu, NKUNDIZERA Damascène, HABAKURAMA Gratien and HARERIMANA Emmanuel.

[10] And that people from Kivu Sector namely: NGAYABERURA Emmanuel, DUSENGIMANA Solange, KANYANDEKWE Vénant, NYIRAMYASIRO Verediana,

HAGENIMANA Patrice, NSANGIYEZE Emmanuel and NYIRAKOMEZA Claudine, are not awarded damages, the same case as GAKWAYA Gérard from Nyakarenzo Sector.

[11] The prosecution, certain accused individuals, and several civil parties were dissatisfied with certain aspects of the ruling and filed an appeal with the Court of Appeal. The prosecution expressed its dissatisfaction with several aspects of the ruling. Firstly, it disagreed with the definition provided by the previous Court regarding the offence of formation of an irregular armed group. Secondly, it was not satisfied with the decision to declare RUSESABAGINA Paul not guilty of sponsoring the terrorist group. Additionally, the prosecution contested the act of reclassifying specific offences, such as murder, abduction, unlawful detention of a person, armed robbery, deliberate arson against another person's house or transport means, attempt to murder, and intentional assault or battery, as acts of terrorism. Lastly, the prosecution claimed that the penalties imposed were in contradiction with the law.

[12] Regarding NSABIMANA Callixte alias Sankara, he filed an appeal based on the ground that he was not granted a satisfactory reduction in his penalty, despite his clear admission of guilt. He requests another reduction in the penalty. NSENGIMANA Herman filed an appeal, stating that he was dissatisfied with the denial of the penalty reduction, despite his clear admission of guilt. He also expressed discontent with the order to pay damages, considering that he did not play a direct role in the acts that caused harm to the civil parties.

[13] Nizeyimana Marc filed an appeal, arguing that he was wrongly found guilty of offenses in which he did not participate. He also contested the order to pay damages, emphasizing that he

had no involvement in the committed offenses. BIZIMANA Cassien alias Passy, filed an appeal on the grounds that his penalty was not adequately reduced and was not suspended. Matakamba Jean Berchmas, on his part, has appealed on the grounds that the previous court did not analyze the reasons that led him to commit the crime and did not consider them in their decision. He also claims that he was wrongly punished for the attack launched in Karangiro as he did not participate in it. Additionally, he expresses dissatisfaction with the penalty imposed on him.

[14] NSABIMANA Jean Damascène alias Motard and SHABANI Emmanuel have also lodged appeals because the previous court disregarded the mitigating circumstances they pointed out and ordered them to pay damages in relation to attacks that occurred in Rusizi District. He, in particular, blames the previous court for declaring him guilty of the offence of conspiracy and inciting others to commit acts of terrorism, even though he was not accused of those specific charges.

[15] NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude also lodged an appeal, blaming the High Court, Specialized Chamber for International and Transnational Crimes for disregarding the mitigating circumstances they presented. They also criticize the court for not indicating the time of their arrest, which should be considered as the reference for calculating the duration of their imprisonment.

[16] NSANZUBUKIRE Félicien and MUNYANEZA Anastase also lodged an appeal, stating that the previous court failed to determine the time of their arrest, which should be considered for calculating the duration of their incarceration. They also argue that they were not granted a penalty reduction of

one year, despite pleading guilty. IYAMUREMYE Emmanuel, NIYIRORA Marcel, and NSHIMIYIMANA Emmanuel expressed their disagreement with the previous court's decision regarding their prosecution and punishment. They argue that they should have been demobilized, as was the case for others. They also contend that the suspension of their penalty was not considered, as their demobilization was not taken into account. Furthermore, they dispute the damages they were held liable for, as they deny any involvement in the acts in question.

[17] KWITONDA André, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène, and NIKUZWE Siméon filed a cross-appeal in response to the prosecution's appeal, citing various grounds.

[18] On the other hand, the civil parties including HABYARIMANA Jean-Marie Vianney, BAPFAKURERA Vénuste, RUGERINYANGE Dominique, NTABARESHYA Dative, HABYARIMANA Jean-Marie Vianney, INGABIRE Marie Chantal, SHUMBUSHA Damascène, NSABIMANA Anastase, MUKASHYAKA Joséphine, SIBORUREMA Vénuste, NGENDAKUMANA David, RUDAHUNGA Ladislas, KIRENGA Darius, UMURIZA Adéline, SHUMBUSHO David and RUDAHUNGA Dieudonné represented by RUDAHUNGA Ladislas, KAREGESA Phénias, NYIRAYUMVE Eliane, NGIRABABYEYI Désiré, HABIMANA Zerothe, NIYONTEGEREJE Azèle, KAYITESI Alice, NYIRANDIBWAMI Mariane, UWAMBAJE Françoise, five children of MUKABAHIZI Hilarie represented by MBONIGABA Richard, namely MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANKUNDIYE Alphonsine, UZAYISENGA Liliane and HABAKUBAHO Adéline;

MUKABAHIZI Hilarie, MBONIGABA Richard, VUGABAGABO Jean-Marie Vianney, MURENGERANTWALI Donat, HAKIZIMANA Denis, RWAMIHIGO Alexis, NYIRANGABIRE Valérie and SEMIGABO Déo, NKURUNZIZA Jean Népomuscène, NSABIMANA Joseph, RUTAYISIRE Félix, MAHORO Jean Damascène, NZEYIMANA Paulin, NSENGIYUMVA Vincent, NDUTIYE Yussuf, OMEGA Express Ltd, ALPHA Express Company Ltd, filed an appeal, criticizing the previous Court for awarding them insufficient damages based on its own discretion, despite having substantiated their claims with evidence.

[19] The civil parties including YAMBABARIYE Védaste, NYAMINANI Daniel, MUGISHA GASHUMBA Yves, BWIMBA Vianney, NTIBAZIYAREMYE Samuel, HABIMANA Viateur, NGIRUWONSANGA Venuste, BENINKA Marceline, NYIRAMINANI Mélanie, NYIRAHORA Godelive, RUHIGISHA Emmanuel, MUNYENTWALI Cassien, BANGAYANDUSHA Jean-Marie Vianney, NSABIMANA Straton, SEBAGEMA Simon, BARAYANDEMA Viateur, KARERANGABO Antoine, NYIRAGEMA Joséphine, NSAGUYE Jean, NYIRAZIBERA Dative, NDIKUMANA Callixte, NYIRASHYIRAKERA Théophila, KANGABE Christine, NANGWAHAFI Callixte, NYIRAHABIMANA Vestine, NYIRAMANA Bellancille, HABYARIMANA Damascène, MANARIYO Théogène, GASHONGORE Samuel, NZABIRINDA Viateur, NIYOMUGABA, NDAYISENGA Edouard, BIGIRIMANA Fanuel, BARAGAMBA, RUTIHUNZA Enos, BARIRWANDA Innocent, NSABIYAREMYE Pascal, HABIMANA Innocent, SEBARINDA Emmanuel, NZAJYIBWAMI Yoramu, NKUNDIZERA Damascène, HABAKURAMA Gratien,

HARERIMANA Emmanuel, NGAYABERURA Emmanuel, DUSENGIMANA Solange, KANYANDEKWE Vénant, NYIRAMYASIRO Verediana, HAGENIMANA Patrice, NSANGIYEZE Emmanuel, NYIRAKOMEZA Claudine and GAKWAYA Gérard lodged an appeal, criticizing the previous Court for not awarding them damages. They argue that they did substantiate their claims with evidence, including declarations from individuals who were aware of what happened and statements from the suspects who admitted to and revealed the crimes they committed against them. They assert that the previous Court disregarded the consequences they endured as a result of these crimes.

[20] All their appeal claims were assigned different docket numbers and were joined. The hearing was scheduled for 17/01/2022, and on this day, all the parties appeared except RUSESABAGINA Paul. Such incident raised a debate on whether he was regularly summoned, and the Court withdrew for deliberation. On 18/01/2022, it decided that RUSESABAGINA Paul was summoned in accordance with the law and ordered the hearing of the case in his absence, in compliance with article 128 of the Law N°. 027/2019 of 19/9/2019 relating to criminal procedure. The hearing was fixed on 20/01/2022.

[21] On that day, after the parties were provided with an explanation of the main grounds of their appeal, they reached an agreement with the Court to have them summarized into issues to be examined in five different categories:

a. Issues concerning the classification of the offenses for which the previous Court found the suspects guilty;

b. Issues regarding the offenses for which the accused persons were found not guilty;

c. Issues regarding the offenses for which the accused persons were found guilty by the Court;

d. Issues regarding the penalties imposed on them;

e. Issues regarding damages.

They also agreed upon the hearing schedule.

[22] In the course of the hearing, it was realized that NSHIMIYIMANA Emmanuel had appealed against the offense of formation of an irregular armed group, even though the court did not find him guilty of it. As a result, he, along with the prosecution and the present Court, agreed that this crime should be dropped from the charges.

[23] In that hearing as well, the prosecution informed the Court about the changes it made to the first issue regarding the classification of offenses. Therefore, as of now, this issue pertains to RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, and NIZEYIMANA Marc, specifically regarding the classification of the offenses they should be charged with in relation to the acts committed by the MRCD-FLN combatants.

II. ANALYSIS OF LEGAL ISSUES

1. GROUNDS OF APPEAL BASED ON THE CLASSIFICATION OF OFFENCES OF WHICH THE COURT DECLARED THE SUSPECTS GUILTY

- **Determination of the classification of the offence for which RUSESABAGINA Paul, NIZEYIMANA Marc and NSABIMANA**

Callixte alias Sankara should be charged in relation to criminal acts committed by the MRCD-FLN combatants

[24] Regarding this ground of appeal, the prosecution states that it concurs with the High Court, Chamber for International and Transborder Crimes, on the analysis it made regarding some points. However, the prosecution also raises criticism regarding other points. They state that they do not accept the analysis that the previous court made in paragraphs 162, 164, and 236 of the appealed judgment. In these paragraphs, the court held that NSABIMANA Callixte alias Sankara, RUSESABAGINA Paul, and NIZEYIMANA Marc should not be personally prosecuted for the acts of terrorism. Instead, they should be prosecuted for their involvement in the acts of terrorism committed by the MRCD-FLN combatants.[2] The prosecution argues that it is incorrect to consider individuals in leadership roles within a terrorist organization as merely playing a role in the acts of terrorism committed by the members under their command. Instead, they should be considered as personally committing such acts, as the law categorizes the actions of commanders of a terrorist organization who plan, sponsor, and incite others to

[2] In paragraph 164 of the appealed judgment, the High Court, Chamber for International and Transborder crimes states it in the following words: "...the Court therefore concludes that the acts committed by MRCD-FLN combatants in the attacks, for which the prosecution holds NSABIMANA Callixte alias Sankara and RUSESABAGINA Paul **personally responsible** for murder, assault and battery, abduction, deliberate arson against another person's house, transportation means, and armed robbery, are classified as acts of terrorism. However, the Court determined that they should not be personally charged with these acts. Instead, it found that **their involvement constituted playing a role in the aforementioned acts of terrorism**, **which falls under the offense of committing and participating in acts of terrorism.**"

commit such acts as acts of terrorism. They base their argument on the provisions of the law, specifically referring to Article 2, Subparagraphs 4(a) and (b) of Law Nº. 46/2018 of 13/08/2018 on counterterrorism, as amended to date, stating that: "terrorist act:

> a) any deliberate act which is a violation of the criminal laws and which may endanger the life, physical integrity or freedoms of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
>
> i. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint or to act according to certain principles;
>
> *ii.* disrupt any public service, the delivery of any essential service to the public or to create a public emergency;
>
> iii. create general insurrection in a State;
>
> b) any promotion, sponsoring, contribution to, command, aid, incitement, teaching, training, attempt, encouragement, threat, conspiracy, organizing or procurement of any person, with the intent to commit any act referred to in point a)."

[25] The prosecution argues that the acts of terrorism specified in Article 19, paragraph one of the Law nº 46/2018 of 13/08/2018 on counterterrorism, namely committing an act of terrorism,

attempting to commit a terrorism act, participating in acts of terrorism, and supporting acts of terrorism, all share the common definition of **"Act of terrorism"** as defined in Article 2, subparagraphs (4)(a) and (b). They argue that this is the reason why the suspects NSABIMANA Callixte alias Sankara, RUSESABAGINA Paul, and NIZEYIMANA Marc, who hold leadership positions in the MRCD-FLN organization, are connected to the acts committed by those combatants. They assert that these individuals financially sponsored and instructed the launch of various attacks on Rwandan territory and incited others to commit them. For this reason, the prosecution argues that they should be declared guilty of committing acts of terrorism instead of being guilty of participating in terrorism acts committed by those combatants, as decided by the previous court.

[26] Counsel Rugeyo Jean, who is assisting NSABIMANA Callixte alias Sankara, replied to this ground by stating to the appellate court that, according to him, the previous court did not make any mistakes in sentencing the suspects, including his client, based on Article 19 of Law nº 46/2018 of 13/08/2018 on counter-terrorism. He provides the reasons that this article belongs to the chapter on acts of terrorism and penalties. It is understood that it is within this chapter that the classification of offenses with which the suspects are charged should be determined, rather than consulting the section on general provisions, where Article 2 of that law, on which the prosecution emphasizes, is located. In that context, NSABIMANA Callixte alias Sankara argued that as a spokesperson, he should not be held responsible for military operations in which he had no involvement, especially when there were individuals in charge of such operations, including Colonel GATABAZI Joseph (military operations), who were demobilized.

[27] Following the submission of the explanations for the rectification of the appeal submissions regarding this ground, the other suspects who were concerned by this ground remained silent.

DETERMINATION OF THE COURT

[28] The Court of Appeal finds that the debates concerning this issue revolve around determining the command responsibility of commanders of a terrorist organization for crimes committed by combatants under their orders that affected people living at the crime scene.

[29] The prosecution requests the instant court to decide that RUSESABAGINA Paul, NSABIMANA Callixte, and NIZEYIMANA Marc committed the offense of terrorism, rather than the offense of participating in acts of terrorism as decided by the trial court in paragraphs 162, 164, and 236 of the appealed judgment. In a nutshell, the prosecution's concern is not whether they should be held personally responsible or as accomplices for the acts of terrorism committed by MRCD-FLN combatants[3].

[3] These arguments are supported by the statements made by the trial court in paragraph 162 of the appealed judgment. In that paragraph, the court stated, "Considering the text of articles 18 and 19 mentioned above, a person who does not commit an act of terrorism that is likely to harm life, cause serious injury, death, or damage to property as stated in article 2, subparagraph 4(a), but who engages in acts of promotion, sponsorship, contribution, command, aid, incitement, and other acts as stated in the same article, subparagraph 4(b), should be considered as participating in acts of terrorism and held responsible for the offense of committing and participating in terrorist acts as provided by article 19 mentioned above.".

Rather, their argument is that they should be charged with the offense specified in article 19 of the Law on counter-terrorism. Participation, as stated in that article, should not be confused with being an accomplice as defined in article 2 of Law n˚68/2018 of 30/8/2018 determining offenses and penalties in general.

[30] In reality, the act of playing a role as stated in article 19 of the Law on Counter Terrorism constitutes an offense, whereas being an accomplice as stated in article 2 of the Law determining offenses and penalties in general is a mode of participation in the commission of the offense.

[31] Article 83, paragraph one and 2 of the Law n˚68/2018 of 30/08/2018 determining offences and penalties in general provides that "Criminal liability is incurred by the offender, his/her co-offender or accomplice. Only a person who intentionally commits an offence is punishable. However, (….)".

[32] As provided by article 2 of the of the Law n˚68/2018 of 30/08/2018 determining offences and penalties in general, the **offender** is "a person who commits an act punishable by law or omits to perform an act required by law". The same article specifies the person who should be regarded as co-offender as well as accomplice.

[33] A Co-offender is "a person who directly cooperates with the offender in the commission of an offence" while an accomplice is "a person having aided the offender in the means of preparing the offence through any of the following acts:

a. a person who, by means of remuneration, promise, threat, abuse of authority or power has caused an

offence or given instructions for the commission thereof;

b. a person who knowingly aids or abets the offender in the means of preparing, facilitating or committing the offence or incites the offender;

c. a person who causes another to commit an offence by uttering speeches, inciting cries or threats in a place where more than two (2) persons gather, or by means of writings, books or other printed texts that are purchased or distributed free of charge or displayed in public places, posters or notices visible to the public;

d. a person who harbours an offender or a co-offender or an accomplice to make it impossible to find or arrest him/her, helps him/her hide or escape or provides him/her with a hiding place or facilitates him/her to conceal objects used or intended for use in the commission of an offence;

e. a person, who knowingly, conceals an object or other equipment used or intended for use in the commission of an offence;

f. a person who steals, conceals or deliberately destroys in any way objects that may be used in offence investigation, discovery of evidence or punishment of offenders;

[34] The main provisions of International Convention for the Suppression of Terrorist Bombings adopted by the United Nations General Assembly Resolution on 15/12/1997 as ratified by Presidential Order n° 40/01 of 14/04/2002, provide that any

person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily injury or to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss, if that person attempts to commit the foregoing offences, or participates as an accomplice in such an offence, or organizes or **directs others to commit it or any other way contributes to the commission of such offence by a group of persons[4].**

[35] Article 2, subparagraph (4˚), b) of the Law nº 46/2018 of 13/08/2018 on counter terrorism suggests that any person who provides any promotion, sponsoring, contribution to, command, aid, incitement, teaching, training, attempt, encouragement, threat, conspiracy, organizing or procurement of any person, with the intent to commit terrorism, commits acts of terrorism punished under article 19 and subsequent provisions of the same law.

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[4] *''Commet une infraction au sens de la Convention quiconque illicitement et intentionnellement livre, pose, ou fait exploser ou détonner un engin explosif ou autre engin meurtrier dans ou contre un lieu public, une installation gouvernementale ou une autre installation publique, un système de transport public ou une infrastructure, dans l'intention de provoquer la mort ou des dommages corporels graves, ou des destructions massives entraînant ou risquant d'entraîner des pertes économiques considérables. Commet également une infraction au sens de la Convention quiconque tente de commettre une des infractions ci-dessus ou se rend complice d'une telle infraction,* ***ou en organise la commission ou donne l'ordre à d'autres personnes de la commettre ou contribue de toute autre manière à sa commission par un groupe de personnes agissant de concert''.***

[36] It is evident across the world that the persons held responsible for terrorism crimes are the ones who execute such offences, while it is difficult to hold the top leaders responsible for acts committed by their subordinates[5] despite the fact that they plan the plot and order them to execute it. In addition, even when they are prosecuted, they do not incur same penalties than the subordinates since they are sometimes considered as accomplices albeit being the mastermind of terrorist groups and incitigators of others to commit terrorism.[6].

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[5] *"Les infractions pénales traditionnelles et les sanctions qui leur sont applicables ont été principalement conçues pour punir les exécuteurs matériels d'un acte illicite. Elles ne sont cependant pas forcément efficaces pour réprimer les groupes très hiérarchisés dans lesquels les tâches, tels que l'exécution matérielle des attentats à la bombe, les meurtres ou les détournements d'aéronefs, sont séparées de celles qui portent sur la préparation, la planification et le soutien logistiques. La répression efficace du terrorisme passe par l'inculpation pénale des personnes qui ont planifié, organisé et commandité des opérations terrorists". Office des Nations-Unies contre la drogue et les crimes, Recueil de cas sur les affaires de terrorisme, New-York, 2010.*

[6] For example in the case of KATANGA Germain, though he was under prosecution for acts of terrorism, the International Criminal Tribunal, Appelate Chamber decided that he should be punished as an accomplice in the acts committed by people under his command. See the case ICC-01/04-01/17 rendered on 07/03/2014. p.709

Contrariwise, the trial court had held him personally liable for the same offences.

In other cases such as that of Nicolas Rodrigues Bautista from Colombia and co-accused persons with whom they headed the organisation of Ejertico de Liberacion Nacional that layed the bomb into oil pipeline of which affected the population of area of Machuca; the Supreme Court, Criminal Appeals division declared such superiors of ELN group who ordered the placing of the said bomb personally liable despite that they did not reach the crime scene (mens rea).

[37] In order to uphold the principle that criminal liability is personal and and to effectively combat the commission of crimes by organised group with the intent to commit acts of terrorism, the rwandan legislator has decided that any person who commands, incites, encourages, sponsors, organizes, or procures equipment with the intention to instill fear, force, or coerce the government or the general public to perform or refrain from any act, adopt or abandon a particular standpoint, or act according to certain principles, disrupts any public service or the delivery of essential services to the public, or creates a general insurrection in a state, shall be deemed to have committed acts of terrorism.[7]

The similar ruling intervened in the case of Abmeil Guzman and other heads of Sentier Lumunieux group in Peru. They were also declared personally liable despite that they never reached the places of the offences. See Corte Suprema, Judgment of 13 oct. 2006 (Abimael Guzmán). Cited by Werle, G. & Burghardt, B. (2012). Les formes de participation en droit international pénal. Revue de science criminelle et de droit pénal comparé, 1, 47-67. https://doi.org/10.3917/rsc.1201.0047 no muri Recueil de cas sur les affaires de terrorisme. NATIONS UNIES. New York, 2010 iboneka kuri https://www.unodc.org/documents/terrorism/Publications/Digest_of_Terrorist_Cases/French.pdf .

This stance of declaring people with leadership role guilty of the offences committed by organised and structured groups on the basis of the power they have over the acts by such groups under their command, was also adopted in caselaws in Germany in which members of National Defense Council of RDA and members of political bureau of SED for the killings that occured at germany boarder were prosecuted. See Federal *Court of Justice, Decision of 26 Jul. 1994, BGHSt 40, 218 (p. 237 s.); Federal Court of Justice, Decision of 4 March 1996, BGHSt 42 (p. 65, 68) ; Federal Court of Justice*, Decision of 8 Nov. 2002, BGHSt 45, 270 (p. 296)

[7] Such stance is not the particularity of Rwanda. There are other countries that adopted such position too. The instance appears in the Terrorism act, 2000 in United Kingdom where in article 56 providing for a particular offence with respect to any person who directs at any level the acts of terrorism by an

[38] Acts of terrorism stated above constitute a particular offence of committing terrorism. It implies that a person who commands, incites, encourages, sponsors, organizes, or procures equipment for others with the intent to commit offenses determined by the penal code, specifically acts of terrorism, is not punished for the acts committed by others. Instead, they are punished for committing acts that precede and facilitate the perpetration of subsequent acts of terrorism.

[39] Consequently, the Court of Appeal finds that considering the acts committed by NSABIMANA Callixte alias Sankara and RUSESABAGINA Paul, which involved sponsoring, organizing, commanding, inciting, and procuring equipment that enabled the combatants of MRCD-FLN to execute the plan of the group to launch attacks in different districts, and later boasting about these acts on radio stations and social media, they should be declared guilty of committing terrorism instead of participating in acts committed by their subordinates.

[40] Regarding NIZEYIMANA Marc, although he did not physically participate in the attacks in Rwanda, it is evident that he held the responsibility of organizing combatants and selecting

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organisation group having having to do with terrorism. (*Terrorism Act 2000, 56. — (1) A person commits an offence if he directs, at any level, the organisation. Activities of an organisation, which is concerned in the commission of acts of terrorism*.) The Criminal Law of the People's Republic of China, (Amendment (III), Paragraph 1 of Article 120 *"Whoever forms, leads or actively participates in a terrorist organization shall be sentenced to fixed-term imprisonment of no less than ten years or life imprisonment; the active participants shall be sentenced to fixed-term imprisonment of no less than three years but no more than ten years; other participants shall be sentenced to fixed-term imprisonment of no more than three years, criminal detention, public surveillance, or be deprived of political rights."*

the most suitable individuals for participating in the attacks. Additionally, he provided assistance to them in crossing the border and maintained close collaboration with soldiers who organized and commanded the attacks. Therefore, he should also be found guilty of committing acts of terrorism that facilitated the commission of offenses during the attacks, rather than participating in the crimes committed by the combatants.

[41] For the foregoing reasons, the Court of Appeal concludes that the previous Court made an error in determining that NSABIMANA Callixte alias Sankara, RUSESABAGINA Paul, and NIZEYIMANA Marc participated in the offenses committed by the combatants of MRCD-FLN. Instead, in accordance with article 19 of Law N°.46/2018 of 13/08/2018 on counterterrorism, they are guilty of committing acts of terrorism that facilitated the commission of offenses by the combatants during the attacks carried out for terrorist purposes.

2. APPEAL GROUNDS IN RELATION TO OFFENCES OF WHICH THE SUSPECTS WERE ACQUITTED

a. Regarding the formation of an irregular armed group

[42] The prosecution states that the High Court, Specialised Chamber for international and transborder crimes misinterpreted article 459[8] of the Organic Law n° 01/2012/OL of 2/05/2012

[8] Article 459 of the Organic Law n°01/2012/OL of 2/5/2012 instituting the penal code, provides that: Any person who carries out recruitments or incites or makes an agreement with the armed group other than the regular forces of the State, by gifts, remuneration, threats, abuse of authority or power for the

instituting the penal code, and acquitted RUSESABAGINA Paul and NSABIMANA Callixte alias Sankara who were accused of formation of an irregular armed group, as well as NIZEYIMANA Marc, BIZIMANA Cassien alias Passy, NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, NSANZUBUKIRE Félicien, MUNYANEZA Anastase and HAKIZIMANA Théogène who were accused of joining such armed group.

[43] They contend that they do not agree with the statements made by the previous Court that, for the offense of formation of an irregular armed group to occur, there must be an intention to annex Rwanda by foreign states and the involvement of mercenaries during its commission. The prosecution argues that if we consider Article 459 of Organic Law No. 01/2012/OL of 02/05/2012 instituting the penal code, nowhere did the legislator provide for the two grounds on which the High Court relied to acquit them as constitutive elements of formation of an irregular armed group.

[44] The prosecution persues that it criticizes the High Court for relying on two precedents of the High Court, which were upheld by the Supreme Court, namely the case of MUSHAYIDI Déogratias and the case of INGABIRE Umuhoza Victoire. They argue that in such cases, the provisions regarding the offence of formation of an irregular armed group were misinterpreted because the court relied on the explanatory note of Decree Law N°. 21/77 of 18/08/1977, which established the penal code, specifically in the section concerning the involvement of

purpose of waging attack (….) Any person who, willingly, engages or is recruited in an army other than the regular force of the State (….)".

mercenaries. The Court erroneously considered them as constitutive elements of the offence of formation of an irregular armed group. When the 12th sheet of such explanatory note is examined, it is realized that this term was not used with the intent to point out the constitutive elements of the offence of formation of an irregular armed group. Instead, it explained the offences that are prosecuted with the authorization of the Government. They also state that a thorough observation indicates that the High Court held that such crime should intend for Rwanda to be under the domination of foreign countries, which is also false. This is because Article 459, as stated above, clearly indicates that such offence is committed with the intent to support armed attacks by combatants other than regular armed forces.

[45] The prosecution states that after such court decisions, upon which the trial court relied, there have been other cases decided afterward that adopted a different position. They include the judgment n° RPA 0249/13/CS by the Supreme Court on 16/09/2016, which was the appeal against the case n° RP 0108/12/HC/KIG rendered by the High Court on 29/10/2013 in the prosecution's case against NDERERIMANA Norbert alias Gaheza and co-accused. Additionally, they mention the case n° RPA 0224/12/CS rendered by the Supreme Court on 13/1/2017 against the accused HABYARIMANA Emmanuel. Both judgments indicated that the offence of formation of an irregular armed group is committed with the intent to launch a military attack, without necessarily requiring the support of foreign armed forces.

[46] The prosecution concludes this ground by stating that four accused individuals, namely RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, and

BIZIMANA Cassien alias Passy, should be found guilty of the offence of formation of an irregular armed group. On the other hand, the remaining nine individuals, namely NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, and HAKIZIMANA Théogène, are guilty of joining an irregular armed group.

[47] Counsel Rugeyo Jean, assisting Nsabimana Callixte alias Sankara, states that although the prosecution advances the argument that the position set in the Mushayidi Déogratias case and the Ingabire Umuhoza Victoire case, on which the trial court relied for their acquittal, was subsequently reversed by subsequent judgments, it does not provide a basis for this claim. Nowhere in those cases is it held that such a position was reversed. Thus, he states that the fact that the Court did not rely on such a position does not imply that it was reversed in any way.

[48] Counsel URAMIJE James, assisting Iyamuremye Emmanuel, NIYIRORA Marcel, and NSHIMIYIMANA Emmanuel, states that his clients were charged with joining an irregular armed group, and they agree with the prosecution regarding these charges. However, they disagree on the manner in which they joined the group, as they were not aware that it was an irregular armed group, and they joined under coercion. Therefore, they argue that they should not be held responsible for this crime.

[49] Counsel MUGABO Sharifu Yussuf, assisting Kwitonda André, states that such ground of appeal by the prosecution should not be considered since they only explain it by focusing on referring to precedents while disregarding that for their

acquittal, the High Court did not only base on precedents, it also relied on the motive of the accused. He states that the Court clarified that the accused committed acts for which they are charged, with the intent to commit terrorism, which aligns with the definition of acts of terrorism. Consequently, the trial court did not make any mistakes because the accused were indeed found guilty of the offense of membership in a terrorist group.

[50] Except for the accused assisted by Counsel Mugabo Sharifu Yussuf, Counsel Uramije James, and Counsel Rugeyo Jean, the remaining defendants remained silent regarding the prosecution's ground of appeal.

DETERMINATION OF THE COURT

[51] The Court of Appeal primarily finds that the debates concerning this ground of appeal are centered around determining whether the accused are guilty of the offense as stipulated in Article 459 of the Organic Law N°. 01/2012/0L of 2/5/2012 instituting the penal code. As stated by the prosecution, there are case laws tried by the Supreme Court related to the offense provided in that article, which indicate two stances adopted by the court. These stances pertain to criminal acts and the intent to commit them. Thus, the issue at hand consists of determining which stance should be referred to in the present case between the two positions.

[52] The issue concerning the position set by courts to be adopted in the adjudication of cases was addressed in the judgment no RS/INCONST/SPEC 00004/2019/SC rendered on 04/12/2019 between GLIHD (Great Lakes Initiative for Human Rights Development) and the Government of Rwanda. In

paragraph 33 of the judgment, the Supreme Court indicated that in the functioning of courts that refer to the principle of stare decisis, every court is obliged to respect its own rulings on a given case and the position adopted by a superior court depending on their hierarchy. (*the higher up a court is in the hierarchy, the more authoritative its decisions: decisions of the higher courts will bind lower courts to apply the same decided principle*).

[53] This has been supported in Instructions nº 001/2021 of 15 March 2021 of the President of the Supreme Court governing the publication of law reports, in its article 9, paragraphs 2 and 3, stating that: "*Every judge is required to adopt the existing position set by the similar court in rank or the superior court, depending on the hierarchy of courts. However, a judge would not refer to the existing position when he/she manages to demonstrate that issues in the case at hand are different from issues in the existing position (distinguishing) or in the event he is able to demonstate that such position violates the interest of justice (overruling).*"

[54] In summary, a judge is bound to apply the position adopted by superior courts, similar court or that set in cases she/he tried on similar issues to the matter at hand.[9] As explained, overruling such a position may only be done by a court that is superior to the trial court or by the same court. Despite such

[9] Walker Jr, J. M. (2016). The role of precedent in the United States: How do precedents lose their binding effect. *Stanford Law School China Guiding Cases Project*.S Available at: https://cgc.law.stanford.edu/commentaries/15-john-walker/#:~:text=How%20Do%20Precedents%20Lose%20Their%20Binding%20Effect%3F,-In%201932%2C%20Justice&text=In%20the%20federal%20system%2C%20the,en%20banc%E2%80%9D%20in%20plenary%20session.

circumstances, the Rwandan lawmaker provided a solution in the event that a litigant does not agree with the existing position set by the latest trial for a similar issue. In that event, as specified in articles 65 and 73 of the Law determining jurisdiction of courts[10], he/she files to the Supreme Court in order to reverse it. It is not required for the position in question, for which overruling is sought, to have been set by the Supreme Court. It is sufficient that, in relation to a similar issue as the one at hand, it is the same position established by a final judgment.

[55] Overruling the position may be explicit or implicit. When it is explicitly decided, the Court compares the subject matter and its rulings on similar issues. After establishing the similarity, it examines the existing position and provides reasons why it should no longer be binding. It may argue that the position was erroneous at the time of its adoption, that it has become obsolete, or cite any other relevant motive. The Court then concludes by declaring that the position is reversed. However, there are instances where the Court may decide and try an issue without analyzing whether it has been previously determined in a final judgment. In such cases, the Court may establish a position that is different from or contradictory to the existing position. Such a situation may arise due to a lack of information, negligence, or a brief analysis. In any event, if such a situation were to occur, the latest position would prevail. In other words, the latest position is the one that deserves to be applied by such Court as well as lower courts.[11]. It is understood that if such a case were to be tried

[10]Law n°30/2018 of 02/06/2018 determining jurisdiction of courts

[11] "*When the Supreme Court does overrule precedent, it often does so expressly. In that situation, lower courts are obliged to follow the overruling decision. But the Supreme Court sometimes overrules prior holdings only by implication. As the Court stated more than a century ago : "Even if it were*

by the Supreme Court, being the country's highest court, any later position adopted by the Supreme Court on a given issue would become binding not only with regard to that case but also to all other courts across the country. It is not necessary for the prior position to have been explicitly overruled.

[56] In the instant case, the accused are prosecuted for offences provided by article 459 of the Organic Law nº 01/2012/0L of 2/5/2012 instituting the penal code that was into force at the time of the commission of the offences, reading that: "Any person who carries out recruitments or incites or makes an agreement with the armed group other than the regular forces of the State, by gifts, remuneration, threats, abuse of authority or power shall be liable to a term of imprisonment of ten (10) years to fifteen (15) years.

Any person who, willingly, engages or is recruited in an army other than the regular force of the State, shall be liable to a term of imprisonment of seven (7) years to ten (10) years. Legal action against offences under Paragraphs One and 2 of this Article shall be instituted only upon complaint or authorisation of the Prosecutor General or the Military Prosecutor General depending on the case."

[57] Such provision replaced another one which was article 163 of the Decree-law nº 21/77 of 18/08/1977 that instituted the

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true that the decision referred to was not in harmony with some of the previous decisions, we had supposed that a later decision in conflict with prior ones had the effect to overrule them, whether mentioned and commented on or not." See in Shannon, B. S. (2009). Overruled by implication. Seattle UL Rev., 33, 151. Available at: https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1972&context=sulr

penal code, which used to specify that: “Shall be sentenced to imprisonment of five to ten years and a fine of up to two hundred thousand francs, anyone who, through gifts, remuneration, promises, threats, abuse of authority or power, has recruited men or will have incited or collected commitments of men for the benefit of an armed force other than the regular state armies.

Shall be sentenced to imprisonment of one to five years and a fine of up to one hundred thousand francs, anyone who has agreed to be engaged or recruited for the benefit of an armed force other than the regular State armies. The offenses referred to in this article will be prosecuted only on complaint or on authorization of the government of the Republic.

[58] The prosecution argues that the High Court, the specialized chamber for international and cross-border crimes, interpreted the provision based on prior judgments that acquitted suspects of the offense of formation of an irregular armed group. However, they disregarded the existence of subsequent judgments where individuals accused of the same offense were found guilty. For resolving the dissension, the instant Court shall examine whether those cases examined same issues but adopted differing positions.

[59] In the judgment n°. RPA 0255/12/CS rendered by the Supreme Court on 13/12/2013, INGABIRE UMUHOZA Victoire and her co-accused were charged with the formation of an armed group named Coalition des Forces Démocratiques (CFD) under the political organization FDU-Inkingi umbrella. The charges were based on the intent to cause insecurity in the country with the purpose of compelling the government of Rwanda to participate in negotiations. Basing on such acts, the prosecution charged them of offence of formation of irregular

armed group with intent to wage armed attack that was provided by article 163 stated above.[12]

[60] In that case, the Supreme Court found that the criminal acts associated with the offence of formation of an irregular armed group, with the intent to cause insecurity in the country, do not constitute offences against internal State and foreign government security. Instead, these acts are intended to attack the established Government with the purpose of seizing power by force or compelling it to participate in peace talks. This interpretation is based on the understanding that Article 163 belongs to Section One, which pertains to offences against state security. Such section includes offences against external State security and foreing government security whereas the offences of which the accused were charged belongs to section two about the offences against internal state security.[13]

[61] Again, in that case, the Supreme Court indicated that it is the first time to examine such issue because in the judgment n° RPA 0298/10/CS rendered on 24/02/2012 in which the accused was MUSHAYIDI Déogratias, the Supreme Court did not examine it since none of the parties raised it at appellate level.[14] It is also for the same reason that even the judgment N° RPA 0249/13/CS rendered by the Supreme Court on 16/09/2016, opposing the prosecution to NDERERIMANA Norbert alias Gaheza and co-accused that was submitted by the prosecution will not also be relied on in the instant case for the reason that it has not examined matters concerning the formation of irregular

[12] See paragraphs 396 and 397 of the judgment n° RPA 0255/12/CS rendered by the Supreme Court on 13/12/2013
[13] Idem, paragraphs 409-410
[14] See paragraph 407 of the stated case of INGABIRE UMUHOZA Victoire

armed group for such issue was not subject of appeal and examination by the Supreme Court. The appeal concerned only the sentence. Consequently, the judgment of INGABIRE UMUHOZA Victoire and co-accused is the one that should be compared to the judgment no RPA 0224/12/CS of HABYARIMANA Emmanuel vs Prosecution, which was tried by the Supreme Court on 13/01/2017. This is because it is the latest case that deals with the same legal issue.

[62] In the case of HABYARIMANA Emmanuel, he was charged with membership in the political organization of King KIGELI, known as Rwandese Protocol for the Return of the Kingdom (RPRK), in collaboration with KAYUMBA NYAMWASA, with the objective of repatriating KIGELI. HABYARIMANA was specifically responsible for recruiting youth to participate in military training with the intention of waging war against Rwanda. While analyzing the criminal acts, the Supreme Court did not examine whether the formation of an irregular armed group associated with RPRK, with the intent to wage war, aimed to annex or surrender part of Rwanda to foreign countries or whether such group consisted of mercenaries. Instead, as evident in that judgment, the Court determined that the recruitment of individuals into an irregular armed group with the objective of causing insecurity is sufficient for the offense of formation of an irregular armed group to be established. This stance is evident in the fact that the Supreme Court found HABYARIMANA Emmanuel guilty of the offense of formation of an irregular armed group based on the fact that he admitted to assigning SEBATEMBA with the task of recruiting young individuals to join the armed group organized by KAYUMBA NYAMWASA in collaboration with KIGELI. SEBATEMBA also accused HABYARIMANA Emmanuel of this, and it is

particularly noteworthy that these young individuals were apprehended in Kayonza while they were preparing to travel to Uganda.[15]

[63] The Court of Appeal finds that the aforementioned judgments, namely the case of INGABIRE UMUHOZA Victoire and the latest case of HABYARIMANA Emmanuel, share the commonality that the accused individuals were Rwandans who were charged with the formation of irregular armed groups. These groups were formed with the intention of launching military attacks to create insecurity, ultimately with the objective of overthrowing the existing government. Indeed, among all these armed groups, none of them consists of foreigners or mercenaries, as the members or recruits of these groups are Rwandans. This indicates that the criminal acts prosecuted in both cases are similar. Therefore, the fact that the judgment of HABYARIMANA Emmanuel, which is the latest, did not demonstrate that in order for this offense to occur, it is necessary for the irregular armed group to have the objective of surrendering part of Rwanda to foreign countries or for the group to be made up of mercenaries implies that the implicit position set in the INGABIRE UMUHOZA Victoire case was overruled.

[64] The instant Court, however, finds that while that caselaw settled debates on one side concerning potential suspects of the said offense, it did not clearly explain the criminal acts for the offense of formation of an irregular armed group. Considering the fact that this offense belongs to the section relating to offenses against state external security, the instant Court, based on the position adopted in the latest caselaw by the Supreme Court, finds it noteworthy that the suspects causing state insecurity

[15] paragraphs 17 and 23 of that judgment nº RPA 0224/12/CS

collaborate with armed groups formed abroad with the intent to cause state insecurity from outside, even when they collaborate with some domestic groups. In that instance, all group members are charged with such offense, provided that they fall under article 459, which implies the formation of an irregular armed group, inciting its formation, (committing acts leading to its formation), concluding agreements with them, supporting the armed attack by donations, remuneration, threats, or abuse.

[65] In the instant case, the suspects of formation of irregular armed group are also accused of membership to terrorist group, and some of them are even charged with committing and participation in acts of terrorism. The difference between both offences consists of the objective of the commission of the crime. While for the offence of formation of irregular armed group stated in article 459, the objective consists of supporting the armed attack, the terrorist group has the objective of committing acts of terrorism[16].

[66] The accused in the instant case about this crime fall under 2 categories: there are some who are members of FDLR-FOCA and CNRD-FLN who never joined MRCD-FLN, who are NSANZUBUKIRE Félicien and MUNYANEZA Anastase. And others who participated in MRCD-FLN after its merging with CNRD-FLN and other political organisations. Those who pledged allegiance to FDLR-FOCA were part of the terrorist group, as it was included on the United Nations' list of terrorist

[16] See article 2, subpragraph 11 of the Law nº 46/2018 of 13/08/2018 on counter terrorism as amended to date defining the **terrorist group:** structured group persons acting in concert and with intent to commit terrorist acts;

groups.[17] Consequently, the Court finds that they should not be declared guilty of forming an irregular armed group, as they were members of a group listed as a terrorist organization. This indicates that their objective was to commit acts of terrorism as specified by the law. Those who pledged allegiance to MRCD-FLN, as stated in this category, were charged with membership in a terrorist group, as well as committing and participating in acts of terrorism. They were declared guilty at the trial level, and some of them lodged appeals while others did not. Concerning NIZEYIMANA Marc, although he lodged an appeal arguing that the acts he committed do not amount to the offense of membership in a terrorist group, the current Court found him guilty of committing and participating in acts of terrorism, as indicated in paragraph 41 of the current case. For NSHIMIYIMANA Emmanuel, he was also found guilty by the instant Court, as stated in paragraph 89 of the current case. In general, the former members of MRCD-FLN who were found guilty of such offense without lodging an appeal are RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, NDAGIJIMANA Jean Chrétien, and HAKIZIMANA Théogène. This implies that they admit to having been members of a terrorist group.

[67] The instant Court finds therefore that the FLN group that the accused formed[18] to which others paid allegiance, is not an

[17] The FDLR was listed on 31 Dec. 2012 pursuant to the criteria set out in paragraph 4 of resolution 2078 (2012)

[18] Regarding the formation of such group, as indicated by the interrogation report of RUSESABAGINA Paul carried out on 31/08/2020, on sheet 4 and 5, he admitted having, along with other members of MRCD, decided to form an armed wing, which they named FLN. Although he advances that he did not play the role in the formation of FLN since it used to be the CNRD wing, but

irregular armed group because it was not intended to launch armed attack as specified in article 459, instead, following its criminal acts of attacks launched on Rwandan territory in Rusizi, Nyamasheke, Nyamagabe and Nyaruguru districts, such group intended terrorist acts within the context of articles 2, 18 and 19 of the Law nº 46/2018 of 13/08/2018 on counter terrorism as amended to date. For these reasons, the instant court finds that the appeal by the prosecution, requesting that the suspects be declared guilty of the offense of formation of an irregular armed group, lacks merit.

b. Regarding the offence of sponsoring terrorism

[68] The prosecution blames the trial court for not declaring RUSESABAGINA Paul guilty of sponsoring terrorism as an isolated offense. Instead, the court considered the criminal acts of this offense and other acts related to membership in a terrorist group comprehensively. The prosecution bases their assertion on the fact that the acts committed corroborate the provisions of article 3 (1°) (a) of the Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing.

[69] Thus, the prosecution states that the trial court should not have relied on the Law nº 46/2018 of 13/08/2018 on counter terrorism while deciding that his acts amounted to the offence of membership to terrorist group because in case of existence of two legal instruments that repress the same offence, the one which is special is applicable. They further argue that since both laws

at the same time they were forming MRCD, they also decided to give it an armed wing which they named FLN, and besides, it included other militiamen from RRM of NSABIMANA Callixte alias Sankara.

criminalize the sponsorship of terrorism, the law that should have been relied upon is Law Nº. 69/2018 of 31/08/2018 on the prevention and punishment of money laundering and terrorism financing. According to this law, the offense of terrorism financing is provided as a separate offense rather than being considered one of the acts constituting the offense of committing acts of terrorism.

[70] The prosecution further argues that the Court's finding that the offense of sponsoring terrorism should be attributed only to individuals or legal entities who sponsor without being founders or playing a leadership role, with knowledge that the sponsorship will be used for acts of terrorism, is a misinterpretation. According to the prosecution, the lawmaker did not provide any exemption in such cases, and therefore, individuals or entities meeting the constitutive elements of the offense should still be declared guilty of sponsoring terrorism. They argue that the trial court should have instead recognized that both offenses were committed in an ideal concurrence of offenses.

[71] The prosecution further argues that RUSESABAGINA Paul personally committed various acts of sponsoring terrorism, including providing pecuniary support and ammunition, as stated by the trial court in paragraphs 113-132 of the appealed judgment. These acts align with the provisions of Article 3(1°) (a) of the aforementioned Law Nº. 69/2018 of 31/08/2018. Therefore, there was nothing to prevent him from being convicted of sponsoring terrorism. Additionally, he should not be exempted from being declared guilty of membership in the terrorist group MRCD-FLN, as both offenses coexist and were committed with

the same intent of terrorism, constituting an ideal concurrence of offenses.

[72] RUSESABAGINA Paul chose not to comment or provide any response regarding this issue.

DETERMINATION OF THE COURT

[73] The Court of Appeal considers that the sponsorship of terrorist acts by RUSESABAGINA Paul, in which he holds a leadership role as clarified in paragraph 139 of the appealed judgment, is not subject to debate. Instead, it finds that the debate revolves around determining whether the acts of sponsoring terrorism committed by him should be prosecuted under the Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing, or the Law nº 46/2018 of 13/08/2018 on counter-terrorism, or both.

[74] Article 2 of the Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing outlines the individuals subject to this law as follows: "This Law applies to any individual or legal person that, in the framework of his/her or its profession, conducts, controls or advises on transactions involving deposits, exchanges, investments, conversions or any other movement of capital or any other property."

[75] Article 2 of the aforementioned Law nº 69/2018 of 31/8/2018 indicates that for a person to be prosecuted and repressed under the present law, there should be established that he/she is one of the persons falling within the scope of it.

Meaning being an individual or legal entity that, in the context of his/her or its profession:

- conducts,
- controls or
- advises on transactions involving deposits, exchanges, investments, conversions or any other movement of capital or any other property.

This was not the case in the Law n°47/2008 of 09/09/2008 on prevention and punishment of money laundering and terrorism financing, as it did not formulate any exceptions regarding the persons concerned. This implies that the legislator intended for the Law nº 69/2018 of 31/8/2018 on prevention and punishment of money laundering and terrorism financing to exclusively address the persons stated in article 2[19].

[76] Article 2 of the Law nº 46/2018 of 13/08/2018 on counter terrorism defines acts of terrorism. Its paragraph 4º, (b) provides that terrorist act consists of any promotion, **sponsoring**, contribution to, command, aid, incitement, teaching, training, attempt, encouragement, threat, conspiracy, organizing or procurement of any person, with the intent to commit any act referred to in point a). Article 19 of the this Law provides that "A person who commits, attempts to commit, participates in or supports terrorist acts commits an offence."

[19] *Article 2 of the law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing.* ***Scope of this Law : "****This Law applies to any individual or legal person that, in the framework of his/her or its profession, conducts, controls or advises on transactions involving deposits, exchanges, investments, conversions or any other movement of capital or any other property".*

[77] The simultaneous interpretation of these articles leads to the conclusion that a person who provides any form of sponsorship to terrorism is committing an act of terrorism. This law does not formulate any exceptions regarding the persons who should be prosecuted for such acts, as it aims to hold any responsible person accountable. In contrast, as substantiated above, in order to be prosecuted under the Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing, the suspect should fall within the category established by the law. The foregoing leads to the understanding that both legal instruments do not apply to the same persons. Therefore, it is not up for debate regarding the applicable law in each situation, as each legal instrument has its own scope of application. Therefore, in this context, the Law on prevention and punishment of money laundering and terrorism financing cannot be applied to the acts of sponsoring terrorism for which RUSESABAGINA Paul is charged without first establishing whether he falls within the category of suspects to whom it applies.

[78] The Court found Rusesabagina Paul guilty of the offence of sponsoring terrorist acts under the Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing. However, it did not determine whether he falls within the category of persons subject to such law. Instead, the Court held that the offence of sponsoring terrorism should be charged to another individual or legal person sponsoring a terrorist group without taking part in its formation or playing a role in its leadership, and without knowledge that such sponsoring shall be used for terrorism acts[20].

[20] See paragraph 138 of the appealed judgment

[79] The Court of Appeal finds that the issue at hand does not revolve around whether the suspect is a pioneer or leader of a terrorist group and is sponsoring terrorism, as determined by the trial court. Rather, the crucial matter to be determined is whether RUSESABAGINA Paul falls within the categories of individual's subject to the law criminalizing the acts of sponsoring terrorism, as specified in the law on prevention and punishment of money laundering and terrorism financing.

[80] The Court of Appeal finds that neither at the trial nor at the appeal level were there any discussions regarding whether RUSESABAGINA Paul, in the context of his work, is engaged in, leading, supervising, or providing advice on deposit, foreign exchange, finance, exchange, or any other form of money remittance that would subject him to this law. Consequently, the Court has no basis to hold him liable for the offense specified by Law nº 69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing.

3. REGARDING THE OFFENCES AGAINST WHICH THE SUSPECTS LODGED APPEAL

A. Regarding the offence of membership to terrorist group and participation in acts of terrorism

[81] The suspects who lodged appeal with respect to these offences are NSHIMIYIMANA Emmanuel and NIZEYIMANA Marc.

- **NSHIMIMANA Emmanuel**

[82] NSHIMIYIMANA Emmanuel and his legal counsel do not admit the charges of which he was found guilty by the trial court, which consist of membership to FLN. He only admits to

have been a member of FDLR and CNRD. He states that he joined these groups under coercion by their soldiers, who forced him to drop out of school at the age of 17. He further claims that he was not in a position to desert the group, as any attempt to do so resulted in severe punishment, including being beaten 300 whips. He asserts that individuals who tried to escape were subjected to serious punishments, including death. He states that the trial court disregarded his personal situation and the fact that MRCD-FLN is different from CNRD. This distinction was clarified by Colonel NIYONZIMA Arthémon, who served as the treasurer general of CNRD-Ubwiyunge, during his interrogations in the investigation. He further states that the fact that he has never been a member of MRCD-FLN is supported by the witness statements of Gen. MBERABAHIZI David. He concludes his plea by asserting that he was coerced into committing the offense, and therefore no liability should be imposed on him.

[83] The prosecution argues that the arguments presented by NSHIMIYAMANA Emmanuel at the appellate level are identical to the arguments he had raised during the trial. These arguments were thoroughly examined, and based on that examination, he was found guilty. The prosecution argues that when challenging the appealed judgment, it is the responsibility of the party to demonstrate the error made by the trial court. However, NSHIMIYIMANA Emmanuel has failed to point out any such mistake, particularly considering that the High Court, after analyzing the presented evidence and the arguments put forth by both parties, found him guilty of the offense. Moreover, he has not presented any additional evidence to substantiate his claim of a court error.

[84] The prosecution further argues that the trial court found NSHIMIYIMANA Emmanuel guilty of the offense of membership in the terrorist group MRCD-FLN based on various pieces of evidence, including his confession during the interrogation conducted by the Investigation organ. This is supported by the report dated 15 July 2020, which contains question and answer number 4, where he admitted to being a member of FDLR-FOCA from 2012 to 2016 and a member of MRCD-FLN until his arrest on 22 February 2020. He admitted the same before the prosecution on 14 August 2020 and on 24 September 2020. It further argues that NSHIMIYIMANA Emmanuel's claim that he has never been a member of a terrorist group based on the declarations of Gen. Mberabahizi David is unfounded. This is because during the interrogation of Gen. Mberabahizi David before the investigation bureau on 02 February 2020, he did not mention that NSHIMIYIMANA Emmanuel had never been a member of a terrorist group. Regarding the fact that he was still a minor at the time he joined those groups, the prosecution argues that this is not a valid reason to exempt him from criminal liability, as being a minor does not absolve him of responsibility.

DETERMINATION OF THE COURT

[85] The Court of Appeal finds that the arguments presented in the appeal by NSHIMIYIMANA Emmanuel revolve around the question of whether the trial court made an error in determining his membership to MRCD-FLN and in neglecting his personal situation, specifically the coercion he faced as a child and his inability to desert the group.

[86] Regarding the claim that NSHIMIYIMANA Emmanuel was never a member of the MRCD-FLN militia, the Court of Appeal determines that this argument lacks merit. The trial court, as explained in paragraph 445, established that NSHIMIYIMANA Emmanuel joined the FDLR militia and subsequently joined the CNRD, as he himself admitted. The Court of Appeal further finds that another undisputed fact is that the CNRD and its militia members merged with other militias in 2018, becoming part of the MRCD-FLN. Thus, at the time of NSHIMIYIMANA Emmanuel's arrest on 22/02/2020, the CNRD no longer had its own militia, as its members had become part of the FLN, which was allied with the MRCD. For these reasons, the Court of Appeal finds that the trial Court did not unjustly judge him, as at the time of his arrest, the CNRD militia had already transformed into the MRCD-FLN, of which he was a member and subsequently apprehended.

[87] Regarding the Trial Court's alleged disregard of his personal situation, claiming that he was coerced into joining the group as a child and unable to desert, the Court of Appeal finds such arguments groundless. As NSHIMIYIMANA Emmanuel himself admits, he joined the FDLR militia at the age of 17, therefore he was not a minor for whom no criminal liability can be invoked. It instead finds that, as determined by the High Court, his age was taken into consideration for the purpose of reducing the penalty. Instead of sentencing him to 15 years of imprisonment, he was sentenced to three years of imprisonment[21].

[21] Paragraph 687 of the appealed judgment

[88] The Court of Appeal further finds that he joined the CNRD at a mature age, as he was already 23 years old[22]. The foregoing also indicates that the defense based on coercion and minority would no longer remain valid since he chose to stay with the group even after the CNRD militia became MRCD-FLN.

[89] Regarding the fact that he was not in a position to desert, the Court of Appeal finds that besides his statements claiming that he tried to escape and was punished for it, and that even members who wished to desert were subjected to cruel punishments, he fails to provide any substantiating evidence. Additionally, the statements of HAKIZIMANA Uzziel and GATABAZI Joseph do not support his claim. The Court of Appeal finds, however, that the statements made by NSHIMIYIMANA Emmanuel and the interrogation statements should not be considered as reliable. This is because the individuals who made these statements did not voluntarily desert from the militia, and therefore their impartiality could be called into question. For all these reasons, the Court finds him guilty of the offence of membership to terrorist group. Thus, his appeal on this ground lacks merit.

- **NIZEYIMANA Marc**

[90] NIZEYIMANA Marc states that he pleads not guilty to the charges of membership in a terrorist group and committing and participating in acts of terrorism, for which he was declared guilty by the trial court. He only admits to having joined an irregular armed group. He explains that at the time of his apprehension, he held the rank of colonel in the FLN militia and served as the deputy commander of the second sector. He further

[22] At the time of FDLR break up, where one group nicknamed itself CNRD.

explains that in the year 2002, he joined the FDLR-FOCA and gradually rose through the military ranks until he became the commander responsible for the protection of the sector in Masisi. He states that in 2016, he decided to leave FDLR due to a disagreement regarding the census of refugees. The members who supported the idea of the census, including himself, left FDLR and formed the CNRD. With the soldiers under his command, he joined the CNRD and continued his usual activities. He states that in the year 2018, Gen. IRATEGEKA Wilson informed him that a coalition of MRCD had been formed as a political organization, but he didn't pay much attention to it because he didn't engage in conversations with politicians as he was primarily focused on being in the battlefield. As a result, he was unaware of the meeting locations and therefore has no connection to the offenses for which he was found guilty. He argues that the prosecution failed to provide substantial evidence to support their claims, relying solely on allegations.

[91] The prosecution argues that the appealed judgment based its findings on the personal statements of NIZEYIMANA Marc given during his interrogations with the Investigation and Prosecution organs, as well as during the hearings for provisional detention and the substantive trial. Additionally, the prosecution relied on statements from NIZEYIMANA Marc's comrades in terrorist groups, such as BIZIMANA Cassien, alias Passy, MUKANDUTIYE Angelina, KWITONDA André, IYAMUREMYE Emmanuel, and NSABIMANA Callixte, alias Sankara.

[92] The Prosecution states that article 107, pragraph 3 of the Law n° 027/2019 of 19/09/2019 relating to criminal procedure provides that where evidence to support the offence is presented,

the accused or his or her legal counsel may present all the defences available to him or her, raise a plea of inadmissibility or show that the allegations against him or her do not constitute an offence or he or she is innocent and present all the facts challenging the veracity of incriminating evidence. Nonetheless, in his appeal, NIZEYIMANA Marc and his legal counsel do not indicate anywhere that the trial court likely made a mistake by relying on such elements of evidence, and they never raised any facts challenging the incriminating evidence produced by the prosecution to that court.

[93] The prosecution argues that the Court considered the position he held in the FLN militia and the modalities of military decision-making, and that he did not provide any better explanations than what he had previously presented before the trial court. Thus, as decided in the judgment nº RPAA 0024/10/CS rendered by the Supreme Court on 14/03/2014 between the prosecution and NSENGIYUMVA and others[23], as long as he does not provide facts challenging the reasons considered by the trial court, the instant Court should declare his appeal without merit.

DETERMINATION OF THE COURT

[94] The Court of Appeal finds that the debates regarding this ground of appeal by NIZEYIMANA Marc are based on his rejection of the idea that joining the FLN militia constitutes the

[23] The appeal is dismissed as long as the appellant did not produce evidence challenging the evidence considered by the trial court. The court expressed it as follow: The Court finds therefore that Banque Populaire failed to produce disapproving evidence to the ones considered by the High Court to acquit Nyaguhirwa, thus, its appeal lacks merit […]"

offense of membership to a terrorist group and the offense of committing and participating in acts of terrorism.

[95] Article 2 of Law nº 46/2018 of 13/8/2018 on counter-terrorism defines acts of terrorism in the following two categories: *The first category includes actual acts affecting lives and properties of people as indicated in its subparagraph 4 a), committed with intent to:*

i. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint or to act according to certain principles;

ii. disrupt any public service, the delivery of any essential service to the public or to create a public emergency;

iii. create general insurrection in a State;

The second category includes acts contributing to the possibility of occurrence of actual act or its organization or commandment according to the provision of such subparagraph.

[96] In addition, paragraph 11 of that article defines a terrorist group as "structured group persons acting in concert and with intent to commit terrorist acts". Membership to a terrorist group is repressed by article 18 reading that: "A person who is member of a terrorist group or accepts to join a terrorist group or who deliberately participates in the acts of a terrorist group or a group which contributes to the capacity-building of another terrorist group, commits an offence (…). As for Article 19, it criminalizes

the commission and participation in acts of terrorism, stating that: A person who commits, attempts to commit, participates in or supports terrorist acts commits an offence (…).

[97] The concurrent reading of such provisions leads to the understanding that membership in, and the commission and participation in acts of terrorism are manifested in acts including membership in a structured group with the intent to commit acts that endanger life or cause damage to people's property. These acts are calculated to intimidate, spread fear, force, **coerce, or induce the government**, body, institution, the general public, or any segment thereof, **to perform or refrain from performing any act or to adopt or abandon a particular standpoint or to act according to certain principles.**

[98] The Court of Appeal is of the view that the statements of NIZEYIMANA Marc that he ignored the terrorism agenda of the terrorist groups he paid allegiance, are groundless because he joined FDLR-FOCA with knowledge that it was a terrorist group as held by the High Court[24], and remained a member until its disunity and where in the year 2016, he joined the CNRD group that later, allied itself to other parties to form MRCD-FLN.

[99] The Court of Appeal finds that NIZEYIMANA Marc himself provided explanations before the High Court, where he admitted that the agenda of the group was to overthrow the Rwandan government. He also acknowledged assisting military

24 In paragraph 229, the High Court held that FDLR, having launched terrorist attacks at different occasions on Rwandan territory that killed people, destroyed infrastructures, damaged private or public properties, is a terrorist group as held in different rulings of the Supreme Court such the case of MANIRAGUHA Rwego Gilbert and others and the stated cases of NSHIMIYIMA and SHEMA Jimmy as well as the United Nations Security Council that, on 31/12/2012, listed it among terrorist groups.

personnel in crossing the border to the Nyamasheke area. His acts constitute acts of terrorism specified by article 2, paragraph 4 of the aforementioned Law nº 46/2018 of 13/8/2018 on counter terrorism, as explained in paragraph 95 of the instant case.

[100] In contrast to his statements that he did not set foot on Rwandan territory where the offenses occurred, the instant Court also finds that they are unlikely to absolve him of the offense of committing and participating in acts of terrorism. This is because, as clarified in paragraph 38 of the current case, being a commander of the armed forces that committed acts of terrorism does not exempt him from liability for the acts committed by others. Instead, he is held liable for having committed **prior acts that facilitated the execution of subsequent acts.**

[101] For these reasons, the Court of Appeal finds that the appeal of NIZEYIMANA Marc on this ground is without merit.

B. Regarding the offence of Conspiracy and incitement to commit a terrorist act

[102] **NSABIMANA Jean Damascène alias Motard** lodged an appeal for the offences of conspiracy and incitement to commit acts of terrorism advancing that the trial court erred in declaring him guilty of such offences while they were not brought against him because it made a mistake to include him in the same group with MATAKAMBA Jean Berchmas and co-accused who incited others to commit such crimes.

[103] The prosecution argues that it agrees with NSABIMANA Jean Damascène, alias Motard, regarding the fact that he has never been charged or subjected to a sentence requisition for

conspiracy and incitement to commit acts of terrorism. Therefore, he should not be declared guilty.

DETERMINATION OF THE COURT

[104] The Court of Appeal finds that it is evident from paragraph 697 of the appealed judgment that the High Court, specifically the specialized chamber for international and transborder crimes, declared NSABIMANA Jean Damascène, alias Motard, guilty of the offenses of conspiracy and incitement to commit acts of terrorism. However, as stated in paragraph 679, it was already established that he was not among the convicted accused. Consequently, the Court of Appeal finds that based on the statements of NSABIMANA Jean Damascène, alias Motard, in which he concurs with the prosecution, the High Court wrongly convicted him. Based on the foregoing, he is not guilty of the aforementioned offense.

4. GROUNDS OF APPEAL WITH RESPECT TO PENALTIES

[105] The prosecution expressed dissatisfaction with certain sentences issued by the trial court, just as some of the defendants were also dissatisfied with their respective sentences. In the present case, the appeal by the prosecution should be examined in the first section of this title, followed by the examination of the grounds of appeal by the defendants in the second section.

A. GROUNDS OF APPEAL FORMULATED BY THE PROSECUTION

[106] The prosecution criticized the decision of the High Court to accept the sincere guilty pleas of some of the defendants and subsequently reduce their penalties. They were also dissatisfied with the fact that the court reduced the penalties for some of the defendants based on their status as first offenders. In addition, they criticize the High Court for reducing the penalties for the defendants to an extent that fell below the statutory minimum penalty. In this section, the present case will determine whether the guilty plea made by the defendants is sincere enough to warrant a reduction in their penalties. In the second section, the court will examine whether it was the first time the defendants committed a crime and whether this should be considered as a ground for reducing their penalties. Finally, the court will examine whether the High Court erred in reducing the penalty below the minimum provided by the law.

a. Whether the guilty plea made by the defendants is sincere enough to warrant a reduction in their penalties

[107] Regarding this ground, the prosecution criticizes the decision of the High Court, Specialized Chamber for International and Transborder Crimes, for reducing the penalties for defendants such as RUSESABAGINA Paul, NIZEYIMANA Marc, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, NSENGIMANA Herman, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène, and MUKANDUTIYE Angelina. The prosecution argues that the court based its decision on guilty pleas that were not made sincerely by the defendants.

- **With respect to RUSESABAGINA Paul**

[108] The prosecution argues that it objects to the decision of the trial court to rely on the confessions made by the defendant before the investigation bureau, the prosecution, and during the hearing on provisional detention. The prosecution believes that the court unjustly reduced the defendant's penalty based on these confessions, without taking into account the fact that the defendant changed his stance from the time of the hearing on the extension of his detention until the start of the trial. The defendant began challenging the jurisdiction of the court and eventually withdrew from the case without presenting a defense against the charges brought against him.

[109] The prosecution further argues that according to the provisions of article 59 of Law nº 68/2018 of 30/8/2018 determining offences and penalties in general, the person who benefits from a penalty reduction should be the one who sincerely pleaded guilty from the initial step. However, the prosecution contends that this is not the case for RUSESABAGINA Paul, especially considering the behavior he exhibited, which should not be regarded as a mitigating circumstance to warrant a penalty reduction for the offenses charged against him, including membership in a terrorist group and participation in acts of terrorism. For these reasons, the prosecution concludes that RUSESABAGINA Paul should not have been granted a penalty reduction since he did not sincerely admit to the charges before the court.

[110] RUSESABAGINA Paul remained silent regarding the prosecution's ground of appeal, as he did not submit any submissions or participate in the hearings since he did not appear.

- **With regard to NIZEYIMANA Marc**

[111] The prosecution advances their blame on the appealed judgment for the fact that when the Court found NIZEYIMANA Marc guilty of the offence of membership in a terrorist group and participating in acts of terrorism resulting in death, for which the normal penalty is life imprisonment, it sentenced him to a reduced penalty of only 20 years of imprisonment. This reduction was solely based on his guilty plea made during interrogation, the hearing on provisional detention, and the hearing on the merits. Nonetheless, as evidenced in his court submissions and defense during the hearings of 29/4/2019 and 6/5/2021, he denied almost all of the charges. Out of the nine (9) offenses, he admitted only one, which was membership in an irregular armed group, and the trial court acquitted him of that charge. He rejects the other offenses that he should have admitted and expresses apologies for them.

[112] The prosecution further states that the trial court held that NIZEYIMANA Marc admitted some charges during the investigation stage, but later rejected them during the hearing stage, with the purpose of denying the offense. Thus, they request the Court of Appeal to reconcile the defense by NIZEYIMANA Marc with Article 59 of the Law nº 68/2018 of 30/8/2018, determining offenses and penalties in general. This article states that a guilty plea that may serve as the basis for the reduction of the accused's penalty should be expressed at the outset of the trial and accompanied by a sincere confession. From the above analysis, it can be concluded that the guilty plea by NIZEYIMANA Marc has never been expressed in a manner that would constitute a mitigating circumstance for him.

[113] NIZEYIMANA Marc states that he sincerely pleaded guilty to the offense of membership in an irregular armed group

and expressed his apologies. However, he does not admit to the other charges brought against him by the prosecution, as he claims he did not commit them. Thus, it is unfounded to allege that he contradicted himself by denying the offenses of which he had confessed during the investigation. It should be noted that the statements they claim he made during his interrogation were not accurately recorded, as he himself has stated. This is why he rejected those statements during his interrogation by the prosecution and also during the hearing.

[114] Counsel MUREKATETE Henriette, who is assisting NIZEYIMANA Marc, states that her client does not plead guilty to the offenses for which he was declared guilty. However, she also argues that the trial court did not make any mistakes in reducing his penalty, as he had provided an explanation of the circumstances of the crime from the beginning of the proceedings. This is evidenced by paragraphs 376 and 377 of the appealed judgment.

- **Regarding NSANZUBUKIRE Félicien and MUNYANEZA Anastase**

[115] The prosecution argues that the trial court declared the defendants guilty of the offense of membership to the FDLR-FOCA terrorist group and reduced their penalty based on the confessions they made during the investigation stage, the trial on provisional detention, and the hearing on the merits of the case. The prosecution, however, notes that the Court acquitted them of the offense of joining an irregular armed group, to which they had pleaded guilty. In addition, based on their submissions and defense raised during the hearing, they asserted that they do not plead guilty to the offense of membership in a terrorist group. They stated that at the time of their arrest, they had already

transitioned from FDLR-FOCA to CNRD-Ubwiyunge. Furthermore, they have never returned to Rwanda since fleeing the country in 1994. They assert that they have never participated in any attacks by FDLR-FOCA within Rwanda, and they did not make any decisions during the period they were involved with such groups as they were not commanders. The prosecution argues that such defense presented by NSANZUBUKIRE Félicien and MUNYANEZA Anastase indicates that they did not plead guilty in a manner that would warrant the application of the mitigating circumstance.

[116] NSANZUBUKIRE Félicien asserts that from the very beginning of the proceedings, he sincerely pleaded guilty to the offense of belonging to FDLR-FOCA, which was subsequently classified as a terrorist group. However, he maintains that during his membership in the group, he did not personally commit any criminal acts, and the prosecution has not presented any evidence to the contrary. Consequently, he believes that the trial court did not err in considering his guilty plea and reducing his sentence, as it is legally permissible for the court to do so.

[117] MUNYANEZA Anastase affirms that he admitted his membership in FDLR-FOCA and acknowledges that the trial court properly considered mitigating factors and reduced his sentence accordingly. He does not believe there were any irregularities in this regard.

[118] Counsel TWAJAMAHORO Herman, representing NSANZUBUKIRE Félicien and MUNYANEZA Anastase, asserts that his clients offered comprehensive explanations to the trial court regarding the acts they confessed to committing. These explanations align with the classification of the offense for which they were found guilty, and the court recognized that their

admission of facts constitutes a mitigating circumstance that warrants a reduction in their sentence.

- **Regarding NSENGIMANA Herman, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien and HAKIZIMANA Théogène**

[119] The prosecution argues that the trial court reduced their penalties based on the guilty plea. However, according to their submissions and the hearing minutes, they did not admit the charges. The prosecution argues that they were charged with two crimes, but they only admit to membership in an irregular armed group. They refute the claim that this group was a terrorist group, as indicated in paragraph 434 of the appealed judgment. For these reasons, the prosecution contends that the trial court's belief that their statements amounted to a sincere admission of guilt, warranting a reduction in their penalties, is a mistake.

[120] The prosecution concludes its submissions regarding KWITONDA André, noting that he himself acknowledges the charges in his submissions. However, he also adds that he did not commit them intentionally, which, in the prosecution's view, indicates that he did not genuinely plead guilty. Therefore, the prosecution argues that the Court should not have considered this as a mitigating factor for reducing his penalty.

[121] NSENGIMANA Herman asserts that during the trial, he defended himself against two charges: membership in an irregular armed group and membership in a terrorist group. He admits to being part of these groups, which the trial court deemed as terrorist groups. Therefore, he argues that by acknowledging

his involvement in these acts, it implies that he admitted the charges from the very beginning of the proceedings.

[122] Counsel RUGEYO Jean, representing NSENGIMANA Herman, argues that the trial court did not commit any errors by considering his client's admission of charges. He asserts that the court thoroughly analyzed these admissions and determined that they constituted the offense of membership in a terrorist group.

[123] Regarding NDAGIJIMANA Jean Chrétien, he admits to being a member of FLN but claims that he was unaware that it was a terrorist group. He explains that he joined the group because his father was one of its commanders. He therefore asserts that he has admitted to certain acts, and the rest is up to the Court to decide.

[124] KWITONDA André states that from the beginning of the trial, he admitted to having participated in a terrorist group. However, he also provided explanations regarding the reasons he joined the group, including coercion and intimidation from its commanders who threatened him with punishment if he refused. Therefore, he believes that the trial court did not make any mistake by reducing his penalty.

[125] HAKIZIMANA Théogène states that the prosecution's allegation, that he should not benefit from a penalty reduction because he did not sincerely plead guilty, is groundless. He admited to having joined MRCD-FLN during all interrogations, and the trial court classified such groups as terrorists, which he does not refute. Consequently, the fact that the court relied on the facts he admitted to in order to reduce his penalty does not amount to a mistake.

[126] Counsel MUGABO Sharif Yussuf, assisting NDAGIJIMANA Jean Chrétien and HAKIZIMANA Théogène, alleges that based on the submissions of the prosecution, it is endorsed that KWITONDA André pleaded guilty. Therefore, considering article 59, paragraph (3˚), of the Law nº 68/2018 of 30/8/2018 determining offences and penalties in general, he personally finds that neither the prosecution nor the accused are in a position to criticize his guilty plea. He consequently declares that if the judge considered the sincere admission by KWITONDA André to have joined MRCD-FLN and applied it according to the law, and realized that he deserves to benefit from the penalty reduction, the trial court did not make any mistake. The same applies to NDAGIJIMANA Jean Chrétien and HAKIZIMANA Théogène, as he believes that they sincerely pleaded guilty to the acts they committed.

[127] Regarding NSHIMIYIMANA Emmanuel, he states that he never denied having joined the groups he is accused of since the interrogation phase by the investigation bureau, and that he provided explanations on the circumstances of his forced membership. He concurs with the arguments put forth by his legal counsel, URAMIJE James.

- **Regarding MUKANDUTIYE Angelina**

[128] The prosecution states that MUKANDUTIYE Angelina was found guilty of one offence, specifically membership in a terrorist group. Her penalty was reduced based on her guilty plea during the investigation and trial stages. However, before the trial court, she declared that she had incited girls to join FLN prior to the merger between CNRD and PDR-Ihumure, which formed MRCD. She raised these arguments with the intention of avoiding the charge of belonging to the MRCD-FLN terrorist

group. Nonetheless, various witnesses, including those whom she encouraged to join the group, confirmed that she motivated them to join FLN after the merger of CNRD with PDR-Ihumure to form MRCD. Therefore, her guilty plea was not in accordance with Article 59 of Law Nº. 68/2018 of 30/8/2018 determining offences and penalties in general.

[129] MUKANDUTIYE Angelina submits that she initially admitted to having joined MRCD and CNRD-Ubwiyunge, where she held the position of commissioner in charge of women empowerment. However, after they faced attacks by Maï-Maï, she motivated girls to join the military of these groups to defend themselves. She further states that had she known they would attack Rwanda, she would not have taken such action. She admits and apologizes for these acts.

[130] Counsel MUKARUZAGIRIZA Chantal, assisting MUKANDUTIYE Angelina, states that she finds the ground of appeal by the prosecution, which argues that her client should not have received a penalty reduction because she did not sincerely plead guilty, to be unfounded. She argues that her client admitted the charges sincerely, without withholding any information from the investigative authorities throughout the trial process. She further submits that MUKANDUTIYE Angelina explained to the trial court that, as a commissioner in charge of women's empowerment, her responsibilities were limited to motivating young girls to join the military, compiling a list of those willing to join, and submitting it to the military commander named IRATEGEKA Wilson, alias Antoine JEVA. She asserts that she had no knowledge of the subsequent activities, such as participating in trainings and launching attacks, as she was a civilian.

[131] Counsel MUKARUZAGIRIZA Chantal further submits that MUKANDUTIYE Angelina confessed to the court that she held the position of a commissioner in CNRD-Ubwiyunge, which merged with other groups to form MRCD-FLN, a designated terrorist group. This confession establishes her membership in a terrorist group, for which she was found guilty and resulted in a reduction of her penalty. She further states that the court did not make any mistake in admitting the guilty plea of MUKANDUTIYE Angelina. The court examined the plea and found it to be sincere, serving as a mitigating circumstance. This decision is in line with Article 58 of the Law nº 68/2018 of 30/8/2018 determining offences and penalties in general, as amended to date, which grants the judge the authority to assess the admissibility of mitigating circumstances.

DETERMINATION OF THE COURT

[132] The Court of Appeal finds that debates on this issue are based on determination whether the suspects stated in this part did not sincerely plead guilty of the charges in the sense that it should not have served them as a mitigating circumstance.

[133] Such issue is addressed by article 59, subparagraph one (1º) of the Law nº 68/2018 of 30/8/2018 stated above that specifies the characteristics of the guilty plea likely to entice the penalty reduction of the accused as well as its subparagraph three (3˚) indicating the time within the limit of which such guilty plea should be raised in order for the suspect to benefit it. Such article provides in its first (1˚) subparagraph that: "The judge may reduce penalties, especially when the accused, before the commencement of prosecution, pleads guilty and sincerely seek forgiveness from the victim and the Rwandan society and

expresses remorse and repairs the damage caused as much as would be expected from him/her"; The subparagraph three (3˚) states that: "The judge may reduce penalties, especially when, at the outset of the trial in the first instance, the accused pleads guilty by a sincere confession".

[134] This article replaced article 77 of the Organic Law n° 01/2012/OL of 02/5/2012 instituting the penal code stating that "The judge may among others reduce penalties when: 1° the accused, before the commencement of prosecution, pleads guilty and sincerely seek forgiveness from the victim and the Rwandan society and expresses remorse and repairs the damage caused as much as expected; 3° at the outset of the trial in the first instance, the accused pleads guilty by a sincere confession;

[135] While elucidating the concept of a guilty plea, the Supreme Court adopted a position in the case RPA 0343/10/CS rendered on 27/02/2015, which opposed the prosecution to MPIRANYA Boniface. In that case, the court held that for a guilty plea to have the potential to reduce the penalty that the suspect would otherwise face, it must be made sincerely, without any concealment or alteration of information intended for the court.[25]. The Court of Appeal, in judgment no RPAA 00381/2020/CA rendered on 18/3/2022, in the case between the Prosecution and MUSANGAMFURA Damien, also held that his guilty plea was characterized by the downplay of the gravity of the offense, rendering it invalid.[26]

[25] See the case n° RPA 0343/10/CS, Prosecution vs MPIRANYA Boniface, rendered by the Supreme Court on 27/02/2015, paragraph 13.

[26] See paragraphs 21 and 26 of the case n˚ RPAA 00381/2020/CA rendered on 18/03/2022, Prosecution vs MUSANGAMFURA Damien.

[136] According to the aforementioned provision and decided cases, the guilty plea that may lead to a reduction in the penalty for the accused should meet the following requirements:

- Being sincere means not altering or concealing information about the circumstances surrounding the commission of the offense, from the planning stage to the execution. This includes revealing the identities of individuals who played a role in the offense and disclosing the extent of the accused's involvement, as well as providing details about the methods employed to carry out the punishable act,
- The accused must demonstrate an understanding of the gravity of their punishable acts and the associated consequences,
- He/she must express remorse, indicating that they regret what has happened, acknowledge that it should not have occurred, and assure that it will never happen again.
- he/she seek forgiveness'
- And he/she is ready to repair the damage caused as much as would be expected from him/her.

Such proceedings should take place no later than the trial hearing level, at the very least.

[137] Based on the aforementioned, the present Court shall assess whether the trial court made an error in considering the guilty pleas of RUSESABAGINA Paul, NIZEYIMANA Marc, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, NSENGIMANA Herman, KWITONDA André,

NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène, and MUKANDUTIYE Angelina as constituting a mitigating circumstance in their favor.

- **Regarding RUSESABAGINA Paul**

[138] In paragraph 675 of the appealed judgment, the Specialized Chamber for International and Transborder Crimes provided an explanation stating that RUSESABAGINA Paul's admission of certain charges before the investigation organ and during the hearing, where he clarified the circumstances of their commission and expressed remorse, justifies his eligibility for a penalty reduction.

[139] As evidenced in paragraphs 12, 13, and 68 of the appealed judgment, RUSESABAGINA Paul raised two objections concerning the lack of jurisdiction of the High Court's Specialized Chamber for International and Transborder Crimes to try him and the dismissal of his motion to quash the decision on his provisional detention. However, the High Court dismissed these objections. Subsequently, RUSESABAGINA Paul withdrew from the case and refused to defend himself during the trial on the merits.

[140] Following the aforementioned explanations, the Court of Appeal finds that in order to consider the guilty plea by the accused, it should be unequivocally made either during the investigation stage or throughout the trial.

[141] The grounds enunciated in the preceding paragraph imply that the accused should reiterate the statements they made during the investigation stage, wherein they admitted the charges, before the trial judge by clearly indicating their intention to plead guilty

and providing detailed explanations regarding the circumstances of the crime. However, such a stance does not prevent the judge from considering the guilty plea, even if the accused retracts their plea and pleads not guilty during the trial stage[27].

[142] The criticism made by the prosecution is that the trial court reduced his penalty based on his guilty plea at the investigation stage, despite the fact that he did not appear in court and reiterate his guilty plea during the trial. The Court of Appeal finds that such a situation does not, in itself, amount to a mistake because a judge is permitted to assess the confession made during the pre-trial investigation based on its consistency, as explained above[28]. It rather finds that the problem lies in the fact that the trial court, based on the statements made by RUSESABAGINA Paul in paragraphs 112-118, where he mainly explained the formation of MRCD-FLN, the assigned duties, the distribution of responsibilities, and his admission of transferring money, concluded that he pleaded guilty and subsequently reduced his penalty. However, RUSESABAGINA Paul refutes the notion that FLN committed acts of terrorism. He alludes that if any acts of terrorism were committed by the FLN group, he expresses

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[27] '' *Le juge du fond apprécie souverainement la sincérité d'un aveu fait par le prévenu au cours de l'instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribuna*l'' Cass. 29 octobre 1956, 31 octobre 1961, 19 mars 1962, Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P.1042.
''*Cette règle vaut tant pour l'aveu judiciaire que pour l'aveu extrajudiciaire''*, Michel Franchimont, Ann Jacobs et Adrien Masset, idem.

[28] *"Tout en consacrant le principe de l'individualisation de la peine par le mécanisme des circonstances atténuantes dont il précise le régime, le législateur a abandonné au juge le soin de rechercher ce qui, dans le cas d'espèce, pourrait à ses yeux constituer une circonstance atténuante",* Christiane Hennau et Jacques Verhaegen, Droit pénal général, 3e édition, Bruylant, Bruxelles, 2003, P. 455, n° 510.

regret and seeks forgiveness as a leader. The instant Court deems such statements as scapegoat because, although he expresses regret and is sorry for what happened, he neither admits his own role nor the role of FLN. For all these reasons, the Court of Appeal deems that his guilty plea should not have been considered for the reduction of his penalty.

- **Regarding NIZEYIMANA Marc**

[143] The ruling of the appealed judgment, as indicated in paragraph 678, states that the High Court, specialized Chamber for international and transborder crimes, held that considering the circumstances of the commission of the offenses for which NIZEYIMANA Marc was declared guilty, and his guilty plea on some charges during the trial, investigation, and the hearing on provisional detention, he deserves to benefit from the reduction of his penalty as well.

[144] In paragraph 676 of the appealed judgment, the Court held that after analyzing the acts for which NIZEYIMANA Marc is charged, he is found guilty of membership in a terrorist organization and participation in acts of terrorism. However, the Court concluded that he is not guilty of the offenses of formation of an irregular armed group and maintaining relations with a foreign government with the intent to wage war.

[145] The ruling of the appealed judgment, in paragraphs 216 and 218, indicates that NIZEYIMANA Marc pleaded guilty to the offense of membership in irregular armed groups, specifically FDLR-FOCA and FLN, before the trial court. It is stated that he held the rank of colonel at the time of his apprehension and served as the deputy commander of the second sector. He also alluded that he did not commit any acts of terrorism on Rwandan territory

because he never returned to the country since he fled. He further advances that he did not join the MRCD-FLN terrorist group and did not give orders to commit acts of terrorism. He adds that the prosecution failed to demonstrate that the founding political agenda of such groups included the launch of terrorist attacks, thereby failing to prove that he joined them with full knowledge and support. He also argues that he became aware of the acts of terrorism committed by the FLN group during his interrogation before the investigation bureau.

[146] In paragraphs 225, 226, and 227 of the appealed judgment, the trial court found that during provisional detention, the trial in merit, and the hearings on provisional detention, as well as during interrogation by the investigation bureau and before the prosecution, NIZEYIMANA Marc admitted to having joined the FDLR-FOCA and FLN armed groups. However, the court concluded that these groups are not terrorist groups because their agenda was to topple the government, not to engage in terrorism. The paragraph 641 of the ruling of the appealed judgment reveals that while responding to the prosecution's requisitions regarding the penalties, NIZEYIMANA Marc stated that he requests the Court to acquit him of eight (8) charges because the prosecution failed to present incriminating evidence against him. Regarding the offence of membership in an irregular armed group, he states that he pleads guilty and expresses regret. Therefore, he argues that he should be eligible for a penalty reduction and suggests a one (1) year punishment. Additionally, if his statements are found to be valid, he requests that the sentence be suspended since it is his first time being prosecuted.

[147] As evident from NIZEYIMANA Marc's defense submission at the appeal level, he continues to deny his

membership in a terrorist group. This aligns with his statements during the hearing where he clarified that he does not plead guilty to the offense of membership in a terrorist organization or participation in acts of terrorism.

[148] Based on the foregoing, the Court of Appeal holds the view that despite being acquitted of the offense of formation of an irregular armed group by the trial court, NIZEYIMANA Marc pleaded guilty to this offense both before the trial court and before the instant Court. As a matter of fact, as indicated in paragraph 228 of the appealed judgment, the trial court ruled that the acts committed by NIZEYIMANA Marc in relation to his membership in FDLR-FOCA and FLN do not constitute the offense of formation of an irregular armed group. The court reasoned that these acts do not fall under offenses against state security or other countries, and that they were not committed with the intention of supporting an armed attack by irregular forces.
[149] The Court of Appeal, therefore, finds that since a guilty plea entails the admission of the essential elements of the crime in an unequivocal manner, as stipulated in Article 59 of the aforementioned law determining offenses and penalties in general, the trial court erred in reducing Nizeyimana Marc's penalty based on his admission of certain charges during the trial, provisional detention, or investigation, as he openly denied the charges for which he was declared guilty.

[150] For all the foregoing reasons, the Court of Appeal finds that the ground of appeal put forth by the prosecution is valid and well-founded.

- **Regarding NSANZUBUKIRE Félicien and MUNYANEZA Anastase**

[151] The ruling of the appealed judgment, specifically in paragraphs 684, indicates that the High Court, Specialized Chamber for international and transborder crimes, determined that NSANZUBUKIRE Félicien and MUNYANEZA Anastase should receive a penalty reduction based on various factors. These factors include considering the circumstances of the crimes for which they were found guilty, their admission of some charges during the trial, both in the merit stage and during provisional detention, as well as during the investigation stage. Additionally, their status as first-time offenders was also taken into account in determining their eligibility for a penalty reduction.

[152] As evidenced by paragraph 683 of the appealed judgment, the trial court clarified that according to article 503 of the Organic Law n° 01/2012/OL of 2/5/2012 constituting the penal code in force at the time NSANZUBUKIRE Félicien and MUNYANEZA Anastase committed the crimes they were charged with, they were found guilty of the offence of membership in a terrorist group. However, the trial court determined that they were not guilty of the offence of formation of an irregular armed group, as defined under article 459 of the same law.

[153] According to the defense submissions by NSANZUBUKIRE Félicien, as stated in paragraphs 339, 400, and 401 of the appealed judgment, he admitted his guilt regarding the offence of joining an irregular armed group. He explained that he unintentionally joined FDLR in the year 2002. However, on May 31, 2016, he deserted from FDLR and joined CNRD, where

he remained until his arrest by FARDC on February 9, 2017. He was then imprisoned before the formation of FLN. He also refuted the charge of membership in a terrorist organization, arguing that he was apprehended after he had already left FDLR and joined CNRD of his own volition. Therefore, he should not be held accountable under Article 503 of the aforementioned Organic Law n° 01/2012/OL of 2/5/2012, which penalizes individuals who are members of or willingly associate with a terrorist organization. Furthermore, he asserted that he did not participate in any attacks launched on Rwandan territory.

[154] As evidenced by paragraphs 402, 403, 404, and 405 of the appealed judgment, MUNYANEZA Anastase presented his defense before the trial court, admitting the charges related to his involvement in the irregular armed group. He acknowledged that he joined FDLR in 2002 and remained a member until 2016. Additionally, he stated that he joined CNDR-Ubwiyunge and remained with them until he was apprehended by the Congolese armed forces on 10/2/2017. He once again denied being part of a terrorist organization, as he was unaware of the American department listing FDLR as a terrorist group. He stated that he joined them under duress, engaged in combat activities, but was not an official member nor involved in their decision-making processes. Additionally, he emphasized that he was not listed among the members of any terrorist group identified by the UN.

[155] Taking into consideration paragraphs 432 and 433 of the appealed judgment and the defense assessment by NSANZUBUKIRE Félicien and MUNYANEZA Anastase, the trial court concluded that despite their admission of joining FDLR from 2002 until their desertion in 2026, they should still be found guilty of the offense of membership in a terrorist organization. The court dismissed their argument that they should

not be held accountable for the offense since they were no longer associated with FDLR at the time of their apprehension. According to article 503 of the Organic Law n° 01/2012/OL of 2/5/2012 mentioned earlier, the law not only penalizes the act of joining or being a member of a terrorist organization but also encompasses individuals who were members when the membership was still considered a criminal act.

[156] The Court of Appeal notices NSANZUBUKIRE Félicien's plea, where he admits to joining FDLR in 2002 unintentionally, but claims to have deserted the group and joined CNRD in 2016. Therefore, he argues that he should not be held accountable for the offense of membership in a terrorist organization since his apprehension took place after he had already deserted the group. Regarding MUNYANEZA Anastase, he asserts that he is not pleading guilty to the offense of membership in a terrorist organization. He states that while he remained with FDLR, he was unaware of the group's classification as a terrorist organization. He claims that he had no choice when he joined and participated in combat activities, but he emphasizes that he was never an official member of the group and was never involved in any decision-making processes. From the foregoing, while NSANZUBUKIRE Félicien and MUNYANEZA Anastase admit their involvement with FDRL-FOCA, they vehemently deny being aware of their affiliation with a terrorist organization. Consequently, they clearly demonstrate their refusal to accept the seriousness and consequences of the charges leveled against them, and in essence, they show no remorse whatsoever.

[157] Considering the explanations provided in the previous paragraph, the Court of Appeal determines that the guilty plea by

NSANZUBUKIRE Félicien and MUNYANEZA Anastase does not comply with the law[29] to the extent of constituting one of the mitigating circumstances for a reduction in penalty. Thus, such ground of appeal by the prosecution is founded.

- **Regarding NSENGIMANA Herman, KWITONDA André, NDAGIJIMANA Jean Chrétien, NSHIMIYIMANA Emmanuel and HAKIZIMANA Théogène**

[158] The High Court, Chamber of International and Transborder Crimes, in paragraph 684 of the appealed judgment, explained that taking into account the circumstances under which the crime for which HAKIZIMANA Théogène was found guilty was committed, his admission of certain charges during the trial, investigation, and hearings on provisional detention, as well as his status as a first-time offender, he is deemed deserving of a penalty reduction. In paragraph 658 of the appealed judgment, the trial court explained that the fact that NSENGIMANA Herman and KWITONDA André admitted their membership in a terrorist group, for which they were found guilty, should warrant a reduction in their penalties.

[159] In paragraph 687 of the appealed judgment, the Court explained that considering NSENGIMANA Herman and KWITONDA André's admission of their membership in a terrorist group, they should be granted a reduction in their penalties.

[29] Article 59 of the Law nº 68/2018 of 30/08/2018 determining offences and penalties in general

[160] In paragraph 199 of the appealed judgment, the trial court stated that NSENGIMANA Herman, as he declared before the investigation bureau, the prosecution, and the court that heard the case regarding provisional detention, pleaded guilty during the hearing on the merits of the case. He admitted to being a member of FLN, influenced by NSABIMANA Callixte, also known as Sankara. However, he claimed that he was unaware that FLN was an irregular armed group or a terrorist organization. According to NSENGIMANA, their objective was to fight until they could negotiate with the government of Rwanda. It also indicated that NSENGIMANA Herman explained that he is not guilty of the offense of membership in the terrorist group of MRCD-FLN since he is neither a member of MRCD nor one of its founding members. He further argued that the prosecution is prosecuting him solely for his involvement in FLN, which is a distinct military wing separate from MRCD, which is a political organization.

[161] In paragraph 437 of the appealed judgment, the trial court established that NSHIMIYIMANA Emmanuel admitted to joining FDLR-FOCA. He stated that this was due to coercion by its soldiers, who took him from school when he was 17 years old. He also acknowledged joining FLN, which he clarified during his interrogation and the hearing on provisional detention. However, he emphasized that he did not join MRCD-FLN because it was distinct from CNRD. Regarding paragraph 438 of the judgment, the trial court determined that during KWITONDA André's plea on the merits, he admitted to joining FDLR-FOCA, CNRD, and FLN. However, he claimed that he was unaware of these organizations being classified as terrorist organizations. He made this declaration during his interrogation by the investigation

bureau, the prosecution, as well as during the hearing on provisional detention.

[162] In paragraph 440 of the appealed judgment, the trial court explained that HAKIZIMANA Théogène admitted during the hearing on the merits of the case, as he had previously stated before the investigation bureau and the prosecution, to having joined FDLR-FOCA and CNRD-Ubwiyunge. However, he asserted that he was unaware that these were classified as terrorist organizations. He further stated that he continued to stay with them under duress and fear of severe punishments, including executions of those who wished to desert, as well as propaganda aimed at inciting disloyalty towards the Government of Rwanda. It was clarified that HAKIZIMANA Théogène was never a member of MRCD-FLN.

[163] As indicated in paragraph 449 of the appealed judgment, the trial court ruled that NDAGIJIMANA Jean Chrétien pleaded guilty during the hearing on the merits, as he had done during the investigation, prosecution, and trial on provisional detention stages. He admitted to joining the FLN military wing, but claimed that it was not voluntary. He stated that he remained with the group out of fear of severe penalties and due to the propaganda they were exposed to. Therefore, he argued that he should not be held responsible for the offenses he committed under coercion.

[164] Based on the foregoing, the Court of Appeal determines that while NSENGIMANA Herman pleaded guilty before the trial court to joining the FLN group, he did not admit that it was a terrorist group. He stated that it was a separate military group from MRCD, which is a political organization. Furthermore, the prosecution did not provide any evidence establishing his membership or founding status within MRCD-FLN.

Accordingly, the trial court should not have reduced his penalty based on his guilty plea regarding the offense of membership in a terrorist group, as he did not do so sincerely. This is especially evident from his statements, which indicate that he does not fully grasp the severity of the consequences of his criminal actions. This lack of understanding implies a lack of remorse on his part.

[165] Regarding KWITONDA André, the Court of Appeal determines that although he admitted to joining FDLR-FOCA and MRCD-FLN groups, he asserts that he was unaware of their classification as terrorist groups. He further argues that he remained involved with them due to coercion and fear. The foregoing did not prevent the trial court from finding him guilty of the offence of membership in terrorist groups. Thus, since the court declared him guilty, it should not have reduced his penalty based on his guilty plea. Considering his plea, it is evident that he never truly grasped the illegality of his actions, showed remorse, or sought forgiveness. For all these reasons, the appeal by the prosecution in relation to this ground is justified.

[166] Regarding NSHIMIYIMANA Emmanuel and NDAGIJIMANA Jean Chrétien, the Court of Appeal acknowledges that, similar to the aforementioned accused individuals, they admitted to joining the FDLR-FOCA and the FLN. However, they deny doing so willingly and assert that they were unaware of these groups being classified as terrorist organizations. They claim that the FLN is separate from the MRCD. Therefore, the trial court considers these arguments as a strategy aimed at invalidating the credibility of their guilty pleas and undermining the possibility of receiving a reduction in their penalties. Consequently, the prosecution's ground of appeal regarding this matter is justified.

[167] Regarding HAKIZIMANA Théogène, the Court of Appeal notes that he admitted to joining FLN. However, he asserts that he did so under coercion and fear of reprisals, and he was unaware that it was a terrorist group. He claims that the commanders never informed them of the group's terrorist nature, and he himself never engaged in any acts of terrorism. The current Court therefore concludes that his assertion of being unaware that FLN was a terrorist group implies that he does not accept the unlawfulness of his actions. This demonstrates a lack of understanding of their seriousness and consequences, which diminishes the significance of his guilty plea. For that reason, his guilty plea should not have been one of the grounds considered for reducing his penalty.

- **Regarding MUKANDUTIYE Angelina**

[168] In paragraph 685 of the appealed judgment, the High Court, Chamber of International and Transborder Crimes, provided an explanation that taking into account the plea of guilt by MUKANDUTIYE Angelina, her cooperation with justice authorities, and her status as a first-time offender, she should be eligible for a reduction in penalty.

[169] As noted in paragraph 455 of the appealed judgment, the trial court, after evaluating the defense presented by MUKANDUTIYE Angelina, concluded that during the plea in merit, she admitted to holding the position of commissioner in charge of family and the promotion of girls and women in MRCD-FLN. She also acknowledged her role in encouraging girls to join the military. However, she claimed to be unaware that it was a terrorist group, which she even admitted during her interrogation by the investigation bureau, the prosecution, and in court during the hearing on provisional detention.

[170] According to paragraph 424 of the appealed judgment, it is noted that MUKANDUTIYE Angelina, during the hearing before the trial court, stated that she conducted the sensitization activities while they were still affiliated with CNRD, prior to forming a coalition with other political organizations. She clarified that her involvement stemmed from her commitment to showcasing the capabilities of girls as well.

[171] The Court of Appeal finds that MUKANDUTIYE Angelina was convicted of the offense of membership in a terrorist group. As mentioned in paragraph 424 of the appealed judgment, she acknowledged in the trial court that she initially joined FDLR and later became a member of CNRD in 2016, which had a military wing called FLN. She was appointed Commissioner in charge of family and the promotion of girls and women. In paragraph 426 of the judgment, MUKANDUTIYE Angelina concluded her defense by admitting that she was a member of MRCD-FLN, but she claimed that she was unaware of its designation as a terrorist organization.

[172] The Court of Appeal also notes that as documented on page 6 of the hearing minutes dated 22/7/2021 before the trial court, MUKANDUTIYE Angelina admitted to actively encouraging girls to join the military wing of MRCD-FLN. Furthermore, there were two girls who were interrogated and provided statements regarding this matter.

[173] Considering the aforementioned points, the Court of Appeal concludes that, similar to the other defendants, the argument put forth by MUKANDUTIYE Angelina, claiming unawareness of MRCD-FLN's status as a terrorist group, is indicative of her failure to acknowledge the illegality of her actions. It appears to be a mere subterfuge aimed at evading

responsibility for the charges against her. For this reason, the instant Court deems the ground of appeal by the prosecution with respect to her to have merit.

b. Whether the trial court erred by reducing the penalty with respect to some of the suspects on the basis that they were the first-time offenders

[174] The ground of appeal by the prosecution concerns the accused, including RUSESABAGINA Paul, NIZEYIMANA Marc, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, and MUKANDUTIYE Angelina.

- **Regarding RUSESABAGINA Paul**

[175] Regarding the fact that RUSESABAGINA Paul benefited from a penalty reduction based on being a first-time offender, the prosecution declares that it does not consider it a mitigating circumstance in itself. Specifically, the trial court disregarded the provision of Article 49 of the [30] Law determining offenses and penalties in general, as well as the gravity of the offenses he committed, which resulted in loss of life, injuries, and property damage for numerous individuals. They further argue that the rejection of the penalty reduction based on the gravity of the offense aligns with the position adopted in the judgment RPA 0298/10/CS [31] rendered by the Supreme Court on 24/2/2012, in

[30] Article 49 of the said law provides that: "A judge determines a penalty according to the gravity, consequences of, and the motive for committing the offence, the offender's prior record and personal situation and the circumstances surrounding the commission of the offence."

[31]The Court held that: *"Among the charges of MUSHAYIDI Déogratias, include the offence of conspiracy against his country with the intent overturn the established government, by sowing distrust and unrest within the*

the case between MUSHAYIDI Déogratias and the Prosecution, specifically in paragraph 40. Therefore, the prosecution requests that RUSESABAGINA Paul be sentenced to life imprisonment as well.

[176] RUSESABAGINA Paul remained silent about this ground, both in the form of court submissions and during the hearing before the court, as he never appeared.

- **Regarding NIZEYIMANA Marc**

[177] Regarding the fact that NIZEYIMANA Marc is a first-time offender, which was also one of the bases for his penalty reduction by the court, the prosecution argues that it disregarded the gravity of the offenses he committed, which affected various individuals and their properties. As they established in relation to RUSESABAGINA Paul, the refusal to reduce the penalties based on the gravity of the offense, despite the suspect being a first-time offender, aligns with the position adopted in the judgment n° RPA 0298/10/CS rendered by the Supreme Court on 24/2/2012 in the case between the Prosecution and MUSHAYIDI Déogratias.

[178] NIZEYIMANA Marc remained silent about this ground of appeal by the prosecution.

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population through his writings. The Court finds therefore that whoever a person is, the sole act of conspiracy against one's country by waging the war without considering the number of people likely to die, the damages and destruction of the country, amounts to a cruel crime to the extent that the Court deems that MUSHAYIDI Déogratias does not deserve forgiveness due to the severity of the crimes of which he is charged."

- **Regarding NSANZUBUKIRE Félicien and MUNYANEZA Anastase**

[179] Regarding the fact that the trial court reduced their penalty based on them being first-time offenders and the argument that the committed offense did not result in consequences since they never launched terrorist attacks in Rwanda, the prosecution argues that NSANZUBUKIRE Félicien and MUNYANEZA Anastase, being senior officers of FDLR-FOCA - the groups that launched attacks in Rwanda on different occasions - spent fourteen (14) years in a terrorist organization, as stated in paragraph 432 of the appealed judgment (they remained in FDLR-FOCA from 2002 until 2016). The prosecution further emphasizes that during this period, they had ample time to change their minds, yet they chose not to leave such groups voluntarily until their apprehension. It also states that alleging to be first-time offenders is not true because NSANZUBUKIRE Félicien appears on the UN's list as one of the decision-makers in those terrorist groups. Thus, the fact that the trial court relied on them to reduce their penalty constitutes a mistake.

[180] NSANZUBUKIRE Félicien and MUNYANEZA Anastase remained silent about such ground raised by the prosecution.

- **Regarding MUKANDUTIYE Angelina**

[181] Regarding the fact that the trial court reduced the penalty of MUKANDUTIYE Angelina based on being a first-time offender, the prosecution deems it inaccurate because she has already been sentenced to life imprisonment by the Gacaca Court.

[182] MUKANDUTIYE Angelina states that she was notified of her conviction in the year 2006, but she has not replied anything about it until now. Consequently, the prosecution should not rely on such arguments and should not advance that she does not deserve a penalty reduction with respect to other charges.

[183] Counsel MUKARUZAGIRIZA Chantal, assisting MUKANDUTIYE Angelina, declares that the prosecution's appeal ground, which argues that MUKANDUTIYE Angelina should not have received a penalty reduction based on being a first-time offender due to her previous sentencing by Gacaca courts, should not be given merit. This is particularly because it is not the sole reason the trial court relied upon to reduce her penalty. Instead, all the reasons provided by the trial court in paragraph 685 of the appealed judgment should be considered.

DETERMINATION OF THE COURT

[184] Debates in relation to this ground revolve around whether the gravity of the offense she is charged with constitutes a barrier to penalty reduction, despite it being her first time being prosecuted.

[185] There are statutory mitigating circumstances that, when present, warrant the application of penalty reduction by the judge. They are provided in articles 54 (minority) and 55 (Provocation) of the Law n˚68/2018 of 30/8/2018 determining offences and penalties in general. However, the law provides that a judge may consider other mitigating circumstances, including those specified in Article 59. However, it is evident that these circumstances are not the only grounds upon which the judge is

obligated to rely, as the provision mentions them as examples of mitigating circumstances. It implies that he/she may even rely on other reasons, including the fact that the accused is a first-time offender. He/she is allowed such possibility by articles 49 and 58 of the Law n° 68/2018 of 30/8/2018 determining offenses and penalties in general. Article 49, paragraph one, provides that "A judge determines a penalty according to the gravity, consequences of, and the motive for committing the offence, the offender's prior record and personal situation and the circumstances surrounding the commission of the offence." Regarding article 59, it reads that "The judge assesses whether mitigating circumstances decided by a judge are admissible. The reasons for acceptance of mitigating circumstances must be stated in the judgment."

[186] Both legal provisions support the principle that a judge may consider the accused's prior, present, and future personal situations in relation to the commission of the offense during the sentencing phase. The judge can evaluate these factors in light of the circumstances surrounding the offense, its gravity, and its consequences to society. Both provisions further imply that a judge has the right to grant the benefit of mitigating circumstances to the accused, regardless of whether the charge consists of a felony or a misdemeanor, as the law does not place any exceptions to any offense.

[187] Considering the foregoing, the application of mitigating circumstances does not undo the consequences of the offense. This means that the reduction of the penalty for the convict does not negate the gravity of the offense he/she committed[32]. It

[32] *"Un constat de circonstances atténuantes se réfère à l'évaluation de la sentence et n'ôte rien à la gravité de l'infraction. Il atténue la peine et non le*

entails that the gravity and aggravating circumstances of the offense do not prevent the judge from considering the available mitigating circumstances in the interest of the accused. The objective is to provide a discretionary sentence based on the circumstances of the offense and the personal situation of the accused. This is the reason why the legislator stated in Law N°. 68/2018 of 30/8/2018, mentioned above, that the judge must consider both aggravating and mitigating circumstances in determining the penalty. [33]

[188] In subsequent paragraphs, it will be determined whether the Court made a mistake by reducing the penalties for the suspects RUSESABAGINA Paul, NIZEYIMANA Marc, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, and MUKANDUTIYE Angelina based on the ground of being first-time offenders.

- **Regarding RUSESABAGINA Paul and NIZEYIMANA Marc**

[189] With respect to RUSESABAGINA Paul and NIZEYIMANA Marc, as indicated above, among the mitigating circumstances considered by the trial court, the fact that they are first-time offenders was also taken into account[34].

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crime. On n'observera toutefois que l'atténuation de la peine ne réduit en aucune façon le degré de gravité du crime, la question relève davantage du pardon que du moyen justificatif", affaire n° ICTR-97-23-S, Procureur contre Jean KAMBANDA, Jugement portant condamnation, p.27, n°56.

Article 49, paragraph 2 of the Law n° 68/2018 of 30/8/2018 determining offences and penalties in general.

[34] Paragraph 675 and 678 of the appealed judgment.

[190] Based on the provisions and legal principles stated above, the Court of Appeal finds that the prosecution's arguments, stating that the fact that RUSESABAGINA Paul and NIZEYIMANA Marc are first-time offenders, according to Article 49 of the aforementioned Law N°. 68/2018 of 30/8/2018, is not in itself a mitigating circumstance because the offenses they committed are serious crimes, should not be given merit. This is because the mentioned article grants the judge the right to rely on various factors, including the gravity of the offense, its consequences, the motive behind its commission, the personal conduct of the suspect, their personal situation, and the circumstances of the offense. The judge can also refer to Article 58 of the Law No. 68/2018 of 30/8/2018 mentioned above to determine an appropriate penalty.

[191] Regarding the prosecution's arguments citing the Supreme Court's judgment No. RPA 0298/10/CS in the case of MUSHAYIDI Déogratias, where it was held that due to the cruel nature of the offense, he should not be pardoned based on the gravity of the charges, they intended to imply that the same should have applied to RUSESABAGINA Paul and NIZEYIMANA Marc in the instant case. With respect to the instant case, the Court of Appeal finds that the prosecution's arguments reflect a misapprehension of the interpretation of articles 49 and 58 of the Law No. 68/2018 of 30/8/2018 mentioned above. These provisions grant the judge the discretion to consider the specific situation and circumstances of the offense, as well as the personnality of the offender, based on the unique aspects of each case. Such position is indeed stressed by the fact that in the judgment n˚ RPA 0255/12/CS of INGABIRE UMUHOZA Victoire and co-accused rendered on 13/12/2013, the latter who was also prosecuted for conspiracy as it was the

case for MUSHAYIDI Déogratias, which case was even most recent,[35] the Supreme Court reduced her penalty on the basis that she was the first offender.

[192] For those reasons, the Court of Appeal finds such appeal ground advanced by the prosecution without merit.

- **Regarding NSANZUBUKIRE Félicien and MUNYANEZA Anastase**

[193] According to paragraph 684 of the appealed judgment, the trial court held that the fact that they are the first offenders, constitutes one of the mitigating circumstances likely to occasion the reduction of the penalty for the offence of membership to terrorist group committed by NSANZUBUKIRE Félicien and MUNYANEZA Anastase.

[194] Based on the legal provisions and principles raised above, the Court of Appeal finds that the prosecution's arguments regarding NSANZUBUKIRE Félicien and MUNYANEZA Anastase are not meritorious. The prosecution contends that their involvement as senior officers in FDLR-FOCA, their extended period of engagement in the terrorist group (14 years), and the gravity of the offense they were found guilty of, along with the consequences of the attacks launched by FDLR-FOCA on Rwandan territory, should have precluded them from benefiting from a penalty reduction based solely on being first-time offenders or the argument that the offense did not have consequences since they did not personally launch the attacks.However, as explained earlier, the gravity of the offense

[35]Mushaidi Déogratias case was tried on 24/02/2012 while that of Ingabire Umuhoza Victoire was tried on 13/12/2013

or the presence of aggravating circumstances does not prevent the judge from considering the existence of mitigating circumstances in favor of the convict. The judge has the discretion to reduce the statutory penalty and impose an appropriate penalty based on the specific circumstances of the offense and the personal situation of the convict.

[195] For all these reasons, the Court of Appeal finds that the prosecution's ground of appeal lacks merit.

- **Regarding MUKANDUTIYE Angelina**

[196] As indicated above, one of the mitigating circumstances considered by the trial court that led to the reduction of the statutory penalty for the offense MUKANDUTIYE Angelina was found guilty of is the fact that she is a first-time offender.[36].

[197] The analysis of the appealed judgment reveals that during the trial court proceedings, the prosecution did not raise the issue of MUKANDUTIYE Angelina being convicted by Gacaca Courts. Instead, it was Mukandutiye Angelina herself who, according to the minutes of the hearing on 22/7/2021, informed the court about her previous conviction by the Gacaca Courts, where she was sentenced to life imprisonment with solitary confinement.

[198] The Court of Appeal finds that the prosecution did not present any evidence before the trial court to substantiate the statements made by MUKANDUTIYE Angelina. It is worth noting that the trial itself did not mention anything about it.

[36]Paragraph 685 of the appealed judgment.

[199] The Court of Appeal finds that the prosecution cannot criticize the appealed judgment on the basis that the trial court considered MUKANDUTIYE Angelina as a first offender, especially since the prosecution did not raise this issue or present relevant supporting evidence after MUKANDUTIYE Angelina disclosed before the court her conviction by the Gacaca Court.

[200] The Court of Appeal, however, finds that during the appeal proceedings, the prosecution submitted a copy of the judgment established by the National Service for Gacaca Courts, which pertains to the offense of the second category. The submitted document indicates that the Gacaca Court of Nyarugenge Sector in Nyarugenge District had sentenced MUKANDUTIYE Angelina to life imprisonment with seclusion on 23/11/2008. This document was presented by the prosecution on 21/2/2022.

[201] Based on the foregoing, the Court of Appeal finds that if the trial court had been aware of the decision of the Gacaca Court of Nyarugenge Sector, it would not have concluded that MUKANDUTIYE Angelina was a first offender. Therefore, the current court should rectify this error. Consequently, the ground that she is a first offender should not be considered as a basis for reducing her penalty.

a. Whether the trial court erred by reducing the penalties for the defendants below minimum statutory penalty

[202] The prosecution criticizes the trial court to have reduced the penalty of the defendants including RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, NIKUZWE Siméon, NTABANGANYIMANA Joseph,

NIYIRORA Marcel, IYAMUREMYE Emmanuel, NSENGIMANA Herman, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène and MUKANDUTIYE Angelina, below the statutory minimum penalty for the offences they are accused of.

[203] They further argue that the trial court misapplied article 60 of Law nº 68/2018 of 30/8/2018, which determines offenses and penalties in general, in reducing the penalties of the defendants. They contend that the court improperly applied the provisions regarding the reduction of penalties in cases of mitigating circumstances, specifically where the penalty of life imprisonment would be reduced but not to a duration below twenty-five years (25). A fixed-term imprisonment or a fine can be reduced, but it should not be lowered below the minimum penalty prescribed for the committed offense.

[204] The prosecution also argues that the trial court disregarded articles 47 and 48 of the aforementioned Law, which prohibit the judge from handling the case in violation of the provisions of the law and restrict any reduction of the penalty for a specific offense beyond the scope and manner determined by the law. Thus, it concludes that by reducing the penalty below the minimum statutory requirement, the trial court disregarded the law.

[205] The prosecution also criticizes the trial court for relying on previous decisions of the Supreme Court and the Court of Appeal to reduce the penalties. They argue that according to Article 95 of the Constitution, which establishes the hierarchy of laws, court decisions are not superior to the law itself. Therefore, given that the law was both existent and clear, it should have been

applied unless there was a Supreme Court decision declaring it unconstitutional. Even in such a circumstance, adopting a position that violates the law should not be justified. The prosecution further argues that the precedents relied upon by the trial court were misinterpreted, as the Supreme Court decision regarding the application of article 60 was mistakenly expounded, and this article has never been declared repealed by the same Court.

[206] RUSESABAGINA Paul remained silent regarding this ground of appeal, neither making any court submissions nor appearing during the court hearing.

[207] NSABIMANA Callixte alias Sankara, NSENGIMANA Herman and their legal Counsel RUGEYO Jean, advance that the trial court noted that the mitigating circumstances with regard to them were valid and deemed that the objection to grant the penalty below the statutory minimum penalty would amount to violation of fair justice consecrated by article 29 of the Constitution of the Republic of Rwanda. Regarding NSABIMANA Callixte alias Sankara specifically, while the prosecution presented their requisitions, they requested the reduction of penalties due to his guilty plea. As for NSENGIMANA Herman, the trial court, based on mitigating circumstances, sentenced him to five (5) years of imprisonment. For him, the court did not make any mistake in imposing a reduced penalty in their case.

[208] Counsel MUREKATETE Henriette, assisting NIZEYIMANA Marc, argues that the trial court's decision to impose a penalty below the statutory minimum was done in pursuit of fair justice, as outlined in Article 29 of the Constitution

of the Republic of Rwanda. Therefore, she asserts that the trial court did not make any mistakes in its judgment.

[209] Counsel TWAJAMAHORO Herman, assisting NIKUZWE Siméon, asserts that he sees no issue with the trial court's decision to find his client guilty of the offense of membership in a terrorist organization and impose a ten-year imprisonment term, which is below the statutory minimum penalty. He asserts that, as adopted by the Supreme Court in its judgment regarding the judge's discretion in assessing mitigating circumstances and imposing sentences, the role of the penalty should not be perceived solely based on the gravity of the committed offense. The interests of the accused should also be taken into consideration. He therefore contends that if he correlates that with the provisions of Article 151 of the Constitution of the Republic of Rwanda, which guarantees the independence and freedom of judges to make decisions, he concludes that the trial court did not err in reducing the penalties imposed on NIKUZWE Siméon below the statutory minimum penalty.

[210] Counsel NGAMIJE KIRABO Guido, assisting NTABANGANYIMANA Joseph, argues that in order to deliver fair justice, a judge cannot solely rely on statutes, but must also consider relevant court decisions. He refers to the position adopted by the Supreme Court in the case RS/INCOST/SPEC/00003/2019/SC of 4/12/2019 between KABASINGA Florida and the Government of Rwanda, the case RPAA 00032/2019/CA of the Court of Appeal of 28/2/2020 between the Prosecution and NZAFASHWANIMANA Jean de Dieu, and the case n° RPA 00031/2021/CA rendered on 28/10/2021. These cases establish that preventing a judge from

reducing a penalty would violate the principle of fair justice. Therefore, in his view, the trial court did not make any mistake in reducing the penalties of his clients.

[211] Counsel URAMIJE James, assisting IYAMUREMYE Emmanuel, NIYIRORA Marcel, and NSHIMIYIMANA Emmanuel, argues that article 60 of Law n° 68/2018 of 30/08/2018 determining general offenses and penalties, should not prevent a judge from delivering fair justice independently. The judge should have the freedom to consider relevant reasons and factors when pronouncing penalties. In his opinion, he finds it justified that the court has reduced the penalties for his clients.

[212] Counsel MUGABO Sharif Yussuf, assisting KWITONDA André, NDAGIJIMANA Jean Chrétien, and HAKIZIMANA Théogène, states that, on one hand, Article 60 of Law nº 68/2018 of 30/8/2018 determining offenses and penalties in general, does not seem to pose any problems. That is why, when the Supreme Court tried judgment nº RS/INCONST/SPEC/00003/2019/SC, it did not repeal it immediately. However, on the other hand, this provision becomes problematic if the judge deems it necessary to reduce the penalty below the statutory minimum. He declares that if confronted with the provisions of Article 152, subparagraph 5 of the Constitution of the Republic of Rwanda, which guarantees the independence of judges, such an article would limit his/her freedom while he/she has to uphold the principles of fair justice as stated in Article 29 of the Constitution.

[213] He further advances that the statements in the previous paragraph led the trial court to refer to article 49 of the Law nº 68/2018 of 30/8/2018 determining offences and penalties in general in such judgment, providing for sentencing factors, and

article 9 of the Law nº 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, stating that In the absence of such rules, the judge could rely on precedents, and thus, it did it in the context of finding a solution to that issue that arose from article 60 mentioned above. He states that the Court referred to two cases in support of their argument. The first case is RS/INCOST/SPEC/00003/2019/SC, rendered by the Supreme Court on 4/12/2019, involving KABASINGA Florida against the Government of Rwanda. The second case is RPAA 00032/2019/CA, rendered by the Court of Appeal on 28/2/2020, involving the prosecution against NZAFASHWANIMANA Jean de Dieu. These cases were cited to illustrate that the independence of the judge is not restricted by the imposition of the statutory minimum penalty. Instead, this independence should encompass the right to impose penalties below the statutory minimum. He further argues that even the Court of Appeal faced such issue in the trial of the judgment nº RPAA 00025/2019/CA in paragraph 12[37] where it relied on such positions stated above to reach the decision. So, according to him, even in the current case, where his clients' penalties were reduced below the statutory minimum, the Court did not commit any mistake.

[214] Counsel MUKARUZAGIRIZA Chantal, assisting MUKANDUTIYE Angelina, declares that the trial court's decision to reduce her penalty below the statutory minimum penalty was not an error. According to her, mandatory sentencing is generally contrary to the principle of fair justice and violates the independence of the judge. She further argues that the trial court's adoption of the position set by the Supreme Court in the

[37] "Any person who joins or accepts to be member in a terrorist organization shall be liable to a term of imprisonment of fifteen (15) years to twenty (20) years".

case RS/INCONST/SPEC/00003/2019/SC, which states that failure to reduce the penalty below the statutory minimum penalty constitutes a violation of judicial independence, was also not a mistake. This is because the lower court's decision does not contradict the ruling of the higher court. She states that the independence of the judge to impose a sentence below the statutory minimum penalty is supported by the ruling of judgment n˚ RPAA 00031/2021/CA rendered on 28/10/2021, in the case of prosecution vs BAHATI Françoise, specifically in paragraph 43[38].

DETERMINATION OF THE COURT

[215] Debates regarding this issue revolve around the question of whether the trial court made an error by adopting the position set by the Court of Appeal, which involves reducing the penalty below the statutory minimum penalty despite the existence of a law prohibiting it.

[216] According to the principles of stare decisis, the judge's role is to establish a connection between the law and the issues under consideration and subsequently adopt a position on them. In the event that the established position interprets the law, it may offer either a broad or a narrow interpretation of the existing law, taking into account the specific issue at hand as well as all other

[38] In that paragraph, the court declared that "the Court of Appeal finds that the text of article 60, paragraph one (1) of the Law n° 68/2018 of 30/8/2018 stated above, that prevents the judge to reduce the life imprisonment penalty below the imprisonment penalty of twenty five (25) years in case of mitigating circumstances, should not be referred to because it contradicts the principles of fair justice, freedom and independence of the judge."

similar issues. As explained in paragraph 54 of the current case, if someone is dissatisfied with a particular position established by any court under these principles, instead of attempting to prevent the court from relying on it, they should instead challenge it before the Supreme Court to have it overturned in accordance with articles 65 and 73 of the Law determining jurisdiction of courts.

[217] In different paragraphs of appealed judgment, the trial court based on the judgment RPAA 00032/2019/CA rendered by the Court of Appeal on 28/2/2020, and reduced the penalties of RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, NIKUZWE Siméon, NTABANGANYIMANA Joseph, NIYIRORA Marcel, IYAMUREMYE Emmanuel, NSENGIMANA Herman, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène and MUKANDUTIYE Angelina below the statutory minimum penalties.

[218] In that judgment, the trial court reduced the penalties until the statutory minimum penalty on the basis of the judgment rendered by the Court of Appeal[39], which also relied on the

[39] See the paragraph 19 of the judgment RPAA 00032/2019/CA rendered by the Court of Appeal, between the prosecutor vs NZAFASHWANIMANA Jean de Dieu. The Court of Appeal reduced the penalty of NZAFASHWANIMANA Jean de Dieu who was accused of child defilement in that case and sentenced him to the penalty below the statutory minimum penalty. Whereas the minimum penalty with which he would be punished was an imprisonment of twenty-five (25) years as provided for by article 78, paragraph one, subparagraph 2 of Organic Law n° 01/2012/OL of 02/05/2012 instituting the penal code that was into force at the time of the commission of the offence, the Court sentenced him to ten years of imprisonment (10).

analysis it did of the judgment RS/INCONST/SPEC 00003/2019/SC rendered on 4/12/2019[40].

[219] Based on the principle outlined in paragraph 216 of the current case, this court concludes that the judgment of NZAFASHWANIMANA Jean de Dieu expanded the scope of Article 60 of Law nº68/2018 of 30/08/2018, determining offenses and penalties in general[41]. As a result, it provided the Court of

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In that case, the Supreme Court held that the judge should consider aggravating and mitigating circumstances either associated with the defendant or associated with the offence, and held that the law forbiding the court to consider such circumstances in order to decide the merit of penalty reduction, should be regarded as inconsistent with article 29 of the Constitution reading that everyone has the right to due process of law, and it violates the independence of the judge because it does not allow him the exercise of discretion, and deprives him/her of the right to pronounce a sentence corresponding to the committed offence, on the basis of the circumstances of its commission, the conduct of the author and how it affected the victim and society in general. It decided that it would not be said that the judge is independent to pronounce the sentence while he/she should pronounce a mandatory sentence that does not correlate the gravity of the offence, the circumstances surrounding its commission, and even in the event there are valid mitigating circumstances that would justify the reduction of the penalty of the defendant. See paragraph 17 of the judgment nº RPAA 00032/2019/CA rendered by the Court of Appeal between the prosecution and NZAFASHWANIMANA Jean de Dieu**.** The Supreme Court found that the refusal to reduce the statutory minimum penalty would be founded only if the threshold between the minimum penalty and maximum penalty is considerable, while in case such threshold is small, that prevents itself the judge to link the sentence and committed offence, interests of the victim, the public and those of the accused.

Such article provides that: If there are mitigating circumstances, penalties may be reduced as follows: 1º subject to the provisions of Article 107 life imprisonment may be reduced but it cannot be less than twenty-five (25) years; 2º **a fixed-term imprisonment or a fine may be reduced but it cannot be less than the minimum sentence** provided for the offence committed.

Appeal and lower courts with the possibility to reduce the penalty below the statutory minimum penalty based on factors such as the nature of the offense, the circumstances surrounding its commission, and the personal situation of the perpetrator. Furthermore, the prosecution's argument that the Court of Appeal disregarded the law prohibiting the reduction of the penalty below the statutory minimum sentence, as stated in Article 60 of the aforementioned Law, lacks merit. If such a position existed, nothing would have prevented the trial court from referring to it.

[220] For all these reasons, the instant court finds that the trial court did not error by reducing the penalty of RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, NIKUZWE Siméon, NTABANGANYIMANA Joseph, NIYIRORA Marcel, IYAMUREMYE Emmanuel, NSENGIMANA Herman, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène and MUKANDUTIYE Angelina, below the statutory minimum penalty. Consequently, the appeal of the prosecution in relation to this issue lacks merit.

B. GROUNDS OF APPEAL BY THE DEFENDANTS

[221] Some of the suspects filed an appeal within the prescribed time, while others submitted a cross-appeal as an accessory to the appeal filed by the prosecution. In this part, the Court will first assess the admissibility of the cross-appeal, and subsequently address the appeals filed by the accused within the specified time frame.

a. Regarding the admissibility of the cross-appeal in criminal cases

[222] Regarding the cross-appeal filed by some of the accused, the prosecutor raised an objection of inadmissibility. The objection claimed that, based on the submissions made to the court, the cross-appeal only pertains to the defense against the appeal lodged by the prosecution. They argue that according to Article 1 of Law nº. 22/2018 of 29/04/2018 relating to civil, commercial, labor, and administrative procedure, the same law applies to procedures in cases where no other specific laws govern them. However, they believe that the Court should determine the validity of a cross-appeal in criminal cases to ascertain whether the appeal of KWITONDA André, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène, and NIKUZWE Siméon would be admissible.

[223] The prosecution concludes its submission by stating that the procedure of filing a cross-appeal as an accessory to the appeal lodged by the prosecution amounts to taking advantage of the civil procedure. They argue that they will rely on the criminal procedure, adhering to the prescribed time limits and the established process for their appeal. They believe that the accused resorted to such procedure after realizing that the deadline for filing their appeal had already expired. The prosecution argues that there is no reason to seek ways to file appeals against criminal cases using the civil procedure when the appropriate remedy is already provided by the relevant law.

[224] Counsel MUGABO Shariff Yussuf, assisting KWITONDA André, HAKIZIMANA Théogène, and NDAGIJIMANA Jean Chrétien, declares that they filed a cross-appeal and made certain requests to the court based on Article 264 of Law nº 027/2019 of 19/9/2019 relating to criminal procedure. This article stipulates that procedural matters not

covered by the criminal procedure law are governed by the civil procedure. They further base their requests on Article 152 of the same law.

[225] Counsel TWAJAMAHORO Herman, assisting NIKUZWE Siméon, states that his appeal is supported by article 264[42] of the law nº 027/2019 of 19/9/2019 relating to criminal procedure, and that though he was part of the suspects who were content with the penalties they were imposed by the trial court but were subsequently appealed by the prosecution. However, he emphasizes that he would not miss the opportunity to appeal, as allowed by the law.

DETERMINATION OF THE COURT

[226] The Court of Appeal considers that the debates surrounding this issue revolve around the determination of whether a cross-appeal is possible in criminal cases, similar to the practice in civil procedure.

[227] Article 181 of the Law n˚ 027/2019 of 19/9/2019 relating to criminal procedure provides that "An appeal must be filed within a period of thirty (30) days from the pronouncement of the judgment with respect to a party that was present or represented at the pronouncement of the judgment. Such time limits also apply to a party duly notified of the date of judgment but fails to appear or to send a representative."

[228] Article 181 stated above leads to the perception that as of the criminal cases, the convict and the prosecution, in case they

[42]"All matters that are not provided for under this Law regarding procedure are handled in accordance with civil procedure rules (…)"

are not satisfied with the verdict of the trial court, should in any circumstance lodge an appeal within thirty days from the date of the pronouncement of the judgment with respect to a party that was present or represented. This implies that the appeal lodged beyond thirty days or filing a cross-appeal after the expiry of thirty days within which the main appeal was lodged by another party, it leads to its inadmissibility[43], because every appeal in relation to a criminal action should be in the form of main appeal.

[229] Furthermore, regarding the arguments put forth by some parties that the principles of civil procedure are applied in cases not covered by the criminal procedure, the current court concludes that, in the context of appeals in criminal cases, the legislator intended for the criminal procedure to be the sole applicable procedure. This is evident from the fact that in cases such as trials involving damages, where the legislator intended for the civil procedure to apply, it was explicitly stated.[44]. That means that in relation to the cross-appeal in criminal cases, the legislator remained silent because they were aware of the existing legal principle that appeals in criminal cases are only exercised through a main claim, as explained earlier.

[230] Based on these explanations, the respondent at the appellate level is only permitted to respond within the scope of the subject matter of the appeal. Other claims that he/she submits

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[43] ''*L'appel intéressant l'action publique ne peut être qu'un appel* ***principal****. L'appel portant sur l'action civile peut se faire en forme d'appel principal ou incident'',* Antoine Rubbens, L'instruction criminelle et la procédure pénale, Tome III, Larcier, Bruxelles, 1965, P. 265, n° 259.

[44] See article 113 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure "When a civil action is instituted before a criminal court, the court hears such action in accordance with Laws governing civil procedure for cases heard on the merits."

to the court beyond such scope are not admissible if they are made beyond the prescribed time for appeal.

[231] NIKUZWE Siméon submitted his defense against the prosecution's appeal on November 28, 2021. In that submission, after responding to the grounds of appeal raised by the prosecution, he filed a cross-appeal regarding the unfulfilled constitutive elements of the crime concerning him and the grounds for non-criminal liability.

[232] Kwitonda André, HAKIZIMANA Théogène, and NDAGIJIMANA Jean Chrétien submitted their defense against the prosecution's appeal on November 29, 2021. Through these submissions, after responding to the grounds of appeal put forward by the prosecution, they filed a cross-appeal concerning the penalties imposed on them for the offense of which they were found guilty by the trial court, as well as the grounds for exemption from criminal liability. Additionally, they raised a cross-appeal against the appeal made by the civil parties.

[233] The Court of Appeal finds that the appealed judgment was rendered on September 20, 2021, and notes that NIKUZWE Siméon filed a cross-appeal on November 28, 2021, while KWITONDA André, HAKIZIMANA Théogène, and NDAGIJIMANA Jean Chrétien filed their cross-appeal on November 29, 2021. Since these cross-appeals were filed after the thirty-day time limit from the date of the pronouncement of the appealed judgment, their appeal claims cannot be admitted as they are not the primary appeal, and the concept of cross-appeal does not exist in criminal cases pertaining to criminal liability.

b. Appellants for second reduction of the penalties

[234] NSABIMANA Callixte, also known as Sankara, NSENGIMANA Herman, and MATAKAMBA Jean Berchmas, who initially benefited from a reduction in their penalties at the first instance, have lodged an appeal and requested a further reduction of the penalties.

- **NSABIMANA Callixte alias Sankara**

[235] In the submissions submitted to the Court of Appeal by NSABIMANA Callixte alias Sankara, he argues that the trial court's decision to sentence him to twenty (20) years has deprived him of the opportunity to reintegrate into Rwandan society. He asserts that the extended prison term will hinder his ability to take care of himself and lead a productive life upon his release. He requests the Court to consider his personal circumstances, including his medical conditions of gastric disorders and hypertension. He also highlights that he is an orphan as a result of the 1994 genocide against the Tutsi, and he survived alongside a disabled sibling. Additionally, he emphasizes that they have no permanent accommodation. He requests that the Court consider the cases of former FDLR leaders, such as Dr. Ignace MURWANASHYAKA and MUSONI Straton, who were given reduced penalties. He also mentions the militiamen of FLN admitted to Mutobo, as well as other perpetrators of the genocide against the Tutsi who pleaded guilty and received reduced penalties, including community works (TIG).

[236] He further states that he requests the Court to consider the fact that he publicly dissociated himself from his political party, RRM, FLN, as well as MRCD-FLN. He also publicly denounced governments that supported FLN, including Burundi, Uganda, as

well as former president Edgar LUNGU. He claims that as a result, all of them became his enemies and would repress him. Consequently, he believes that he has no other choice but to serve the government of Rwanda, as it is the only entity that can guarantee his security. He therefore requests the Court of Appeal to consider all these submissions and grant him a reduction of his penalty by five (5) years. He also maintains his request for forgiveness for what has happened.

[237] Concerning the prosecution's reference to the position set by the Supreme Court in the judgment N°. RPA 283/10/CS rendered on 19/12/2014, between the prosecution and GAHONGAYIRE Jeanne regarding the refusal to reduce the penalty for the accused who benefited from it at the trial court, NSABIMANA Callixte alias Sankara argues that such a precedent is different from his case. This is because in the referenced case, the accused was sentenced to ten (10) years of imprisonment by the High Court, whereas in his case, he was sentenced to twenty (20) years of imprisonment.

[238] Counsel RUGEYO Jean, representing NSABIMANA Callixte alias Sankara, argues that their criticism of the judgment of the trial court is based on the failure to reduce the penalty by five years of imprisonment. They contend that despite their client pleading guilty and providing significant and valuable information to the prosecution, the trial court failed to take into account his cooperation. Instead, they claim that the court excessively focused on the seriousness of the charges against him, neglecting to consider his personal situation. He prays the Court of Appeal to consider personal interest of his client and the justice interests in general, and base on the position adopted in the judgment n° RS/INCONST/SPEC 00003/2019/SC rendered

by the Supreme Court, paragraph 45[45], and the judgment n° RPAA 00031/2021/CA rendered by the Court of Appeal on 28/10/2021, to reduce his penalty again.

[239] The prosecution counters the appellant's argument by stating that his appeal grounds should not be considered valid. They point out that his request for a reduction in penalty was already granted by the High Court. Furthermore, they claim that the High Court's decision did not violate Article 60 of the Law determining offenses and penalties in general. According to the prosecution, the Appeal judgment, specifically in paragraphs 665 to 667, reduced the sentence from life imprisonment to twenty years, which is within the range specified by Article 60. They argue that the appellant's deserved penalty could not be lower than twenty-five years, unless mitigating circumstances were present, as outlined in the provisions of the mentioned article. They argue that NSABIMANA Callixte alias Sankara should present before the Court of Appeal the specific grounds on which he criticizes the appealed judgment, as required by Article 88 of the aforementioned law.

[45]In this paragraph, the supreme Court stated that "Given the fact that the legislator decided that if there is a mitigating circumstance, the penalties may be reduced but shall not be less than the minimum penalty provided for the offence committed. It is the opinion of this Court that it would be reasonable if the range between the minimum and the maximum penalty is large, putting more emphasis on reducing the minimum penalty. This would enable the provisions of article 49 par.1 of the Law Nº 68/2018 of 30/08/2018 which provides that a judge determines a penalty according to the gravity, consequences of, and the motive for committing the offence, the offender's prior record and personal situation and the circumstances surrounding the commission of the offence to be correctly applied. Basing on the mitigating circumstances and impose minimum penalty provided for an offense which itself is heavy, does not benefit the defendant nor does it serve justice in general."

[240] Regarding the new grounds he advances to seek a second reduction of the penalty, the prosecution argues that they are baseless. They assert that the fact that he was affected by the genocide does not exempt him from taking responsibility for the consequences of the war. Furthermore, regarding the fact that there are FLN militiamen who have committed crimes but have not yet been prosecuted and were admitted to the Mutobo demobilization center, he should not raise it as a reason to request a reduction of his penalty. He cannot establish a direct link between their actions and his personal acts, and there is no indication that they will not be prosecuted in the future. Moreover, regarding the cases of Dr. Ignace MURWANASHYAKA and MUSONI Straton, who were tried in Germany and received reduced penalties due to mitigating circumstances, the prosecution argues that the assessment of mitigating circumstances in that country is based on their own criteria and standards.

[241] In view of the foregoing, the prosecution requests the Court of Appeal to consider the position adopted in the judgment n° RPAA 66/08/SC rendered by the Supreme Court on 6/2/2009, between the Prosecution and KABAHIZI Jean, which dealt with the appellant's request for penalty reduction after already benefiting from it, as well as the judgment n° RPA 283/10/CS rendered on 19/12/2014, between the prosecution and GAHONGAYIRE Jeanne, particularly paragraph eleven (11) of that judgment. The prosecution argues that based on these precedents, NSABIMANA Callixte alias Sankara's ground of appeal lacks merit.

- **NSENGIMANA Herman**

[242] NSENGIMANA Herman and his legal counsel, RUGEYO Jean, argue that there is an important aspect regarding the offense of membership in a terrorist group, which the trial court overlooked in the case of NSENGIMANA Herman's guilt declaration. They argue that despite NSENGIMANA Herman pleading guilty, the trial court did not appropriately reduce his penalty. Therefore, they request the Court of Appeal to reconsider his plea for a reduced penalty. They request that his penalty of five years of imprisonment be reduced to two years of imprisonment, especially since the Court of Appeal has the authority to do so. They rest their submissions that the prosecution is not permitted to request an increase in the penalty.

[243] The prosecution argues that NSENGIMANA Herman's request for a further reduction of his penalty from five (5) years to two (2) years should not be granted merit. They state that his request was already considered by the trial court, and the court is not obligated to reduce the penalty to the extent desired by the defendant. They state that basing on the provisions of article 18 of the Law n° 46/2018 of 13/8/2018 on counter terrorism, he should have been sentenced to the penalty not below fifteen (15) years but not beyond twenty (20) years, that instead, considering the provisions of the law[46], the High Court pronounced a penalty below the penalty provided for such offence.

[46]See the reading of article 60 of the Law n° 68/2018 of 30/8/2018 determining offences and penalties in general.

- **MATAKAMBA Jean Berchmas**

[244] MATAKAMBA Jean Berchmas states that his criticism of the High Court lies in its failure to consider his guilty plea. He argues that despite not being present at the location of the offense in Karangiro, as he was hospitalized due to an accident at that time, he was still found guilty. He points out that other offenders who pleaded guilty received lesser penalties, whereas he was given severe penalties based on his actions in Rusizi. He emphasizes that he assisted in providing relevant information to the justice system. Therefore, he requests the Court of Appeal to carefully consider his arguments, analyze the circumstances that led him to commit the offenses, and subsequently reduce his penalties once again.

[245] MATAKAMBA Jean Berchmas asserts that he is generally a law-abiding citizen of good character. He emphasizes that he actively provided information about various FDLR militiamen, which ultimately led to the apprehension of some of them. However, he states that he unintentionally found himself involved in the offense. He explains that in 2017, he reported information about BIZIMANA Cassien alias Passy, and Mongali who came under false pretenses of applying for a job in order to engage in illegal activities. He promptly informed the local administration, leading to the arrest of Mongali, while BIZIMANA Cassien managed to escape to Congo. He explains that this incident had a profound impact on him as members of FDLR sought revenge against his sibling. Later, he encountered BIZIMANA Cassien alias Passy, and BUGINGO Justin in Bukavu, Congo, where he was involved in the production of a beverage called Sadiki Soft Drink. They intimidated him, warning that if he refused to cooperate with them, they would

harm him. Fearing for his life, he reluctantly agreed to cooperate as a means of self-preservation.

[246] Counsel MUKARUZAGIRIZA Chantal, assisting MATAKAMBA Jean Berchmas, argues that in accordance with Article 49 of Law nº 68/2018 of 30/8/2018 determining offenses and penalties in general and outlines the factors to be considered by a judge when determining a penalty, the trial court failed to take into account his circumstances prior to the commission of the crime as well as his guilty plea since his arrest. She argues that, instead, the trial court focused on aggravating circumstances. It acknowledged his guilty plea but, considering the gravity of the offenses committed, such as smuggling arms into Rwanda and his collaboration with terrorist groups, as well as the adverse consequences they had on the population, the court sentenced him based on the most serious offense. She requests the Court of Appeal to consider both mitigating and aggravating circumstances simultaneously and grant him another reduction in his penalty.

[247] The Prosecution states that it finds all the arguments of MATAKAMBA Jean Berchmas, which claim that the court disregarded his defense, to lack merit. This is because he pleaded guilty to the offenses of conspiracy and inciting people to commit terrorism. He explained that he, along with NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude, accepted the conspiracy proposed by BUGINGO Justin and BIZIMANA Cassien alias Passy, with the intention of participating in acts of terrorism. They state that although he claimed that he did not have the intention to commit such a crime and that he fell into the trap set by BIZIMANA Cassien, alias Passy, and BUGINGO Justin, who incited him to do so, the trial court explained that

MATAKAMBA Jean Berchmas, in association with the conspirators, committed their acts with intent. The court concluded that he played a role in the attacks carried out in different sectors, including the attack in Karangiro. The ammunition used in these attacks, such as shotguns, bullets, and grenades, originated from the Democratic Republic of Congo (DRC), and some of them were stored at Matakamba Jean Berchmas' home after reaching Rwanda. Therefore, based on these factors, the trial court determined his involvement in acts of terrorism.

[248] Regarding his request for a reduction in his penalty based on his sincere admission of the charges, the prosecution finds it unfounded. This is because during his various interrogations and his plea, he consistently admitted his role in the terrorist attacks carried out in Rusizi. However, he contradicted himself by claiming that there were individuals who incited him to commit these acts. He states that he personally did not have the intent to commit those acts, but he also admits that he never made an effort to distance himself from them. The prosecution states that such contradiction on his part does not constitute a mitigating circumstance. This is because his guilty plea is doubtful, and the offenses he committed are serious, as they caused harm to individuals and damage to their properties. They base their argument on the fact that the rejection of the penalty reduction was determined in the judgment Nº. RPA 0298/10/CS, delivered by the Supreme Court on 24/02/2012, in the case of MUSHAYIDI Déogratias against the prosecution. This is mentioned in paragraph 40 of the aforementioned judgment.

DETERMINATION OF THE COURT

[249] The Court of Appeal finds that, regarding this issue, it needs to be determined whether, in addition to merely alleging that they did not receive the appropriate reduction, the court has the authority to reduce the penalty if the defendants have no valid grounds to blame the trial court in relation to this matter.

[250] Article 49 of the Law n° 68/2018 of 30/8/2018 determining offences and penalties in general, provides that "A judge determines a penalty according to the gravity, consequences of, and the motive for committing the offence, the offender's prior record and personal situation and the circumstances surrounding the commission of the offence."

[251] Article 58, paragraph one, of the Law n° 68/2018 of 30/8/2018 stated above, reads that: "The judge assesses whether mitigating circumstances decided by a judge are admissible." Paragraph two of the same article provides that "The reasons for acceptance of mitigating circumstances must be stated in the judgment."

[252] The analysis of article 58 and 49 of the Law n° 68/2018 of 30/8/2018 stated above implies that the judge assesses in his/her own discretion the judicial mitigating circumstances, motivates them and decides that they mitigate the gravity of the offence and that they should be adopted. After deciding that they can be adopted, the judge pronounces the sentence corresponding to the gravity of the offence as well as its effects. Such discretion is exercised by every judge trying the case they were submitted including the appellate judge. However, the appellate judge should bear in mind that he is allowed to reduce the penalty

pronounced by the trial court after demonstrating the mistakes made by such judge in the process of sentencing[47]. It means that the appellate judge has the duty to verify whether the trial judge abide by the sentencing process appropriately in accordance with articles 49 and 58 stated above.

[253] On a similar issue, the Appellate Division of International Criminal Tribunal for Yugoslavia in the case VOjISLA vs SESELJ, has also held that the trial judge is vested with broad discretion to determine the appropriate sentence, and that the appellate judge is not permitted to modify such sentence unless they demonstrate that the trial court abused its discretion or misinterpreted the law.[48]

[254] Overseeing the discretion applied in the trial judgment was supported in the judgment nº RPAA 00406/2020/CA rendered on 22/10/2021 between the prosecution and NAHAYO Ignace, in which the Court held that though he has benefited the penalty reduction on ground of guilty plea, nothing could prevent him to pray for the penalty reduction again at appeal level once he deems the penalty he was given severe considering the crime

[47] It is the reason why the law relating to criminal procedure provides, in its article 183, subparagraph 6, that the appellant should indicate explanations for each default or issue showing the mistakes made and how they should be rectified in accordance with laws, evidence and court recommendation.

[48] See the Case nº. IT-03-67-R77.2-A, 19 May 2010, VOJISLAV V SESELJ par 37: "The *Appeals Chamber recalls that Trial Chambers are vested with broad discretion in determining an appropriate sentence. In general, the Appeals Chamber will not revise a sentence unless the appellant demonstrates that the Trial Chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law"*. Available at: file:///C:/Users/l.ucyeye/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/PPHD5LL8/VOjISLA%20V%20SESELJ%20%20in%20ICTR%20APPELATE%20CHAMBER.pdf

he was found guilty of, and the court exercises its discretion and determine whether his prayers are admissible and lawful.[49]

[255] Basing on these explanations, the instant court shall examine in the subsequent paragraphs, and for every party at appellate level, whether there has occured apparent mistake, or misapplication of discretion or law in determining the sentence with respect to the appealed judgment.

- **Regarding NSABIMANA Callixte alias Sankara**

[256] In his appeal, NSABIMANA Callixte alias Sankara does not criticize the trial court to have misapplied the law in determining his sentence, since he only alleges that considering the mitigating circumstances he raised, he did not benefit the penalty reduction satisfactorily; therefore, he requests the Court of Appeal to reduced it once more.

[257] According to paragraphs 664, 665 and 671 of the appealed judgment, the trial court explained that though NSABIMANA Callixte alias Sankara committed acts that resulted into death, he admitted the charges from the investigation until the trial in merit, and cooperated with justice by providing information that helped in investigation and the fact that he is the first offender; he therefore should benefit the penalty reduction and be sentenced to twenty (20) years of imprisonment in lieu of life imprisonment on the basis of article 60, paragraph one, subparagraph one (1˚) of the aforementioned Law n˚ 68/2018 of 30/8/2018 as well as the holdings set in the judgments n˚

[49] However, after reexamination, the Court realised that the penalty he was given matched up with the gravity of the crime he was declared guilty and did not reduce his penalty for another time.

RS/INCONST/SPEC/00003/2019/SC rendered by the Supreme Court and n° RPAA 00032/2019/CA rendered by the Court of Appeal.

[258] NSABIMANA Callixte alias Sankara prays further reduction of the penalty because the imprisonment penalty of twenty (20) years he was given deprives him of the opportunity to reintegrate into Rwandan society despite that he expressed remorse of all the offences he committed and asked for forgiveness because they affected the Rwandan society in general. He declares that he cooperated with the justice organ by whistling information about him and accomplices. He states that he dissociated himself with RRM, MRCD and FLN groups, that he publicly denounced countries that supported the FLN, that he is infected with an incurable ailment and for these reasons, he prays the instant court to reduce his penalty once more and be sentenced to five (5) years of imprisonement[50]. He states that, in the course of sentencing, the trial court would not have considered the gravity of the crime he was found guilty only as it would have considered his interests and the interests of justice.

[259] The prosecution argues that the fact that NSABIMANA Callixte alias Sankara benefited the penalty reduction by the trial court, and that basing on the precedent set by the Supreme Court

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NSABIMANA Callixte alias Sankara alleges that the Court in Germany sentenced senior leaders of FDLR, Dr. Ignace MURWANASHYAKA, who was the president of FDLR and MUSONI Straton who was the vice president, to thirteen (13) years of imprisonment and eight (8) years of imprisonment respectively, that the senior officers of FLN, namely Colonel GATABAZI Joseph, who was operations commander, Lieutenant Colonel HAKIZIMANA who was the intelligence advisor to General Wilson and Brigadier general MBERABAHIZI David, colonel NAMUHANGA Anthère who were admitted for rehabilitation at Mutobo.

in different cases including the judgments n˚ RPA 0066/08/CS of 6/2/2009, n˚ RPA 0085/09/CS of 17/6/2011[51] and n˚ RPA 0283/10/CS of 19/1/2014[52], he should not benefit it once more.

[260] As it was held above, the judge should, at the time of determination of the sentence, consider the situation of the accused before, at the time of and after the commission of the crime, and correlates them with the circumstances of its commission, its gravity, and the impact it had on the society. This means that they pronounce the sentence which is propotional to the committed crime (principle of proportionality of the sentence to the offense) which they do to protect the society, to really reprimand the convict while maintaining the interest of rehabilitation of the latter and prevent new criminality[53].

[261] As demonstrated above, the Court of Appeal finds that the trial court abode by them because it sentenced NSABIMANA Callixte alias Sankara on the basis of the gravity and the

[51] The prosecution states that in the two first judgments, the Supreme Court indicated that there is no reason to reduce the penalties of the defendants (Kabahizi Jean and HAVUGIMANA Innocent) on the basis of the fact that they benefited the penalty reduction in appealed judgments in accordance with the law.

[52] The prosecution states that in the third judgment, the Supreme Court explained that the prayers of GAHONGAYIRE Jeanne were already granted because the crime she committed is normally punished with the sentence of life imprisonment whereas she was sentenced to ten (10) years of imprisonment; therefore, she should not benefit another round of penalty reduction considering the gravity of the offence she committed.

[53] *'' Le choix de la peine par le juge doit donc obéir à cinq considérations: la protection de la société, la punition du condamné, la prise en compte des intérêts de la victime, la réinsertion du condamné et la lutte contre la récidive.*'', Harald Renoult, Droit pénal général, 19e édition, Bruylant-Paradigme, Bruxelles, 2020, p. 291.

consequences of the offences he was declared guilty and in consideration of his situation preceding the commission of such crimes, his admission of the charges from investigation level to the merit of the case as well as his cooperation with justice by revealing information relating to the charges. It therefore sentenced him to twenty (20) years of imprisonment. It finds furthermore that the trial Court would not have based on other factors of his personal situation in the event they were not submitted to the case file or were not subject to adversarial hearing[54].

[262] The Court of Appeal found that the mitigating circumstances raised by NSABIMANA Callixte, alias Sankara, before the instant court - such as his claims of being a genocide survivor or an orphan, having a fiancée, being 39 years old, alleging that he had dissociated from RRM, MRCD and FLN, being hypertensive and suffering from a stomach ailment, and the fact that some superior FLN military members were admitted to Mutobo for their rehabilitation - did not constitute mitigating circumstances likely to lead to a further reduction of his penalty, considering the seriousness of the penalty and the consequences of the offences for which he was found guilty.

[263] However, the Court of Appeal found that the trial court did not appropriately consider the proportionality of the penalty and the gravity of the offence in relation to the mitigating factors presented, such as being a first-time offender, making a sincere admission of guilt since his arrest, seeking forgiveness from the

[54] ''*Le juge prononce la ou les peines qu'il considère être adaptées au condamné et prend en compte pour cela tous les éléments le concernant figurant à la procédure et soumis aux débats contradictoires''*, Harald Renoult, op.cit, P. 285.

victims and Rwandan society, cooperating with justice by revealing relevant information regarding the terrorist groups and their financing, pleading guilty during the hearing, which provided justice organs with sufficient information regarding the modus operandi of the MRCD-FLN terrorist group, and taking appropriate measures to prevent and repress offences committed by the group. For all these reasons, the instant court deems his request for further reduction of his penalty with merit.

[264] Furthermore, with regard to the prosecution's argument that, based on three Supreme Court precedents, NSABIMANA Callixte, alias Sankara, should not receive a further reduction in his penalty since such precedents held that there is no reason to reduce the penalties of the accused once they have already received a reduction at the trial court, the Court of Appeal found that it should not be given merit. According to the law, the Supreme Court explained instead that the accused would not benefit from a penalty reduction on the grounds that the penalty was already **sufficiently** reduced by the trial court.[55] With regards to the case law of GAHONGAYIRE Jeanne, the Supreme Court clarified that she did not deserve a further reduction in her penalty due to the seriousness of the offence she committed[56].

- **Regarding NSENGIMANA Herman**

[265] The Court of Appeal, in referring to paragraph 164 of the instant case, noted that it had previously determined that the admission made by NSENGIMANA Herman was not sincere, despite it being relied on to reduce his penalty. Therefore, the

[55] See the third sheet, paragraph 7 of the judgment of KABAHIZI Jean and the sheet two, paragraph 6 of the judgment of HAVUGIMANA Innocent.
[56] See paragraph 12 of the appealed judgment.

admission should not have been used as a basis for reducing his penalty. Therefore, in this part, there is going to be analyzed grounds that NSENGIMANA Herman advances to request the penalty reduction while maintaining the principle stated above that the penalty may only be modified at appeal level when the trial court erred manifestly in exercising discretion or in applying the law for the determination of the penalty.

[266] In the instant case, the appeal of NSENGIMANA Herman is not based on the fact that the trial court misapplied the law. Rather, it is based on the fact that the trial court did not reduce his penalty sufficiently upon its discretion, which is why he is requesting another penalty reduction.

[267] In paragraph 685 of the appealed judgment, the trial court reduced the penalty of NSENGIMANA Herman because he pleaded guilty of the offence of membership to a terrorist group, of which he was declared guilty, the fact that he cooperated with justice organs and the fact that he is a first offender, and for this reason, instead of being sentenced to fifteen (15) years of imprisonment, he was sentenced to five years (5).

[268] As NSENGIMANA Herman sincerely pleaded guilty, the Court of Appeal deems that his requests should not be granted as he has already received significant leniency from the trial court. The trial court reduced his penalty to five years, considering his sincere guilty plea as a mitigating factor, despite NSENGIMANA Herman's assertion that FLN is not a terrorist organization but rather a military group. This implies that he does not admit to being a member of a terrorist group, as held by the trial court.

[269] Given the above, the Court of Appeal has determined that NSENGIMANA Herman does not warrant further leniency in

relation to the trial court's penalty. Consequently, his ground of appeal is unfounded.

- **Regarding MATAKAMBA Jean Berchmas**

[270] Paragraph 679 of the appealed judgment clearly states that the trial court found MATAKAMBA Jean Berchmas guilty of several offenses, including membership in a terrorist organization, committing and participating in acts of terrorism, illegal use of explosives or other noxious substances in a public place, and conspiracy and incitement to commit terrorism. Paragraph 681 of the appealed judgment states that the trial court found MATAKAMBA Jean Berchmas and his co-accused guilty of the charges against them, but considering the circumstances surrounding the attacks they launched in Rusizi district, how they transported and concealed ammunition into Rwanda, and their collaboration with FLN commanders, as well as the consequences of their actions, including injuries to individuals and destruction of property, the court determined that they deserved severe punishment. Consequently, the court sentenced them to twenty (20) years' imprisonment, which is the penalty provided for severe offense.

[271] Paragraphs 637 and 643 of the appealed judgement reveal that the prosecution sought a heavier penalty of twenty-five years (25) for MATAKAMBA Jean Berchmas, arguing that he should not receive a penalty reduction due to the severity of the charged offenses and his insincere guilty plea. However, MATAKAMBA Jean Berchmas acknowledged his role in the offenses and the severity of the penalty imposed on him, but he also requested that the court exercise caution in determining the reasons behind his actions. Additionally, he asked for the suspension of the penalty due to a mental health issue stemming from an accident.

[272] In his appeal submissions, MATAKAMBA Jean Berchmas requested that the court review his sincere guilty plea and reduce his penalty, as he believed the trial court had overlooked this factor. Instead, the trial court had taken into account aggravating circumstances that were not provided for by the law and had rejected his request for a penalty reduction, despite the statutory provisions of article 59 of Law n° 68/2018 of 30/8/2018, which recognizes aggravating circumstances. During the court hearing before the instant court, MATAKAMBA Jean Berchmas appeals for a further reduction in the penalty that was handed down to him by the trial court. He argues that prior to being found guilty of the offences in question, he had a reputation as a person of integrity who used to collaborate with security officers.

[273] The prosecution argues that the trial court did not disregard Matakamba Jean Berchmas' guilty plea because it acknowledged that he pleaded guilty. However, the prosecution contends that the trial court refused to grant him a penalty reduction based on the circumstances surrounding the attacks he and his co-accused launched in various parts of Rusizi district, citing articles 47 and 49 of Law n° 68/2018 of 30/8/2018 as the basis for its decision. They also advance that had the court considered his guilty plea as a mitigating factor, the penalty would not go below twenty years of imprisonment that he was given by the trial court on the basis of article 60, subparagraph two (2°) of the Law n° 68/2018 of 30/8/2018 stated above.

[274] As explained above, the court is not compelled to adopt any mitigating circumstances raised to reduce the penalty of the accused. Instead, it has discretion to consider them, and may refuse to do so based on the circumstances of the offense charged

to the accused, which was the approach taken by the trial court. Regarding MATAKAMBA Jean Berchmas, although he admitted to the charges, the court refused to reduce his penalty below twenty (20) years of imprisonment - the minimum statutory penalty for the severe offense he was found guilty of - based on the explanations provided in paragraph 681 of the appealed judgment. This means that the court, while not disregarding the defendant's guilty plea, exercised discretion and determined that his admission would not constitute mitigating circumstances, given the offenses for which he was found guilty.

[275] MATAKAMBA Jean Berchmas argued that the trial court denied a reduction in his penalty due to non-specified aggravating circumstances. However, the Court of Appeal rejected this argument, stating that the alleged aggravating circumstances were actually just the underlying criminal acts for which he was found guilty, and were already specified by the criminal law.

[276] MATAKAMBA Jean Berchmas claims that the trial court ignored a mitigating factor related to his prior integrity before committing the offenses for which he was found guilty. The Court of Appeal rejected MATAKAMBA Jean Berchmas's argument because he did not provide evidence to support it before the trial court. The Court of Appeal determined that MATAKAMBA Jean Berchmas failed to produce supporting evidence for his argument, even at the appellate level.

[277] Although MATAKAMBA Jean Berchmas claimed that he did not receive a reduced penalty, the Court of Appeal found that the trial court actually sentenced him to the minimum statutory penalty of twenty (20) years imprisonment for the severe offense, rather than the maximum statutory penalty of twenty-five (25) years imprisonment. The foregoing suggests

that he may have received a reduced penalty, as he was not given the maximum statutory penalty. It determined further that the trial court imposed an appropriate and sufficient penalty on MATAKAMBA Jean Berchmas, as he was unable to identify any mistakes in the determination of his sentence that would warrant a further reduction.

c. Whether the trial court ignored any mitigating circumstances that were raised by some of the accused

[278] NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, NSABIMANA Jean Damascène alias Motard, Shabani Emmanuel, and Bizimana Cassien alias Passy filed an appeal accusing the trial court of ignoring mitigating circumstances they had raised in order to receive a reduction in their penalty.

[279] NTIBIRAMIRA Innocent criticized the trial court for disregarding information he had revealed during the initial interrogation where he admitted to the charges and continued to do so sincerely throughout the court proceedings, but his statements were not taken into account. He argues that he did not receive a reduced penalty, as he was ultimately sentenced to twenty years (20) of imprisonment.

[280] Counsel NGAMIJE KIRABO Guido, his legal counsel, states that the previous Court based the sentence given to NTIBIRAMIRA Innocent on the most severe offence, which led to the penalty being reduced appropriately, and he therefore requests the Court of Appeal to adopt the position set in the judgements n° RS/INCONST/SPEC 00003/2019/CS rendered by the Supreme Court on 4/12/2019, paragraph 49, and n° RPAA 00031/2021/CA rendered by the Court of Appeal on 28/11/2021,

all relating to the independence of the judge to consider mitigating circumstances.

[281] BYUKUSENGE Jean-Claude states that he is critical of the trial court for ignoring his guilty plea, which he made from the time of his arrest until the court proceedings. Despite this plea, the court did not reduce his penalty for the offence of participating in acts of terrorism, which he was declared guilty of. This offence is provided for and punished by article 19 of the Law on Counterterrorism, which prescribes a penalty of twenty (20) years of imprisonment. Byukusenge received the same penalty. Consequently, he finds that no penalty reduction ever occured, the reason why he requests the Court of Appeal to reduce his penalty.

[282] SHABANI Emmanuel states that the trial court ignored his guilty plea from the time of investigation by the relevant authorities to the court proceedings. He was charged with committing and participating in acts of terrorism, incitement to commit a terrorist act, illegal use of explosives or any noxious substance in a public place, and membership to a terrorist group. He also states that he admitted to some offenses committed under the incitement of Justin BUGINGO. However, the trial court included him in the group accused of other crimes, such as attempted murder, for which he was punished even though he did not commit it.

[283] Counsel UWIMANA Channy, who is assisting Emmanuel SHABANI, argues that during the sentencing process, the trial court disregarded Article 49 of Law n°. 68/2018 of 30/8/2018 determining which outlines the factors to be considered by judges in determining sentences. The trial court also included Shabani in a group of suspects charged with

offenses he never committed, which prevented him from receiving a reduced penalty despite having mitigating circumstances. SHABANI Emmanuel argues that the trial court remained silent and did not provide explicit reasons for his sentence as required by Article 58, subparagraph 2 of Law n°. 68/2018 of 30/8/2018. Instead, the court only sentenced him to twenty years of imprisonment without substantiating the decision with relevant grounds.

[284] Counsel UWIMANA Channy declares that she believes that SHABANI Emmanuel did not benefit from the reduction of the penalty, which is why they request the Court of Appeal to reduce it. Regarding the reduction of the penalty on the ground of mitigating factors, she prays the court to refer to the caselaw n° ICTR 05-86-S of 17/12/2019 between the prosecution and Michel BAGARAGAZA, whereby the court decided that he pleaded guilty and was the first offender, and subsequently sentenced him to seven years (7) of imprisonment instead of life imprisonment.

[285] Nsabimana Jean Damascène states that he is appealing for the reduction of his penalty on the grounds that he admitted to the charges against him from the initial stage, asked for forgiveness, and handed back the ammunition in his custody. However, the trial court ignored these mitigating circumstances and sentenced him to twenty years (20) of imprisonment. Therefore, he requests the instant Court to reduce his penalty.

[286] Counsel UWIMANA Channy, who is assisting NSABlMANA Jean Damascène, argues that he filed an appeal because the court did not take into consideration his guilty plea, the information he provided about the location of the ammunition prior to his arrest, and the fact that he is a first-time offender.

Instead, he was categorized with many other criminals, which resulted in him being sentenced to twenty years of imprisonment for the offense of conspiracy and incitement to commit a terrorist act, which he was not accused of and did not have the opportunity to defend himself against. She states that the reason for requesting the instant court to reduce the penalty of NSABlMANA Jean Damascène is based on Article 38 [57] of Law nº. 46/2018 of 13/8/2018 on counterterrorism. She believes that he did not benefit from it because he was subject to the severe penalty provided for the offense of membership in a terrorist group, of which he was found guilty. This offense is normally punished with twenty years of imprisonment, which is the same penalty he was sentenced to.

[287] BIZIMANA Cassien alias Passy asserts that since his arrest, he has demonstrated a change in his behavior, admitted to the charges, expressed remorse and apologized, and returned all the equipment in his possession. Therefore, he requests that the court of appeal reduce his sentence.

[288] Counsel MUREKATETE Henriette assisting BIZIMANA Cassien alias Passy advances that the trial court ignored article 59, subparagraph one (1º) of the Law n˚ 68/2018 of 30/8/2018 determining offences and penalties in general. She claims that the court did not provide any explanations for the mitigating circumstances regarding her client. She alleges that

[57] "Without prejudice to the provisions of other legal instruments, the penalties established for the crimes listed in this law may be reduced if the accused discloses information that would not have been discovered otherwise. This can help prevent or alleviate the consequences of the crime, identify or prosecute the suspect, gather evidence, or prevent acts of terrorism as defined in this law".

the failure to consider the mitigating circumstances resulted in the court denying Cassien Bizimana, also known as Passy, a reduced sentence, despite his sincere plea of guilt. Therefore, they request that the instant court reduce his penalty based on Paragraph 39 of the RPAA 00064/2019/CA[58] judgment issued by the Court of Appeal on 30/7/2021 in the case of HABIMANA Pascal and the prosecution.

[289] The prosecution states that among the accused include NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, SHABANI Emmanuel, NSABIMANA Jean Damascène and BIZIMANA Cassien alias Passy whose criminal connection is the attacks they launched in Rusizi. They argue that the trial court, in paragraph 681 of the appealed judgment, noted that they

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The Court of Appeal recognizes that article 60, subparagraph 2 of the Law no 68/2018 of 30/8/2018 states that a fixed-term imprisonment or fine may be reduced if there are mitigating circumstances, but cannot be less than the minimum sentence provided for the offense committed. However, considering the position taken by the Supreme Court in the judgment RS/INCONST/SPEC 00003/2019/SC of 4/12/2019, the judge has the duty to impose an appropriate sentence based on the gravity of the offense, its consequences, the intent for its commission, the behavior of the suspect prior to its commission, his/her personal situation and the circumstances surrounding the crime, according to article 49 of the Law no 68/2018 of 30/8/2018. Proscribing the judge from reducing the statutory penalty despite the existence of mitigating circumstances or allowing it to him/her if such facts exist, without going below the statutory minimum penalty provided for the committed offense, would result in depriving him/her of the freedom and discretion to pronounce a sentence corresponding to the committed offense, and this would obstruct serving the accused of fair justice. The court of appeal also notes that such a restriction on the judge's discretion would be contradictory to articles 29 and 151 of the Constitution of the Republic of Rwanda of 2003, revised in 2015. The Supreme Court rulings were meant to show that nothing should prevent a judge from appropriately reducing the statutory penalty of a convict on the basis of article 49 of Law nº 68/2018 of 30/8/2018."

should incur the most severe penalty considering the impact of the attacks on the victims. Thus, the request for a reduction in their penalties is unfounded since the reduction of penalties is not mandatory even in the presence of mitigating factors. They argue that the trial court gave them a reduced penalty of twenty years of imprisonment, which is lower than the statutory penalty.

[290] The defendant in this group often asserts that the trial court considered aggravating circumstances, but the prosecution denies this and argues that such factors are statutory. Article 19, paragraph 3 of Law n° 46/2018 of 13/8/2018 on counter-terrorism provides for one aggravating factor for the offense of participating in terrorism acts as a group leader, and article 34 of the same law provides for an aggravating circumstance if such acts resulted in death. However, the trial court did not rely on any of these factors in relation to the accused.

DETERMINATION OF THE COURT

- **Regarding NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude**

[291] NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude are appealing on the grounds that the trial court disregarded their guilty plea to reduce their penalties. To address this issue, the court will refer to articles 49 and 58 of Law n° 68/2018 of 30/8/2018 determining offenses and penalties in general.

[292] Article 49 of the Law n° 68/2018 of 30/8/2018 determining offenses and penalties in general reads: "A judge determines a penalty according to the gravity, consequences of, and the motive for committing the offence, the offender's prior

record and personal situation and the circumstances surrounding the commission of the offence." Furthermore article 58, paragraph one of the same law states: "The judge assesses whether mitigating circumstances decided by a judge are admissible." The second paragraph ofthe same article provides that "the reasons for acceptance of mitigating circumstances must be stated in the judgment."

[293] Both legal provisions support the principle that a judge may consider the accused's prior, present, and future personal situations in relation to the commission of the offense during the sentencing phase. The judge can evaluate these factors in light of the circumstances surrounding the offense, its gravity, and its consequences to society, and determine whether there are mitigating circumstances that may warrant a reduction in the penalty.

[294] In paragraph 679 of the appealed judgment, the trial court found NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude guilty of several offenses. These included membership in a terrorist group, participation in terrorist acts, and illegal use of explosives or any noxious substance in a public place. In addition, NTIBIRAMIRA Innocent was also found guilty of conspiring to and inciting the commission of a terrorist act. In paragraph 681 of the appealed judgment, the Trial Court found that although NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude had admitted to the charges, they deserved a severe punishment provided for most serious offence. The court considered several factors, including the circumstances surrounding the attacks they launched in Rusizi district, how they transported and concealed ammunition into Rwanda, their collaboration with FLN commanders, as well as the

consequences of their actions, such as injuries to individuals and destruction of property. The court ultimately sentenced them to twenty (20) years' imprisonment.

[295] In their joint appeal, NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude argue that the trial court denied them a reduction in their penalties despite their guilty plea. The prosecution argues that the trial court did not disregard the plea of guilty by NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude. The court recognized that they admitted to the charges, but it determined that they did not deserve a reduction in their sentence due to the circumstances surrounding the attacks they launched in Rusizi district. They add that if the court had considered their guilty plea as a mitigating factor, the penalty would not have been reduced below the twenty (20) years' imprisonment they were sentenced to by the trial court based on article 60, subparagraph (2) of the Law nº. 68/2018 of 30/8/2018 mentioned earlier.

[296] The instant court finds that, as explained above, the court is not obligated to consider mitigating factors raised by the accused in order to reduce their penalty. Instead, it considers them discretionary and can reject them based on the circumstances of the offense committed by the accused, which is what the trial court did. Regarding NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude, the trial court refused to reduce their penalty below twenty (20) years, the statutory minimum penalty provided for the most serious offence, of which they were declared guilty, considering the grounds held in paragraph 681 of the appealed judgment. That means the court did not disregard their guilty plea, but instead used its discretion to find that their

plea would not constitute mitigating circumstances, considering the gravity of the offenses for which they were declared guilty.

[297] Despite that NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude allege that they did not benefit the penalty reduction at trial court, the Court of Appeal notes that it sentenced them to twenty (20) years' imprisonment, which is the minimum statutory penalty provided for the most serious offence among the offences of which they were declared guilty, instead of sentencing them to twenty-five (25) years' imprisonment, the maximum statutory penalty provided for that offence. This leads to the fact that as long as they were not given a higher penalty, they received the reduced penalty. The instant court notes further that the trial court sentenced them to the proper and sufficient penalty considering the offences they have committed personally.

[298] For the foregoing reasons, the Court of Appeal deems that NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude should not benefit another reduction of their sentences by the trial court. Consequently, their ground of appeal lacks merit.

- **Regarding SHABANI Emmanuel and NSABIMANA Jean Damascène alias Motard**

[299] Shabani Emmanuel and Nsabimana Jean Damascène, also known as Motard, allege that the trial court disregarded their plea of guilty and the fact that they were first-time offenders, which should have been considered as mitigating factors. Despite being accused of a felony, they argue that there was nothing that should have prevented them from receiving a reduced sentence. They further allege that they did not receive a penalty reduction because they were sentenced to the maximum statutory penalty of twenty (20) years' imprisonment for the offenses they were

found guilty of. In addition, they place blame on the trial court for failing to provide an explanation for the twenty (20) year sentence they received.

[300] Indeed, Nsabimana Jean Damascène, alias Motard, argues that his disclosure to the administration of the location where he kept the ammunition before his arrest, in order to prevent it from falling into the wrong hands, should be considered a mitigating factor under Article 38 of the Law N°. 46/2018 of 13/8/2018 on counterterrorism.

[301] The prosecution argues that under Article 47 of the Law n°. 68/2018 of 30/8/2018, as previously mentioned, it should not be assumed that the trial court rejected the guilty plea of SHABANI Emmanuel and NSABIMANA Jean Damascène, alias Motard. According to Paragraph 681 of the appealed judgment, the court decided that they should not receive a penalty reduction despite admitting to the charges due to the circumstances surrounding the attacks they launched in different parts of Rusizi district. The prosecution further alleges that under Article 60, Subparagraph (2˚) of the aforementioned Law No. 68/2018 of 30/8/2018, even if the court had considered their guilty plea as a mitigating circumstance, the penalty they would have received could not have been less than the twenty-year sentence imposed by the trial court. This is because the most serious crime they were charged with is illegal use of explosives or any noxious substance in a public place, which carries a minimum sentence of twenty years and a maximum sentence of twenty-five (25) years' imprisonment.

[302] The trial court explained in Paragraph 679 of the appealed judgment that SHABANI Emmanuel and NSABIMANA Jean Damascène, also known as Motard, were found guilty of

membership in a terrorist group, committing and participating in terrorist acts, and illegal use of explosives or any noxious substance in a public place. SHABANI Emmanuel is also guilty of conspiracy and incitement to commit a terrorist act. In Paragraph 681, the trial court ruled that despite SHABANI Emmanuel and NSABIMANA Jean Damascène, also known as Motard, admitting to the charges, they would be sentenced to the penalty provided for the most serious crime they were convicted of. They received a sentence of twenty (20) years' imprisonment due to the circumstances of the attacks they carried out in different parts of Rusizi district.

[303] Although it is not mandatory for the court to adopt mitigating circumstances and reduce the penalties of the accused, the Court of Appeal finds that they should be considered discretionary. This means that the court may choose not to consider them depending on the circumstances of the crime committed by the accused. In this case, the trial court declined to consider mitigating circumstances for SHABANI Emmanuel and NSABIMANA Jean Damascène, alias Motard.

[304] Based on the rulings in the previous paragraph, the Court of Appeal observes that the legal principle regarding mitigating factors is that the cruelty of the crime does not preclude the consideration of mitigating circumstances or the reduction of the sentence. However, it is within the court's discretion to decline to reduce the sentence of the accused even in the presence of such circumstances, if it deems that the gravity and cruelty of the crime outweigh the mitigating factors in their favor.

[305] The Court of Appeal observes that the trial court did not provide a clear reason for declining to reduce the penalties of SHABANI Emmanuel and NSABIMANA Jean Damascène, alias

Motard, despite the cruelty of their offenses. Instead, in paragraph 681 of the appealed judgment, the same court explained that the defendants admitted to the charges but did not deserve much leniency due to the circumstances of their attacks in different locations of Rusizi district. As a result, the Court sentenced them to twenty (20) years' imprisonment, which is the minimum statutory penalty for the most serious offense they were convicted of, instead of imposing the maximum statutory penalty of twenty-five (25) years' imprisonment.

[306] Therefore, the Court of Appeal does not find merit in the arguments put forward by SHABANI Emmanuel and NSABIMANA Jean Damascène alias Motard, who claimed that their penalty was not reduced and that no clear explanation was provided for their twenty-year sentence.

[307] Concerning NSABIMANA Jean Damascène, alias Motard's arguments that he deserves a reduced sentence based on Article 38 of the Law n° 46/2018 on counter-terrorism since he disclosed, through his wife while he was in Congo[59], the location of hidden ammunition to the authorities before his arrest, in order to prevent it from falling into the wrong hands; the Court of Appeal found these statements to be groundless.The court noted that his wife disclosed the information about the hiding place of a handgun and grenade that would not be accessed otherwise, but that it did not help to subdue, mitigate the effects of the crime, or suppress acts of terrorism under Article 38. Furthermore, the court determines that even if the information had been consistent with the text of such article, the court would not be obligated to reduce the sentence of the accused in any way.

[59] See paragraph 321 of the appealed judgment where he declared about that.

[308] For all the foregoing reasons, the Court of Appeal deems this ground of appeal of SHABANI Emmanuel and NSABIMANA Jean Damascène alias Motard without merit.

- **Regarding BIZIMANA Cassien alias Passy**

[309] BIZIMANA Cassien, also known as Passy, cricizes the trial court for sentencing him to twenty years in prison despite being a first-time offender, sincerely admitting to the charges, cooperating with investigation agencies, and providing information that helped to arrest his accomplices. Therefore, he is requesting the instant court to reduce the sentence because the trial court disregarded the provisions of article 59, subparagraph one of the aforementioned Law n° 68/2018 of 30/8/2018. He clarifies that he did not receive a penalty reduction because the trial court sentenced him to a penalty that falls within the threshold of the punishments provided for the most serious crime among the offenses he was found guilty of, without providing any justification for that sentence. He argues further that he has shown a change in behavior since his arrest by handing over the ammunition that was under his custody, expressing remorse, and seeking forgiveness.

[310] In paragraph 679 of the appealed judgment, the trial court found BIZIMANA Cassien, alias Passy, guilty of membership in a terrorist group, committing and participating in terrorist acts, illegal use of explosives or any noxious substance in a public place, as well as conspiracy and incitement to commit a terrorist act. In paragraph 681 of the appealed judgment, the trial court held that although BIZIMANA Cassien, alias Passy, and his co-accused admitted to the charges, considering the circumstances of the attacks they launched in different parts of the Rusizi district, they should be sentenced to the penalty provided for the

most serious offense they are guilty of. Therefore, they were sentenced to twenty years of imprisonment.

[311] The Court of Appeal analyzed the reasons presented by the trial court in paragraph 681 of the appealed judgment and concluded that despite BIZIMANA Cassien admitting to the charges, he was not eligible for a reduction in his sentence due to the severity of the attacks carried out in various areas of the Rusizi district. Therefore, the court sentenced him and his accomplices to twenty years of imprisonment, which is the minimum penalty provided for the most serious offense they were found guilty of. The court did not impose the maximum penalty of twenty-five years of imprisonment for the same offense.

[312] The Court of Appeal noted that although the accused admitted to the charges since his arrest, was a first-time offender, and cooperated with the agencies involved in the case, the court is not obligated to consider those mitigating factors to the extent that he wished. The court has the discretion to consider such factors based on the circumstances surrounding the commission of the offense and the situation of the suspect in general. The Court finds that the irregularity raised by BIZIMANA Cassien, alias Passy, that the trial court disregarded the provisions of article 59, paragraph one of the aforementioned Law n˚ 68/2018 of 30/8/2018, should not be given any merit.

[313] The Court of Appeal notes that as indicated above, the trial court provided justifications for the reasons that led to the sentence of BIZIMANA Cassien to twenty years of imprisonment (20). The trial court considered the circumstances surrounding the commission of the offenses he was guilty of and his admission of the charges. Consequently, his statements are not credible.

[314] For all these reasons, the Court of Appeal finds this ground of appeal by BIZIMANA Cassien, alias Passy, without merit.

d. Whether the prayers of some of the accused for the suspension of the penalty should be granted

[315] The accused who requested the suspension of the penalty are NSHIMIYIMANA Emmanuel, NIYIRORA Marcel, IYAMUREMYE Emmanuel, NSABIMANA Jean Damascène, alias Motard and SHABANI Emmanuel.

- **NSHIMIYIMANA Emmanuel**

[316] NSHIMIYIMANA Emmanuel declares that he prayed for the suspension of the penalty previously before the trial court citing article 85[60] of the Organic Law n° 01/2012/OL of 2/5/2012 instituting the penal code. However, his request was not granted. He argues that if the court does not grant him the opportunity to be reintegrated into society, he should be sentenced to a suspended penalty. This would allow him to reunite with his family and care for his life, as he suffers from hypertension.

[317] The prosecution retorts that Nshimiyimana Emmanuel's request to be granted the suspension of the penalty lacks merit. They argue that he was never forced to join terrorist groups, as he alleges, and that he was not a minor when he joined them.

[60] Article 85 of the Organic Law n° 01/2012/OL of 2/5/2012 instuting the penal code reads : the suspension of penalty is a judge's decision to order the stay of execution of a penalty of imprisonment not exceeding five (5) years if the convict has not been previously sentenced to imprisonment or to community service as an alternative penalty to imprisonment of more than six (6) months as a result of a final judgment."

- **IYAMUREMYE Emmanuel**

[318] Iyamuremye Emmanuel argues that he agrees with the prosecution on the facts that the charges were based on the Organic Law n° 01/2012/OL of 2/5/2012 instituting the penal code. Therefore, he requests the instant court to rely on Article 85 of that organic law, which provides for the suspension of the penalty, and suspend his penalty of five (5) years imposed by the trial court.

[319] Regarding his request for the suspension of his five-year penalty based on Article 85 of Organic Law nº. 01/2012/OL of 2/5/2012 instituting the penal code, the prosecution argues that he has not provided any reasons why he should benefit from such suspension, especially in the case of a serious offense such as membership in a terrorist group. Furthermore, the provision of the law invoked in relation to such an offense is not relevant because it is a continuous offense that is repressed under the law in force at the time the last criminal act ceases. They further argue that he was a member of the FDLR-FOCA terrorist group until May 2016, after which he joined the MRCD-FLN terrorist group and remained a member until his arrest in 2019. As such, the act he committed falls under Article 18 of Law nº 46/2018 of 13/8/2018, on counter terrorism, which provides for imprisonment for a term of not less than fifteen (15) years but not more than twenty (20) years. This penalty cannot be suspended, considering the provisions of Article 64[61] of Law nº. 68/2018 of 30/8/2018 determining offenses and penalties in general, as amended to date.

[61] "Suspension of sentence is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years. Suspension of a penalty isordered on the basis of the gravity of the offence."

- **Kuri NIYIRORA Marcel**

[320] Niyirora Marcel argues that, based on his admission of the charges as a mitigating factor, he requests the court to consider Article 38[62] of Law nº 46/2018 of 13/8/2018 on counterterrorism, which provides for the possibility of reducing the penalties provided by such law, as well as Article 85 of Organic Law nº 01/2012/OL of 2/5/2012 instituting the penal code and providing for the suspension of the penalty. He seeks a penalty reduction to find his family since he did not know their whereabouts when he was arrested.

[321] Counsel URAMIJE James, who is assisting NSHIMIYIMANA Emmanuel, IYAMUREMYE Emmanuel, and NIYIRORA Marcel, states that the trial court reduced their penalties to five (5) years of imprisonment on the basis of their guilty plea. Therefore, he requests that they be reintegrated into society, but if the court deems otherwise, he requests that they benefit from the suspension of the penalty based on the penalty they were given.

[322] The prosecution argues that the suspension of the penalty by Niyirora Marcel is without merit because the offense he was declared guilty of is a felony subject to a term of imprisonment that is more than five (5) years. Therefore, they find that his request is inconsistent with Article 64 of Law nº 68/2018 of 30/8/2018 determining offenses and penalties in general, and

[62] Article 38 of the Law nº 46/2018 of 13/8/2018 on counter terrorism reads: "Subject to the provisions of other laws, penalties provided for offences referred to in this Law may be reduced if the accused provides information which would have been inaccessible by other means and that help to prevent or reduce the effects of the offence, to identify or take the offender to courts, to obtain evidence or to prevent terrorist acts provided for under this Law."

reads as follows: "Suspension of sentence is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years."

- **NSABIMANA Jean Damascène and SHABANI Emmanuel**

[323] NSABIMANA Jean Damascène states that the trial court rejected the suspension of his penalty on the ground that his residence is unknown, despite the fact that his identification is contained in the dossier. This has scared him as he is concerned about the potential consequences. Furtheremore, SHABANI Emmanuel seeks forgiveness because he admitted to the charges and requests for the reduction and suspension of penalty requisitioned against him.

[324] Counsel UWIMANA Channy, who is assisting NSABIMANA Jean Damascène, states that the trial court explained that the suspension of the penalty was not granted because his identification was unknown. However, the appealed judgement has indicated several times that he had applied to be transferred to Rusizi Correctional Service where his sister lives, and that his identification, residence, and spouse are all mentioned in the file. Therefore, he requests the suspension of his penalty, based on the five (5) years he was sentenced to, in order to single him out of the same category established by the trial court, which led to him being unfairly punished for an offence he did not commit and sentenced to twenty (20) years' imprisonment.

[325] The prosecution rebuts that the rejection of the suspension of the penalty for NSABIMANA Jean Damascène, alias Motard, on the grounds of unknown identification, is not the only reason.

As evidenced in paragraph 688 of the appealed judgment, the reasons for rejecting the suspension for him and his accomplices include the circumstances and gravity of the offenses for which they were found guilty. Therefore, they argue that since the penalties for the felonies he was charged with are more than five (5) years, the suspension he is applying for is impossible under article 64 of Law nº 68/2018. This law states that the suspension of a sentence is granted for a penalty of imprisonment not exceeding five (5) years, and based on the gravity of the offense.

DETERMINATION OF THE COURT

[326] Article 64, paragraph one of the Law n˚ 68/2018 of 30/8/2018 determining offences and penalties in general provides as follow: "Suspension of sentence is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years. Suspension of a penalty is ordered on the basis of the gravity of the offence."

[327] There appears to be a mistake in the Kinyarwanda version of paragraph one of Article 64. It states that suspension is possible in relation to the penalty for which the law provides for five years' imprisonment, but in fact, the penalty itself is not subject to imprisonment - rather, it is the offense that may result in imprisonment. This mistake may cause confusion when trying to determine the legislator's rationale. It's unclear whether the suspension applies to the penalty provided for the offense subject to a sentence not exceeding five years' imprisonment or to the offense for which a sentence of not more than five years' imprisonment was pronounced.

[328] Article 85 of the Organic Law n°01/2012/OL of 2/5/2012 instituting the penal code defines the suspension of the penalty as follow: "Suspension of sentence is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years, (…)". Similar definition is provided by the current law in its english[63] and french versions[64]. As a result, the court has observed that the Rwandan legislator made a mistake in formulating this provision in the Kinyarwanda version. Instead of stating that the penalty suspension is a court decision which orders the stay of execution of a penalty for which the law provides for the punishment not exceeding five (5) years' imprisonment, they should have stated that penalty suspension is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years' imprisonment. It ensues that the suspension of the penalty applies to the imprisonment penalty of not more than five years, which is pronounced by the court, and not to the offense for which the law provides a penalty of not more than five years' imprisonment.

[329] This corroborates the legal principle in criminal law that allows for the suspension of the penalty for all crimes, provided that the penalty pronounced for the offense makes it possible[65] while also taking into account the gravity of the offense, as

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[63] The english version of Article 64, paragraph states that: "*Suspension of sentence is a court decision which orders the stay of execution of a penalty of imprisonment not exceeding five (5) years. Suspension of a penalty is ordered on the basis of the gravity of the offence"*

[64] It states in French that: *"Le sursis est la décision judiciaire ordonnant de surseoir à l'exécution d'une peine d'emprisonnement n'excédant pas cinq (5) ans. Le sursis est ordonné en considération de la gravité de l'infraction''*.

[65] ''Le *sursis simple peut être accordé quelle que soit l'infraction commise, du moment que la peine choisie est susceptible de sursis''*, Bernard Bouloc, Droit pénal général, 26e édition, Dalloz, Paris, 2019, P. 591, n° 791.

outlined in Article 64 of the Law Determining Offenses and Penalties in General. Therefore, the court finds that, notwithstanding the text of Article 333[66] of Law nº 68/2018 of 30/8/2018 mentioned above, the suspension of the penalty should be ordered based on the sentence not exceeding five (5) years that the judge pronounced against the accused, and should be granted with regard to all offenses in accordance with the meaning of Article 64 of the English and French versions. This reasoning was similarly recapitulated in different penal codes that were applicable before, such as Article 97[67] of Penal Code nº 21/1977 of 18/8/1977, which deals with penalty suspension, and Article 85[68] of Organic Law Nº 01/2012/OL of 2/5/2012 instituting the penal code.

[330] The Court of Appeal finds that, taking into account its sense, the suspension of the penalty consists of the modality of executing the imprisonment sentence pronounced by the judge[69].

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[66] Article 333 of the Law n° 68/2018 of 30/8/2018 determining offences and penalties in general provides that: "This Law was drafted, considered and adopted in Ikinyarwanda."

[67] '' If the convicted person has not been previously sentenced to imprisonment for more than two months, the courts may, by the same judgment and with reasoned decision, **order that the execution of all or part of the principal or accessory sentences they pronounce be suspended**, provided that the main imprisonment sentence does not exceed five years.

[68] "The suspension of penalty is a judge's decision to order the stay of execution of a penalty of imprisonment not exceeding five (5) years **if the convict** has not been previously sentenced to imprisonment or to community service as an alternative penalty to imprisonment of more than six (6) months as a result of a final judgment."

[69] ''*Le juge a la possibilité, grâce aux sursis,* ***de conditionner l'exécution d'une ou de plusieurs peines qu'il prononce au comportement ultérieur du condamné****. S'il prononce une peine, le juge ne décide pas seulement de sa*

The judge can order it even if the convict did not request it, which means that he or she exercises discretion[70] based on the penalty pronounced against the accused, their personal situation, and the gravity of the offense committed. Therefore, it finds that since the suspension of the penalty is granted at the judge's discretion, and taking into account its nature, there should be nothing preventing the convict from requesting it for the first time at the appeal level.

- **Regarding NSHIMIYIMANA Emmanuel**

[331] During the hearing held on January 31st, 2022, NSHIMIYIMANA Emmanuel stated that if the court finds him responsible for the offense committed, he requests a suspension of the three (3) year imprisonment penalty that was given to him by the trial court.

[332] The prosecution argues that since NSHIMIYIMANA Emmanuel is requesting the suspension of the penalty for the first time at the appeal level, this application should not be entertained. They explained that he should have indicated that he had

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nature et de son taux ***mais est également habilité à préciser, dans certaines limites, ses modalités d'exécution*** *(…….)"*, Harald Renout, op.cit., P. 321.

[70] *''Lorsque toutes les conditions légales sont remplies, il n'est jamais tenu de faire bénéficier le condamné du sursis simple. Le sursis n'est jamais un droit, ce n'est même pas une mesure naturelle lorsque l'indulgence paraît s'imposer. Le juge apprécie s'il ya lieu d'ordonner le sursis en fonction de la personnalité du délinquant et de son milieu social* ; (…..), Bernard Bouloc, op.cit. P. 592, n° 792.

''*La condamnation conditionnelle est facultative. Elle est une faveur que le juge accorde discrétionnairement au condamné. Donc, même lorsque les conditions légales sont réalisées, le juge peut refuser d'accorder le sursis, (…). Par contre, si la condamnation conditionnelle est accordée, elle doit être motivée''*, Nyabirungu mwene Songa, Droit pénal général zaïrois, DES, Kinshasa, 1989, P. 340.

introduced such a request at the trial court without success, and then point out the mistakes that would have been made in order to rectify them. They declared that even if the instant court entertains it, it is impossible for suspension to be granted because the offense of membership in a terrorist group, for which he was declared guilty, carries a penalty of twenty (20) years' imprisonment, whereas the suspension of penalty is allowed only for imprisonment penalties of five (5) years or less. They also argue that it is not understandable for him to request the suspension of the penalty while at the same time alleging that he did not commit any offense.

[333] The ruling of the appealed judgment indicates that, regarding the penalty requested by the prosecution at the trial court, NSHIMIYIMANA Emmanuel replied that he should not be held liable for the charges because he participated under coercion. Therefore, instead of being repressed, he should be instructed on the country's history, as is the case for his colleagues with whom he lived together in Congo's forests, who are being educated for reintegration purposes.

[334] The Court of Appeal notes that NSHIMIYIMANA Emmanuel does not really refute his membership in terrorist groups. He rather admits to having joined under coercion while still a minor, for which he should not be held liable. However, at the appellate level, he adds that if the court deems that he should be held liable for the offense he was found guilty of, he should be granted a suspension of the penalty of three (3) years that he was given by the trial court.

[335] Based on the foregoing explanations regarding Article 64, which state that penalty suspension is an execution modality of the verdict issued by the judge and that it is ordered at the judge's

discretion, the Court of Appeal finds that there is nothing to prevent NSHIMIYIMANA Emmanuel from applying for the suspension of his sentence for the first time at the appeal level. This implies that the prosecution's argument against the suspension of the penalty at the first time at the appeal level by NSHIMIYIMANA Emmanuel with regard to the penalty of imprisonment not less than fifteen (15) years but not exceeding twenty (20) years for the offence of membership in a terrorist group that he was found guilty of, should not be given merit.

[336] The Court of Appeal finds that, as indicated by the trial court, NSHIMIYIMANA Emmanuel joined the terrorist groups while still a minor, completed his secondary education, admitted to the charges against him, and provided valuable information to justice organs. In addition, although he is a first-time offender, it should be noted that he remained in FDLR and FLN until his apprehension on February 22, 2020. He confessed that he joined CNRD on May 31, 2016, because it had the ideology that interrested him, and he enrolled in secondary school and Military Academy (ESM) in September 2017, where he completed his studies on March 25, 2018 with second lieutenant rank. This proves his intention to stay engaged in the terrorist groups. Therefore, he should not be granted the suspension of the three (3) year penalty imposed on him, as such penalty is commensurate with the gravity of the offence he was charged with.

[337] For all the foregoing reasons, the Court of Appeal finds this ground of appeal raised by NSHIMIYIMANA Emmanuel without merit.

- **Regarding NIYIRORA Marcel**

[338] Regarding the prosecution's request for a 15-year imprisonment penalty at first instance, NIYIRORA Marcel rebutted that he should not be subjected to such a penalty. Instead, he argued that he should be reintegrated into society and provided with education on national history. The trial court had imposed a sentence of five (5) years' imprisonment against him before. At the appeal level, NIYIRORA Marcel is requesting the instant court to suspend the penalty that was imposed on him by the trial court.

[339] The prosecution opposes NIYIRORA Marcel's request for the suspension of his penalty by arguing that the offense he was charged with is subject to a maximum penalty of five (5) years' imprisonment according to Article 64 of Law nº 68/2018 of 30/8/2018 Law n˚ 68/2018 of 30/8/2018 determining offences and penalties in general.

[340] As explained above, the Court of Appeal has found that the prosecution's argument, which states that the suspension of the penalty is impossible because the offense of membership in terrorist groups that NIYIRORA Marcel was charged with is subject to a penalty of imprisonment ranging from fifteen (15) to twenty (20) years, which exceeds the five (5) year sentence he received, should not be considered. This is because, when examining the suspension of the penalty, the penalty provided for the offense of which the suspect is charged is not taken into account; rather, the penalty pronounced by the judge is considered.

[341] The Court of Appeal has determined that, despite the fact that NIYIRORA Marcel was sentenced to five years'

imprisonment, the suspension of his sentence should not be granted due to the circumstances surrounding the offense he committed. It is evident that he joined FDLR-FOCA in 2003 and remained a member until 2016. Subsequently, he joined CNRD with the rank of captain and later MRCD-FLN until his arrest on July 16, 2020, with the rank of Lieutenant-Colonel. He led FDLR-FOCA combatants in Northern Kivu, in Rusizi, and other areas of the Congo (DRC) while serving in the high command of CNRD.

[342] Therefore, for all of the aforementioned reasons, the Court of Appeal finds that the appeal by NIYIRORA Marcel is without merit.

- **Regarding IYAMUREMYE Emmanuel**

[343] IYAMUREMYE Emmanuel was sentenced to five (5) years of imprisonment by the trial court. He is now requesting the instant court to suspend the execution of such penalty, as he did before the trial court.

[344] The prosecution rebuts that IYAMUREMYE Emmanuel joined and remained in the FDLR-FOCA terrorist group until May 2016, and subsequently moved to the MRCD-FLN terrorist group, where he continued until his arrest in 2019. He was found guilty of the offense of membership in a terrorist group, which carries a penalty ranging from fifteen (15) to twenty (20) years. Therefore, according to Article 64 of Law n° 68/2018 of 30/8/2018, which is mentioned above, this sentence is not eligible for suspension.

[345] The Court of Appeal has determined that the arguments presented by the prosecution, which state that the suspension of

the penalty demanded by IYAMUREMYE Emmanuel is impossible due to the offense of membership in a terrorist group carrying a penalty ranging from fifteen (15) to twenty years, and thus exceeding the five (5) year sentence he was given, should not be given merit. This is because Article 64, as stated above, provides that only offenses subject to imprisonment not exceeding five (5) years can be considered for suspension of penalties. It is important to note that while examining the request for penalty suspension, the penalty provided for the offense charged to the accused is not considered, but rather the sentence imposed by the judge.

[346] The Court of Appeal has found, however, that IYAMUREMYE Emmanuel was a member of FDLR from the year 2000 until 2016 when he left to join CNRD until 2019 when he was arrested. As part of the combatants of FDLR and FLN, he participated in acts of FDLR-FOCA and MRCD-FLN terrorist groups, where he held the position of platoon chief in FDLR-FOCA and company commander until 2016. Considering his rank of Colonel at the time of his apprehension, he is viewed to have played an important role in the groups' operations. Therefore, he should not be granted the suspension of his penalty.

[347] For these reasons, the Court of Appeal finds his ground of appeal without merit.

- **Regarding NSABIMANA Jean Damascène alias Motard and SHABANI Emmanuel**

[348] The trial court, in paragraph 688 of the appealed judgment, held that penalty suspension should not be granted to NSABIMANA Jean Damascène, alias Motard, and SHABANI Emmanuel. The court based this decision on the circumstances

surrounding the commission of the offenses, the fact that the defendants have no known residence, and the gravity of the terrorism charges for which they were found guilty.

[349] NSABIMANA Jean Damascène, alias Motard, and SHABANI Emmanuel argue that the trial court wrongly rejected their request for a penalty suspension due to a lack of a known residence. However, NSABIMANA Jean Damascène, alias Motard, claims that the prosecution's indictment includes his full identification, including his domicile and residence. NSABIMANA Jean Damascène, alias Motard, further clarifies that the law does not make the suspension of the sentence in favor of the defendant dependent on a known residence, even if he does have one. He further states that he requested the trial court to transfer him to Rusizi prison to serve his sentence if they could not grant him the penalty suspension, as it is closer to his family's area of residence. However, the court did not make a ruling on this request.

[350] The prosecution rebuts that while they agree with NSABIMANA Jean Damascène, alias Motard, on his known domicile, the trial court did not solely base the rejection of his penalty suspension request on this ground. The court also relied on other reasons, including the circumstances and gravity of the offenses for which he was found guilty, as stated in paragraph 688 of the appealed judgment. They further argue that despite this, the suspension of the penalty is impossible for the offenses for which he was found guilty under Article 64 of Law n^{o} 68/2018 of 30/8/2018.

[351] The Court of Appeal finds that even though the lack of known residence was not the sole reason for rejecting the request for penalty suspension by NSABIMANA Jean Damascène, alias

Motard, and SHABANI Emmanuel, the trial court erred in deciding that they lacked a known residence, as their residences are mentioned in the case file.

[352] The Court of Appeal has found that, based on the explanations provided above regarding Article 64 of Law n˚68/2018 of 30/8/2018 determining offences and penalties in general, the penalty of imprisonment for twenty (20) years given by the trial court for the offenses for which they were found guilty, does not allow for suspension of the sentence. This is because suspension is only granted when the convict is sentenced to imprisonment for a period of five (5) years.

[353] Therefore, for all the aforementioned reasons, the Court of Appeal finds that the grounds of appeal brought forward by NSABIMANA Jean Damascène, alias Motard, and SHABANI Emmanuel, relating to the suspension of their penalty, which was not granted at the trial level, are unfounded.

[354] With regards to the request made by NSABIMANA Jean Damascène, also known as Motard, to serve his penalty in Rusizi prison, closer to his family, the Court of Appeal finds that the decision on the place of execution of the sentence does not fall under the jurisdiction of the courts.

- **e. Whether the requests made by the accused to be admitted into the center for reintegration program of former combatants can be considered**

[355] The request to be admitted to a demobilization and reintegration center was submitted by NSANZUBUKIRE

Félicien, MUNYANEZA Anastase, NSHIMIYIMANA Emmanuel, and NIYIRORA Marcel.

[356] NSANZUBUKIRE Félicien and MUNYANEZA Anastase stated that during the trial court, they requested not to be indicted and to be admitted to the Mutobo rehabilitation center for reintegration into society, as was the case for their colleagues. This request was made based on the Lusaka Ceasefire Agreement of 10/7/1999, the Joint Communiqué of 9/11/2007 signed between Rwanda and DRC in Nairobi/Kenya, and Ministerial Order n° 066 of 13/9/2002. They declared that the High Court disregarded the principle of Rwanda to always resolve problems through dialogue and consensus, as provided for in the guiding principles in Article 10, paragraphs ten and eleven of the Constitution of the Republic of Rwanda. This is the reason why they lodged an appeal against it and requested the Court of Appeal to consider this.

[357] NSANZUBUKIRE Félicien and MUNYANEZA Anastase, along with Counsel TWAJAMAHORO Herman who is assisting them, argue that in paragraph 463 of the appealed judgment, the trial court held that they could not be admitted for reintegration because the provisions of the convention did not prevent the prosecution of the suspect for other offences, without specifying what those offences were. However, the appellants were only convicted of membership in a terrorist group, which they do not dispute. Therefore, they request the court to consider their case and allow them to be reintegrated into society, as they believe it is their right under the convention. They claim to have met all the necessary requirements and to have distanced themselves from terrorist groups.

[358] NSHIMIYIMANA Emmanuel argues that the trial court misinterpreted Lusaka Ceasefire Agreement of 10/7/1999, which states that combatants from those terrorist groups in Congo are allowed to undergo social reintegration through the Mutobo rehabilitation center, except for those who have been prosecuted for crimes against humanity, war crimes, and genocide. He argues that the prosecution ignored the fact that he has not been charged with any of the offences mentioned above. He therefore requests to be admitted for social reintegration, as others in similar situations have been.

[359] Marcel NIYIRORA stated during his trial that he had requested to be admitted for social rehabilitation, citing that others who had distanced themselves from terrorist groups and were apprehended after him were treated similarly and transferred to the Mutobo rehabilitation center. He now requests that the current court consider this and transfer him to the center for civic education, based on Article 15 of the Constitution, which stipulates that all persons are equal before the law. He also points out that the Lusaka Ceasefire Agreement and Nairobi Declaration call for the disbandment, disarmament, and demobilization of combatants, which the prosecution allegedly knew but ignored, resulting in his prosecution. As such, he requests the court to examine and consider this information.

DETERMINATION OF THE COURT

[360] Article 183, subpargraph 6° of the Law n˚ 027/2019 of 19/9/2019 relating to criminal procedure provides that "An appeal is filed in the form of a written submission instituting a claim indicating explanations for each default or issue showing

the mistakes made and how they should be rectified in accordance with laws, evidence and court recommendation."

[361] This provision implies that if the appellant fails to provide explanations for each irregularity translating the mistake made in the appealed decision, as well as how they should be remedied according to the law, then the appeal would become groundless.

[362] As evident in paragraphs 463 and 464 of the appealed judgment regarding the issue of demobilization and reintegration, the trial court explained that neither the Lusaka Ceasefire Agreement of 10/7/1999, nor the Joint Communique between the Democratic Republic of Congo and Rwanda issued in Nairobi on 9/11/2007, nor the Ministerial Order n° 066 of 13/9/2002 determining eligibility criteria for demobilization of members of ex-armed groups, provides that suspects of other crimes who are members of such groups would not face prosecution for their actions. What is recalled is that those prosecuted for genocide, war crimes, and crimes against humanity should be judged, and this is the position that the Supreme Court adopted in judgment No. RPA 0255/12/CS of INGABIRE UMUHOZA Victoire and co-accused, rendered on 13/12/2013.

[363] The accused mentioned above allege that they blame the trial court for not accepting their demand to be demobilized instead of being prosecuted, based on the Lusaka Ceasefire Agreement of 10/7/1999, Joint Communique between the Democratic Republic of Congo and Rwanda issued in Nairobi/Kenya on 9/11/2007, and Ministerial Order No. 066 of 13/9/2002 determining eligibility criteria for demobilization of members of ex-armed groups. They argue that since they have been charged with membership in a terrorist group, but not with genocide, war crimes, or crimes against humanity, they should

not be prosecuted but rather demobilized. However, the court held that although they are not charged with those three offenses, such documents do not prevent their prosecution for other unspecified crimes. This is the reason why they request that the court consider admitting them to a rehabilitation retreat in Mutobo Center, instead of being prosecuted, as it was the case for others in the same situation.

[364] The prosecution rebuts the accused's ground of appeal, stating that it is unfounded because the accused did not indicate what they blame on the holdings provided by the trial court that led to the rejection of their request to be admitted to a demobilization and rehabilitation center.

[365] The Court of Appeal finds the accused's ground of appeal unfounded because although they alleged that the trial court ignored the provisions of the Lusaka ceasefire agreement, they did not criticize the explanations provided by the trial court to support its decision that offenders of crimes other than genocide, crimes against humanity, and war crimes could still face prosecution for general offenses such as terrorism.

[366] However, the Court of Appeal finds that the trial court's decision is supported by the position adopted by the Supreme Court in the case of INGABIRE UMUHOZA Victoire, and the provisions of subparagraph twenty-two (22) of the Lusaka Ceasefire Agreement of 10/7/1999. This provision specifies that except for fugitives of genocide, the countries of origin of the members of armed groups would take all necessary measures to facilitate their voluntary repatriation, including granting

amnesty[71] (retroactively) with regard to other crimes committed[72], such as general offences. However, that is not what the Government of Rwanda opted to do. Therefore, even though the accused did not commit the three crimes mentioned above, they could still be prosecuted and found guilty for the crimes they are accused of in this case.

[367] The Court of Appeal finds no merit in the arguments made by the accused regarding others who were arrested with them and subsequently demobilized, as it is the duty of the prosecution to determine whether or not prosecution is necessary.

[368] For all these reasons, the Court of Appeal finds this ground of appeal by NSANZUBUKIRE Félicien, MUNYANEZA Anastase, NSHIMIYIMANA Emmanuel and NIYIRORA Marcel without merit.

f. Determining the beginning of the computation of penalty execution

[369] NSANZUBUKIRE Félicien, MUNYANEZA Anastase, NTIBIRAMIRA Innocent, and BYUKUSENGE Jean-Claude have requested the court to determine the reference time for the

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[71] *Amnistie : Acte du législateur qui efface rétroactivement le caractère punissable des faits auxquels il s'applique. Selon le cas, l'amnistie empêche ou éteint l'action publique, annule la condamnation déjà prononcée ou met un terme à l'exécution de la peine*.

[72] '' (…….). *Les pays d'origine des membres des groupes armés s'engagent à prendre toutes les mesures nécessaires pour faciliter leur rapatriement. Ces mesures pourraient inclure l'amnistie, au cas où certains pays jugeraient cette mesure avantageuse. Toutefois, cette mesure ne s'appliquera pas dans le cas des suspects du crime de génocide. (…..)''.*

calculation of the time of imprisonment penalty that was imposed on them.

[370] NSANZUBUKIRE Félicien and MUNYANEZA Anastase allege that the trial court did examine the issue they presented, which was to determine that the imprisonment penalty they were sentenced to should be calculated from the day of their apprehension in Congo. They explain that they were incarcerated in Goma in February 2017 (9/2/2017), then transferred to Makala prison in Kinshasa. After six months, they were repatriated to Rwanda. However, at the time of their arrest and repatriation, they were never issued any documents that could be used to calculate the duration of their imprisonment. Therefore, they plead with the court to correct the mistake made by the trial court.

[371] NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude also state that they requested the trial court to consider the date on which they were arrested in Congo for the calculation of the duration of their imprisonment penalty. However, the trial court did not examine this request, despite the fact that they provided evidence that NTIBIRAMIRA Innocent was arrested on 31/7/2019, while BYUKUSENGE Jean-Claude was arrested on 24/10/2019. NTIBIRAMIRA Innocent alleges that the evidence to support his claim is that on 26/10/2019, he was paraded before the press and the population in the Kamembe sector of the Rusizi district to recount his alleged crimes. On his side, BYUKUSENGE Jean-Claude declares that the evidence to support his claim is that on 26/10/2019, he was also paraded in Rusizi before the population to recount his alleged crimes. Thus, he requests that the nine months (9) he spent in prison be included in the sentence that was imposed on him.

[372] The prosecution argues that they did not provide evidence of the alleged date of the defendant's arrest in Congo. As a result, they contend that the defendant's appeal should not be granted because the duration of the defendant's incarceration should be determined based on the time spent in custody as determined by competent authorities. They claim that the evidence determining the duration of their incarceration, as decided by competent authorities, consists of arrest warrant documents established by RIB. Therefore, since they have not presented any evidence to the contrary of such documents that they personally signed, their arguments regarding the dates of their arrest lack merit before the court.

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[373] Article 28, paragraphs one and two of the Law n° 68/2018 of 30/8/2018 determining offences and penalties in general provides that "The term of imprisonment runs from the day on which the judgment of conviction becomes final. The length of the period of detention by legally competent organs is deducted from the term of imprisonment imposed by the court." Furthermore, article 16, paragraphs two and three of the Law n° 027/2019 of 19/9/2019 relating to criminal procedure provides that "When conducting investigation, an investigator can move to the arrest or detention of a suspect in accordance with procedures under this Law. An investigator writes a statement of arrest and detention and reserves a copy to the suspect."

[374] Article 3, paragraph one of the Law n° 15/2004 of 12/6/2004 relating to evidence and its production provides that "Each party has the burden of proving the facts it alleges."

[375] Since the legislator has explicitly stated that the statement mentioned in article 16, paragraph three of the aforementioned Law n° 027/2019 of 19/9/2019 is reliable, binding, and can only be challenged through prosecution for falsification or forgery, its content should be considered true until proven otherwise.

[376] The Court of Appeal notes that the evidence regarding the date of the suspect's provisional detention in the pre-trial process consists of an arrest warrant issued by the competent investigator or a provisional arrest warrant issued by a prosecutor.

[377] The file clearly shows that it includes an arrest warrants for Major General NSANZUBUKIRE Félicien, alias IRAKIZA Fred, and Major General MUNYANEZA Anastase, alias RUKUNDO Job Kuramba, established on 15/7/2020 by the Investigation (RIB). It also includes the arrest warrants for NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude, established on 16/7/2020.

[378] The Court of Appeal has found that, despite alleging that they were apprehended and detained in Congo on account of the offences charged against them in this case, they have not produced any written evidence or written preliminary proof to support their claims. Therefore, it can be concluded that they were arrested on the dates mentioned in their arrest warrants, which are on 15/7/2020 and 16/7/2020.

[379] Furthermore, the Court of Appeal finds that these arrest warrants constitute evidence of the date of their detention because they were signed voluntarily and without any coercion or constraint.

[380] Based on the aforementioned findings, the Court of Appeal determines that the period of imprisonment for NSANZUBUKIRE Félicien and MUNYANEZA Anastase shall commence from 15/7/2020, while the period of imprisonment for NTIBIRAMIRA Innocent and BYUKUSENGE Jean-Claude shall commence from 16/7/2020. Although the Court did not examine the statements of the other accused regarding this issue, as they raised it for the first time during the appeal hearing, this ruling should apply to all defendants, based on the content of the arrest warrants issued by the Investigation organ.

[381] Based on the aforementioned reasons, the Court of Appeal concludes that the argument presented by NSANZUBUKIRE Félicien, MUNYANEZA Anastase, NTIBIRAMIRA Innocent, and BYUKUSENGE Jean-Claude lacks merit.

C. REGARDING THE REQUISITIONS OF THE PROSECUTION AGAINST THE ACCUSED AT APPEAL LEVEL

[382] The prosecution requests the court of appeal to decide, without prejudice to the offenses of which the accused were found guilty and based on the grounds of appeal stated above, that:

1. RUSESABAGINA Paul is sentenced to life imprisonment;
2. NIZEYIMANA Marc is sentenced to life imprisonment,
3. NSABIMANA Callixte alias Sankara is sentenced to twenty-five (25) years of imprisonment,

4. NSENGIMANA Herman is sentenced to twenty (20) years of imprisonment,
5. IYAMUREMYE Emmanuel is sentenced to twenty (20) years of imprisonment,
6. KWITONDA André is sentenced to twenty (20) years of imprisonment,
7. NSHIMIYIMANA Emmanuel is sentenced to twenty (20) years of imprisonment,
8. HAKIZIMANA Théogène is sentenced to twenty (20) years of imprisonment,
9. NDAGIJIMANA Jean Chrétien is sentenced to twenty (20) years of imprisonment,
10. NSANZUBUKIRE Félicien is sentenced to twenty (20) years of imprisonment,
11. MUNYANEZA Anastase is sentenced to twenty (20) years of imprisonment,
12. NIKUZWE Siméon is sentenced to twenty (20) years of imprisonment,
13. NTABANGANYIMANA Joseph is sentenced to twenty (20) years of imprisonment,
14. MUKANDUTIYE Angelina is sentenced to twenty (20) years of imprisonment,
15. NIYIRORA Marcel is sentenced to fifteen (15) years of imprisonment.

[383] The prosecution further requests this court to uphold the sentences pronounced against:

1. BIZIMANA Cassien alias Passy,
2. MATAKAMBA Jean Berchmas,
3. SHABANI Emmanuel,
4. NTIBIRAMIRA Innocent,
5. BYUKUSENGE Jean-Claude and
6. NSABIMANA Jean Damascène alias Motard.

[384] NSABIMANA Callixte, alias Sankara, demands the court to reject the prosecution's requisition. He argues that, considering the fact that he distanced himself from MRCD and cooperated with justice, his repeated prayers for forgiveness to Rwandans affected by the attacks carried out by FLN (of which he was a spokesperson), the penalty requisitioned against him is not commensurate with his behavior in the face of justice since his arrest. He concludes his plea by requesting the court to reduce his penalty once again, stating that he is ready to become a law-abiding citizen of Rwanda, and that the role of the penalty should not be solely perceived in relation to the gravity of the offense.

[385] NIZEYIMANA Marc states that he requests to be declared not guilty of the crimes of membership in a terrorist group and participation in acts of terrorism.

[386] Herman NSENGIMANA states that the penalty of twenty (20) years that has been requested against him is unjust, as he has pleaded guilty since his hearing. This was the reason why, at first instance, the trial court reduced his penalty to five (5) years. Therefore, he demands that the court consider his guilty plea, reduce his penalty once again, and allow him to reintegrate into society as has been the case for others.

[387] IYAMUREMYE Emmanuel declares that the prosecution's request to find him guilty of the offense of forming an irregular armed group should be dismissed because it was not included in the charges. He requests the Court to consider his pleadings and decide his demobilization through rehabilitation center.

[388] KWITONDA André states that he requests the court not to find him guilty of the offense of forming an irregular armed group because he was not accused of it. He was instead declared guilty of the offense of membership in a terrorist group, which he joined under duress. He requests the court to hold that he should not be held liable for such offense.

[389] NSHIMIYIMANA Emmanuel states that he requests the court to invalidate the penalty that was imposed on him because the prosecution failed to contradict the evidence he produced, which supports that he was coerced to join and stay in terrorist groups. Additionally, he requests to be transferred to a rehabilitation center. If this is not possible, he requests to benefit from the suspension of the penalty.

[390] HAKIZIMANA Théogène states that he joined a terrorist group under duress and coercion, and was obliged to remain a member because of his disability, which made it impossible for him to do anything about it. He requests the court to consider these grounds and deliver justice to him.

[391] NDAGIJIMANA Jean Chrétien states that he was taken into the forest while he was still a minor. He requests not to be held liable for the crime he was found guilty of and to be demobilized in order to inspire other youths who are still with guerrilla groups to distance themselves from these groups.

[392] NSANZUBUKIRE Félicien states that he is not guilty of the offense of forming an irregular armed group because it was not charged against him before the trial court. Therefore, he requests the court to order his admission to the national program for demobilization and reintegration. However, if the court finds otherwise, he requests to serve the five-year imprisonment sentence pronounced by the trial court, which should run from 9/2/2017.

[393] MUNYANEZA Anastase states that he is not guilty of the offense of forming an irregular armed group because it was not included in the charges he faced in the trial court. Thus, he requests the court to provide him with the opportunity to be demobilized and participate with others in the development of the country. However, if the court finds otherwise, he requests to uphold the decision of the trial court with respect to the five-year penalty he was sentenced to, and that the sentence should run from 10/2/2017.

[394] NIKUZWE Siméon states that the prosecution has requisitioned a higher penalty than the one he was sentenced to without indicating the acts falling under article 18 of Law n˚46/2018 of 13/8/2018 that he would have committed. Therefore, he requests to be declared innocent of that crime.

[395] NTABANGANYIMANA Joseph requests the Court to decided that he is innocent with regard to the offence he was found guilt of because he has never been a member in terrorist group.

[396] Angelina MUKANDUTIYE states that she seeks forgiveness and wishes to participate with others in the development of the country.

[397] Niyirora Marcel argues that the prosecution did not present any evidence of the new crime he is being accused of, which is the formation of an irregular armed group, during the appeal stage. Therefore, he is requesting to be demobilized, similarly to those who have distanced themselves from armed groups. If that is not possible, he is seeking a reduction in the penalty he was initially sentenced to by the lower court.

[398] BIZIMANA Cassien, also known as Passy, argues that he has never been charged with the offense of formation of an irregular armed group. He is requesting the court to reduce his penalty because he admitted to the charges during the investigation and court hearing. He also claims that the information he disclosed would not have been known if he had not cooperated with justice organs.

[399] MATAKAMBA Jean Berchmas argues that he cooperated with justice organs to arrest other suspects. He is seeking forgiveness from the court and requesting to be demobilized for being sick and in quarantine.

[400] SHABANI Emmanuel is requesting the court to impose the minimum possible penalty on him and apply a suspension so that he can participate with others in the development of the country.

[401] NTIBIRAMIRA Innocent is requesting the Court to consider the forgiveness he is seeking, reduce his sentence, and decide that the sentence shall commence from 24/10/2019.

[402] BYUKUSENGE Jean-Claude requests the court toconsider the forgiveness he is seeking, reduce his sentence, and decide that the sentence shall commence from 24/10/2019.

[403] NSABIMANA Jean Damascène, also known as Motard, states that he reiterates his plea to the court to reduce his penalty for having repented well. He claims that if he is reintegrated into Rwandan society, he will sensitize others to avoid falling into the same trap and to participate in the reconstruction of the country. If the court finds otherwise, he requests that he be incarcerated at Rusizi prison, closer to his family, because he has a stomach ailment that requires proper medical care.

DETERMINATION OF THE COURT

- **Regarding Rusesabagina Paul**

[404] This court has determined that the trial court's holdings, which suggested that Paul Rusesabagina's admission of guilt was sincere and thus entitled him to a mitigating circumstance, are without merit. However, this court acknowledges that the trial court's determination that Rusesabagina is a first-time offender is a valid consideration. Nevertheless, there is no justification for this court to increase his sentence, as the imposed penalty of twenty-five (25) years' imprisonment falls within the range appropriate for the gravity of the offense committed, and thus it is upheld.

- **Regarding NSABIMANA Callixte alias Sankara**

[405] As explained above, the Court of Appeal finds that NSABIMANA Callixte, alias Sankara, was a first-time offender who sincerely pleaded guilty since his arrest and sought forgiveness from the victims and Rwandan society as a whole. He also cooperated with justice organs by disclosing relevant information regarding the terrorist groups, their members, and the

modalities of their funding by individuals and countries. Furthermore, he maintained his guilty plea even during the hearing on the merits. These factors constitute valid reasons for mitigating his sentence, as admitted by the trial court in its discretion, and no appeal was lodged against that decision. For all these reasons, this court finds that the trial court did not appropriately reduce the defendant's penalty, given his attitude and the part he played in revealing the truth about the circumstances surrounding the offense of which he was accused. Therefore, in its discretion, the defendant deserves to receive an additional reduction in his sentence from twenty (20) years to fifteen (15) years' imprisonment.

- **Regarding NIZEYIMANA Marc**

[406] Based on the grounds provided above, the Court of Appeal finds that NIZEYIMANA Marc, by refuting all the charges of which he was declared guilty, did not deserve to have his penalty reduced merely on the basis that he admitted to some of the charges during the hearing on the merits of the case. However, considering the circumstances of the offenses he committed and the fact that he is a first-time offender, this court, in its discretion, deems that the sentence of twenty (20) years' imprisonment imposed by the trial court is proportionate to the gravity of those offenses. Therefore, the penalty imposed by the trial court should be upheld.

- **Regarding NSENGIMANA Herman**

[407] As explained above, NSENGIMANA Herman denied before the trial court that he was a member of the terrorist group and requested the court to declare him innocent of such a crime. However, he admitted to being a member of an irregular armed

group and, despite that, he received a reduction in his sentence based on three mitigating factors, including his admission of being a member of a terrorist group, which resulted in a reduction of his penalty to five (5) years' imprisonment. The Court of Appeal has noted that although the trial court determined that the explanations presented by the defendant constituted the offense for which he was found guilty, the court does not consider this to be an admission of guilt on his part. This is because he maintains that the acts he committed were not intended for terrorism. Therefore, the court has noted that he received a significant reduction in the statutory penalty, which ranges between fifteen (15) and twenty (20) years of imprisonment. However, the court determines that this reduction should be rectified. In its discretion, the court has sentences him to seven (7) years of imprisonment instead of the five (5) years he was originally given by the trial court.

- **Regarding IYAMUREMYE Emmanuel**

[408] As explained above, the Court of Appeal has noted that IYAMUREMYE Emmanuel received a reduction in penalty in accordance with the law due to being a first-time offender. Therefore, the court determines that the penalty of five (5) years' imprisonment given by the trial court should be upheld, as it is commensurate with both the circumstances of the offense committed and his personal situation.

- **Regarding KWITONDA André**

[409] As indicated above, the Court of Appeal found that KWITONDA André received a reduction in his sentence, in accordance with the law, due to being a first-time offender. Therefore, the Court of Appeal considers the five (5) years of

imprisonment he was sentenced to by the trial court should be upheld because it is commensurate with the circumstances of the crime he committed and his personal situation.

- **Regarding NSHIMIYIMANA Emmanuel**

[410] The Court of Appeal notes that as indicated above, NSHIMIYIMANA Emmanuel received a reduction in his sentence, in accordance with the law, due to his minority age at the time he joined the terrorist group, and the fact that he was a first-time offender. Thus, the Court of Appeal considers that the sentence of three years' imprisonment given by the trial court should be maintained because it is commensurate with the circumstances of the offense and his personal situation.

- **Regarding HAKIZIMANA Théogène**

[411] As indicated above, HAKIZIMANA Théogène received a reduction in his sentence, in accordance with the law, due to his admission to some charges during the hearing on the merits of the case, during interrogation and in the course of trial on provisional detention, as well as being a first-time offender. The Court of Appeal finds that the five-year imprisonment penalty he was sentenced to for the offense of membership in a terrorist organization is commensurate with the circumstances of the crime, his personal situation, and his conduct since his arrest. Therefore, the penalty he was imposed should be maintained.

- **Regarding NDAGIJIMANA Jean Chrétien**

[412] The Court of Appeal notes, as indicated above, that NDAGIJIMANA Jean Chrétien received a reduction in his sentence, in accordance with the law, due to the way he joined the terrorist group at a minority age, stayed there because his

father was one of the commanders of MRCD-FLN, admitted to being a member of such groups, disclosed relevant information to justice organs, and being a first-time offender. For these reasons, it finds that the three-year (3) penalty imposed by the trial court should be maintained because it is commensurate with the circumstances of the offense of which he was declared guilty, his personal situation, and his conduct since his arrest.

- **Regarding NSANZUBUKIRE Félicien**

[413] As explained above, NSANZUBUKIRE Félicien received a reduction in his sentence in accordance with the law. This reduction was based on the fact that he admitted to some charges during the hearing of the merits of the case, during interrogation, and during the hearing on provisional detention, as well as the fact that he is a first-time offender. The Court of Appeal finds that the five-year sentence he was given for the offense of membership in a terrorist group is commensurate with the circumstances of the crime he committed, his personal situation, and his attitude since his arrest. For this reason, such sentence should be maintained.

- **Regarding MUNYANEZA Anastase**

[414] As mentioned previously, the Court of Appeal determined that MUNYANEZA Anastase received a reduction in his sentence in accordance with the law, on the grounds of being a first-time offender. Therefore, the court finds that the five-year sentence he was given for the offense of membership in a terrorist group is appropriate given the circumstances of the offense, his personal situation, and his conduct since his arrest. Thus, that penalty should be maintained.

- **Regarding NIKUZWE Siméon**

[415] As mentioned previously, the Court of Appeal determined that NIKUZWE Siméon received a reduction in his sentence in accordance with the law. This reduction was based on the circumstances of the offense of which he was declared guilty, namely that his acts did not result in severe consequences because he did not participate in attacks and that the grenade he had hidden was seized before being used. Additionally, he is a first-time offender. Thus, it is concluded that the ten-year sentence handed down by the trial court for the offense of membership in a terrorist group should be upheld because it is proportional to the acts committed, his conduct, and personal situation overall.

- **Regarding NTABANGANYIMANA Joseph**

[416] The Court of Appeal finds that, as explained above, NTABANGANYIMANA Joseph received a sentence reduction in accordance with the law, considering the fact that his role was limited to seeking the boat and port without participating in attacks, and the inexistence of prior offenses. Therefore, the three-year sentence he received for the offense of membership in a terrorist group should be upheld because it is proportional to the circumstances surrounding the offense, his conduct, and his personal situation overall.

- **Regarding MUKANDUTIYE Angelina**

[417] As explained above, one of the mitigating factors considered by the trial court resulted in a reduction of the statutory penalty for the offense of which MUKANDUTIYE Angelina was found guilty, due to her status as a first-time offender. In contrast, the Gacaca Court of Rugenge sector, Nyarugenge District, had previously sentenced

MUKANDUTIYE Angelina to life imprisonment with reclusion on 23/11/2008.

[418] The Court of Appeal has determined that, in accordance with Article 52, Paragraphs 1 and 3[73] of Law nº 68/2018 of 30/8/2018 determining offenses and penalties in general, MUKANDUTIYE Angelina should be sentenced to the maximum statutory penalty for the offense of which she was found guilty due to her recidivism, which means a penalty of twenty years' imprisonment.

- **Regarding NIYIRORA Marcel**

[419] As previously stated, the Court of Appeal determined that NIYIRORA Marcel received a sentence reduction in accordance with the law, based on his status as a first-time offender. Therefore, this court concludes that the five-year sentence imposed on him by the trial court should be upheld because it is proportional to the circumstances of the offense he committed, his conduct since his arrest, and his personal situation.

- **Regarding BIZIMANA Cassien alias Passy, MATAKAMBA Jean Berchmas, SHABANI Emmanuel, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude and NSABIMANA Jean Damascène alias Motard**

[420] The Court of Appeal has found that, as explained above, there are no grounds for BIZIMANA Cassien **alias Passy**,

[73] The first paragraph of article 52 stated above provides that "For felonies, recidivism occurs at any time when a person reoffends after conviction in a final judgment." Its paragraph 3 states that "Every recidivist receives the maximum penalty provided by law and such penalty may be doubled."

MATAKAMBA Jean Berchmas, SHABANI Emmanuel, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, and NSABIMANA Jean Damascène to be given a further reduction in the penalty they were given by the trial court. Therefore, the sentence of twenty years' imprisonment to which they were sentenced should be maintained since it is proportionate to the severity of the offense they committed, their conduct since their arrest, and their personal situation.

5. GROUNDS OF APPEAL IN RELATION TO DAMAGES

[421] Some of the accused were dissatisfied with the decision of the High Court chamber for international and transborder crimes because they felt that the court had not respected the rules for the payment of court fees. They claimed that some of the parties who claimed for damages paid a common court fee, while others paid it beyond the specified time or submitted the certificate of indigence late **(A).** Some of the accused criticize the fact that they were ordered to pay damages in the appealed judgment, even though they did not play any role in the acts that caused harm to the claimants **(B).** There are also civil parties who lodged an appeal to express their dissatisfaction with the small amount of damages they were awarded **(C)** or the fact that they were not awarded any damages at all **(D)**. All the accused presented their defense at the same time regarding the appeal lodged by the civil parties who expressed dissatisfaction with the small amount of damages they were awarded or the fact that they were not awarded any damages at all **(E).**

A. Regarding the admissibility of the claims for damages, for which a single court fee was paid or

for which the certificate of indigence was issued after the specified time

[422] In regards to this issue, the accused, including NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, BIZIMANA Cassien alias Passy, NTABANGANYIMANA Joseph, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, NSABIMANA Jean Damascène alias Motard, and SHABANI Emmanuel, as well as their legal counsel, have indicated that they do not agree with the decision of the trial court to admit the claim for damages, despite the fact that the civil parties did not pay the court fee before its registration. They allege that the claims for damages by the civil parties represented by Counsel MUKASHEMA Marie Louise and Counsel MUNYAMAHORO René were initially introduced on the basis of a single court fee recorded in the name of HAVUGIMANA Jean-Marie Vianney. Then, an objection was raised regarding the admissibility of their claim because they did not indicate the reason for paying a single court fee despite not having a common interest. As a result, they filed certificates of indigence in the file. They argue that the trial court disregarded this fact and admitted the claim on the basis that a claim for damages may be entertained at any time before the closure of the proceedings. The legal counsel for the accused argue that the claim of the these civil parties should not have been admitted because it is inconsistent with the law.

[423] Counsel RUGEYO Jean, who is assisting NSABIMANA Callixte alias Sankara, states that it is a principle that regarding claims for damages in criminal proceedings, civil procedure is applicable. Therefore, in order for the claim for damages to be admitted, there are requirements that must be met prior to its

registration in the cases docket, including the payment of the court fee or submission of the certificate for indigence. He states that the civil parties' action of bringing certificates of indigence while the trial was underway was aimed at complementing what they did not do well during the filing of the claim, especially since the claim had already been submitted.

[424] Counsel MUREKATETE Henriette, who is assisting NIZEYIMANA Marc and BIZIMANA Cassien alias Passy, argues that when the claim was initially admitted, it did not meet the necessary requirements. This is because the payment of court fees or the provision of a certificate of indigence is a prerequisite for the claimant to have the right to address the court, as per Article 7, Subparagraph 1 of Law n°. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedures. They further argue that the payment of court fees was intended to enable the civil parties to assert their interest, but later, the court realized that they did not share such interest. He adds that this argument does not apply to the claims that paid court fees at the time of initiating their claims for damages because, as far as they are concerned, they met the conditions set forth by the law.

[425] NTABANGANYIMANA Joseph, NTIBIRAMIRA Innocent, and BYUKUSENGE Jean-Claude, who are assisted by Counsel NGAMIJE KIRABO Guido, argue that, as per Article 7 (1°) of Law n°. 22/2018 of 29/04/2018 relating to civil, commercial, labor, and administrative procedures, the claimant is obligated to pay court fees. They further argue that as per Article 21, Subparagraph (1°) of the same law, the court registrar cannot register a claim if the claimant does not pay court fees, unless the claimant is granted an exemption. They also assert that at the

beginning of the hearing for case n°. RP 00031/2019/HC/HCCIC, they requested that the claims of civil parties who did not pay court fees should not be admitted.

[426] Counsel NGAMIJE KIRABO Guido argues that some of the claimants for damages who were heard during the case hearing initiated their claims without paying court fees. After hearing the critique, they filed certificates of indigence in the IECMS system. However, according to the provisions of Articles 7 and 21 of Law n°. 22/2018 of 29/04/2018 regarding the payment of court fees, they would have been given the opportunity to speak only if they met the required conditions.

[427] NSABIMANA Jean Damascène and SHABANI Emmanuel who are assisted bu Counsel UWIMANA Channy as well as their co-accused stated above, allege that based on article 7 subparagraph one (1°) of the Law n°22/2018 of 29/04/2018 stated above, the claimant has the obligation to pay court fees, and that based on article 21, subpargraph one (1°) of the same law, the court registrar cannot register a claim if the claimant does not pay court fees, unless the claimant is granted an exemption.

[428] Counsel MUGABO Sharif Yussuf, who is assisting KWITONDA André, HAKIZIMANA Théogène, and NDAGIJIMANA Jean Chrétien, argues that with regards to the issue of admissibility of the claims for damages, the law does not provide a time limit for the payment of court fees. When he compares this to the time limit for initiating the claim for damages, he realizes that court fees can be paid at any time during the period of the criminal proceedings. Therefore, he believes that the solution should not be sought in the law. Therefore, regarding his clients, he leaves it to the discretion of the court to examine

the matter, taking into consideration the decision taken by the trial court.

[429] The civil parties argue that regarding the issue that some of them paid the court fees lately to the extent that the trial court would not have entertained their claims, article 116 of the Law n° 027/2019 of 19/09/2019 relating to criminal procedure, indicates that the civil party may file a civil action to a competent court from the time when the court is seized with the criminal action to the time when the proceedings are closed at first instance. They explain that the provisions of this article imply that a person intending to file for damages can initiate their claim at any time before the closure of the criminal proceedings. This is what occurred in the course of the appealed judgment, where victims who had not paid court fees initially submitted a certificate of indigence later. As a result, the court admitted their claims. Therefore, they conclude that the defense and grounds of the appellants regarding the inadmissibility of the claim should not be given merit.

DETERMINATION OF THE COURT

[430] The Court of Appeal is of the view that the issue for determination here does not consist of the fact that there is a victim who filed for damages in the appealed case n° RP 00031/2019/HC/HCCIC without paying court fees or submitting a certificate of indigence that exempts him/her from such obligation. It finds, rather, that the issue that the present court should examine, and that was examined and decided by the trial court, concerns the effects on the admissibility of the claims that may arise from the time of payment of court fees or the filing of the certificate of indigence during the course of the appealed

judgment. On this point, the defendants allege that their evidence should have been submitted concurrently with the court submissions for damages, whereas the civil parties argue that no issue relating to the admissibility of the claim for damages arises as long as the court fees or the certificate of indigence are filed in the dossier before the closure of proceedings. The trial court gave merit to these arguments presented by the civil parties.

[431] Regarding the time period in which a person intending to file for damages within criminal proceedings is allowed to do so, Article 116 of Law nº. 027/2019 of 19/09/2019 relating to criminal procedure states that: "A victim of an offence may file a civil action to a competent court in order to be indemnified, **from the time when the court is seized with the criminal action to the time when the proceedings are closed at first instance.** The court informs the concerned parties thereof".

[432] The wording of this article is clear and unambiguous to the fact that no victim is permitted to file for damages within criminal proceedings until the prosecution has filed the criminal action, and once the trial court has concluded the proceedings, victims are no longer permitted to file for damages. This implies that the victim who intends to file for damages must fulfill all the necessary requirements for their claim to be admitted before the proceedings on the merits of the case are concluded by the court.

[433] This also implies that a victim who intends to file for damages within this process may meet the necessary requirements at an unspecified time, provided that they fulfill the admissibility conditions for a civil action before the time limit for the conclusion of the trial court proceedings expires. Furthermore, it implies that when determining whether an action for damages initiated within criminal proceedings meets the legal

requirements for admissibility, the examining judge should consider the actions that have already been taken in relation to it up to the conclusion of the hearing by the trial court. A party who raises an objection of inadmissibility of this type of claim for damages, alleging that some requirements of admissibility were not complied with within the specified time, has the burden of indicating when the civil party fulfilled the requirements and when the hearing of the case at the trial level was concluded. Had the civil party fulfilled the requirements before the conclusion of the hearing, their claim for damages should be admitted on the basis that it was initiated in accordance with the law.

[434] In this case, as agreed by the parties and as stated in paragraph 469 of the appealed judgment, the civil parties involved in this issue began submitting their claims for damages on February 15th, 2021. However, in regards to claims where court fees were unpaid or no certificates of indigence were provided, they were submitted on July 14th, 2021, prior to the conclusion of the hearing at the trial level of said judgment. As also stated in the minutes of the last hearing of the appealed judgment, the hearing was concluded on July 20th, 2021, during which the court scheduled the pronouncement of the decision for August 20th, 2021.

[435] After considering the background information provided and the relevant provisions of the law, the present court agrees with the High Court's Specialized Chamber for International and Transborder Crimes, as stated in paragraph 474 of the appealed judgment. The court notes that although the civil parties did not initially submit evidence of the payment of court fees or certificates of indigence, they later submitted certificates issued by a competent authority indicating that they were exempt from

paying court fees due to their indigent status. As a result, their claims should have been admitted based on their filing for damages through private prosecution under Article 116 of Law Nº. 027/2019 of 19/09/2019 relating to criminal procedure, as previously mentioned. Therefore, the arguments put forward by some of the accused that certain claims of the victims should have been rejected, should not be given merit.

B. Regarding the critique made by the accused that in the appealed judgment, they were ordered to pay damages despite not playing any role in acts that prejudiced the applicants

[436] NIZEYIMANA Marc, assisted by Counsel MUREKATETE Henriette, states that none of the claims for damages against him are valid. He argues that he never committed any of the acts that caused harm to the claimants, nor did he play any role in them. Additionally, he notes that criminal liability is personal.

[437] NSENGIMANA Herman, with the assistance of Counsel RUGEYO Jean, argues that his mere membership in the FLN does not establish a close enough link to the acts committed by the group's combatants, and he did not personally play any role in those acts to hold him liable for damages. Thus, Counsel RUGEYO Jean requests that the court decide that NSENGIMANA Herman did not play a direct role in the attacks that caused damages to the claimants. NSENGIMANA Herman states that though he is accused of being a member of a terrorist group, he did not participate in any terrorist acts, nor did he command anyone to commit such damaging acts.

[438] NSENGIMANA Herman further states that the claimants' argument that any person who participated in FLN should be held responsible for the entire prejudice caused by MRCD-FLN amounts to injustice, especially for him. He crossed into the country with over four hundred (400) combatants, and he wonders if he was singled out from among others as a sample.

[439] With regards to the issue of Article 33 of Law n˚68/2018 of 30/8/2018 which states that all persons convicted of the same offense are jointly responsible for damages, NSENGIMANA Herman argues that at the time of their entry into the country from Congo, all of them were members of a terrorist group and therefore should be held responsible for paying damages without distinction. He believes that holding everyone accountable would ultimately allow the victims to receive the necessary reparations.

[440] Counsel RUGEYO Jean who assists NSENGIMANA Herman argues that the trial court misinterpreted article 11 of the Law nº 027/2019 of 19/09/2019 relating to criminal procedure which the claimants have relied on to allege that a civil action can be instituted against the principal offender, co-offender, accomplice and any other person with civil liability. He explains that the text of that article supports two theories regarding the payment of damages, namely the proximate cause theory and the adequate causation theory, which the trial court did not refer to. He alleges that the court chose to apply the *but-for causation theory*, which considers any cause, whether direct or indirect, as sufficient for liability, despite the fact that such theory is not provided for by Rwandan law for the purpose of claiming damages in this case, as it would include everything. He argues that the proximate cause theory should have been applied, as it considers the direct cause that resulted in the damage for which

compensation is being sought. He further states that this theory is already provided for in Articles 258, 260, and 261 of Book III of the Civil Code. Therefore, applying the theory of equivalence of conditions would entail holding all individuals who played any role in the acts that caused harm to the claimants, including the owners of the factories that produced the guns and grenades used in the attacks, responsible for paying damages.

[441] Counsel MUGABO Sharif Yussuf and his clients, namely KWITONDA André, HAKIZIMANA Théogène, and NDAGIJIMANA Jean Chrétien, state that the three should not participate with others in paying damages. They argue that they were coerced and under duress beyond their control when they allegedly committed the acts that caused harm to the claimants. Furthermore, they deny playing any role in the acts that prejudiced the claimants. They argue that the senior leaders of the groups of whihc they are accused, along with those who played a direct role in the acts that caused damage to the claimants, should be responsible for paying such damages.

[442] They further argue that, as evidenced on page 230 of the appealed judgment, the trial court applied the but-for causation theory when ordering the accused to pay damages, after discussing the available theories that could be used[74]. They explain that the accused were not ordered to pay damages jointly for being co-offenders; instead, the Trial Court ordered them to pay damages by applying the but-for causation theory. This is because, had the terrorist group not existed, the terrorist attacks that caused damage to the claimant would not have occurred. However, he alleges that the court failed to consider that this

[74] That are *théorie de l'équivalence de conditions, théorie de la proximité de cause na théorie de la causalité adéquate*.

theory has its own scope, which distinguishes it from the theory that legal scholars have titled "théorie de causalité de l'univers." In other words, this means that every event has its own causal link. According to the but-for causation theory, emphasis is placed on distinguishing the essential events that played a role in the prejudice. On the other hand, according to the "théorie de causalité de l'univers," the sequence of all events that resulted in the damage is considered. Therefore, the present court's failure to distinguish the events disregarded the scope of this theory, and he finds it to be the first irregularity.

[443] Counsel MUGABO Sharif Yussuf stated that regarding his clients who are accused of being members of terrorist groups, the Court should consider that they joined and stayed in the groups under threat and coercion, and that the trial court disregarded this fact. Additionally, according to Article 33 of Law n˚68/2018 of 30/8/2018 determining offences and penalties in general, individuals held jointly liable to pay are those who were declared guilty of the same crime. Therefore, he believes that the High Court should have applied the theory of adequate causation to determine liability, as it values all events, but where a link between every act and the harm it caused must be established. For these reasons, he finds it unfair for the court to include all different crimes that each accused committed in different ways at the same level. Instead, the trial court should have considered the impact of each act on the harm caused.

[444] IYAMUREMYE Emmanuel, NIYIRORA Marcel, and NSHIMIYIMANA Emmanuel, who are assisted by Counsel URAMIJE James, state that they did not commit any act, be it killing or looting, as indicated throughout the entire trial. Therefore, individuals who should be held personally liable are

those who committed acts that caused harm to others. Consequently, they request the Court to rule that those personally responsible for damages are the ones who participated in the attacks or committed acts that caused damages to others.

[445] In particular, NIYIRORA Marcel states that the trial court determined he was no longer a member of the terrorist group, and therefore, he believes he should not have been held liable for damages associated with its acts. Furthermore, Counsel URAMIJE James, who is assisting NIYIRORA Marcel, states that the prosecution confirmed that NIYIRORA Marcel did not participate in the attacks. Therefore, he should not be held liable for any damage resulting from any act of which he did not participate.

[446] NIYIRORA Marcel disputes the representatives' claims that he played a role in selecting the combatants who went to Nyamasheke, as nowhere has it been demonstrated that he had a direct or indirect role in selecting combatants who participated in any of the attacks. Consequently, applying the but-for causation theory would imply that it becomes an original sin, whereas criminal liability is personal.

[447] IYAMUREMYE Emmanuel states that criminal liability is personal, and therefore, an individual should be responsible for their own deeds. He explains that he did not send anyone to participate in the attacks and that he never set foot in the crime scene. Therefore, he requests that the court, at the time of withdrawal for deliberation, decides that he should not be held liable for damages as criminal liability is personal.

[448] NSHIMIYIMANA Emmanuel and Counsel URAMIJE James, who is assisting him, state that he should not be held liable

for damages because he was forced to join FLN while he was still a student. Furthermore, concerning their legal critique on the but-for causation theory on which the trial court relied to order some of the accused to pay damages, Counsel URAMIJE James explained that they criticize the fact that over twenty (20) accused are involved in the dossier but indicted for different criminal acts, and especially his clients have never set foot on the place where the damaging acts occurred, neither in Nyungwe nor Nyaruguru, and despite that, they were ordered to pay damages. Thus, the role of his clients has not been demonstrated for any specific act on which the claimants could rely to request damages. This is what they are asking the court to examine.

[449] NSABIMANA Jean Damascène and SHABANI Emmanuel, who are assisted by Counsel UWIMANA Channy, state that they should not be held liable merely for their membership in MRCD-FLN. They argue that even in the event that they were not there as members of the terrorist group, nothing would have prevented the group from committing the acts that affected the claimants. Therefore, it is the leaders of the group who should be held responsible for paying the damages.

[450] NSABIMANA Jean Damascène accepts responsibility for damages that resulted from acts that occurred in the Rusizi district. However, he argues that he should not be held liable for acts that occurred in Nyungwe, for which the group should be responsible.

[451] Shabani Emmanuel argues that he should not be held responsible for the acts that took place in 2018 before he was affiliated with FLN, and for the acts that occurred in Rusizi, as criminal liability is a personal matter. On the contrary, while acknowledging that his involvement with FLN was deemed an

offense, he maintains that the individuals responsible for its formation should be held accountable for the aforementioned acts.

[452] Counsel UWIMANA Channy, who is assisting NSABIMANA Jean Damascène and SHABANI Emmanuel, alleges that the court applied the but-for causation theory. However, had the court applied the theory of adequate causality, which it also discussed, these two accused would have been held liable for acts they were involved in and admitted. Thus, he believes that the court should hold individuals responsible only for their respective roles, based on their level of involvement.

[453] MATAKAMBA Jean Berchmas, assisted by Counsel MUKARUZAGIRIZA Chantal, argues that he should not be held liable for damages resulting from the acts that occurred in Nyaruguru District and Nyamagabe within Nyungwe forest, as he was not present there. Similarly, he should not be held liable for acts that took place before his enrollment in the MRCD-FLN terrorist group. Instead, he admits liability for damages with regard to the victims of terrorist attacks carried out in Rusizi District, provided that there is supporting evidence.

[454] Bizimana Cassien alias Passy, and his legal Counsel MUREKATETE Henriette, argue that liability for damages should only be established for the attacks in which he admits to have participated in Rusizi District. They deny any involvement in the attacks carried out in Nyabimata, Nyamagabe sectors, and other locations.

[455] Ninety-three civil parties, represented by Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, argue in their defense that the accused's claims that they

should not be ordered to pay damages because they did not participate in the acts that caused harm to the civil parties, are contradicted by Article 2, Subparagraph 5 of Law N°. 68/2018 of 30/08/2018 determining offenses and penalties in general. The article clearly indicates that holding the accused liable for their acts is not limited to the sole author of the damaging act, but also to any person who abets them in any way. Additionally, Article 33 of the same law emphasizes that all persons convicted of the same offense are held jointly responsible for restitution, damages, and court fees.

[456] They argue that before the High Court, Specialized Chamber for International and Transborder Crimes, they presented three theories for determining damages. The first theory is the but-for causation theory, which considers any cause related to the act. The second theory is the theory of adequate causation, which relates to the closest cause of the damage. The third theory is the theory of proximate cause, which relates to the extent of the cause of the harm.

[457] They explained that they requested the Court to apply the but-for causation theory, which identifies the wrongful acts committed in the sequence of events and holds the authors responsible. They argue that the accused, who were members of the CNRD-FLN group, can be grouped into different categories, including high-ranking officials such as RUSESABAGINA Paul, who was the chairman, NSABIMANA Callixte alias Sankara, who was the spokesperson of FLN, as well as ordinary cadres such as commissioners and military personnel. Some of them provided equipment while others participated in the attacks. therefore, all of them should be held responsible for the damages they caused, and they cannot escape this liability.

[458] They argue that, for instance, NSENGIMANA Herman, who was the spokesperson of the terrorist group, was aware of the attacks carried out in Ruheru sector, as evidenced in paragraph 195 of the appealed judgment, where he announced what had happened. On the other hand, with regard to NIZEYIMANA Marc, who was a colonel in the FLN, paragraph 221 of the appealed judgment states that he admitted to having selected the military personnel who participated in the attacks. Regarding NSHIMIYIMANA Emmanuel, they argue that despite being a student, he was a member of MRCD-FLN and participated in attacks while NIYIRORA Marcel prepared the attackers. They declare that others admitted to the acts that occurred in Rusizi without disclosing the time of formation of the terrorist group, but at the time the attacks were launched, all of them were members of the group.

[459] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise go on to explain that they correlate this but-for causation theory with Article 2 of Law No. 46/2018 of 13/8/2018 on counter-terrorism, where the lawmaker clarified that a terrorist group is a structured group of persons acting in concert. They thus align this theory with the organization of the group. During the interrogation of the accused, in their defense meant to indicate the presence of the FLN, they disclosed the status of their plan. They dispatched tasks, with some of them being in Rusizi, and others in Nyabimata and the vicinity of the Nyungwe forest. They further clarified that during the pleading by the defendants, especially NSABIMANA Callixte alias Sankara, he reiterated that at the time of the publication of the events, they usually possessed photographs. For instance, when the attack was launched in Rusizi, they had evidence of the events, deaths, lootings, and damages in photographs. These

photographs demonstrate that such a terrorist group operated in an organized manner. They allege that Sankara, as a spokesperson, would not operate in isolation. There must have been someone in Rusizi who took those photographs and sent them to him so that he could publish them to show that the FLN was present in Rwanda and had taken control of Nyungwe or Nyabimata. Therefore, they deem that this corroborates the spirit of the law, which states that such a terrorist group operates in an organized manner and dispatches tasks with specific modalities among its members.

[460] They go on to state that in paragraph 391 of the appealed judgment, NIYIRORA Marcel alias Bama, who was a colonel, declares that he had various important responsibilities, including welcoming new recruits. So, if this is correlated with various declarations of NSABIMANA Callixte alias Sankara, who clarified the way they used to recruit people from Uganda to Congo, which implies that NIYIRORA, as a soldier, used to welcome them, give them military training, and inform them of all the plans. For this reason, he should not come before the court to deny his responsibility regarding the events resulting from the attacks that killed, injured, and caused permanent disability to various people. He should also not insist on requesting his demobilization and suspension of the penalty. Thus, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise request the court, during its withdrawal for deliberation, to consider the admission of the charges by the accused, as well as their prayer to reduce the penalties and compare them to their pleadings about claims for damages.

[461] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that they do not deny that

criminal liability is personal, but they argue that the accused's statements claiming that they should not be personally prosecuted are groundless. This is because the charges for which they were found guilty have not been dropped and they have not yet indicated their innocence. Consequently, they are still facing prosecution for their own criminal acts. On the other hand, while they admit to being members of the MRCD-FLN terrorist group and acknowledge that it caused harm to individuals, claiming that they did not play a significant role in the group's formation to the point of not warranting prosecution is unfounded. They should understand that, according to the law, they are still responsible for their involvement.

[462] With regard to the issue of the accused denying the application of the but-for causation theory to the case against them on the grounds that there are many others who should also face prosecution, Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise argue that their defense is based on the principle that the person responsible for causing damage to another person should be liable to pay damages. Therefore, claiming that there are other culprits does not excuse their own responsibility. Consequently, the individuals being sued for damages are those brought before the court, especially since they have admitted their participation in MRCD-FLN. For all these reasons, based on the principle that accused individuals who have been concurrently declared guilty for the same offense should be held equally responsible, the accused in this judgment should be held accountable for entire damages requested by the civil parties.

[463] With regards to the arguments made by NSENGIMANA Herman that responsibility for damages should be attributed to each accused based on their individual role in causing prejudice,

Counsel MUNYAMAHORO Réné and MUKASHEMA Marie Louise refute this claim as untrue. According to legal principle, convicts of the same crime are jointly held responsible for damages, and the civil party may even seek the full damages from just one of them as permitted by law. Thus, if the accused express their wish in writing to pay for the damages, it would be acceptable as their desire is that all victims who lost loved ones and those who lost properties damaged during the attacks receive fair compensation.

[464] In response to the argument raised by some of the accused that their role in the acts causing prejudice to the civil parties is small or non-existent, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise contend that damages are not determined by the degree of fault as stipulated in the principle of comparative fault. Rather, liability is assigned to any person who committed the fault, and in addition, the defendant with more means than others may be ordered to pay the total damages, as permitted by law.

[465] Counsel MURANGWA Faustin, who represents four (4) civil parties, agrees with the arguments put forth by his colleagues, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, on the present issue. He notes that the defendants, against whom damages are sought, did not appeal the crimes for which they were charged as members of MRCD-FLN. Furthermore, at the time of adjudication, the Court adhered to article 11 of Law no. 68/2018 of 30/08/2018 determining offenses and penalties in general. This provision holds responsible for damages any person among the accused, including offenders, accomplices, and co-offenders, who is a

member of FLN, a terrorist group responsible for acts that harmed the civil parties.

[466] Counsel Murangwa Faustin explains that with regard to issue that the but-for causation theory should not apply in this case with many defendants while there may be other suspects of whom it is impossible to bring them to court at the same time, he states that Counsel RUGEYO Jean who assists some of the accused, disregards that there are some offences of which all the accused were declared guilty including membership in terrorist group against which they did not lodge an appeal before the instant court, and that it is the same crime of membership in MRCD-FLN terrorist group that affected the civil parties. As a result, there is a causal connection that makes it impossible for the accused to avoid joint liability for the harm they caused. Furthermore, with regard to the modalities of payment of damages, he argues that this matter falls under the execution of the judgment and not the modality of determination of damages. He also argues that the civil parties do not intend to be involved in the determination of individual liability of every accused, whether as an offender, co-offender, or accomplice in this group or in these attacks, of which they were found guilty to have been members by the court, and the decision against which they did not lodge an appeal. Therefore, he concludes that the accused's argument that they should not be held liable for the requested damages amounts to a self-contradiction.

[467] KARERANGABO Antoine, who is also a civil party, states that the statements of some of the civil parties who argue that they should not be ordered to pay damages because they did not participate in the attacks should not be given merit. He points out that he was among the victims who were hospitalized in

Munini Hospital for two days due to beatings inflicted by the suspects or their subordinates.

[468] Counsel HAKIZIMANA Joseph, who is assisting him, notes that, in the context of supporting the arguments of his fellow legal counsels for other civil parties, none of the accused lodged an appeal with the purpose of proving their innocence. Thus, with regard to his client KARERANGABO Antoine, who was not awarded damages, he concludes his argument by citing article 33 of Law nº 68/2018 of 30/08/2018 determining offenses and penalties in general. This article states that all persons convicted of the same offense are jointly responsible for restitution, damages, and court fees. He argues that, according to this provision, all 21 accused individuals belong to the same terrorist group that has committed acts of insecurity and terrorism, including killing. Therefore, he contends that the Court should hold all of them jointly liable for the requested damages and award them accordingly.

DETERMINATION OF THE COURT

[469] As far as the issues for determination are concerned, the Court of Appeal notes that, in general, except for RUSESABAGINA Paul, who neither lodged an appeal nor appeared in the hearing, NSANZUBUKIRE Félicien and MUNYANEZA Anastase, who were not found guilty of membership in the MRCD-FLN terrorist group, all other accused individuals argue that they should not be held liable for damages because they did not participate in the attacks that harmed the civil parties. They maintain that being a member of FLN is not a sufficient reason to hold them liable for the damages, as the civil parties should seek compensation from FLN as a group, its senior

leaders, or the combatants who participated in the attacks that harmed them. On the other hand, the civil parties in general argue that all accused individuals should be jointly held liable for all damages because they all played a role in the attacks launched by the MRCD-FLN terrorist group, which affected them in different ways, including the murder of their siblings, causing injuries to them, and damaging their properties. They claim that the accused should be ordered to pay for the damages simply for belonging to the same terrorist group, committing or participating in terrorist acts, despite the fact that they never set foot at the sites of the attacks that caused the prejudice for which they seized the court.

[470] Regarding the person that can face the civil action for damages, article 11 of the Law Nº 027/2019 of 19/09/2019 relating to criminal procedure provides that: "A civil action can be instituted against the principal offender, co-offender, accomplice and any other person with civil liability. A civil action can also be instituted against the offender's heirs." This position is also supported by the general principle that "any individual whose actions result in damages is responsible and liable for the compensation." Regarding the civil joint liability of the guilty, Article 33 of Law No. 68/2018 of 30/08/2018, which determines offenses and penalties in general, stipulates that: "All persons convicted of the same offence are held jointly responsible for restitutions, damages and court fees." This implies that whenever an offense results in any prejudice, and which is determined by the court; all guilty persons should pay compensation, moral damages, and court fees jointly and severally.

[471] In contrast, when the offense is committed by a single offender, it is sufficient to determine the damages to be awarded

to the victim based on the general principle explained above. Article 33 of the Law nº68/2018 of 30/08/2018 determining offenses and penalties in general, as recalled above, adds that in the event of several offenders, they should be jointly held liable to pay for damages without prior distribution of payment among the accused on the basis of individual role in the commission of the offense to determine those with little, average, or heavy roles. In other words, there is no longer a need to seek the fault of the responsible person as the basis because the lawmaker indicated in this Article 33 that the culprit is the responsible person, and if there are multiple culprits, they are jointly held liable for the damages in the manner explained above.

[472] As far as the instant case is concerned, the determination of whether the accused should pay damages to the civil parties should no longer consist of leaning on the fault or specific acts committed by each accused against the victim. Instead, the issue lies in determining whether the damages for which compensation is sought resulted from the commission of the offense of forming the terrorist group MRCD-FLN, in addition to the commission of the offense of committing and participating in acts of terrorism by some of them. It also needs to be determined whether the accused have already been declared guilty of such offenses.

[473] The High Court, Specialized Chamber for International and Transborder Crimes, stated in paragraph 632 of the appealed judgment that any cause of the damaging act should be taken into account when determining compensation. It noted that the attacks launched on Rwandan territory were carried out as part of the plan of MRCD-FLN to commit terrorism, and that without such a group, those acts that affected the civil parties would not have been possible, and those who committed them were fulfilling the

plan of MRCD-FLN. Therefore, those who were found guilty of membership in that group and committing and participating in acts of terrorism should be jointly held liable to pay damages.

[474] In this instant appeal case, some of the accused allege that they should not be held liable for damages because, although they admit being members of the MRCD-FLN group, they did not participate in the attacks that caused prejudice to the civil parties. While the accused admit having participated in attacks that occurred in the Rusizi district, they only accept responsibility for damages caused by acts that occurred in that district. They claim they were not involved in attacks carried out elsewhere, and at the time of those attacks, they had not yet started cooperating with the FLN. The civil parties are all requesting that the decision of the trial court, which ordered the accused to jointly pay damages, be upheld.

[475] The present Court finds that although the trial court emphasized certain analyses of legal scholars' writings regarding different grounds used to determine the person responsible for compensation[75], the analysis of which even the legal counsel for the accused used to engage in lengthy debates at this instance court with the civil parties, it was unnecessary to spend time on such writings. This is because Article 33 of the Law nº68/2018 of 30/08/2018 determining offenses and penalties in general, as previously mentioned, provides clarification on how such debates

[75] See the sheet number 230-231, in paragraph 631 of the appealed judgment, especially in holdings nº 54, 55,56 and 57 at the end of the page, whereby the Court explained the "theory of the equivalence of conditions", "proximate cause theory", "theory of adequate causation" and "theory of the continued imprint of harm".

can be resolved without the need to first delve into legal scholars' writings for alternative opinions.

[476] The instant court finds, therefore, that since NSABIMANA Callixte alias Sankara, Nsengimana Herman, RUSESABAGINA Paul, NIZEYIMANA Marc, BIZIMANA Cassien alias Passy, MATAKAMBA Jean Berchmas, SHABANI Emmanuel, NTIBIRAMIRA Innocent, BYUKUSENGE Jean Claude, NIKUZWE Siméon, NTABANGANYIMANA Joseph, IYAMUREMYE Emmanuel, NIYIRORA Marcel, NSHIMIYIMANA Emmanuel, KWITONDA André, HAKIZIMANA Théogène, NDAGIJIMANA Jean Chrétien, MUKANDUTIYE Angelina, and NSABIMANA Jean Damascène were again found guilty of offenses closely related to the terrorist acts committed by MRCD-FLN combatants that caused harm to the civil parties in this case, they should jointly pay damages as decided by the trial court. Consequently, The appeal of the accused on this ground lacks merit.

C. Regarding the civil parties who filed an appeal to express their dissatisfaction with the awarded amount

[477] The following 46 civil parties state that they claimed damages, but the trial court did not award them the full amount requested. Instead, it awarded them a discretionary amount. Those are:

1. HAVUGIMANA Jean Marie Vianney,
2. BAPFAKURERA Vénuste,
3. RUGERINYANGE Dominique,
4. NTABARESHYA Dative,

5. HABYARIMANA Jean Marie Vianney,

6. INGABIRE Marie Chantal,

7. SHUMBUSHA Damascène,

8. NSABIMANA Anastase,

9. MUKASHYAKA Joséphine,

10. SIBOROREMA Vénuste,

11. NGENDAKUMANA David,

12. RUDAHUNGA Ladislas,

13. KIRENGA Darius, represented by RUDAHUNGA Ladislas,

14. UMURIZA Adéline, represented by RUDAHUNGA Ladislas,

15. SHUMBUSHO David, represented by RUDAHUNGA Ladislas,

16. RUDAHUNGA Dieudonné represented by RUDAHUNGA Ladislas,

17. KAREGESA Phénias,

18. NYIRAYUMVE Eliane,

19. NGIRABABYEYI Désiré,

20. HABIMANA Zerothe,

21. NIYONTEGEREJE Azèle,

22. KAYITESI Alice,

23. YAMBABARIYE Vedaste

24. NYIRANDIBWAMI Mariane,

25. UWAMBAJE Françoise,

five children of MUKABAHIZI Hilarie represented by MBONIGABA Richard namely:

26. MUKESHIMANA Diane,
27. NDIKUMANA Isaac,
28. MUKANKUNDIYE Alphonsine,
29. UZAYISENGA Liliane and
30. HABAKUBAHO Adéline,
31. MBONIGABA Richard,
32. VUGABAGABO Jean Marie Vianey,
33. MURENGERANTWALI Donat,
34. HAKIZIMANA Denis,
35. RWAMIHIGO Alexis,
36. NYIRANGABIRE Valérie,
37. SEMIGABO Déo,
38. NKURUNZIZA Jean Népomuscène,
39. NSABIMANA Joseph,
40. RUTAYISIRE Félix,
41. MAHORO Jean Damascène,
42. NZEYIMANA Paulin,
43. NSENGIYUMVA Vincent,
44. NDUTIYE Yussuf
45. OMEGA Express Ltd,

46. ALPHA Express Company Ltd

[478] The civil parties in this category are those who allege that they suffered damages as a result of MRCD-FLN attacks carried out in (a) Nyabimata sector in Nyaruguru district, (b) Nyungwe in Kitabi sector in Nyamagabe district, and (c) Kamembe and Nyakarenzo sectors in Rusizi district.

a) Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Nyabimata Sector, Nyaruguru district

[479] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise argue that the clients they represent, as well as those they assist, were affected by the attacks launched in Nyabimata but were dissatisfied with the awarded damages. Those are: HAVUGIMANA Jean Marie Vianney and BAPFAKURERA Venuste, whose motorcycles were damaged; HABYARIMANA Jean Marie Vianney, NSABIMANA Anastase, SIBORUREMA Venuste, NGENDAKUMANA David, and SHUMBUSHA Damascène, whose various properties were looted and who were ordered to carry the looted properties; RUGERINYANGE Dominique and NTABARESHYA Dative, whose child was murdered; as well as INGABIRE Marie Chantal and MUKASHYAKA Joséphine, whose husbands were killed. In addition to these victims, NSENGIYUMVA Vincent, represented by Counsel MURANGWA Faustin, is also included.

- **Regarding HAVUGIMANA Jean Marie Vianney and BAPFAKURERA Venuste**

[480] Counsel MUNYAMAHARO René and Counsel MUKASEHAMA Marie Louise, who represent these two victims, both of whom had their motorcycles burned down, argue that Havugimana Jean Marie Vianney was awarded only six hundred thousand (600,000Frw) in compensation for his burnt motorcycle by the court, despite having suffered other losses. These losses include an amount of 360,000Frw that he had already paid for the motorcycle prior to its registration in his name since the payment was meant to be done in installments, 120,000Frw in expenses he incurred to follow up on the problem with this motorcycle since the person in whose name it was registered engaged him in administrative proceedings, and moral damages amounting to 500,000Frw. Thus, he requests the Court to award him the total amount of 1,100,000Frw in damages instead of the 1,500,000Frw mentioned in the court submission.

[481] They further adduce that his motorcycle was set on fire by MRCD-FLN combatants in the attack launched in the Nyabimata sector of the Nyaruguru district. He was supposed to pay it in installments within a period of one and a half years for 1,400,000 Frw, but only three (3) months of that period had elapsed. The motorcycle was not yet registered in his name as the owner because he had not yet completed the full payment required to transfer ownership from the previous owner to himself.

[482] Regarding BAPFAKURERA Venuste, they declare that he was awarded damages by the court amounting to 600,000 Frw, which was the value of the damaged motorcycle. This was despite the fact that he had submitted a report from the administration clearly indicating the circumstances of the crime and the moral impact it had on all individuals involved. He is therefore

requesting that the court award him damages amounting to 5,044,500 Frw, including both moral damages and compensation for his damaged property.

[483] They allege that the reason for their criticism of the trial court is that it determined damages related to the motorcycle only collectively, by awarding everybody 600,000 Frw. Since Rwandan legislation is silent on the modalities of computing damages in certain instances, they had filed documents in the system, as far as the instant appeal is concerned, indicating how other jurisdictions have attempted to address this issue. They argue that, for instance, in the case of Germain KATANGA, advocates for the civil parties presented to the court the defense that damages should not only cover the value of the damaged property, but also shortfalls, including the negative impact on their lives as a result of the loss. Consequently, they request that the court exercise its discretion and take all these grounds into consideration. They further allege that, although these civil parties did not provide undisputed proof to the court of the amount of their daily earnings, according to their market survey, the motorcycle would earn between 5,000 Frw and 8,000 Frw per day.

[484] HABYARIMANA Jean Marie Vianney, NSABIMANA Anastase, SIBORUREMA Venutse, NGENDAKUMANA David and SHUMBUSHA Damascene are also represented by Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise. All five (5) of them have in common the fact that, in addition to having their belongings looted, they were also abducted and forced to carry the stolen items. They adduce that, based on the report from the Nyabimata sector administration listing them as abductees, the trial court awarded each of them a discretionary

amount of only three hundred thousand (300,000 Frw), the decision against which they lodged appeal. However, each appellant has their own particular claims.

- **Regarding HABYARIMANA Jean Marie Vianney**

[485] He alleges that the Court awarded him moral damages amounting to 300,000 Frw for being forced to carry the loads. However, the court held that he did not present evidence of his other looted and damaged belongings. He argues that this disregards the fact that the offenders were stealing people's belongings and other items. At this instance, he requests damages amounting to 1,560,000 Frw, which is the same amount he requested at the trial court level. This includes 560,000 Frw, representing the value of his various belongings (telephone, trousers, shirt, beans, and African print fabric), and 100,000 Frw as moral damages.

- **Regarding NSABIMANA Anastase**

[486] He argues that although he requested a total amount of damages of one million two hundred thirteen thousand (1,213,000 Frw), the trial court only awarded him moral damages amounting to 300,000 Frw and disregarded all the other damages he had requested. He is on this occasion requesting damages in the same amount of 1,213,000 Frw, which he had requested at the trial court level. This amount includes 150,000 Frw for the bribe he paid to the attackers from the price of the cow he sold to spare his wife, 63,000 Frw for the value of his looted belongings (provisions, telephone, and clothes), and 1,000,000 Frw for moral damages due to the fact that the attackers forced him to carry the

looted items, abducted him, and released him early in the morning.

- **Regarding SIBORUREMA Venuste**

[487] He argues that he had requested damages totaling 570,500 Frw, including moral damages and compensation for his stolen belongings, but the court only awarded him moral damages of 300,000 Frw for being abducted. The court disregarded his claim for compensation for his stolen belongings. He is now requesting damages in the same amount of 570,500 Frw that he had requested at the trial court level. This includes 70,500 Frw for the value of his various belongings that were looted (provisions, milk, telephone, and clothes) and 500,000 Frw for moral damages.

- **Regarding NGENDAKUMANA David**

[488] He alleges that he had requested damages amounting to 528,400 Frw for being abducted and for the loss of his belongings, but the trial court only awarded him moral damages amounting to 300,000 Frw for being abducted, without compensating him for his lost belongings. He is now requesting damages in the same amount of 528,400 Frw, which he had requested at the trial court level. This amount includes 28,400 Frw for the value of his looted belongings (provisions, telephone, and clothes) and 500,000 Frw for moral damages for being forced to carry the stolen belongings until they reached Nyungwe forest.

- **Regarding SHUMBUSHA Damascène**

[489] He claims that he requested damages of six hundred fifty-four thousand (654,000 Frw), but the trial court only awarded him 300,000 Frw in moral damages and did not compensate him for

his stolen belongings. He is now requesting damages in the same amount of 654,000 Frw, which he had requested at the trial court level. This amount includes 600,000 Frw for the value of his looted belongings, namely provisions, telephone, clothes, and the four thousand rwandan francs (4,000 Frw) they took from him.

[490] Regarding all of them, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise criticized the ruling of the court for holding that there was no evidence to prove their claims of losses. They are therefore requesting the instant court to consider their claims at its discretion based on the report of the administration indicating that these people were abducted and the declarations of various witnesses that appeared in the video submitted to the court during the hearing. They argue that it is difficult to obtain supporting evidence, especially for invoices of clothes, telephone, and other stolen belongings, and request to be awarded damages accordingly. Regarding the moral damages they have requested, they explain that these are based on the suffering they endured during their abduction at night, which caused them trauma and stress, in addition to the toxic words that were said to them. For these reasons, they request the court to consider their claims and award them the damages they had requested at the trial court level.

[491] There is also a group of appellants who lost their siblings as a result of the attack launched in Nyabimata sector, and they are also assisted by Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise. They were awarded compensation by the trial court, but they were not satisfied with the amount and thus lodged an appeal. Those are RUGERINYANGE Dominique and NTABARESHYA Dative,

whose child was killed, and INGABIRE Marie Chantal and MUKASHYAKA Joséphine, whose husbands were murdered.

- **Regarding RUGERINYANGE Dominique and NTABARESHYA Dative**

[492] They allege that the court awarded 5,000,000Frw each of moral damages for the murder of their child, HABAREMA Joseph, despite the fact that the report of the administration on which the court relied clearly indicated that he owned a boutique that was also looted. They request compensation amounting to 17,000,000 Frw, including 10,000,000 Frw for moral damages and 7,000,000 Frw for compensation for their damaged belongings.

[493] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise clarify that the reason for their appeal is that the court awarded them 5,000,000Frw of moral damages for the loss of their child, but failed to take into account his properties, including a telephone valued at 19,000Frw, a boutique that was operating in the form of a bar where one of the motorcycles mentioned above was set on fire, and a flat-screen television valued at 200,000Frw. To express their dissatisfaction with the court's ruling, they assert that the awarded moral damages of 5,000,000Frw fell far short of the requested 45,000,000Frw. They argue that their child had been a primary source of support for them, and his loss has caused immeasurable grief due to the pivotal role he played in their lives.

- **Regarding INGABIRE Marie Chantal**

[494] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who are assisting her, state that she had requested 30,000,000Frw in moral damages,

70,000,000Frw in pecuniary damages, and 50,000,000Frw in damages for the fact that her children were orphaned, for killing her husband MANIRAHO Anatole, who was a deputy head teacher for studies at the Nyabimata complex school, and for raising the orphans herself. She blames the fact that the court awarded her only 10,000,000Frw in moral damages, while dismissing her other requested damages on the grounds of lack of evidence.

[495] They explained that at the trial court level, he had requested various damages as stated above. Regarding pecuniary damages, they had indicated to the court the amount of money that this family was earning but without presenting supporting evidence of the deceased's salary. However, she has now managed to find the element of evidence attached to annex 111 in the electronic filing system. This proves that the gross salary of the deceased was 207,335 Frw, with the net salary being 130,650 Frw. They further adduce that while the court awarded him 10,000,000 Frw in moral damages only, it disregarded the funeral expenses. The court did not grant damages for funeral expenses on the grounds that she did not provide evidence to support the claim.

[496] They argue that this category of civil parties who lost their siblings in the attacks carried out in Nyabimata sector share a common challenge of lacking invoices to prove the funeral expenses. Burial services involve costs such as catering for people and hearse transportation, but due to the hardship they were facing after losing their relatives, they were unable to find the invoices and request them during that period. Therefore, they combined such damages into moral damages. Regarding INGABIRE Marie Chantal, among the pecuniary damages she is

requesting, it includes the money she possessed that she would have used to care for her family. However, all of that money was spent on funeral services, which has affected her.

[497] They further explain that they did not request compensation for funeral expenses in detail during the trial court. Instead, they requested such compensation cumulatively with moral damages at the appeal level. Consequently, they request that, as they have pointed out, the court should consider other grounds for raising the damages awarded by the trial court, including the suffering they endured during the funeral services and related expenses. They do not wish for the loss of their siblings to go uncompensated.

- **Regarding MUKASHYAKA Joséphine**

[498] Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise state that Munyaneza Fidèle, the husband of MUKASHYAKA Joséphine, was killed, and that she had requested moral and pecuniary damages amounting to 100,000,000 Frw for becoming a widow and having to care for herself and her two young children. Her husband used to earn 100,000 Frw and was responsible for caring for both his family and his parents. They criticize the court for only awarding her 10,000,000 Frw in moral damages and not awarding any pecuniary damages, on the basis that she failed to provide any evidence of the deceased's salary beyond mere words.

[499] They claim that they criticize the court for awarding only a small amount in moral damages, and for not awarding any pecuniary damages. Despite that, they later discovered an evidence indicating that the deceased used to earn 100,000Frw a month, as shown in annex 112 of the filing system. Therefore,

they request the court to consider the document they have found, and award both moral and pecuniary damages she had claimed, which amount to 100,000,000Frw, based on her husband's remuneration.

- **Regarding NSENGIYUMVA Vincent**

[500] NSENGIYUMVA Vincent, represented by Counsel MURANGWA Faustin, states that on 19/06/2018, the FLN armed group launched an attack on his home, setting his RAV4 model car with license plate RAD 802 K on fire. The car had a value of 25,000,000Frw. In addition, household items worth 30,000,000Frw were destroyed. He also suffered serious head injuries and spent 1,500,000Frw on healthcare and 4,000,000Frw on feeding. He claims that he requested all these amounts in damages, in addition to 21,600,000Frw, calculated on 20,000Frw per day from the time his car was set on fire until the trial of the case, for depriving him of the right to use his car in his daily activities. He also requested 20,000,000Frw in moral damages and 540,000 Frw for judicial expenses. He argues that he has relied on various documents to support the reliability of his claims. However, regarding this appeal claim, he also relies on various witness declarations from people who intervened to rescue him during the attack. Such declarations are intended to help the appellate court understand that some evidence may not have been available due to the situation of the attacks, as well as the physical and mental trauma the victim experienced.

[501] He states that the criticism he makes of the appealed judgment is that the court analyzed the evidence proving that he was assaulted during the attacks and sought medical care from King Faisal Hospital, where he was transferred from Butare University Teaching Hospital. However, the court held that he

should not be awarded the requested amount of 5,500,000Frw for medical expenses and feeding during the time of his hospital admission, on the grounds that he did not substantiate it with evidence and lacked evidence of the duration of his hospital stay. He clarifies that the court made a contradiction because it recognized having been given evidence of the transfer of NSENGIYUMVA Vincent from University Teaching Hospital of Butare to King Faisal Hospital but finally held that there is no basis to assert his admission to that hospital. Consequently, he requests the same damages as he had already requested at the trial court level at the appellate level.

[502] He alleges that with regard to the value of his car that was set on fire, the court held that since he provided sufficient evidence to prove his ownership, he is awarded fifteen million (15,000,000Frw) instead of the twenty-five million (25,000,000Frw) he had requested. He criticizes the court for contradicting itself by acknowledging the reliability of the evidence he presented on the value of the car but still awarding discretionary damages. According to him, the amount awarded is arbitrary because the court did not rely on any evidence to justify it.

[503] He states that regarding the household equipment, the court ruled that every party should prove their claim. Thus, since NSENGIYUMVA Vincent failed to prove that he owned household equipment worth thirty million (30,000,000Frw), he should not be awarded the requested compensation. This is especially so since even the report established by Nyabimata sector does not mention the plundered equipment. He believes that the court has quoted him mistakenly because the report actually states that they were attacked by arson, not that their

belongings were plundered. He requests to rely on the declarations of witnesses, such as Antoine's, to support his claim and to not to be deprived of his rights.

[504] Regarding compensation for the expenses he incurred for transportation due to being deprived of the car he used, the Court awarded him a discretionary amount of six million (6,000,000Frw) in moral damages. He argues that this is an arbitrary amount because he had indicated that he uses a car for his daily life and that a daily car rental ranges from 15,000Frw to 20,000Frw, which he relied on to calculate the requested amount. Therefore, he does not understand the basis of the court's decision to award him only 6,000,000Frw.

[505] He argues that the court awarded him only 500,000Frw for judicial expenses, which is a smaller amount compared to the trips he made to Nyanza before the trial was transferred to Kigali and the expenses he incurred afterward. He prays, in general, that the Court's award of twenty-one million five hundred thousand (21,500,000Frw) in paragraph 708 be reviewed based on the elements of evidence that were produced at the trial level as well as those produced at the appeal level, including witness statements.

[506] Counsel MURANGWA Faustin, representing NSENGIYUMVA Vincent, states that invoices for medical expenses incurred during his client's hospital stay were produced, as well as other expenses. He also states that the identification card of the burned motor vehicle indicates that it was purchased in 2016, and as a civil servant, the vehicle should not have exceeded 40,000km and should have had valid insurance. He asserts that he purchased it for 25,000,000Frw, and that awarding him 15,000,000Frw of compensation only after two years is

unjustified given that it would not have depreciated to the extent of losing half its original value.

[507] He goes on to state that regarding the compensation sought for household equipment, the witness called Callixte, who used to live with NSENGIYUMVA Vincent, explained how the attackers burned the vehicle, damaged and set fire to the house and equipment inside. Therefore, it is difficult to find invoices for the damaged equipment. In contrast, regarding moral damages, he demanded 20,000,000Frw, considering how they affected him and that he still bears wounds that prevent him from working well and providing for his family. However, the court only awarded him 6,000,000Frw, even though he believes the requested amount was not excessive.

b) Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Nyungwe forest, Kitabi sector, in Nyamagabe district

[508] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that the attacks launched in Nyungwe forest affected 26 victims, who were awarded damages that they found insufficient. They are the following:

1. UWAMBAJE Françoise and
2. NGIRABABYEYI Désiré,
3. DAHUNGA Ladislas,
4. RUDAHUNGA Dieudonné,
5. SHUMBUSHO David,

6. KIRENGA Darius,
7. MARIZA Adéline,
8. MBONIGABA Richard,
9. MUKESHIMANA Diane,
10. NDIKUMANA Isaac,
11. MUKANDUTIYE Alphonsine,
12. UZAYISENGA Liliane,
13. HABAKUBAHO Adéline,
14. VUGABAGABO Jean Marie Vianney,
15. MURENGERANTWARI Donat,
16. HAKIZIMANA Denys,
17. RWAMIHIGO Alexis,
18. NYIRANGABIRE Valérie,
19. SEMIGABO Déo,
20. NYIRAYUMVE Eliane,
21. NYIRANDIBWAMI Mariane,
22. KAREGESA Phénias,
23. HABIMANA Zerothe,
24. NIYONTEGEREJE Azèle,
25. KAYITESI Alice and
26. YAMBABARIYE Védaste.

- **Regarding UWAMBAJE Françoise**

[509] UWAMBAJE Françoise, assisted by Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, states that her husband HABYARIMANA Dominique was killed in the attack launched in Nyungwe. This had a profound impact on her, causing her serious grief. Additionally, she is now solely responsible for raising their children, which requires her to work hard to provide for the household. However, this is proving to be impossible to achieve without her husband's help. Furthermore, she also had to spend money on funeral services.

[510] She argues that her husband was an entrepreneur who used to win many bids and used two cars to work with the administration of the District, schools, and reserve force in the building of settlements, among others. She asserts that during the good times, her husband used to earn four million (4,000,000Frw) per month, excluding expenses. She further states that considering the remaining time until his retirement, she had requested 100,000,000Frw in damages, including moral and pecuniary damages, as well as the shortfall in income. She believes that this amount would enable her to start developing her household. She adds that she provided evidence for her husband's income, such as bank account statements indicating his operations, to the Court of Appeal. She requests the court to consider them when awarding damages.

[511] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who are assisting UWAMBAJE Françoise, declare that concerning the requested damages, it is good that the court held that the damages it awarded are moral damages. If the provisions of the law and the fact that damages should be subdivided in different categories are considered,

UWAMBAJE Françoise was dissatisfied with the awarded damages because she has children under her responsibility. Therefore, the court should have considered awarding damages taking into account all the individuals under her care.

[512] Furthermore, regarding pecuniary damages, they state that even though UWAMBAJE Françoise could not prove her husband's monthly earnings for this occasion, there is no applicable law for computing damages in cases where people died as a result of various causes except for cases of motor vehicle accidents and cases of victims of animal attacks from parks or reserved zoos. They allege that in Rwanda, an individual's annual or monthly earnings are taken into account when determining damages, and if the individual has no earnings, a minimum wage is considered. Therefore, they criticize the appealed judgment where the court only held that damages were groundless because UWAMBAJE's husband was not working. As a living individual, the court should have at least held that he failed to prove his employment but would consider the guaranteed minimum wage and award an average amount of damages.

[513] They argue that the court denied the requested funeral expenses, even though they were included in the requested hundred million. They further explain that it is currently difficult to provide evidence for all the expenses incurred, as previously mentioned. On the day of the attacks, there were serious incidents, dangerous accidents, and people died or were traumatized to the extent that they did not believe justice would be served. As a result, some elements of evidence were not available during the filing of the claim, including those related to the funeral expenses of her husband.

[514] However, they state that, based on Article 154 of the Law relating to civil, commercial, labour and administrative procedure, they submitted various documents as evidence indicating the different activities of her husband. These documents are available in the filing system on Annex 104. Additionally, photographs of her husband's grave were filed on Annex 106 and 107, along with the invoice of funeral expenses on Annex 103. However, there were some invoices, such as those for mineral water and transportation, that she was not able to find.

[515] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise explain that the court only awarded her ten million (10,000,000 Frw) in moral damages, whereas there are also pecuniary damages to be considered, as it was clarified that her husband was working. Therefore, the remaining working period should be taken into account to award damages and compensation for other losses, as explained above. The trial court should have awarded these damages, which it did not do, alleging that she did not provide reliable evidence. They request the court to exercise its discretion and award her these damages. Furthermore, with regard to the moral damages amounting to ten million (10,000,000Frw) awarded to their client, but of which she is dissatisfied for being insufficient, they request the court to reexamine the request and exercise its discretion to award her at least fifty million (50,000,000Frw) in moral damages.

- **Regarding NGIRABABYEYI Désiré**

[516] They declare that he had requested a total of 137,600,000Frw in damages, including 50,000,000Frw for disability, 20,000,000Frw for moral damages, 66,600,000Frw for pecuniary damages, and 1,000,000Frw for judicial expenses.

However, the High Court only awarded him 2,000,000Frw for moral damages and judicial expenses.

[517] They explain that NGIRABABYEYI Désiré was a driver of a motor vehicle owned by ALPHA Express Company Ltd, and on 15/12/2018, he was carrying passengers from Rusizi. When they reached Nyungwe forest, they encountered an ambush set up by FLN combatants. The combatants killed some of the passengers and injured others, including Ngirababeyi. He states that during the attack, he was shot in the tibia and sole of his foot, which has caused him permanent disability. As a result, he is no longer able to make the round trip from Kigali to Rusizi, which he used to do as a driver. Such disability was diagnosed by a medical doctor at Kigabagaba Hospital and was determined to be 22%, and he was advised that an operation was not possible. For now, he is no longer able to work as a driver and can only do manual labor.

[518] He also states that he never presented such a report to the High Court, as he found it when the case was already at the appellate level. He has now uploaded it to the filing system as annex 093. He further states that while he was still working as a driver, his monthly income amounted to 250,000Frw, but he has not presented any evidence to support this claim. Therefore, he requests that the court award him the requested damages of 137,600,000Frw based on his medical report, previous monthly income, and remaining work period, as he is now disabled and unable to continue working as a driver. He asks the court to exercise its discretion in making this award. His legal counsel added that regarding the damages for the suffering he endured, the amount he was awarded, which was 2,000,000Frw, should also be reconsidered by the instant court as it was insufficient.

- **Regarding RUDAHUNGA Ladislas and his children RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius and UMULIZA Adéline**

[519] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, representing RUDAHUNGA Ladislas and his children RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius, and UMULIZA Adéline, allege that all of them filed requests for various damages amounting to a total of 33,620,000Frw. However, the court only awarded moral damages of 5,000,000Frw plus funeral expenses of 2,190,200Frw to RUDAHUNGA Ladislas, the father of the child who was killed, named MUTESI Jacqueline. For each of the deceased's siblings, namely RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius, and UMULIZA Adéline, the court awarded 2,000,000Frw. They argue that since the damages were awarded at the court's discretion, they demand that the instant court reconsider them, as they believe the amount awarded to be insufficient.

- **Regarding MBONIGABA Richard, MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANDUTIYE Alphonsine, UZAYISENGA Liliane, HABAKUBAHO Adéline, VUGABAGABO Jean Marie Vianney, MURENGERANTWARI Donat, HAKIZIMANA Denis, RWAMIHIGO Alex, NYIRAGABIRE Valerie and SEMIGABO Déo**

[520] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent them, state that all

of them filed for damages as a result of the death of MUKABAHIZI Hilarie. In their claim, they had requested moral damages of 10,000,000Frw for her children and 5,000,000Frw for her siblings, but the court awarded only 2,000,000Frw for the siblings and 5,000,000Frw for the children. They are requesting that the instant court exercises discretion, re-examines their claim, and awards them the full amount they had claimed.

- **Regarding NYIRANDIBWAMI Mariane**

[521] ounsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that she filed a claim for damages following the death of her child, NIYOBUHUNGIRO Jeanine, aged 23, who was coming from school in Butare toward Rusizi. She had requested damages totaling 20,000,000Frw, including 15,000,000Frw for moral damages and 5,000,000Frw for shortfalls. However, the Court awarded her a discretionary amount of only 5,000,000Frw. They argue that the amount awarded is insufficient and are requesting that the instant court exercise discretion and re-examine the claim.

- **Regarding NYIRAYUMVE Eliane**

[522] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that she lost her husband NTEZIRYAYO Samuel as a result of the attack that occurred in Nyungwe. She had therefore requested the trial court to award her 23,500,000Frw, but she was awarded a cumulative amount of 10,500,000Frw in moral damages only, without differentiating between moral and pecuniary damages. The court stated that 10,000,000Frw was for moral damages and 500,000Frw was for judicial expenses. She alleges that she was not awarded compensation for funeral expenses. They argue that

with respect to this appeal, they have submitted evidence of the funeral expenses of her husband in annex 071. Thus, they reiterate their request for the same amount of damages, which they request the instant court to award at its discretion. Regarding pecuniary damages, as the deceased did not have any known remunerated work, they are requesting the court to calculate them based on the guaranteed minimum wage.

- **Regarding KAREGESA Phenias**

[523] Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise, who represent him, argue that due to the death of his child NIYONSHUTI Isaac, who was a third-year secondary school student, he had requested a total of 67,000,000Frw in damages, including 63,000,000Frw in moral damages, 3,000,000Frw in funeral expenses, and 1,000,000Frw in judicial expenses. However, the court only awarded him 5,500,000Frw. They thus request to reconsider them at its discretion.

[524] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise also state that besides NGIRABABYEYI Désiré whom they assisted and mentioned above, they also represent others who were injured as a result of the attack that occurred in Nyungwe and who also request damages namely: HABIMANA Zerothe, NIYONTEGEREJE Azèle, KAYITESI Alice and YAMBABARIYE Védatse.

- **Regarding HABIMANA Zerothe**

[525] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that he had requested damages amounting to 139,400,000Frw, but he was awarded only 2,500,000Frw at the court's discretion. This amount is insufficient compared to the requested amount because

there is a significant difference. They declare that they have uploaded a medical report from Kigeme Hospital on Annex 090 into the system, which indicates that HABIMANA Zerothe has a permanent disability and requires medical care. They therefore request the instant court to reconsider the amount he was given since it is insufficient, and increase it accordingly.

- **Regarding NIYONTEGEREJE Azèle**

[526] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that she had requested damages amounting to 5,500,000Frw, but the court only awarded her 2,000,000Frw in moral damages. This was because the court held that she could not be awarded damages for her disability as the medical report did not indicate that it was a result of the attack. They argue that there is a medical report on annex 094, which they uploaded to the system, indicating that he still suffers from a disability, particularly with regard to aesthetics. They, therefore, request the court to reconsider the damages awarded because the amount of 2,000,000Frw is insufficient.

- **Regarding KAYITESI Alice**

[527] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that they uploaded a medical report in the system indicating that she still has a 20% degree of disability. She had requested damages amounting to 50,000,000 Frw, but the court only awarded her 2,000,000Frw. They, therefore, request the court to reconsider it.

- **Regarding YAMBABARIYE Vedaste**

[528] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that he had requested 20,000,000Frw due to the disability he suffered as indicated by the medical report uploaded in the filing system on annex 099. However, the Court did not clarify his request well, because if one clearly observes the statements in paragraph 618 of the appealed judgment, the Court indicated that it had seen his evidence, considered it, and deemed that he should be awarded 2,000,000Frw. However, according to paragraph 711, he was listed among the plaintiffs who were not given damages. They request the court to rectify this mistake and increase the damages he was awarded because the 2,000,000 Frw he received were insufficient compared to the 20,000,000 Frw he had requested before.

- **Regarding NDUTIYE Yussuf, OMEGA Express Ltd and ALPHA Express Company Ltd**

[529] These appellants, who are represented by Counsel MURANGWA Faustin, also allege that they were dissatisfied with the damages awarded by the trial court, which they deemed insufficient.

[530] Regarding NDUTIYE Yussuf, Counsel MURANGWA Faustin states that, as indicated by paragraph 533 of the appealed judgment, while he was travelling in his car from Rusizi, he encountered armed men in Nyungwe forest. They stopped him and he disembarked from his Golf VW model car with the plate number RAC 547 A and hid in the forest. When he returned, he discovered that they had set fire to his car, and he later learned that it was done by FLN combatants. As a result, he filed a claim requesting the defendants to jointly compensate him with an

amount of eight million francs (8,000,000Frw), the value of the car, moral damages amounting to two million (2,000,000Frw), and judicial expenses of one million (1,000,000Frw). He also requested to be awarded twenty thousand francs (20,000Frw) from the day of the car arson until the day of the trial.

[531] He states that the evidence on which he relied to request such damages is indicated in paragraph 534 of the appealed judgment. It includes a proforma invoice established by KAMECAR Motors Ltd on 24/01/2020, showing that the car's value was 8,000,000Frw, an insurance policy established on 23/12/2019, photographs of the vehicle before its arson and of the burnt car, as well as a report established by the local administration stating that on 15/12/2018, within that Nyungwe forest, armed combatants burned several motor vehicles.

[532] He explains that the court evaluated the submitted evidence and acknowledged that he was the owner of the Golf VW model car with the plate number RAC 547A, manufactured in 2001, for which he requested compensation after it was set on fire in Nyungwe forest. However, the court held that the proforma invoice, which was established on 24/01/2020, after the arson of his car, was insufficient in proving the value of the car at the time of purchase and did not reflect the value when it comes to the period of ownership. Therefore, he should not be awarded the requested compensation based solely on the proforma invoice. Instead, he should be awarded a discretionary amount of 4,000,000Frw. He argues that the awarded compensation of 4,000,000Frw is baseless because it is insufficient to buy any replacement motor vehicle. Consequently, he requests that the court either award him the compensation amount he had initially requested or appoint new valuers to determine the residual value

since the previous valuers had used the same mode of calculation.

[533] He declares that with regard to the other damages he requested, the trial court determined that the fact that his car was burned, he was terrorized by the attack and deprived of his right to use his car in his daily activities; he should be awarded 2,500,000Frw in moral damages at the court's discretion, as the amount he originally requested was deemed excessive, and he failed to provide evidence for the daily rent of 20,000Frw. On this point, he argues that the trial court failed to consider his need for another car to use in his daily activities and the cost of renting such a car, which he claims ranges from 15,000Frw to 20,000Frw per day, depending on the model (crossover or sedan).

[534] He argues that the five hundred thousand francs (500,000Frw) of judicial expenses he was awarded by the trial court is insufficient, considering the number of times he appeared in hearings in Nyanza before the transfer of the case to Kigali and afterward, as well as the loss of income from his work as an entrepreneur. Therefore, he requests a reconsideration of these damages and seeks to be awarded 1,000,000Frw based on the evidence filed, as well as others that were presented to the court as part of the appeal, including witness statements.

[535] Regarding OMEGA EXPRESS Ltd, Counsel MURANGWA Faustin states that as indicated in paragraph 535 of the appealed judgment, OMEGA EXPRESS Ltd, which operates in passenger transport, requested compensation for its two Coaster model buses with the plate numbers RAC 357 J and RAD 201 N that were set on fire in Nyungwe forest.

[536] He explains that the evidence submitted to support his claim for damages includes the vehicle papers and invoices issued by the seller "Akagera Business Group," which prove that the Coaster model motor vehicle with chassis number JTFGFB 51820-1053253 and plate number RAC 357 J was purchased for 51,809,000Frw and was set on fire after being used for five years. Moreover, the motor vehicle with chassis number GFB518901981521 and plate number RAD 201 N was purchased for 52,079,986Frw and was set on fire after being used for five years. Compensation was sought for these motor vehicles as well as pecuniary damages amounting to 662,000,000Frw for both of them on the basis of the profits they used to generate and the shortfalls they suffered because passenger buses typically last for twenty years.

[537] He also argues that they had requested judicial expenses and court fees amounting to 1,240,000Frw, as well as damages amounting to 20,000,000Frw because OMEGA Express Ltd lost the trust that people had in it, resulting in financial losses. The total amount of damages it is requesting is 737,128,986Frw.

[538] He goes on to state that in clarifying its decision, the court indicated that it relied on the pieces of evidence furnished by OMEGA Express Ltd. The court realized that there were two (2) Coaster passenger buses that were set on fire in Nyungwe forest by MRCD-FLN combatants, and such loss should be compensated by paying the value of the vehicles, the loss incurred by OMEGA Express Ltd for not being able to use them, as well as the judicial expenses. In paragraph 602 of the appealed judgment, the trial court held that since the motor vehicle for which compensation was sought, amounting to 51,809,000Frw, was in use for five (5) years, it deemed that, at its discretion, an

amount of forty million francs (40,000,000Frw) should be paid. Similarly, the one for which compensation was sought, amounting to 52,079,986Frw, and which was in use for one year, should be paid forty-five million francs (45,000,000Frw).

[539] Counsel MURANGWA Faustin argues that the trial court deemed that OMEGA Express Ltd did not clearly demonstrate the basis for pecuniary damages. The court held that relying solely on the period of twenty (20) years of use and the daily income generated by the buses was not sufficient to award such damages. In paragraph 603 of the appealed judgment, the court held that since buses do not run every day and OMEGA Express Ltd provided an estimate of their income, it should only be awarded pecuniary damages for a period of 33 months, computed from 15/12/2018, the time the motor vehicles were set on fire until the trial of the case. This is because the motor vehicles were used for 24 days per month with a return of fifty thousand francs (50,000Frw) per day.

[540] Counsel MURANGWA Faustin argues that there is no way the court could have held that the bus runs for only 24 days a month, because even if the driver takes break, the bus can still be used. He adds that the court did not consider the fact that the events resulted in the loss of trust of customers in OMEGA EXPRESS Ltd, which has still caused losses for the company. The Court has decided to award damages to OMEGA Express Ltd amounting to seventy-nine million two hundred thousand francs (79,200,000Frw) for its two motor vehicles that were set on fire, five hundred thousand francs (500,000Frw) for judicial expenses and court fees, making the total amount one hundred sixty-four million seven hundred thousand francs (164,700,000Frw).

[541] He states that his clients were dissatisfied with the decision of the court in paragraphs 600 and 603 of the appealed judgment because they believed that pecuniary damages should have been awarded based on the daily rate of fifty thousand (50,000Frw) until the pronouncement of the decision, and for the full 30 days of the month, as motor vehicles work every day, as clarified by witness RURANGWA. He further explains that the judicial expenses demanded amount to one million two hundred forty thousand francs (1,240,000Frw), including twenty thousand (20,000Frw) for court fees and one million two hundred twenty thousand francs (1,220,000Frw) estimated because they did not request invoices for the payments they made for case follow-up.

[542] Regarding ALPHA Express Company Ltd, Counsel MURANGWA Faustin, who represents it, states that according to paragraph 536 of the appealed judgment, ALPHA Express Company Ltd, as a passenger transport company, has requested compensation for its motor vehicle, a TOYOTA Coaster model with plate number RAC 341U, which was set on fire in Nyungwe forest. The amount requested is 341,000,000Frw, including 52,000,000Frw as its purchase price, 288,000,000Frw as pecuniary damages, and 1,000,000Frw as judicial expenses. He argues that evidence supporting such damages was presented, including vehicle papers, the purchase invoice of the vehicle dated 09/01/2015, and a report from the local administration indicating the burnt passenger vehicles in Nyungwe forest.

[543] He also states that based on the pieces of evidence presented by ALPHA Express Company Ltd, the trial court decided that its passenger vehicle, a Coaster model, was set on fire in the attack that occurred on 15/12/2018 in Nyungwe forest. Therefore, it should be awarded damages for the loss incurred

relating to the loss of its motor vehicle and the money it would have earned if it had not been set on fire, as well as for the judicial expenses it incurred by being dragged into lawsuits. However, considering that the said vehicle was in use for 4 years, the court deemed that it should not be compensated for its value at its purchase period. Instead, at its discretion, the court awarded forty million francs (40,000,000Frw).

[544] He further states that concerning the pecuniary damages requested by ALPHA Express Ltd, the trial court explained that considering the remaining 16 years of the period of use of the motor vehicle and the alleged daily income of fifty thousand (50,000Frw), it deemed that they should not be awarded such damages because compensation had already been awarded for the value of the motor vehicle. Instead, they should be awarded pecuniary damages for 33 months computed from 15/12/2018, the day the motor vehicle was set on fire until the trial of the case. Therefore, based on the fact that the court noted that the passenger motor vehicle is used for 24 days per month with an income of fifty thousand (50,000Frw) per day, they should be awarded 39,600,000Frw for compensation and five hundred thousand (500,000Frw) for judicial expenses, making the total amount awarded to be eighty million one hundred thousand francs (80,100,000Frw)

[545] For these reasons, Counsel MURANGWA Faustin argues that they disagree with the method used by the High Court to calculate such damages, because the value of a motor vehicle, such as the coaster model, does not depreciate as a result of usage, but rather increases as a result of inflation. The trial court ignored this fact when determining the compensation for the value of the motor vehicle, as it considered the period of usage instead of

taking into account the market value. For illustration, he cited the instance where OMEGA Express Ltd company purchased a motor vehicle three years ago for 51,000,000Frw, but when they went to buy another one, they realized that the market value of the same motor vehicle had increased to 57,000,000Frw. Regarding pecuniary damages, he requests the instant court to compute them on the basis of 30 days per month because motor vehicles are used every day, and he demands 1,000,000Frw for judicial expenses because since the beginning of the case in Nyanza until now, ALPHA Express Company Ltd could not have incurred only 500,000Frw as awarded by the court.

[546] Regarding the question that was asked by the court about the steps taken by the companies he represents to get compensation from insurance companies, Counsel MURANGWA Faustin clarified that they attempted this process but did not achieve a positive result. They were told that indemnification was impossible based on the principle of predictability. They even tried to seek compensation from the insurance guarantee fund, but their request was also rejected.

c) Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Kamembe and Nyakarenzo Sectors in Rusizi district

[547] Counsels MUNYAMAHORO René and MUKASHEMA Marie Louise allege that there were attacks launched in two different locations in Rusizi District, namely Kamembe Sector at Stella Bar and in Nyakarenzo Sector at the factory, where a car was also set on fire. They argue that four (4) of their clients have

lodged an appeal for being awarded insufficient damages with respect to the attacks carried out in Kamembe sector, namely:

1. NKURUNZIZA Jean Népomuscène
2. RUTAYISIRE Félix,
3. NSABIMANA Joseph and
4. NZEYIMANA Paulin,

Another one of them, namely MAHORO Jean Damascène, lodged an appeal against the awarded damages in respect to the attack on the factory in Nyakarenzo sector.

- **Regarding NKURUNZIZA Jean Népomuscène**

[548] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, argue that MAHORO Jean Damascène had requested damages of 30,000,000Frw for the disability he suffered as a result of the attack. He proved this by submitting a medical report dated 22/10/2020 that indicated his disability degree of 6%. He also sought medical treatment. However, the trial court awarded him a discretionary amount of only 3,000,000Frw. He lodged an appeal against the awarded damages as he considered them to be insufficient, and therefore, they request the court to review the claim and increase the damages awarded.

- **Regarding RUTAYISIRE Félix**

[549] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, adduce that their client had requested 5,000,000Frw in damages for the disability resulting from the attack launched in Kamembe sector.

However, the trial court awarded him a discretionary amount of 4,000,000Frw, which they argue is insufficient, and therefore, they request the appellate court to re-examine the claim and increase the damages by awarding him the requested amount of 5,000,000Frw.

- **Regarding NSABIMANA Joseph**

[550] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise adduce that NSABIMANA Joseph was injured as a result of that attack and had requested moral damages amounting to 9,000,000Frw and damages of 6,000,000Frw for an 8% degree of disability, for which he presented pieces of evidence. However, the court awarded him a discretionary amount of 3,000,000Frw only for both claims. Since he was awarded an insufficient amount of damages, they request the appellate court to re-examine the claims and award him the damages he had originally requested.

- **Regarding NZEYIMANA Paulin**

[551] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, adduce that he was injured as a result of that attack when grenade fragments hit different parts of his body. He had requested damages amounting to 5,000,000Frw, but the court awarded him a discretionary amount of 2,000,000Frw which they argue is insufficient. Therefore, they request the appellate court to reexamine the claim considering the medical report that he previousely submitted, although only indicated that he was injured, and increase the damages awarded to the amount of 5,000,000Frw he had requested before.

- **Regarding MAHORO Jean Damascène**

[552] MAHORO Jean Damascène, through his legal counsel MUNYAMAHORO René and MUKASHEMA Marie Louise, states that he is the owner of the Daihatsu Dyna motor vehicle with plate number RAC 943 B that was set on fire during the night of 18/07/2019 at the factory located in Karangiro, Nyakarenzo sector. He argues that the Court awarded him 5,500,000Frw, which he deems insufficient because he had purchased the motor vehicle for 11,000,000Frw. He used it to transport flour to Congo twice a day for sixty thousand (60,000Frw) francs because one trip was 30,000Frw. He had taken a loan to purchase it, which had plunged him into poverty that he cannot come out of at present. Therefore, he requests the appellate court to meticulously examine whether the awarded damages are sufficient.

[553] Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise argue that, in addition to the compensation for the value of his motor vehicle, MAHORO Jean Damascène had also requested 29,000,000Frw for the loss of earnings it would have generated as a business vehicle. He used the vehicle to transport flour to Congo and other areas from the factory, and had also requested moral damages of 10,000,000Frw. However, the trial court awarded him a discretionary cumulative damages of only 5,000,000Frw for the value of the motor vehicle, which they deem insufficient. They further state that the trial court held that it could not award him damages related to the loss of earnings because he did not produce supporting evidence. They allege that their client's failure to produce evidence that his motor vehicle was used for business was due to the fact that all its papers were burnt along with it. However, they argue that he has witnesses

who can attest that he owned such a vehicle, namely Damascène who accompanied him when he purchased it, the driver, and the seller. They further state that if necessary, the court can subpoena these witnesses to be heard.

[554] They further argue that the administration that rescued him is aware that he owned the motor vehicle, and the Prosecution authority reported the arson of the motor vehicle as a result of the attack carried out in Nyakarenzo. They also assert that since it was a Dyna light truck model, it could only be used for business purposes. He bought it in a used condition and used it for a year. Considering the market price and the daily income of 60,000 Frw, it should have generated 29,000,000 Frw. They rest their statements by requesting the appellate court to exercise its discretion and reconsider all these grounds, and award him the same damages he had requested at the first instance level.

D. Regarding appellants who claimed to have not been awarded any damage at all

[555] There are 51 claimants of damages who were not awarded any compensation by the trial court. They state that they presented evidence of the damages they suffered, including reports issued by administrative organs, medical reports, witness statements, suspects' declarations, and various pieces of evidence present in the prosecution file. Despite this, the trial court decided that they did not deserve compensation due to lack of evidence. Their names are:

1. HABIMANA Viateur,
2. NGIRUWONSANGA Venuste,
3. BENINKA Marceline,

4. NYIRAMINANI Mélanie,
5. NYIRAHORA Godelive,
6. RUHIGISHA Emmanuel,
7. MUNYENTWALI Cassien,
8. BANGAYANDUSHA Jean Marie Vianney,
9. NSABIMANA Straton,
10. SEBAGEMA Simon,
11. BARAYANDEMA Viateur,
12. KARERANGABO Antoine,
13. NYIRAGEMA Joséphine,
14. NSAGUYE Jean,
15. NYIRAZIBERA Dative,
16. NDIKUMANA Viateur,
17. NDIKUMANA Callixte,
18. NYIRASHYIRAKERA Théophila,
19. KANGABE Christine,
20. NANGWAHAFI Callixte,
21. NYIRAHABIMANA Vestine,
22. NYIRAMANA Bellancille,
23. HABYARIMANA Damascène,
24. NYAMINANI Daniel,
25. MUGISHA GASHUMBA Yves,
26. BWIMBA Vianney,

27. NTIBAZIYAREMYE Samuel,
28. MANARIYO Théogène,
29. GASHONGORE Samuel,
30. NZABIRINDA Viateur,
31. NIYOMUGABA
32. NDAYISENGA Edouard,
33. BIGIRIMANA Fanuel,
34. BARAGAMBA,
35. RUTIHUNZA Enos,
36. BARIRWANDA Innocent,
37. NSABIYAREMYE Pascal,
38. HABIMANA Innocent,
39. SEBARINDA Emmanuel,
40. NZAJYIBWAMI Yoramu,
41. NKUNDIZERA Damascène,
42. HABAKURAMA Gratien and
43. HARERIMANA Emmanuel,
44. NGAYABERURA Emmanuel,
45. DUSENGIMANA Solange,
46. KANYANDEKWE Vénant,
47. NYIRAMYASIRO Verediana,
48. HAGENIMANA Patrice,
49. NSANGIYEZE Emmanuel,

50. NYIRAKOMEZA Claudine and

51. GAKWAYA Gérard.

[556] The civil parties in this category are among those who allege that they were affected by attacks launched by MRCD-FLN in (a) Nyabimata sector, (b) Nyungwe in Kitabi sector, and in Rusizi district in Kamembe and Nyakarenzo Sectors (c), as well as those alleging to have been affected by attacks launched in Kivu (d) and Ruheru (e) sectors.

a) Regarding appellants who claimed to have not been awarded any damage at all with respect to attacks launched in Nyabimata sector

[557] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise argue that their clients, were affected by attacks carried out in Nyabimata without being awarded any compensation. The number of their clients is twenty-two (22), namely:

1. HABIMANA Viateur,
2. NGIRUWONSANGA Venuste,
3. BENINKA Marcelline,
4. NYIRAMINANI Melanie,
5. NYIRAHORA Godelive,
6. RUHIGISHA Emmanuel,
7. MUNYENTWARI Cassien,
8. BANGAYANDUSHA Jean Marie Vianney,
9. NSABIMANA Straton,

10. SEBAGEMA Simon,
11. BARAYANDEMA Viateur,
12. NYIRAGEMA Joséphine,
13. NSAGUYE Jean,
14. NYIRAZIBERA Dative,
15. NDIKUMANA Viateur,
16. NDIKUMANA Callixte,
17. NYIRASHYIRAKERA Théophila,
18. KANGABE Christine,
19. NANGWAHAFI Callixte,
20. NYIRAHABIMANA Vestine,
21. NYIRAMANA Bellancille and
22. HABYARIMANA Damascène.

[558] They allege that, in general, all of them have in common the fact that the trial court decided not to award them any compensation due to a lack of evidence, and that they are not mentioned anywhere in the report established by the administration of Nyabimata sector. They have therefore appealed, blaming the decision of the court and requesting the current appellate court to examine the report established by the administration of Nyabimata sector. The report shows that belongings of the population, including foodstuffs and others, were damaged, and that various witnesses have reiterated that their belongings were plundered. They also state that upon observing paragraph 47 of the appealed judgment, it is noted that the trial court reexamined the statements of some of the civil

parties, such as HABYARIMANA Damascène, who is also among those not awarded compensation. They recount the facts, including the destruction or plundering of the civil parties' properties, but despite this, they were not awarded damages.

- **Regarding HABIMANA Viateur**

[559] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, representing him, assert that HABIMANA Viateur is one of the persons who were present in the bar belonging to HABAREMA Joseph, who was killed. The combatants who launched the attack assaulted him, but it did not result in any visible injury that could be expressed in a medical report. Therefore, he requested moral damages of 5,000,000 Frw. They also state that his clothes were torn apart, and he lost his shoes, for which he requested compensation amounting to 30,000 Frw. They further state that these acts traumatized him, as they proved to the trial court that he was unable to work for a long period of two (2) months, and as a result, he requested damages amounting to 180,000Frw. The total amount requested is 5,210,000Frw. However, despite their efforts, the trial court held that they did not produce any evidence to support their claims.

[560] They argue that since HABIMANA Viateur could not find evidence to prove how he was assaulted or his belongings were plundered, they request the appellate court to reconsider this issue by taking into account the report established by Nyabimata sector, even though it does not provide the details of the events on 3/06/2018, 19/06/2018, and 01/07/2018. They also request the court to consider various witness statements, which are mentioned in paragraph 47 of the appealed judgment, and the fact that HABIMANA Viateur is one of the witnesses who testified

about the death of HABARUREMA Joseph, who was killed in the said bar after being beaten during those attacks. They argue that the events occurred in plain sight of everyone, and therefore HABIMANA Viateur should be awarded damages as requested at the previous instance.

- **Regarding NGIRUWONSANGA Venuste**

[561] Counsel Munyamahoro René and Me MUKASHEMA Marie Louise, who represent him, allege that Ngiruwonsanga Venuste is one of the victims of the attack that took place on 01/07/2018 while he was at home. They claim that his various belongings, including provisions, were looted by the attackers. Furthermore, they assert that he was forcibly made to carry the looted belongings all the way to Nyungwe Forest. They state that he had requested to be given compensation for various items. These include 70 kg of wheat, valued at 28,000Frw at a rate of 400Frw per kilogram. Additionally, he requested compensation for beans equivalent to 35,000Frw for 50 kg, calculated as 700Frw per kilogram (50 kg x 700 Frw = 35,000Frw). He also sought compensation for maize equivalent to 16,000Frw for 40 kg, where the rate was 400Frw per kilogram (40 kg x 400 Frw = 16,000Frw). Furthermore, he claimed compensation for clothes, including sweaters valued at 60,000Frw, as well as boot-type shoes valued at 5,000Frw. He also requested compensation for the looted belongings, amounting to 140,000Frw, and moral damages totaling 1,856,000Frw for being abducted and forced to carry the looted belongings to Nyungwe Forest. The total amount claimed was 2,140,000Frw. However, the trial court did not award him any damages based on the report established by the Nyabimata sector administration. The court's decision was influenced by the fact that he was not mentioned among the individuals whose belongings were stolen in that report.

[562] They further state that they urge the instant court to consider the report established by the administration of Nyabimata Sector, which states that there are individuals whose provisions were plundered, without specifying their names or the quantity of provisions. Additionally, they request the court to consider the video containing witness declarations recounting the attacks by the assailants, the looting of provisions belonging to the population, as well as the statements made by some of the accused individuals admitting to the act of plundering provisions. The court should also take into account the statements in the report, which demonstrate that people were abducted and forced to carry the looted belongings. These statements can be corroborated with the text of article 104 of Law No. 15/2004 of 12/6/2004, relating to evidence and its production, which provides that a court may use a known fact to ascertain an unknown fact. It is known that the gardens of the civil parties were plundered, and this assertion is supported by witnesses.

[563] They also express their concern that, regarding NGIRUWONSANGA Venuste, he was unable to gather evidence to support his claim of having 70 kilograms of wheat. Consequently, the Court is requested to exercise discretion and rely on Article 104 of Law Nº. 15/2004 of 12/6/2004 relating to evidence and its production. The witness declarations regarding the plundering of provisions should be considered as a presumption supported by the report established by the administration of Nyabimata, serving as initial written evidence to prove the fact.

- **Regarding BENINKA Marceline**

[564] Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise, who represent her, allege that she had her

telephone stolen and experienced trauma as the assailants forced her to walk throughout the entire night. She requests damages totaling two million fifty-four thousand francs (2,054,000Frw), which include moral damages and compensation for the stolen telephone.

- **Regarding NYIRAMINANI Mélanie**

[565] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, allege that during the attack launched in Nyabimata sector, her husband, who was on patrol, was abducted and forcibly made to carry the plundered belongings. He returned after a period of two weeks, having experienced significant trauma. As a result, he is requesting moral damages totaling five hundred thousand francs (500,000Frw). Furthermore, they argue that she was not awarded damages by the trial court due to the lack of evidence proving her husband's abduction and the loss of her belongings.

- **Regarding NYIRAHORA Godelive**

[566] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, allege that NYIRAHORA Godelive is a 60-year-old mother. They further assert that during the attack, she was at home and heard individuals forcefully breaking into the house where she was sleeping. The intruders proceeded to steal her clothes and the provisions she had recently harvested. They argue that she filed for damages for her lost belongings, which are calculated as follows: An african print fabric consisting of three parts valued at 9,000Frw, a sweater valued at 3,500Frw, a machete valued at 1,200Frw, bean seeds valued at 3,000Frw (5kg x 600Frw), and moral damages amounting to 483,300Frw, totaling 500,000Frw,

were claimed as damages. However, the trial court did not award her any damages for not having presented evidence.

- **Regarding RUHIGISHA Emmanuel**

[567] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, allege that RUHIGISHA Emmanuel was a farmer involved in seed supply with RAB (Rwanda Agriculture Board). They further state that he had seed stocks consisting of five houses. They state that in the morning, people came to inform him that armed people had looted his stored provisions. They explain that he had requested the trial court to award him damages for his stolen belongings, as well as moral damages. These damages were calculated as follows: Potato seeds of 5,000kg x 400Frw = 2,000,000Frw, bean seeds of 350kg x 700Frw = 245,000Frw, pea seeds of 250kg x 800Frw = 200,000Frw, 5 improved chicken breeds x 5,000Frw = 25,000Frw, maize of 500kg x 300Frw = 150,000Frw, clothes valued at 40,000Frw, and moral damages of 5,000,000Frw, making a total of 7,690,000Frw. However, the court decided that he does not deserve to be awarded damages on the grounds that he failed to provide evidence of the looted belongings and the report established by the executive secretary of the sector did not prove that he is among the individuals affected by the acts for which damages are being sought. For all these reasons, they request that the court consider the report of the administration filed in annex n°. 114 in the filing system and award him the damages he requested at the trial court level.

- **Regarding MUNYENTWARI Cassien**

[568] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, allege that the

assailants attacked at around 9:00 pm in the evening. They forcibly broke the door of his house, extorted 10,000Frw from him, and proceeded to loot household equipment. They then demanded that he leave the house and forced him to carry the stolen belongings.

[569] They further allege that MUNYENTWARI Cassien had requested compensation for his stolen belongings and money, calculated as follows: compensation for stolen items consisting of a sweater valued at 5,000Frw, 2 African print fabrics valued at 18,000Frw, twenty (20) kilograms of peas valued at 30,000Frw, as one kilogram costs 1,500Frw (20kg x 1,500Frw = 30,000Frw), thirty (30) kilograms of beans valued at 18,000Frw, as one kilogram costs six hundred (30 x 600 Frw = 18,000Frw), and moral damages of 500,000Frw. The total damages amount to 571,000Frw. They state that the trial court did not award him any damages on the grounds that he failed to present evidence in support of his claims. Additionally, they mention that the report from the executive secretary of the sector did not include him among the individuals affected by the acts for which damages are being sought. Therefore, they argue that the facts were disregarded despite being reiterated by the witnesses. Consequently, they request the court to reexamine the facts.

- **Regarding BANGAYANDUSHA Jean Marie Vianney**

[570] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that he was on a night patrol as a member of DASSO. Around 9:00 in the evening, armed individuals approached him. They tied him up and demanded to know the residence of the sector executive secretary and SACCO accountant. They also confiscated his

DASSO uniform jacket and two Tecno model phones. Subsequently, they compelled him to carry the looted items and continued to insult him upon discovering that he was the head of the patrol within the sector. They walked with him throughout the night and released him at daybreak, around 4:00 in the morning.

[571] They argue that for all these reasons, BANGAYANDUSHA Jean Marie Vianney had requested the trial court to award him moral damages and compensation for his stolen items as follow: Two Tecno model phones valued at 113,000Frw, 28,000Frw extorted from him, and moral damages amounting to 500,000Frw, the total being 641,000Frw. They allege that the trial court did not award him damages on the grounds that he did not present evidence of the plundered items and the acts that caused his suffering. Additionally, the report of the executive secretary did not mention him among the persons affected by the acts for which damages are being requested.

- **Regarding NSABIMANA Straton**

[572] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that NSABIMANA Straton owned a bar and resided at the same place. When the assailants attacked, they drank his beers and took others with them. They argue that he managed to escape, but he left his wife and 2-year-old child in the house. The assailants shot at the wall of the house to terrify him, hoping that he would return to rescue them. Fortunately, they were not harmed. He thus alleges that they remained in hiding throughout the night. For these reasons, he has requested damages calculated as follows: *5 crates of Mutsig x 11,000Frw = 55,000Frw, 2 crates of Primus x 8,300Frw = 16,600Frw, 1 crate of Turbo x 11,000Frw = 11,000Frw, 5 empty crates x 10,000Frw = 50,000Frw, Tecno*

telephone model valued at 50,000Frw, moral damages of 1,000,000Frw, the total being 1,182,600Frw. However, the Court held that no damages would be awarded to him on the grounds that he did not present any evidence, while disregarding the fact that apart from having his belongings looted, he also suffered trauma due to what he endured.

- **Regarding SEBAGEMA Simon**

[573] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, argue that SEBAGEMA Simon was a trader with a TIN number 10466687. During the armed attack, his commodities and the money he had cashed that day were stolen. This caused him significant losses as he had borrowed money from SACCO, which he had invested in his trade. As a result, he was forced to sell all his properties in order to repay the loan. They further state that SEBAGEMA Simon filed a claim for damages in the trial court, which were calculated as follows: The stolen amount of money of 110,000Frw, 100 kg of wheat valued at 80,000Frw, where a kilogram is 800Frw (100kg x 800Frw); 1 box of Pakmaya baking yeast with 12 pieces valued at 21,600Frw (12 pieces x 1,800Frw); 50 kg of sugar valued at 45,000Frw (50kg x 900Frw); 50 kg of rice valued at 35,000Frw, where a kilogram is 700Frw (50kg x 700Frw); Cooked donuts, 150 pieces valued at 15,000Frw (150x 100Frw); Sweaters, 12 pieces valued at 18,000Frw (12 x 1,500Frw); 1 box of biscuits valued at 7,200Frw; 12 pieces of underwear valued at 9,600Frw (12 x 800Frw); 100 kg of corn flour valued at 60,000Frw (100kg x 600Frw) and a telephone valued at 12,000Frw.

[574] They state that as a result, SEBAGEMA Simon was forced to sell his plot of land to repay the loan he received from

the SACCO, which amounted to 300,000Frw. Additionally, he incurred expenses of 45,000Frw for transportation while following up on these matters. Due to these circumstances, he requested the trial court to award him damages totaling 3,500,000Frw. However, the Court held that he should not be awarded damages on the grounds that he did not present any evidence to prove the items that were stolen from him, and the report prepared by the executive secretary of the sector does not include him as a victim of the mentioned acts. They argue that the trial court disregarded the fact that the events caused him to suffer a loss.

- **Regarding BARAYANDEMA Viateur**

[575] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that BARAYANDEMA Viateur is a trader who operated a business in a house located in a trading center. They argue that on 19/06/2018, when assailants launched an attack at night, BARAYANDEMA Viateur received a call informing him that the motor vehicle belonging to the executive secretary of the sector had been burned. He went outside his house to assess the situation and check if anything was stolen from him. It was at that moment that he encountered the assailants, and he hid when he heard gunshots as they attempted to break into other people's houses. They argue that after the assailants left the area, they went to assess the situation, and BARAYANDEMA Viateur discovered that his boutique had also been plundered. He had requested compensation in the following manner: Stolen money amounting to 15,000Frw; donuts valued at 6,000Frw, as each donut costs 100Frw; 300 kg of sugar valued at 300,000Frw, as each kilogram costs 1,000Frw; 500 kg of rice valued at 450,000Frw, as each kilogram costs 900Frw (500kg x 900Frw =

450,000Frw); 475 kg of wheat flour valued at 380,000Frw, as each kilogram costs 800Frw (475kg x 800Frw = 380,000Frw); 50 kg of small fish valued at 100,000Frw, as each kilogram costs 2,000Frw (50kg x 2,000Frw = 100,000Frw); 100 kg of groundnuts valued at 150,000Frw, as each kilogram costs 1,500Frw (100kg x 1,500Frw = 150,000Frw); 30 pairs of boot shoes valued at 150,000Frw, as each pair costs 5,000Frw (30 x 5,000Frw = 150,000Frw); 42 liters of milk valued at 42,000Frw, as each liter costs 1,000Frw (42L x 1,000Frw = 42,000Frw); 20 trousers valued at 200,000Frw, as each costs 10,000Frw (20 x 10,000 Frw = 200,000 Frw); 12 shirts valued at 72,000Frw, as each costs 6,000 Frw (12 x 6,000Frw = 72,000 Frw); 60 African print fabrics valued at 540,000Frw, as each costs 9,000Frw (60 x 9,000Frw = 540,000Frw); 25 shirts for kids valued at 75,000Frw, as each costs 3,000Frw (25 x 3,000Frw = 75,000Frw); 180 men underwear valued at 180,000Frw, as each costs 1,000Frw (180 x 1,000Frw = 180,000Frw); a metal door valued at 70,000Frw, a metric ton of potatoes in the plot of land where they set their position to fight, valued at 350,000Frw. The total requested compensation amounts to 1,500,000Frw.

[576] They allege that during the deliberation, the trial court decided that he does not deserve to be awarded damages due to a lack of evidence to prove the looted belongings and the fact that the sector executive secretary's report did not mention him among the victims of such acts. They therefore request the instant court to award him the damages he had requested based on the tax collection document since the trial court disregarded the events and the loss he incurred as a result of such attacks.

- **Regarding NYIRAGEMA Joséphine**

[577] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that on the night of 01/07/2018, armed individuals broke into her home. They forcefully entered the house by breaking the door and proceeded to physically assault them. They extorted 5,200Frw from her, stole clothes valued at 22,000Frw, took 10 kg of maize valued at 9,500Frw, and caused damage to her door estimated at 25,000Frw. They state that she requested compensation for the damagedbelongings amounting to 61,700Frw, in addition to moral damages, bringing the total amount to 2,000,000Frw. However, the court held that she does not deserve to be awarded damages due to a lack of evidence to prove her damaged assets, as well as the fact that the report of the executive secretary of the sector did not mention her among the victims of such acts. They therefore allege that the trial court disregarded the fact that what happened in Nyabimata sector affected the population in this sector, and that the perpetrators themselves openly admitted to committing those acts. Consequently, they request the instant court to rectify the situation.

- **Regarding NSAGUYE Jean**

[578] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that the assailants arrived at his neighbor's house during the night. Upon noticing them, he mistook them for thieves and went out to help. They argue that he encountered them and mistook them for soldiers. They immediately forced him to sit down and began beating him. While they were beating him, a man named NYANGEZI arrived on a motorcycle. They stopped him, but he refused to comply. They chased after him, but he managed to run

away and escape. What he endured during that night traumatized him, and he requested moral damages amounting to 1,000,000Frw. However, the court decided not to award him damages because he failed to produce evidence, and even the report of the executive secretary of the sector does not mention him among the individuals affected by the acts of the assailants. They, therefore, argue that the court disregarded the impact of the events in Nyabimata sector, which affected the population of the sector. They also point out that the perpetrators themselves openly admitted to committing those acts.

- **Regarding NYIRAZIBERA Dative**

[579] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that in July 2018, armed individuals approached NYIRAZIBERA Dative and demanded money. They proceeded to loot her provisions, which included five (5) kilograms of beans and clothes, including a sweater she had recently purchased for 4,000Frw. They allege that she requested compensation for that before the trial court, amounting to 1,000,000Frw. However, during the deliberation, the Court decided not to award her damages, citing the lack of evidence. They further assert that the Court disregarded the impact of the events in Nyabimata on the population in this sector and the fact that the perpetrators openly admitted to committing those acts.

- **Regarding NDIKUMANA Viateur**

[580] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that during the night, at around 7 pm, NDIKUMANA Viateur and others heard multiple gunshots and decided to take cover. In the

morning, soldiers from the Rwanda Defense Forces arrived at his home along with his son MUNYENTWARI, who was traumatized after witnessing the killing of his younger brother, Nyandwi Vital, by the assailants. They explain that due to the suffering he endured, he filed a claim in the trial court requesting damages amounting to 50,000,000Frw. However, the court decided not to award him damages, citing the lack of evidence and the fact that the report established by the executive secretary of the sector does not mention him among the victims of the assailants' acts.

- **Regarding NDIKUMANA Callixte**

[581] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that the armed individuals arrived at his home, tied him and his wife, and proceeded to take their belongings. They then forced him to carry the belongings to Nyungwe forest. He, therefore, requested compensation for his belongings valued at five hundred eighty-one thousand francs (581,000Frw). However, the court dismissed his request, citing the lack of evidence to support his claim.

- **Regarding NYIRASHYIRAKERA Théophila**

[582] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, state that armed individuals attacked the home of NYIRASHYIRAKERA Théophila. They broke the door and entered the house, where they abducted her husband and subjected him to physical assault, resulting in his disability. Théophila had filed a claim requesting moral damages, pecuniary damages, and compensation for medical expenses, totaling seven hundred seventy-eight thousand one hundred francs (778,100Frw). However, the court dismissed

her claim, citing the lack of evidence to support her allegations. Consequently, she requests the present court to rectify the situation.

- **Regarding KANGABE Christine**

[583] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, argue that armed individuals forcefully entered the home of KANGABE Christine, waking her and her children. They proceeded to take various belongings from her. She had requested compensation for her lost belongings and claimed moral damages, totaling five hundred forty thousand five hundred francs (540,500Frw), before the trial court. However, the court dismissed her claim, stating a lack of evidence to support her allegations.

- **Regarding NANGWAHAFI Callixte**

[584] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, argue that armed assailants attacked NANGWAHAFI Callixte at his home. They forcibly broke the door and window, looted various belongings, and even compelled him to carry the stolen items. He had sought compensation for his stolen belongings and claimed moral damages, amounting to six hundred fifty thousand francs (650,000Frw). However, the trial court declined to award him damages, citing a lack of evidence to substantiate his claim.

- **Regarding NYIRAHABIMANA Vestine**

[585] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, claim that armed assailants targeted NYIRAHABIMANA Vestine and unlawfully took several of her belongings. She had sought

damages totaling five hundred thirty-four thousand francs (534,000Frw) before the trial court. However, the Court denied her claim for damages, citing a lack of evidence to substantiate her allegations.

- **Regarding NYIRAMANA Bellancilla**

[586] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent her, assert that NYIRAMANA Bellancilla was targeted by armed assailants who unlawfully looted her diverse possessions. She had sought compensation for her belongings and moral damages totaling five hundred thirty-six thousand four hundred francs (536,400Frw). However, the Court rejected her claim for damages, citing a lack of evidence to substantiate her allegations.

- **Regarding HABYARIMANA Damascène**

[587] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, assert that armed assailants forcibly entered the residence of HABYARIMANA Damascène during the night. They subjected him to physical assault and coerced him to take them to the residence of the Nyabimata SACCO accountant, a request he adamantly refused. The assailants seized his mobile phone and compelled him to transport the looted belongings until they reached Nyungwe forest. The following morning, they released him from captivity. They further allege that he submitted a claim for damages to the trial court, seeking compensation for his stolen telephone and moral damages totaling five hundred twenty-two thousand francs (520,000Frw). However, the Court refused to grant him damages, citing a lack of evidence to substantiate his claim.

- **Regarding KARERANGABO Antoine**

[588] Counsel MUNDERERE Léopold and Counsel HAKIZIMANA Joseph, who represent KARERANGABO Antoine, allege that on the night of 19/06/2018, KARERANGABO Antoine sustained injuries during the attack carried out by the accused. He was subsequently taken to Nyabimata Health Centre and later transferred to Munini District Hospital, as evidenced by the document provided to him. They further state that, in accordance with articles 10 and 11 of Law n° 027/2019 of 19/09/2019 relating to criminal procedure, they respectfully request the court to order the accused to jointly compensate KARERANGABO Antoine. This compensation includes moral damages amounting to 1,500,000Frw, reimbursement of the 11,000Frw he paid for the medical report, reimbursement of the 11,500Frw he paid for the counter-expertise, as well as counsel fees and judicial expenses amounting to 1,500,000Frw.

[589] Counsel MUNDERERE Léopold explains that the reason he blames the High Court is that in paragraph 594 of the appealed judgment, it was held that KARERANGABO Antoine failed to prove that he was assaulted, while in paragraph 47, it is clear that he stated that he was beaten by the accused and was taken to Nyabimata Health Centre, which then transferred him to Munini hospital after realizing that he was in critical condition. In addition, he states that MUHIRWA Médard declared in his testimony on 20/07/2018 that KARERANGABO Antoine was among the individuals who were taken to the hospital. He requests the court to consider the evidence submitted by Munini Hospital, which confirms that he was admitted there and received

treatment for injuries to his head, as further confirmed by Dr. Byamungu Jean de Dieu, who provided medical care to him.

[590] Counsel MUNDERERE Léopold further explains that it is not surprising that KARERANGABO Antoine is not listed in the report established by the administration of Nyabimata sector. If one carefully examines the report, it becomes apparent that it is a concise document consisting of only one and a half pages, and the events that occurred in Nyabimata are described in just 13 lines. Therefore, he believes that KARERANGABO Antoine's absence from the report may be attributed to an oversight, but it should not undermine his case because there are witnesses who testified that he was assaulted and admitted to the hospital. Furthermore, KARERANGABO Antoine himself confirmed this fact during the court proceedings through video conference.

b) Regarding appellants who claimed to have not been awarded any damage at all with respect to attacks launched in Nyungwe forest whithin Kitabi sector

[591] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that among their clients, there are four other victims who were also affected by the attacks that occurred in Nyungwe. They filed claims for damages, but unfortunately, no compensation was awarded to them. These are:

1. NYAMINANI Daniel
2. MUGISHA GASHUMBA Yves
3. BWIMBA Vianney
4. NTIBAZIYAREMYE Samuel\

- **Regarding NYAMINANI Daniel**

[592] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, state that he had requested damages amounting to 45,000,000Frw, including compensation for his suffering and compensation for his losses. However, the Court ruled against awarding him damages, citing a lack of evidence to support his claim. For that reason, they have filed a new medical report, annex 0100, in the system, which indicates that their client currently has a 50% degree of disability and a 4/6 loss of aesthetics. They now request the Court to exercise its discretion and award him the damages he had previously requested.

- **Regarding MUGISHA GASHUMBA Yves**

[593] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, allege that MUGISHA GASHUMBA Yves had requested damages amounting to 50,000,000Frw at the trial court, but he was not awarded any compensation. They argue that considering the medical report that is filed in the ssystem, annex 116, it is indicated that he has 25% degree of disability and that he is still suffering of the veines. They therefore request the court of appeal to award him damages since he deserve them, due to the disability he was caused by the attack carried out in Nyungwe forest.

- **Regarding BWIMBA Vianney**

[594] Counsel MUKASHEMA Marie Louise and Counsel MUKASHEMA Marie Louise, representing BWIMBA Vianney, allege that he had requested damages amounting to 209,500,000Frw, but he was not awarded them due to a lack of evidence to support his claim. They state that the medical report

they filed in the system, annexes 087 and 088, indicates that he has a 65% disability. Therefore, they request the court to reconsider his claim and award him the damages he has claimed.

- **Regarding NTIBAZIYAREMYE Samuel**

[595] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, representing him, allege that NTIBAZIYAREMYE Samuel had requested damages amounting to 50,000,000Frw, but he was not awarded them. They argue that considering the medical report found in the filing system, annex 095, which indicates that he has a 25% disability, they request the court of appeal to award him the claimed damages.

c) Regarding the appellant who claimed to have not been awarded any damage at all with respect to attacks launched in Nyakarenzo sector in Rusizi District

[596] Regarding the attack launched in Rusizi district, Nyakarenzo sector, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that there is one claimant who lodged an appeal as they were dissatisfied with the ruling of the trial court, which did not award any amount of compensation. And this is GAKWAYA Gérard.

- **Regarding GAKWAYA Gérard**

[597] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, representing him, allege that he had requested moral damages amounting to 11,000,000Frw for sustaining back injuries. However, the trial court did not award him damages, citing the fact that the evidence he presented

indicates a chronic headache, which the court deemed was not caused by the attack carried out in Karangiro, Nyakarenzo sector, as he alleges, based on the medical report it relied on. They further argue that although the medical report indicates that GAKWAYA Gérard has a mental ailment that was not caused by the alleged attack, he asserts that it resulted from the attack while he was working as a security guard at MAHORO Jean Damascène's factory. They request the present court to exercise its discretion and examine the relevance of his statements, and award him the moral damages he requested.

d) Regarding the appellant who claimed to have not been awarded any damage at all with respect to attacks launched in Kivu sector

[598] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that there are around seven claimants from Kivu sector, to whom the court decided not to award damages, citing a lack of evidence. These are:

1. NGAYABERURA Emmanuel,
2. DUSENGIMANA Solange,
3. KANYANDEKWE Venant,
4. NYIRAMYASIRO Verediana,
5. HAGENIMANA Patrice,
6. SANGIYEZE Emmanuel and
7. NYIRAKOMEZA Claudine.

[599] They criticize that in paragraph 149 of the appealed judgment, the court recalled the attack that occurred in Kivu sector, but the court did not award damages to the victims of such

attacks citing their failure to present evidence. They explain that this time, before the court of appeal, they have new evidence in the form of the report established by the administration of Kivu sector, which is available as Annex 11. The report provides a general overview of the attacks that occurred on August 12, 2018. However, it specifically details the attack that took place on August 14, 2018, including information about each victim and the specific belongings that were stolen. The report lists the names of some of the seven claimants who are seeking damages and compensation for their damaged assets.

- **Regarding NGAYABERURA Emmanuel**

[600] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise explain that in the case of NGAYABERURA Emmanuel, during the attack in Kivu sector, armed assailants abducted five individuals who were conducting a night patrol, which included his son NSENGIMANA Claude. The assailants proceeded to loot the belongings of the people and released three of the abducted individuals, while holding the remaining two, including his son. They explain that NGAYABERURA Emmanuel had requested damages amounting to 6,000,000Frw for the abduction of his son, who is still missing to this day, although no amount of compensation can truly alleviate the anguish he has endured due to the loss of his child.

- **Regarding DUSENGIMANA Solange**

[601] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise argue that DUSENGIMANA Solange was legally married to BIZUMUREMYI Damien, who was 35 years old at the time. They state that the couple had two

children together. In the night of 16/8/2018, her husband, BIZUMUREMYI Damien, left home at six in the evening for the night patrol. During the same night, DUSENGIMANA Solange heard multiple gunshots and called her husband, requesting him to come and help take care of their child as she was pregnant. She explains that she was unable to reach her husband on the phone, and the following morning she received the news that her husband was among the individuals who had been abducted by the assailants.

[602] They further explain that prior to her husband's abduction, they worked as farmers and generated a monthly income of 400,000Frw by selling their produce. However, since that time, the children have suffered and grown up without knowing their father, as they are still unaware of his fate and whether he is alive or deceased. They conclude their case by stating that DUSENGIMANA Solange had requested damages for the shortfall in income they would have earned since the abduction of her husband, amounting to 11,200,000Frw. Additionally, she claimed moral damages for the loss of her husband and the impact on their children who have lost their father, amounting to 10,000,000Frw. The total amount claimed is 21,200,000Frw.

- **Regarding KANYANDEKWE Venant**

[603] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that on 16/07/2018, around 9:00 in the evening, KANYANDEKWE Venant and his family heard the sound of people breaking into the door of their house while they were sleeping. When he went to check, he found armed assailants inside the living room. They forced him to sit down and proceeded to take a 40kg sack of potatoes and steal all five of his goats from the goat barn. They argue that

KANYANDEKWE Venant had requested compensation for the entire loss before the trial court, amounting to 500,000Frw, as well as moral damages amounting to 500,000Frw, resulting in a total amount of 1,000,000Frw.

- **Regarding NYIRAMYASIRO Verediana**

[604] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that it was at night when NYIRAMYASIRO Verediana had prepared a meal and was about to eat with her children. Suddenly, they heard a knocking on the door, and . when she opened, she saw approximately 8 individuals standing near the door, who immediately entered the house. They asked her for something to eat, and she provided them with food. After eating, they proceeded to the bedroom where they stole her 4 African print fabrics and 15,000Frw. They explain that before the trial court, NYIRAMYASIRO Verediana had requested compensation for all her stolen belongings amounting to 30,000Frw, as well as moral damages amounting to 500,000Frw, totaling 530,000Frw.

- **Regarding HAGENIMANA Patrice**

[605] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that armed assailants attacked HAGENIMANA Patrice in his home during the night of 16/08/2019. They looted his provisions and clothes, valued at thirty-three thousand francs (33,000Frw), and forced him to carry them. He had requested compensation for the value of his stolen belongings and moral damages amounting to one million francs (1,000,000Frw) before the trial court, but the court did not award him any damages.

- **Regarding NSANGIYEZE Emmanuel**

[606] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that on 16/08/2019, armed assailants broke into the home of NSANGIYEZE Emmanuel and looted his various belongings, including provisions valued at one hundred twenty thousand four hundred francs (120,400Frw). He requested the trial court to compensate him for the value of his stolen belongings and award him moral damages amounting to six hundred thousand francs (600,000Frw). However, the court did not award him any damages.

- **Regarding NYIRAKOMEZA Claudine**

[607] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that armed assailants attacked NYIRAKOMEZA Claudine at her home and plundered her various belongings, including foodstuffs and clothes valued at forty-seven thousand five hundred francs (47,500Frw). She had requested the trial court to award her compensation for her belongings and moral damages amounting to five hundred thousand francs (500,000Frw), but she was not awarded any damages.

e) Regarding the appellants who claimed to have not been awarded any damage at all with respect to attacks launched in Ruheru sector in Nyaruguru District

[608] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that approximately 16 individuals from Ruheru sector had filed claims for damages, but none of them were awarded any compensation. The trial court justified its decision by pointing out that the claimants failed to

provide evidence for their stolen belongings, including provisions, livestock, and houses, as stated in their original claim for damages and reiterated in the court submission for appeal. These are the following:

1. MANIRIHO Théogène,
2. GASHONGORE Samuel,
3. NZABIRINDA Viateur,
4. NIYOMUGABA,
5. NDAYISENGA Edouard,
6. BIGIRIMANA Samuel,
7. BARAGAMBA,
8. RUTIHUNZA Enos,
9. BARIRWANDA Innocent,
10. NSABIYAREMYE Pascal,
11. HABIMANA Innocent,
12. HARERIMANA Emmanuel,
13. NZAJYIBWAMI Yoramu,
14. SEBARINDA Emmanuel,
15. NKUNDIZERA Damascène and
16. HABAKURAMA Gratien.

[609] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise state that in this appeal claim, they rely on article 154 of Law n°. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure. This

article permits a party to introduce new evidence at the appeal level. Accordingly, they have submitted, as annex 086, a report from the administration of Ruheru sector dated 13/01/2021. This report explicitly supports the claim that these individuals were affected by the attack that occurred in the sector. They argue that this evidence is additional to the other pieces of evidence they had previously submitted. These include various witness statements, ordinary reports, and the evidence relied upon by the prosecution in filing the case, which involved the interrogation of several individuals regarding the attacks.

[610] They explain that in paragraph 596 of the appealed judgment, NSENGIMANA Herman clearly made a formal declaration that the attack was carried out in Ruheru Sector. This supports the claimants' argument that the damages they sought are based on factual evidence, especially considering that even the suspects took pride in their actions. They respectfully pray to the court of appeal to reexamine their claim for damages and kindly request the court to award the damages they had previously requested in accordance with the law. They clarify that the damages they previously sought are specified and explained in detail for each plaintiff in the subsequent paragraphs.

- **Regarding MANARIYO Théogène**

[611] Louise, representing him, state that during the night of 17/7/2020, MANARIYO Théogène and his family heard multiple gunshots and became panicked, but they did not leave their house. In the morning, they discovered that bullets had broken through their house, which cause them parmenant fear and distress. They further add that even the roofing tiles of their house were broken, intensifying the terror and fear experienced by both him and his wife due to the alarming sounds they heard during the incident.

For all of that, he requests compensation for the damage caused and moral damages amounting to 1,500,000 Frw, which were not awarded at the trial court level.

- **Regarding GASHONGORE Samuel**

[612] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie Louise, who represent him, declare that on 17/7/2020, around midnight, Gashongore Samuel, residing near the military barracks, heard multiple gunshots, causing him fear. He tried to cover inside his house to avoid being hit by bullets. They add that during the exchange of gunfire, GASHONGORE Samuel's trees and roofing tiles were damaged. They further allege that since the trial court declined to award him the requested damages, he requests the present court to award him a total of 1,200,000Frw in damages. This includes compensation for the damaged tiles (40 x 70 Frw = 2,800Frw), damaged trees (150 x 1,000Frw = 150,000Frw), the cost of rehabilitating his house amounting to 47,200Frw, and moral damages of 1,000,000Frw.

- **Regarding NZABIRINDA Viateur**

[613] Counsel MUNYAMAHORO René and MUKASHEMA Marie Louise, representing him, state that NZABIRINDA Viateur resides within 10km of the military barracks. During the night of 17/7/2020, armed assailants attacked the military barracks, resulting in a fight. As a result of this incident, his house was damaged, and the wheat and peas he had planted in the plot near his home were razed. Additionally, his chickens died as a consequence of the attack. For that reason, they respectfully request the present court to award NZABIRINDA Viateur the compensation that was not granted to him at the previous court

instance. The requested amount is 1,000,000Frw, which includes the following components: 250,000Frw for 500kg of wheat, calculated at a value of 500Frw per kilogram; 60,000Frw for a hundred kilograms of peas, valued at 600Frw per kilogram; 400,000Frw for forty (40) roofing sheets, with each sheet costing 10,000Frw; 30,000Frw for the rehabilitation of the wall of his house that was damaged by bullets; 35,000Frw for the loss of seven (7) improved breed chickens, valued at 5,000Frw each; and 500,000Frw for moral damages.

- **Regarding NIYOMUGABA**

[614] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing NIYOMUGABA, state that during the night, him and the people with him heard gunshots, causing them fear and decided not to leave the house. In the morning, NIYOMUGABA discovered that his 8-month gestating cow had been killed and his house had been damaged. They argue that based on these facts, NIYOMUGABA appeals to the present court to be awarded the damages he previously requested at the lower court, which were not granted. The total amount of damages sought is 1,290,000Frw, including 50,000Frw for the expenses incurred in treating his cow, 700,000Frw for the estimated value of the calf that died, 40,000Frw for the damaged roofing sheets, and 500,000Frw for moral damages.

- **Regarding NDAYISENGA Edouard**

[615] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, argue that armed assailants launched an attack in the sector where NDAYISENGA Edouard resides. They fired guns and damaged

several houses. While fleeing the scene, they also demolished his fence, and the tile roofing of his house was damaged. For that reason, NDAYISENGA Edouard requests the present court to award him damages that were not granted by the trial court. These damages include 100,000Frw for the expenses incurred for the reconstruction of his fence, 47,000Frw for the roofing tiles (1,000Frw x 47), and 500,000Frw for moral damages.

- **Regarding BIGIRIMANA Fanuel**

[616] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, who represent him, state that the location where BIGIRIMANA Fanuel resides is in close proximity to the cattle enclosure where the local population keeps their herds. They heard gunshots coming from the vicinity of the enclosure and were apprehensive about leaving their houses. His cow, which was 7 months pregnant, broke through the cowshed and fled due to fear. In the morning, they discovered that the cow had aborted its calf. They also add that during the same night, the roofing tiles of his house were also damaged and broken. For that reason, BIGIRIMANA Fanuel requests the present court to award him the compensation that was declined by the trial court, totaling 1,150,000Frw. This amount includes 50,000Frw for the damaged items, 600,000Frw for the shortfall proceeds from the aborted calf, and 500,000Frw for moral damages.

- **Regarding BARAGAMBA**

[617] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, allege that during the night of 17/7/2020 around 1:00 in the evening, BARAGAMBA and his family heard intense gunshots. The gunshots pierced the iron sheets of his house, and they also heard

the sound of whistling. Despite the fear, they chose to stay inside their house and sought cover beneath the bed. They also assert that on the morning of 18/7/2020, three dead bodies of assailants were discovered near BARAGAMBA's home, which has continued to terrify him until the present. Additionally, he has been unable to repair his house, which still experiences leakage during rainfall. They conclude their argument by stating that in regards to seeking compensation for his damaged property, BARAGAMBA requests the present court to award him the damages that were denied by the trial court, amounting to 2,000,000Frw.

- **Regarding RUTIHUNZA Enos**

[618] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that during the night of 17/7/2020, RUTIHUNZA Enos and his family members heard gunshots and experienced fear. Shortly after, they heard someone knocking on the door and demanding to be let in, but they refused to open the door. The individual then fired multiple gunshots at the upper part of the house, causing the tiles on the roof to be pierced multiple times. They go on to state that in the morning, they discovered a deceased armed individual near his home, and they promptly informed the local administration, who subsequently removed the body from the premises. They conclude their case by stating that all of these events have caused significant trauma to RUTIHUNZA Enos, and the roofing tiles of his house were damaged as a result. Therefore, he requests the present court to award him damages that were denied by the trial court, amounting to 1,000,000Frw. This includes 500,000Frw for the damaged property (the value of his aborted cow and the value of the damaged tiles of his house), and 500,000Frw for moral damages.

- **Regarding BARIRWANDA Innocent**

[619] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that gunshots were heard around 9:00 in the evening, during which some bullets pierced the roofing tiles of BARIRWANDA Innocent's house. In the morning, he discovered that the tiles of his two houses were damaged. For that reason, they conclude that BARIRWANDA Innocent requests compensation from the present court for the damages suffered, which were denied by the trial court, including moral damages amounting to 1,000,000Frw.

- **Regarding NSABIYAREMYE Pascal**

[620] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, argue that on the night of 17/7/2020, NSABIYAREMYE Pascal and his colleagues were on a night patrol when they heard gunshots and realized that it was an armed group attack. When he reached home in the morning, NSABIYAREMYE Pascal realized that the roofing tiles of his house had been pierced, and the corn field had been squashed because they took cover there. They conclude that NSABIYAREMYE Pascal requests damages for the aforementioned incidents before the present court, amounting to 800,000Frw, which he was denied by the trial court.

- **Regarding HABIMANA Innocent**

[621] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that on the night of 17/7/2012, HABIMANA Innocent heard multiple gunshots that were falling on the roof of his house, causing serious damage to the house with tile roofing. They add that in order for him to afford a new roof, HABIMANA Innocent had to

sell his cow. Due to the loss he incurred, he is requesting a cumulative amount of 1,000,000Frw in damages, which he was denied by the trial court.

- **Regarding HARERIMANA Emmanuel**

[622] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that armed assailants attacked the military barracks located in Wimbogo, resulting in damage to the property of HARERIMANA Emmanuel. As a result, he is requesting compensation of five hundred nineteen thousand five hundred francs (519,500Frw) for his property and moral damages, as he was not awarded them by the previous court.

- **Regarding NZAJYIBWAMI Yoramu**

[623] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, argue that on the night of 17/07/2020 in the place where NZAJYIBWAMI Yoramu resides, there was armed fighting that resulted in damage to his properties. Therefore, he requests moral damages and compensation for his properties amounting to eight hundred thousand (800,000Frw), as he was not awarded any damages at the first court level.

- **Regarding SEBARINDA Emmanuel**

[624] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, argue that on the night of 17/07/2020, armed assailants attacked the military barracks, resulting in multiple gunshots that damaged his house. For that reason, SEBARINDA Emmanuel filed a claim, but the trial court denied him the requested damages. Therefore, he

requests the present court to award him compensation for his damaged property, amounting to three hundred thousand five hundred francs (350,500Frw).

- **Regarding NKUNDIREMA Damascène**

[625] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that during the night of 17/07/2020, in the vicinity where NKUNDIREMA Damascène resides, armed assailants launched an attack on the military barracks in Ruheru sector. Consequently, there was intense fighting that resulted in damage to his properties. As a result, he requests compensation amounting to one million one hundred thousand francs (1,100,000Frw), covering damages for the destroyed property and moral damages. This request is made because the trial court declined to award them.

- **Regarding HABAKURAMA Gratien**

[626] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise, representing him, state that HABAKURAMA Gratien is a neighbor to the military barracks that were attacked by armed assailants. During the attack, his house sustained damages. He is now requesting compensation amounting to one million sixty-two thousand five hundred francs (1,062,500Frw) since he was not awarded damages at the trial court level.

[627] In general, and as a conclusion to the appeal for damages, Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise state that the arguments put forth by the defendants, claiming that criminal liability is personal, denying their involvement in any offenses, and disavowing any responsibility

for the events leading to the damages, lack merit. They argue that these individuals were members of the FLN terrorist group, which was an organized group with a common intent to carry out various attacks in different locations. As a result, they should be held liable for the damages caused to properties, as demonstrated in the cases of Nyabitama, Nyungwe, and other similar instances where their collective collaboration led to property damage. Therefore, they respectfully request the court to consider the precedent uploaded in the filing system as Annex 150. This precedent is from the trial chamber of ICTR with the reference number ICTR/96/3/T in the case of the prosecutor versus NDIRUBUMWE RUTAGANDA. They specifically draw attention to paragraphs 62 and 72 of the ruling, which clarify the concept of common intent and the joint responsibility of all accused individuals who share that intent to commit acts of terrorism, regardless of the location where such acts are carried out. In that case, the court ordered the accused individuals to jointly bear the responsibility for the damages caused.

[628] They further argue that the statements made by BIZIMANA Cassien, alias Passy, claiming to be the commander responsible for the attacks in Rusizi, which he carried out upon orders from the commanders of FLN, provide clear evidence of the common intent among the members of the FLN group. Moreover, regarding those who argue that the civil parties should not be awarded damages due to lack of supporting evidence, they request the court to dismiss such arguments. They argue that, for instance, in paragraph 269 of the appealed judgment, the statements made by BYUKUSENGE Jean-Claude provide clear evidence of their involvement in throwing a grenade that injured people and setting a motor vehicle on fire in Rusizi District. These statements not only incriminate the accused themselves but

also demonstrate their active participation in damaging the properties. They also argue that the statements made by MATAKAMBA Jean Berchmas, claiming that MAHORO Jean Damascène's motor vehicle is still intact and in circulation, are simply mocking the owners of the damaged properties. This is because some of the accused, including BYUKUSENGE Jean-Claude, have admitted to their involvement in the events.

[629] Counsel MUNYAMAHORO René and Counsel MUKASHEMA Marie-Louise further state that there are properties for which they demand compensation but for which they were unable to provide evidence. They argue that, given the nature of these properties, the only possible evidence is the possession by the owner (as possession is nine-tenths of the law). They explain that it is difficult to present evidence regarding the plundering of a certain person's 6 kilograms of beans or millet. They argue that if the civil parties were lying, they would have exaggerated in their claims. Therefore, in relation to such properties, the available pieces of evidence are the statements provided by the owners and the reports prepared by the administration, which clearly indicate the instances of damaged or plundered properties.

[630] As a general conclusion, Counsel MURANGWA Faustin further states that the accused individuals who deny their liability for the damages caused by the various attacks in which they were involved, fail to acknowledge the fact that the offense for which they were found guilty, namely membership in a terrorist group, is causally linked to the damages for which they are held responsible. Additionally, they themselves admit to being members of the said group. In contrast, concerning the accused individuals who claim that they should only be held liable for

damages caused by the specific attacks in which they were directly involved, Counsel MURANGWA Faustin states that such a stance is equally untrue. Instead, they should be held responsible for damages caused by all the attacks perpetrated by the terrorist group to which they belonged as members.

[631] Counsel MUNDERERE Léopold concludes by requesting that, during the deliberation, the Court take note of the fact that the intent of the accused individuals was not to benefit the nation and the general population. Therefore, all individuals involved in the acts that resulted in damages should be held jointly liable. Regarding those alleging that holding them liable for damages would amount to punishing them for original sin, he argues that this is not true. He emphasizes that such liability is a result of the common intent shared by members of the same terrorist group that launched attacks causing damage to the civil parties.

[632] In general, once again, all the civil parties implore the court to apply the fundamental principle of law stating that "the present and future assets of the debtor constitute the common pledge of its creditors" when examining the allegations made by MUKANDUTIYE Angelina, in which she claims to possess no assets that could contribute to the payment of damages. Therefore, while deliberating, it is not necessary for the court to initially examine whether the party held civilly liable has the capacity to pay damages before deciding to hold them liable.

THE DEFENSE OF THE CIVILLY LIABLE INDIVIDUALS, IN RESPONSE TO THE APPEAL FILED BY THE CIVIL PARTIES, WHO CRITICIZE THE LACK OF DAMAGES AWARDED OR THE INADEQUATE AMOUNT AWARDED TO THEM

[633] In general, the accused individuals allege that the civil parties should not have been awarded damages because they fail to provide supporting evidence. However, particular attention should be given to the statements made by MATAKAMABA Jean Berchmas, BIZIMANA Cassien alias Passy, NSABIMANA Jean Damascène, and MUKANDUTIYE Angelina. These individuals not only admit their participation in the attacks carried out in Rusizi District but also offer additional clarifications to support their defense.

[634] MATAKAMBA Jean Berchmas declares that the victims of the attacks that occurred in Rusizi District, who have fulfilled the requirement of paying the court fees as stipulated by the law and have provided evidence for the claimed damages, will be duly compensated. However, he asserts that MAHORO Jean Damascène, who claims that his motor vehicle was set on fire, is mistaken. As a close neighbor, MATAKAMBA Jean Berchmas affirms that he knows for sure that the motor vehicle is still in use and in circulation to this day. He clarifies that MAHORO Jean Damascène purchased the said motor vehicle from Gitarama for 6,500,000Frw. However, the latter never presented any photographs of the vehicle in the aftermath of the arson, unlike other burnt cars. He explains that only the cab of the vehicle was damaged by the fire, but it was subsequently repaired and is currently being used to transport flour to Congo.

[635] MATAKAMBA Jean Berchmas further states that regarding the grenade that was thrown in Kamembe, he admits to having injured three Muslim women whose names he does not know, and fragments of the grenade hit a motor vehicle. Regarding the Stella Bar where the alleged grenade was thrown, he argues that it would not have been possible because the bar has a high fence of 3 meters and is located 2 meters high from the roadside. He further contends that the court would have noticed this if they had visited the site. He concludes that he should be held liable for the attack carried out in Nyakarenzo, Rusizi, but emphasizes that nothing was damaged there due to their commanders' instructions not to cause any harm. As an example, he cites an instance where they encountered a lorry carrying goods and refrained from taking anything from it. Therefore, the allegations of looting and stealing by the civil parties are untrue.

[636] BIZIMANA Cassien, alias Passy, declares that he does not deny his involvement in the attacks that occurred in Rusizi because he was the commanding officer. He states that he was implementing the FLN orders he received in everything he did. Under the orders of his senior commander, Geva, he set fire to a motor vehicle carrying military and police uniforms. During this incident, he broke its windshield, poured fuel on it, and fired a bullet, causing it to catch fire. He concludes that everything he did was in the context of complying with the orders of the leadership and that he should not be held liable for the attacks carried out in other places.

[637] NSABIMANA Jean Damascène states that he began collaborating with MATAKAMBA Jean Berchmas in September 2019. He admits that regarding the attacks in Rusizi, MATAKAMBA Jean Berchmas gave him a grenade and

instructed him to deliver it to Claude, who was aware of its intended destination. This is the same grenade that was subsequently thrown in Kamembe town. He requests the Court to examine the reliability of the evidence provided by the civil parties. He points out that a medical report dated 02/07/2019, which lists individuals injured by the mentioned grenade, is being presented as evidence, despite the fact that the grenade was thrown on 19/10/2019. He concludes that he should not be held liable for anything related to the attacks that occurred in Karangiro, Nyakarenzo sector because he had not yet begun collaborating with MATAKAMBA Jean Berchmas at that time.

[638] MUKANDUTIYE Angelina states that no one would not be grieved by what happened as a result of the attacks, and all victims should be awarded damages. However, she mentions that all of her properties have already been auctioned, and she does not possess any other property. Therefore, she argues that damages should be paid by the co-accused who are solvent and own properties.

DETERMINATION OF THE COURT

a) Regarding the civil parties who lodged an appeal due to being awarded an insufficient discretionary amount of damages

[639] Regarding the appeal based on the fact that the civil parties were awarded insufficient amounts and desire a reconsideration of the damages at the appellate level, the Court of Appeal shall examine the reliability of the criticisms raised by the civil parties regarding the discretion exercised by the court that rendered the appealed judgment. It will consider whether

such discretion should be replaced by the discretion of the instant appellate court when determining the damages they are requesting. Although the civil parties allege that they had presented sufficient pieces of evidence regarding the requested damages before the trial court and even produced additional evidence before the appellate court, they argue, based on Article 154, paragraph 3, of Law No. 22/2018 of 29/04/2018 relating to civil, commercial, labor, and administrative procedure[76], that the court has no other way to determine the damages except by exercising its own discretion as well.

[640] While examining the issue of the substance of the blame placed on the discretion of the trial court, the present court should take into account that, as evidenced by paragraph 578 of the appealed judgment, it was this discretion that the trial court exercised to assess whether the civil parties provided evidence to support their claims of damages. This includes evidence related to fatalities resulting from the attacks, injuries sustained, abductions, property plundered and damaged, and proof of ownership of said properties. Additionally, the court should consider whether the assigned values are commensurate with the sought compensation. The court should also consider the requirements set forth in Article 150 (5º and 6º) of Law No. 22/2018 of 29/04/2018, as mentioned above, which stipulates that claimants must substantiate the grounds they raise against the appealed judgment.

[76] Article 154, paragraph 3 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that: "It is not prohibited to submit in appeal new arguments or elements of evidence that were not heard at the first level."

[641] It should also be understood that if the evidence truly existed at the trial court level but the claimed damages were not awarded, or if the evidence was not available at that level but is now present at the appellate level, such damages should be awarded. Nonetheless, if the evidence continues to be unavailable, such damages should not be awarded, based on Article 12 of Law nº. 22/2018 of 29/04/2018, which states that the claimant must prove their claim, and Article 3 of Law nº. 15/2004 of 12/6/2004 relating to evidence and its production, which states that each party has the burden of proving their allegations, and if they fail to do so, they will lose the case.

- **Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Nyabimata sector, Nyaruguru district**

[642] Regarding HAVUGIMANA Jean-Marie Vianney, the court notes that in paragraph 584 of the appealed judgment, the trial court determined that there was no basis to award him compensation for the money he claims was extorted from him and for moral damages due to his abduction and being ordered to carry loads, due to a lack of evidence. However, the court did award him compensation for his motorcycle that was set on fire, based on the report of the executive secretary of Nyabimata sector, which attested the burning of the motorcycle. Thus, the court awarded him a discretionary amount of six hundred thousand Rwandan Francs (600,000Frw) in damages because he failed to present any other evidence to establish the actual value of the motorcycle at the time it was burned.

[643] In this appeal case, HAVUGIMANA Jean-Marie Vianney and his legal counsel demand that the court award him damages

totaling 1,100,000Frw, which includes 500,000 Frw for moral damages and expenses incurred in the process of recovering his motor cycle. The court notes that out of the requested 1,100,000 Rwandan Francs (Frw) in damages by HAVUGIMANA Jean-Marie Vianney before the trial court and this court, he was only awarded 600,000 Frw for the value of the motorcycle that was set on fire. However, he was not granted compensation for any other alleged lost assets due to his failure to provide sufficient evidence. Additionally, the trial court did not address the issue of moral damages.

[644] The present court also finds that there is no basis to award him compensation for the money he claims was extorted from him, as well as the expenses incurred during the process of recovering the motorcycle that was set on fire, because he failed to provide supporting evidence. However, concerning the moral damages he claims, the court determines that he deserves to be awarded them due to the impact of the crime for which the accused were found guilty, namely their membership in a terrorist group that set fire to his motorcycle. Therefore, at the court's discretion, the moral damages that should be awarded to HAVUGIMANA Jean-Marie Vianney, based on the conviction of membership in a terrorist group, amount to three hundred thousand Rwandan Francs (300,000Frw), in addition to the amount previously awarded by the trial court in the appealed judgment.

[645] Regarding BAPFAKURERA Vénuste, the Court acknowledges that in paragraph 586 of the appealed judgment, the trial court determined that there was no basis to award him compensation for the value of the telephone and the money he claimed was extorted from him, as he failed to provide supporting

evidence. Furthermore, there is no basis to award him compensation for the expected income from his motorcycle, as he did not present evidence of his daily income prior to the time it was set on fire, nor for the period during which he had already used it. Instead, considering the evidence consisting of the report prepared by the executive secretary of Nyabimata sector and the photographs of the burnt motorcycle, the trial court awarded him discretionary compensation proportional to the value of his motorcycle, as the claimed amount was deemed excessive. Therefore, the court awarded him compensation amounting to six hundred thousand francs (600,000Frw) since he failed to present additional evidence regarding the actual value of the motorcycle on the day it was set on fire.

[646] In the appeal, BAPFAKURERA Vénuste and his legal counsel request the court to award him damages amounting to 5,044,500Frw, which he also claimed before the trial court. This amount includes moral damages and compensation for his damaged assets. In their second request, they criticize the trial court for awarding compensation only for his motorcycle, despite submitting a report from the administration accounting for the events that affected the victims.

[647] The court finds that in this appeal, BAPFAKURERA Vénuste does not raise any criticism regarding the amount of compensation awarded at the court's discretion for the value of his motorcycle that was set on fire. Instead, his concern is solely that he was not awarded any moral damages. The court finds that BAPFAKURERA Vénuste is deserving of the moral damages he requested due to the consequences he suffered as a result of the offense of membership in a terrorist group, for which the accused were found guilty, resulting in the burning of his motorcycle.

Therefore, at the discretion of the court, BAPFAKURERA Vénuste should be awarded moral damages amounting to three hundred thousand (300,000Frw) by the convict of membership in a terrorist group, in addition to the compensation he was awarded by the trial court.

[648] Regarding HABYARIMANA Jean-Marie Vianney, the Court of Appeal notes that in paragraph 587 of the appealed judgment, the trial court deemed that he should be awarded moral damages amounting to three hundred thousand (300,000Frw) for being abducted and forced to carry the looted belongings. This decision was based on the report of the executive secretary of Nyabimata sector, which indicated the victims who were abducted and made to carry the plundered belongings in Nyungwe forest. However, he should not be awarded compensation for his alleged stolen belongings as he failed to substantiate it with evidence.

[649] At the appellate level, HABYARIMANA Jean-Marie Vianney and his legal counsel request that the court award him damages amounting to 1,560,000Frw, which he had previously requested at the trial level. This includes 560,000Frw for the value of his various looted belongings (telephone, trousers, shirts, beans, and African print fabric) and 1,000,000Frw for moral damages. They reiterated their request for damages and criticized the trial court for disregarding the fact that criminals had looted the belongings of the population.

[650] The instant court finds that HABYARIMANA Jean-Marie Vianney expressed dissatisfaction with the discretionary amount of 300,000Frw in moral damages awarded by the trial court. However, he did not specify the exact criticism he has regarding the trial court's exercise of discretion in determining

the damages. Moreover, he requests an increase in the amount of moral damages to 1,000,000Frw. Therefore, the present court finds no basis to modify the amount of moral damages awarded to him by the trial court. The court further finds that besides requesting damages amounting to 560,000Frw for the value of his various plundered properties (telephone, trousers, shirts, beans, and African print fabric) as previously stated in the trial court, he has failed to present any new evidence or demonstrate that any evidence presented was overlooked by this trial court. Consequently, these damages are groundless. In light of this, HABYARIMANA Jean-Marie Vianney should only be granted the previously awarded amount of 300,000Frw in moral damages, as determined by the trial court.

[651] Regarding NSABIMANA Anastase, the court acknowledges that paragraph 590 of the appealed judgment states that the trial court recognized NSABIMANA Anastase as one of the individuals who were abducted by the assailants and compelled to transport the looted possessions to Nyungwe forest, as indicated in the report provided by the executive secretary of Nyabimata sector. Therefore, based on the aforementioned report, the trial court awarded NSABIMANA Anastase moral damages in the amount of three hundred thousand (300,000Frw) for the abduction and forced transportation of the looted belongings. However, the court determined that he should not be granted compensation for his alleged stolen belongings, such as provisions, clothes, telephone, and money, due to his failure to provide supporting evidence.

[652] NSABIMANA Anastase and his legal counsel request the Court of Appeal to award him damages totaling 1,213,000Frw, which is the same amount he had previously requested before the

trial court. This amount includes 150,000Frw, which represents the proceeds from his cow. He paid this amount to the assailants in order to spare the life of his wife. Additionally, it includes 63,000Frw, which represents the value of his various looted possessions, such as provisions, telephone, and clothes, and 1,000,000Frw of moral damages for being abducted, forced to carry the looted possessions, and being subsequently released during the early morning hours.

[653] The court notes that NSABIMANA Anastase expressed dissatisfaction with the discretionary amount of 300,000Frw in moral damages awarded by the trial court. He requested an amount of 1,000,000Frw, which was the same amount he had requested before the trial court. However, he did not specify the specific criticism he had regarding the trial court's discretion in determining the damages. Based on this, the court finds no grounds to modify the moral damages awarded to him by the trial court. The court also notes that NSABIMANA Anastase has not presented any new evidence to support his other claimed damages before this court, nor has he presented any evidence to the trial court that was overlooked. Therefore, the court finds that these additional damages also lack merit, and thus, the amount of 300,000Frw in moral damages awarded by the trial court should be upheld.

[654] Regarding SIBORUREMA Venuste, the court notes that in paragraph 592 of the appealed judgment, the trial court awarded him moral damages amounting to three hundred thousand (300,000Frw) based on the report provided by the executive secretary of Nyabimata sector. The report indicated that SIBORUREMA Venuste was among the individuals who were abducted by assailants and forced to carry the stolen

belongings to the Nyungwe forest. However, the trial court declined to award him damages for his plundered possessions, including provisions, clothes, and telephone, among others, due to a lack of evidence.

[655] At the appeal level, SIBORUREMA Venuste and his legal counsel request the present court to award him damages totaling 570,500Frw, which is the same amount he had previously requested before the trial court. This amount includes 70,500Frw for his various plundered possessions, such as provisions, milk, telephone, and clothes, and 500,000Frw for moral damages, as the trial court had declined to award him damages for his plundered possessions.

[656] The Court of Appeal finds that SIBORUREMA Venuste expressed dissatisfaction with the discretionary amount of 300,000Frw in moral damages awarded by the trial court and requests the appellate court to award him 500,000Frw, as he had previously requested. However, he does not specify the specific criticism he has regarding the trial court's exercise of discretion. Therefore, there is no basis to modify the amount awarded by the trial court. The court finds that with regard to his other requests that were not granted by the trial court, SIBORUREMA Venuste has not presented any new evidence to support the claims that were dismissed by the trial court. In view of that, other requested damages lack merit. For the aforementioned reasons, the court upholds the award of moral damages amounting to 300,000Frw to SIBORUREMA Venuste.

[657] Regarding NGENDAKUMANA David, the court notes that in paragraph 593 of the appealed judgment, the trial court awarded him three hundred thousand (300,000Frw) in moral damages based on the report established by the executive

secretary of Nyabimata sector, which indicated his abduction by the assailants and his forced participation in carrying plundered possessions to Nyungwe forest. However, the trial court declined to award NGENDAKUMANA David compensation for his alleged plundered belongings, such as provisions, clothes, telephone, etc., as he failed to provide sufficient evidence to support his claim.

[658] At the appellate level, NGENDAKUMANA David and his legal counsel request the court to award him damages totaling 528,400Frw, which is the same amount he had previously requested before the trial court. This includes 28,400Frw, representing the value of his various looted possessions, such as provisions, telephone, and clothes, and 500,000Frw in moral damages for being forced to carry the plundered belongings to Nyungwe forest. They argue that the trial court had declined to award him compensation for the stolen possessions, hence the request for damages.

[659] The Court of Appeal notes that NGENDAKUMANA David expressed dissatisfaction with the discretionary amount of 300,000Frw awarded to him by the trial court and instead requests an amount of 500,000Frw as originally requested. However, he does not provide specific reasons or criticisms regarding the trial court's exercise of discretion in determining the damages. Therefore, the Court of Appeal finds that there is no sufficient justification to modify the amount awarded to NGENDAKUMANA David by the trial court. It finds that with regard to the other compensations he claims not to have been awarded, he does not provide any new evidence at this level indicating what the trial court may have overlooked. In view of that, such damages also lack merit. It finds that the moral

damages of 300,000Frw awarded to NGENDAKUMANA David by the trial court should be upheld.

[660] Regarding SHUMBUSHA Damascène, the court of appeal finds that in paragraph 589 of the appealed judgment, based on the report of the executive secretary of Nyabimata sector, it was established that SHUMBUSHA Damascène was among the persons abducted by the assailants and forced to carry the plundered possessions to Nyungwe forest. Consequently, the trial court awarded him moral damages amounting to three hundred thousand (300,000Frw). However, the same court declined to award him compensation for his alleged plundered possessions, including provisions, clothes, telephone, and money, due to lack of evidence.

[661] At the current court instance, SHUMBUSHA Damascène and his legal counsel request the court to award him damages totaling 654,000Frw, the same amount he had requested at the trial court level. This includes 600,000Frw of moral damages and 50,000Frw for the compensation of his various plundered possessions, such as provisions, clothes, telephone, and an additional amount of 4,000Frw that was extorted from him. They argue that the trial court had declined to award him compensation for his stolen possessions.

[662] The Court of Appeal finds that SHUMBUSHA Damascène, in his request for an increased amount of 600,000Frw in moral damages, fails to specify the specific criticism he has regarding the discretion exercised by the trial court in awarding him the initial amount of 300,000Frw. Therefore, there is no basis to grant him the requested 600,000Frw in moral damages. For these reasons, in relation to compensations for his plundered assets, the lack of new evidence

provided by SHUMBUSHA Damascène to prove any disregard by the trial court in awarding them renders his claim without merit. For these reasons, the court upholds the award of 300,000Frw in moral damages to SHUMBUSHA Damascène as previously granted by the trial court.

[663] Regarding RUGERINYANGE Dominique and NTABARESHYA Dative, the Court of Appeal acknowledges that in paragraph 585 of the appealed judgment, the trial court specifically stated that due to the lack of evidence presented by the aforementioned individuals to support the existence and value of the claimed plundered possessions at their child HABARUREMA Joseph's business premises, there was an inadequate basis to award them the requested damages pertaining to those belongings. It further clarified that despite the existence of a report prepared by the executive secretary of Nyabimata, which indicates that HABARURIMA Joseph was a victim of the attack that took place on 19/06/2018, along with the death certificate dated 06/11/2018 and evidence establishing RUGERINYANYE Dominique and NTABARESHYA Dative as the parents of the deceased, they are entitled to receive moral damages for the loss of their child. However, considering that the amount they requested is deemed excessive, the trial court exercised its discretion and awarded them a discretionary amount of 5,000,000Frw each.

[664] At the appeal level, RUGERINYANGE Dominique and NTABARESHYA Dative, along with their legal counsel, request the present court to award them damages totaling 17,000,000Frw, which is the same amount they had requested at the trial court. This includes moral damages amounting to 10,000,000Frw and compensation for damaged belongings totaling 7,000,000Frw.

They argue that the trial court overlooked the fact that the report prepared by the administration, which served as the basis for awarding them moral damages, specifically mentions the existence of plundered boutiques, including the one owned by their child.

[665] The Court of Appeal finds that the moral damages requested by RUGERINYANGE Dominique and NTABARESHYA Dative, totaling 10,000,000Frw, are identical to the amount awarded by the trial court in the appealed judgment. In the trial court, each of them was granted 5,000,000Frw. Consequently, there is no justification to reassess the matter of moral damages.

[666] The Court of Appeal also finds that in regard to the compensation for the alleged plundered possessions, they have not presented any new evidence at this appellate level, nor have they pointed out any evidence that was overlooked by the trial court. Consequently, such damages are deemed to lack merit. In view of the above, the Court upholds the amount of 5,000,000Frw in moral damages awarded to each of them by the trial court.

[667] Regarding INGABIRE Marie Chantal, the court of appeal notes that in paragraph 588 of the appealed judgment, the trial court held that the report established by the Nyabimata sector executive secretary indicates that MANIRAHO Anatole, who was INGABIRE Marie Chantal's husband, was killed in the attack launched on 19/06/2018. Consequently, the court awarded her a discretionary amount of ten million francs (10,000,000Frw) in moral damages for the loss of her husband, who left behind children in need of care. The court also points out that the same court declined to award pecuniary damages due to a lack of evidence regarding her husband's income.

[668] In the appeal, INGABIRE Marie Chantal and her legal counsel argue that they had presented evidence to the trial court regarding the annual income of the family of MANIRAHO Anatole, but without providing specific evidence of the deceased's salary. However, INGABIRE Marie Chantal has now managed to find supporting evidence, which is attached as Annex 111 in the filing system. This evidence demonstrates that the gross salary of the deceased was 207,335Frw, while the net salary was 130,650Frw. They also allege that the trial court did not consider the funeral expenses in awarding him moral damages amounting to only 10,000,000Frw. They argue that this omission was due to a lack of evidence and the fact that they did not provide detailed explanations at that time. However, they are currently presenting additional explanations at the appeal level. Therefore, they request the present court to increase the amount of moral damages awarded by the trial court, taking into account the grief they experienced as a result of the obsequies and associated expenses.

[669] The court of appeal acknowledges that the damages requested by INGABIRE Marie Chantal, and which she hopes the present court will reexamine, consist of the following: Moral damages totaling 30,000,000Frw, pecuniary damages amounting to 70,000,000Frw, damages for the grief suffered by her children, who became orphans, totaling 50,000,000Frw.These damages are sought due to the killing of her husband, MANIRAHO Anatole, who held the position of being in charge of studies at Nyabimata complex school.

[670] The Court of Appeal notes that the legal counsel for INGABIRE Marie Chantal did not distinguish between funeral expenses and moral damages in their arguments. Consequently,

the present court concludes that even if the trial court did not specifically designate a separate amount for funeral expenses, it should be understood that the cumulative moral damages award of 10,000,000Frw encompasses the grief associated with the funeral expenses. The court further determines that the award of these damages not only represents the grief experienced by INGABIRE Marie Chantal as a widow but also encompasses the grief endured by the children left as orphans.

[671] The Court of Appeal also determines that concerning pecuniary damages related to the income that MANIRIHO Anatole would have earned if he had not been killed, the trial court did not award them due to a lack of evidence regarding his previous income. However, the present court should take into consideration the newly presented evidence, which consists of the salary certificate, and proceed to award such damages to INGABIRE Marie Chantal. Based on the provided information, it appears that the evidence demonstrates the gross and net salary of the deceased individual, which was 207,335Frw and 130,650Frw, respectively. However, it is important to note that this evidence alone does not prove that the salary amount would be permanent until the individual's death. The evidence indicates that the deceased used to earn an income to support his family and establish his status. This information can be considered by the court when determining the appropriate amount of equitable damages. The present court finds, therefore, that the appropriate pecuniary damages amount to fifteen million six hundred seventy-eight thousand Frw (15,678,000Frw). This calculation is based on the monthly net salary of the deceased, which was stated as 130,650Frw, and a discretionary timeframe of ten (10) years. The court has reached this decision because the requested gross damages of 70,000,000Frw are deemed highly excessive, and no

link has been established between this amount and the proven salary.

[672] The Court of Appeal has determined that there is no valid reason to modify the moral damages of 10,000,000Frw that were determined by the trial court at its discretion. The appellant, INGABIRE Marie Chantal, has failed to demonstrate any fault or error in the exercise of the trial court's discretion, except for claiming that she personally considers the awarded amount to be insufficient. In general, the Court finds that INGABIRE Marie Chantal should not be awarded any additional damages at the appeal level, except for the pecuniary damages of 15,678,000Frw as clarified above. This amount is to be added to the damages awarded by the trial court, resulting in a total amount of twenty-five million six hundred seventy-eight thousand francs (25,678,000Frw).

[673] Regarding MUKASHYAKA Joséphine and her legal counsel's argument, they place blame on the trial court for awarding only 10,000,000Frw in moral damages and declining to award pecuniary damages. They argue that the trial court's decision was based on the fact that Joséphine did not provide sufficient evidence of the deceased's salary beyond mere utterance. They also criticize that the moral damages awarded to Joséphine were insufficient. Furthermore, they allege that they have recently discovered new evidence indicating that the deceased's monthly salary was 100,000Frw, which they have attached as Annex 112 in the case file. They now request the present Court to consider this piece of evidence and award both the moral and pecuniary damages sought by them, totaling 100,000,000Frw.

[674] The Court of Appeal finds that there is no basis to modify the awarded moral damages of 10,000,000Frw, which MUKASHYAKA Joséphine received from the trial court at its discretion. This decision is made because MUKASHYAKA Joséphine and her legal counsel did not provide any evidence to support their criticism of the trial court's discretion, apart from their mere allegations that the awarded amount is insufficient.

[675] The Court of Appeal finds that the trial court did not award pecuniary damages in relation to the potential income that MUNYANEZA Fidèle would have earned had he not been killed. This omission occurred because no evidence of his earnings to support his family was submitted during the trial. The Court of Appeal acknowledges that new evidence, in the form of a salary certificate raised at the appeal level, now exists. Therefore, the Court should consider this new evidence and award pecuniary damages to MUKASHYAKA Joséphine. It is noted that, according to the salary certificate of MUNYANEZA Fidèle, he used to receive a net salary of 86,222Frw. However, this evidence cannot be solely relied upon to assert that this was the permanent salary amount until his death, had he not been killed in the FLN attack. Instead, it serves as evidence of the deceased's earnings to support his family and his socioeconomic status. This information will aid the present court in exercising its discretion to determine fair and equitable damages. At its discretion, the Court deems that equitable pecuniary damages should amount to ten million three hundred forty-six thousand six hundred forty francs (10,346,640Frw). This calculation is based on the net monthly salary of 86,222Frw that the deceased used to receive, and it applies to a period of ten (10) years as determined by the court's discretion.

[676] The Court of Appeal finds that MUKASHYAKA Joséphine should not be awarded any additional damages at the appeal level, despite being entitled to pecuniary damages amounting to 10,346,640Frw as explained above. This amount is to be added to the damages determined by the trial court, resulting in a total amount of twenty million three hundred forty-six thousand six hundred forty francs (20,346,640Frw).

[677] Regarding NSENGIYUMVA Vincent, the Court of Appeal notes that in paragraphs 579-583 of the appealed judgment, the trial court provided reasons for awarding him a cumulative amount of damages totaling twenty-one million five hundred thousand francs (21,500,000Frw). This amount includes 15,000,000Frw as the value of the burnt motor vehicle, which was awarded instead of the requested 25,000,000Frw. Additionally, 6,000,000Frw was awarded as moral damages for the injury he sustained from being shot and being deprived of the use of his burnt car, instead of the requested 20,000,000Frw. Furthermore, 21,600,000Frw was awarded to cover the cost of car rental used for his daily activities as a substitute for the burned vehicle. Lastly, 500,000Frw was awarded as judicial expenses instead of the requested 540,000Frw. It is also noted that in those paragraphs of the appealed judgment, the trial court clarified that NSENGIYUMVA Vincent was not awarded damages of 30,000,000Frw for his burned household equipment, 1,500,000Frw for medical expenses he incurred, and 4,000,000Frw for living expenses while he was hospitalized. The trial court cited the lack of evidence as the basis for denying these claims, in accordance with Article 12 of Law n°. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure.

[678] The Court of Appeal acknowledges that NSENGIYUMVA Vincent and his legal counsel allege that they possess several documents as evidence to substantiate his claim. Furthermore, at the appeal level, they have introduced witness statements from individuals who arrived to assist him shortly after the attack. The Court finds that these statements serve as an indication that there may be additional evidence that was not readily accessible due to the circumstances of the attack, as well as the physical and mental trauma endured by the victims. It further finds that NSENGIYUMVA Vincent and his legal counsel criticize the trial court for noting the pieces of evidence that demonstrate his injury from the attack and his subsequent medical treatment at King Faisal Hospital, following his transfer from the University Teaching Hospital of Butare. However, they express dissatisfaction with the trial court's decision to deny their request for damages amounting to 5,500,000Frw, which encompassed medical and living expenses. The trial court cited the lack of evidence and the absence of proof regarding his hospital admission and the duration of his stay as the reasons for rejecting the claim. Therefore, they argue that the trial court's decision was inconsistent. On one hand, the court acknowledged the evidence regarding the value of the motor vehicle, but on the other hand, it awarded him damages at its discretion, rather than based on the submitted evidence.

[679] The Court of Appeal takes note of their dissatisfaction with the judicial expenses awarded to NSENGIYUMVA Vincent by the trial court, totaling 500,000Frw. They raise concerns regarding the expenses he incurred for trips to Nyanza before the transfer of the case hearing to Kigali, as well as the expenses he continued to face after the transfer. They argue that the trial court awarded these expenses at its discretion and based on estimation,

without fully considering the impact of his inability to use his car as usual. NSENGIYUMVA Vincent had emphasized his reliance on the car for his daily activities and even factored in the daily car rental costs ranging between 15,000Frw and 20,000Frw when calculating the requested amount. Moreover, regarding the compensation for the household equipment that were set on fire, the present court notes their allegation that the trial court misinterpreted the absence of these items in the report prepared by the administration of Nyabimata Sector. They argue that the items were not listed because they were burned, not stolen, and that the same report actually confirms the incidence of burned equipment. It also finds, in general, that they request a reconsideration of the damages awarded to NSENGIYUMVA Vincent, amounting to twenty-one million five hundred thousand francs (21,500,000Frw), in order to take into account, the submitted evidence and the new evidence filed at the appeal level, including witness statements. They are seeking the award of all the damages they have claimed.

[680] The Court of Appeal finds that, with regards to the compensation of 30,000,000Frw for his household equipment that was set on fire, the trial court did not award it to him due to a lack of evidence. The Court further determines that, even at the appeal level, he should not be awarded the compensation as he has also failed to substantiate his claim with evidence.

[681] The Court of Appeal finds that, regarding the compensation of 1,500,000Frw that NSENGIYUMVA Vincent claims to have spent on medical treatment but was not awarded by the trial court due to a lack of evidence, he has submitted the following pieces of evidence: an invoice for 2,000Frw on annex 077, an invoice for 77,242Frw on annex 078, and an invoice for

11,378Frw on annex 079. These invoices demonstrate that he has spent a total of 90,620Frw on medical treatment. Based on Article 154 of the Law n° 22/2018 of 29/04/2018 mentioned above, he deserves to be awarded this amount, as he has not provided the requested amount of 1,500,000Frw at the appeal level. The Court of Appeal notes that regarding the damages amounting to 4,000,000Frw for living expenses while admitted in the hospital, which NSENGIYUMVA Vincent requests, there is no basis to award them to him as he has also failed to provide evidence at the appeal level.

[682] Regarding compensation for the value of the burned motor vehicle, determined at the trial court's discretion, the Court of Appeal finds that Nsengiyumva Vincent should not be awarded the claimed damages at the trial court level. This is because he does not base them on the actual cost of purchase, nor does he demonstrate that the requested amount is equivalent to the market price of the same model and age of his burned vehicle. Consequently, NSENGIYUMVA Vincent does not provide sufficient grounds to challenge the trial court's exercise of discretion, which would justify changing the discretionary amount of 15,000,000Frw determined by the trial court.

[683] The Court of Appeal finds that regarding the damages of 6,000,000Frw determined by the trial court, it explained that they include moral damages for being shot, sustaining injuries, and being deprived of the use of his burned car. However, Nsengiyumva Vincent made a distinction between the damages he sought. He claimed 20,000,000Frw for moral damages and 21,600,000Frw for car rental expenses incurred in his daily activities as a replacement for his own car. This calculation was based on a daily rate of 20,000Frw, starting from the day his car

was set on fire (on 19/06/2018) until the day the judgment was pronounced.

[684] Therefore, the Court of Appeal finds that the trial court made an error in combining the moral damages and car rental expenses incurred by Nsengiyumva Vincent. These damages are of different nature, and their calculation methods differ. It finds that while the awarding of moral damages is discretionary, as they are often based on emotions and lack a tangible basis for calculation, the concept of loss of opportunity (pecuniary damages) has a more concrete foundation. Even though estimations may be used, when a person is deprived of the right to use their motor vehicle, they seek alternatives to maintain their normal way of life, and this loss can be quantified in monetary terms.

[685] The Court of Appeal finds that, in line with its approach to other victims of these terrorist attacks who were awarded moral damages at its discretion in the amount of 300,000Frw, NSENGIYUMVA Vincent should also have been granted moral damages. His case warrants special consideration, particularly due to the severity of the physical suffering he endured and the fact that he narrowly escaped death from the bullets that were intentionally fired at him. It finds, within its discretion, that NSENGIYUMVA Vincent should be awarded five million francs (5,000,000Frw) in moral damages. In contrast, regarding compensation for being deprived of the right to use his motor vehicle in his daily business, the court finds that it cannot overlook the fact that NSENGIYUMVA Vincent incurred expenses for his movements in order to continue his daily activities. However, since there is no evidence to support the requested damages of 21,600,000Frw, calculated based on a daily

amount of 20,000Frw, the court awards him a discretionary amount of 5,000Frw per day. This award covers the period from the day his car was set on fire on 19/06/2018 until 04/04/2022, amounting to 1369 days x 5,000Frw, totaling 6,845,000Frw.

[686] Regarding the five hundred thousand francs (500,000Frw) of judicial expenses awarded to NSENGIYUMVA Vincent by the trial court, he filed an appeal claiming that it was insufficient. He argued that the awarded amount did not adequately cover all the times he appeared in the hearings at Nyanza when they were still held there, as well as the subsequent hearings in Kigali. He requested that the damages be increased to one million francs (1,000,000Frw), which was his initial request. The present court finds that the amount determined by the trial court was awarded because there was no evidence indicating the actual amount of judicial expenses incurred by NSENGIYUMVA Vincent. He reiterates his request for the same amount that was declined by the trial court. However, he has not provided any additional evidence or specified the grounds for challenging the trial court's exercise of discretion. Consequently, the present court finds no grounds to modify the decision of the trial court in this regard.

[687] In general, the damages awarded to NSENGIYUMVA Vincent in the appealed judgment are upheld for the value of the car (amounting to 15,000,000Frw) and judicial expenses (amounting to 500,000Frw). However, the compensation for medical expenses, which was substantiated with evidence, is modified to 90,620Frw. The damages for the deprivation of the right to use the car are adjusted to 6,845,000Frw, and the moral damages are set at 5,000,000Frw. The total amount awarded is

twenty-seven million four hundred thirty-five thousand six hundred twenty francs (27,435,620Frw)

- **Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Nyungwe forest, Kitabi sector in Nyamagabe District**

[688] Regarding UWAMBAJE Françoise, the Court finds that in paragraph 616 of the appealed judgment, the trial court awarded her moral damages amounting to ten million francs (10,000,000Frw) at its discretion. This decision was based on the medical report from University Teaching Hospital of Butare on 18/12/2018, which indicated the death of HABYARIMANA Dominique on 16/12/2018, and another medical report that confirmed his physical injuries resulting from being shot. The awarded damages were meant to compensate UWAMBAJE Françoise for the suffering she endured due to the killing of her husband, who left behind three children. However, the Court held that she should not be awarded any other requested pecuniary damages or the value of the shortfalls because she failed to substantiate her claim with evidence.

[689] In this appellate case, UWAMBAJE Françoise and her legal counsel argue that, based on article 154 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure, they have submitted new evidence to the present appellate court. They claim that these new documents, including the certificate attesting that her husband UWAMBAJE Françoise was an entrepreneur dealing with the District administration, issued by Gashonga sector where the deceased HABYARIMANA Dominique used to participate in bids, are

attached as annex 104. There are also photographs attached to the file as annexes 106 and 107, indicating the grave of the deceased, as well as the invoice for funeral expenses attached as annex 103. However, they further allege that there are other invoices for funeral expenses incurred, such as those related to the purchase of packaged water and transportation, which they have been unable to locate. They request that when determining damages at the appellate level, the court should take into account the remaining working time of HABYARIMANA Dominique, as well as the expenses incurred by UWAMBAJE Françoise for funeral expenses and the closure of the mourning ceremony. However, since they do not have conclusive evidence, they request the court to exercise its discretion and award her the requested damages, as the expenses they refer to in their claim were indeed incurred in reality. In contrast, regarding the moral damages of ten million francs (10,000,000Frw) that she was awarded and expresses dissatisfaction with, they request the court to reconsider the claim and award her a discretionary amount of at least fifty million francs (50,000,000Frw).

[690] The Court of Appeal finds that UWAMBAJE Françoise expressed dissatisfaction with the moral damages of 10,000,000Frw awarded to her by the trial court at its discretion. She requests an amount of 50,000,000Frw instead. At the appellate level, she had initially requested one hundred million francs (100,000,000Frw), which included moral damages, pecuniary damages, and funeral expenses incurred. It finds, however, that since she does not specify any criticism regarding the discretion exercised by the trial court in awarding her moral damages, and merely expresses dissatisfaction, there is no basis for the appellate court to modify the amount of moral damages

awarded to her. Therefore, the amount of 10,000,000Frw awarded by the trial court should be upheld.

[691] Regarding the pecuniary damages requested by UWAMBAJE Françoise, based on the fact that the deceased HABYARIMANA Dominique had business ventures that provided financial support to his family, the Court of Appeal finds that even though UWAMBAJE Françoise and her legal counsel do not specify the specific amount within the total sum of 100,000,000Frw that they requested, the certificate dated 15/02/2021 issued by the executive secretary of Gashonga sector, which they submitted as evidence, indicates instead that HABYARIMANA Dominique, who was an entrepreneur and a supplier of construction materials for school classrooms, successfully completed his projects, including the construction of classrooms in Gashonga sector at the EP Buhokoro site, GS Gashonga Catholique, from 2017 until 2018". Consequently, the requested pecuniary damages by UWAMBAJE Françoise should not be awarded to her since the supporting evidence she provided does not indicate the specific amount that can be used as a basis for calculating them.

[692] Regarding the funeral expenses incurred for the burial of HABYARIMANA Dominique, the Court of Appeal, based on Article 154 of the Law n^{o} 22/2018 of 29/04/2018 mentioned above, which allows the submission of new evidence for the first time at the appellate level, finds that UWAMBAJE Françoise should be awarded damages amounting to two hundred fifty-five thousand francs (250,000Frw) for the purchase of the coffin, as evidenced by invoice number 264, and two hundred thousand francs (200,000Frw) for the hire of the hearse, as provided by invoice number 265. However, the two photographs of the grave

of the deceased presented as evidence do not provide a basis for awarding any compensation. Consequently, at this appellate level, the court awards UWAMBAJE Françoise damages amounting to four hundred fifty thousand francs (450,000Frw) that she was able to prove, in addition to the ten million francs (10,000,000Frw) of moral damages awarded to her by the court in the appealed judgment.

[693] Regarding NGIRABABYEYI Désiré, the Court of Appeal finds that in paragraph 611 of the appealed judgment, the trial court concluded that there is no evidence indicating the extent of his disability to justify the requested amount of sixty-six million six hundred thousand francs (66,600,000Frw), nor is there evidence to support the need for medical treatment amounting to fifty million francs (50,000,000Frw) as he claimed. The Trial Court, instead, found that the pieces of evidence he submitted only prove that he received medical care for the injury to his left leg, which he sustained as a result of the grenade. Therefore, considering the suffering inflicted upon him and the fact that he had to walk all night long in Nyungwe forest after his car was set on fire, the court awarded him a discretionary amount of two million francs (2,000,000Frw) as moral damages and five hundred thousand francs (500,000Frw) as judicial expenses, totaling two million five hundred thousand francs (2,500,000Frw).

[694] At the appellate level, NGIRABABYEYI Désiré and his legal counsel allege that based on the medical report filed in the case from Kibagabaga Hospital, which indicates a permanent disability of 22%, the court should award him pecuniary damages taking into account this medical report and his monthly salary of 250,000Frw. They further request the court to award him

discretionary moral damages, as the damages of 2,000,000Frw awarded by the trial court for his suffering are deemed insufficient and should be increased at the court's discretion. They point out that their criticism of the appealed judgment lies in the fact that the damages awarded to NGIRABABYEYI Désiré only pertain to his suffering. However, upon reading the law governing the compensation of victims of motor vehicle accidents, they realize that there are other aspects that are also compensated.

[695] The Court of Appeal notes that NGIRABABYEYI Désiré does not raise any objections regarding the judicial expenses of five hundred thousand francs (500,000Frw) awarded to him by the trial court. However, he expresses dissatisfaction with the damages awarded to him at the court's discretion, totaling two million francs (2,000,000Frw), which were referred to as moral damages but of which he associated with the suffering resulting from the injury to his leg. He requests the instant court to exercise its discretion and increase the aforementioned damages. Furthermore, he seeks to be awarded pecuniary damages, although he does not specify the amount. He argues that the court should determine the amount based on his monthly salary of 250,000Frw , but he fails to substantiate this claim with evidence. He also states that the court should consider the 22% degree of disability stated in the medical report he submitted as new evidence, as mentioned earlier.

[696] The Court of Appeal finds that in relation to the damages of 2,000,000Frw awarded to NGIRABABYEYI Désiré, the trial court explicitly stated in paragraph 611 of the appealed judgment that they are moral damages resulting from the injury he sustained during the night-long walk in Nyungwe forest. Therefore, his

claims that these damages are solely related to suffering lack merit. In addition, regarding the other damages he requests for his inability to work despite receiving a monthly salary of 250,000Frw, the Court of Appeal finds that the medical report he provided as evidence states that the disability of his leg is currently at a provisional 22% degree, as he is still undergoing medical treatment. However, there is no basis to award him the requested damages as long as he fails to demonstrate the connection between the provisional degree of disability and the damages claimed. Furthermore, he does not provide evidence of the alleged salary he received or the current inability to engage in paid work. Consequently, the present court finds no other basis on which to modify the moral damages of 2,000,000Frw and the judicial expenses of 500,000Frw that were awarded to NGIRABABYEYI Désiré by the trial court.

[697] Regarding RUDAHUNGA Ladislas and his children, RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius, and UMULIZA Adéline, the Court of Appeal finds that in paragraph 608 of the appealed judgment, the trial court determined that RUDAHUNGA Ladislas should be awarded moral damages amounting to five million francs (5,000,000Frw). Similarly, it concluded that each of the siblings of MUTESI Jacqueline should be awarded two million francs (2,000,000Frw) at the court's discretion, as the amount they requested was deemed excessive. It also finds that the trial court had explained that RUDAHUNGA Ladislas should be awarded compensation for funeral expenses and fees for various certificates amounting to two million one hundred ninety thousand two hundred francs (2,190,200Frw), as proven by the invoices he submitted. Additionally, he should receive five hundred thousand francs (500,000Frw) as judicial expenses.

[698] At the appellate level, RUDAHUNGA Ladislas and his children, RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius, and UMULIZA Adéline, along with their legal counsel, request the instant court to reexamine the damages they had previously requested. They argue that the amount awarded by the trial court is insufficient and therefore seek an increase, as the amount they originally requested falls within a reasonable range and is not excessively high.

[699] The Court of Appeal finds that RUDAHUNGA Ladislas, along with his children RUDAHUNGA Dieudonné, SHUMBUSHO David, KIRENGA Darius, and UMULIZA Adéline, expressed their dissatisfaction regarding the moral damages awarded to them at the trial court's discretion. They request the same amount as they initially requested at the first instance level. However, they fail to provide any specific criticism of the trial court's exercise of discretion in determining the damages. For that reason, the present court finds that there is no basis to modify the moral damages awarded to them at the first instance level.

[700] Regarding MBONIGABA Richard, MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANDUTIYE Alphonsine, UZAYISENGA Lilliane, HABAKUBAHO Adéline, VUGABAGABO Jean-Marie Vianney, MURENGERANTWARI Donat, HAKIZIMANA Denis, RWAMIHIGO Alex, NYIRAGABIRE Valérie, and SEMIGABO Déo, the Court of Appeal finds that, according to paragraph 617 of the appealed judgment, based on the medical report issued by Kigeme Hospital on 16/12/2018, which indicated that MUKABAHIZI Hilarie succumbed to gunshot wounds, the trial court decided that her children, listed on the indigents list

established by Giheke sector on 21/06/2021, namely MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANDUTIYE Alphonsine, UZAYISENGA Lilliane, HABAKUBAHO Adéline, represented by MBONIGABA Richard, should be awarded moral damages for the loss of their parent due to the gunshot during the attack in Nyungwe forest. Each of them should be awarded five million francs (5,000,000Frw). Regarding his siblings, MBONIGABA Richard, VUGABAGABO Jean-Marie Vianney, MURENGERANTWALI Donat, HAKIZIMANA Denis, RWAMIHIGO Alex, NYIRAGABIRE Valérie, and SEMIGABO Déo, each of them should be awarded two million francs (2,000,000 Frw) each. It also finds that the trial court explained that they should not be awarded compensation for alleged expenses and a compensation amounting to one million francs (1,000,000 Frw) for the deceased's shortfalls due to lack of evidence.

[701] At the appeal level, MBONIGABA Richard, MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANDUTIYE Alphonsine, UZAYISENGA Liliane, HABAKUBAHO Adéline, VUGABAGABO Jean-Marie Vianney, MURENGERANTWARI Donat, HAKIZIMANA Denis, RWAMIHIGO Alex, NYIRAGABIRE Valérie, SEMIGABO Déo, along with their legal counsel, request the present court to reconsider and, at its discretion, determine whether they are entitled to the damages they initially requested.

[702] The Court of Appeal acknowledges that MBONIGABA Richard, MUKESHIMANA Diane, NDIKUMANA Isaac, MUKANDUTIYE Alphonsine, UZAYISENGA Liliane, HABAKUBAHO Adéline, VUGABAGABO Jean-Marie

Vianney, MURENGERANTWARI Donat, HAKIZIMANA Denis, RWAMIHIGO Alex, NYIRAGABIRE Valérie, and SEMIGABO Déo have expressed their dissatisfaction with the moral damages awarded to them by the trial court at its discretion. They request to be awarded the same initial amount. However, since they have failed to demonstrate any fault on the part of the court that determined the damages, the Court of Appeal finds no basis to modify the awarded moral damages.

[703] Regarding NYIRANDIBWAMI Marianne, the Court of Appeal notes that in paragraph 615 of the appealed judgment, the trial court decided to award her discretionary moral damages of five million francs (5,000,000Frw) due to the death of her child, NIYOBUHUNGIRO Jeanine, in the attack launched in Nyungwe, as proven by the medical report dated 16/12/2018. However, the court also stated that she should not be awarded compensation for the expenses incurred in relation to her child's death because she failed to provide clarification and supporting evidence regarding those expenses.

[704] At the appeal level, NYIRANDIBWAMI Marianne and her legal counsel request the court to reconsider the damages awarded to her at its discretion, as the law does not provide clear guidelines for their computation.

[705] The Court of Appeal finds that NYIRANDIBWAMI Marianne has expressed dissatisfaction with the discretionary moral damages awarded to her by the trial court. She requests the same amount that she initially requested. However, since she has failed to demonstrate any fault on the part of the trial court in determining the damages, the Court of Appeal finds no basis to modify the awarded moral damages.

[706] Regarding NYIRAYUMVE Eliane, the Court of Appeal finds, according to paragraph 610 of the appealed judgment, that the trial court awarded her a discretionary amount of ten million francs (10,000,000Frw) in moral damages for the loss of her partner, NTEZIRYAYO Samuel, and the responsibility of raising her young children. This decision was based on her evidence, including the marriage certificate and a medical report dated 16/12/2018, which indicated that her husband was killed in the attack launched in Nyungwe forest. Additionally, the trial court awarded her judicial expenses amounting to five thousand francs (500,000Frw). It further finds that the trial court clarified that due to the lack of evidence regarding the income of NTEZIRYAYO Samuel, NYIRAYUMVE Eliane should not be awarded ten million francs (10,000,000Frw) in pecuniary damages. Additionally, the trial court determined that the alleged expenses of two million five hundred thousand francs (2,500,000Frw) incurred by NYIRAYUMVE Eliane for the burial could not be substantiated with evidence.

[707] At the appeal level, NYIRAYUMVE Eliane and her legal counsel argue that based on Article 154 of Law No. 22/2018 of 29/04/2018 mentioned above, they have submitted new evidence to the present court to substantiate the funeral expenses incurred for the burial of her husband. They assert that NYIRAYUMVE Eliane initially requested damages totaling 23,500,000Frw, which includes 10,000,000Frw for being left a widow, 10,000,000Frw in pecuniary damages, 2,500,000Frw for funeral expenses, and 1,000,000Frw for judicial expenses. They request the court to reconsider her claim at its discretion. Regarding pecuniary damages, they argue that since the deceased had no paid work and is unable to prove otherwise, and there is no legal basis to calculate such damages, they request the court to exercise

its discretion and award them. They suggest that the legal basis for computing these damages should be similar to that governing the indemnification of victims of accidents caused by motor vehicles. In such cases, when a person's income is unknown, the court typically awards damages based on the minimum wage.

[708] The Court of Appeal finds that since NYIRAYUMVE Eliane is requesting 10,000,000Frw of moral damages, the same amount she initially requested before the trial court, and considering that she has already been awarded a similar amount, her claim lacks merit. It further finds that the requested amount of 1,000,000Frw for judicial expenses should not be awarded to her, as she has not criticized the trial court's discretion in awarding her 500,000Frw for the same purpose.

[709] Regarding the requested pecuniary damages of 10,000,000Frw, based on the argument that the deceased NTEZIRYAYO Samuel engaged in profitable activities and used to provide for his family, the Court of Appeal finds no basis to overturn the decision of the trial court.

[710] Regarding the expenses for the burial of NTEZIRYAYO Samuel, the Court of Appeal finds that the submitted evidence provided by NYIRAYUMVE Eliane to support these expenses should not be considered valid. The document titled "invoice for funeral expenses" is not a genuine invoice as it was handwritten by NYIRAYUMVE Eliane herself on 24/01/2022. In this document, she claims 2,777,800Frw in moral damages, which includes 1,299,800Frw for various items used for the funeral, 278,000Frw for the value of various items her husband purchased and possessed at the time of his death, and 1,200,000Frw as proceeds from the sale of wood planks. Therefore, the Court deems that the document in question, originating from the litigant

herself and not distinct from her own statements, cannot be relied upon as evidence. Furthermore, NYIRAYUMVE Eliane should not be awarded the additional damages she requested, as she failed to provide supporting evidence for them.

[711] Regarding KAREGESA Phénias, the Court of Appeal finds that, according to paragraph 609 of the appealed judgment, the trial court awarded him moral damages based on the evidence he provided, which included the medical report issued by Kigeme Hospital on 16/12/2018. The medical report confirmed that his child, NIWENSHUTI Isaac, had died of fatal burns. The trial court awarded KAREGESA Phénias five million francs (5,000,000Frw) as moral damages for the grief he experienced due to the death of his child. Additionally, the court awarded him five hundred thousand francs (500,000Frw) as judicial expenses, determined at the court's discretion, making a total of five million five hundred thousand francs (5,500,000Frw). It also finds that the trial court explained that KAREGESA Phénias should not be awarded alleged funeral expenses due to a lack of evidence.

[712] At the appeal level, KAREGESA Phénias and his legal counsel request the present court to reconsider his claim for damages at its discretion. The total amount requested is 67,000,000Frw, consisting of 63,000,000Frw for moral damages, 3,000,000Frw for funeral expenses, and 1,000,000Frw for judicial expenses, as previously requested to the trial court. However, they fail to provide specific criticisms regarding the exercise of discretion by the trial court in awarding the damages, instead only making unsubstantiated claims of insufficiency. Therefore, the present court finds no grounds to modify the moral damages awarded to KAREGESA Phénias by the trial court.

[713] Regarding HABIMANA Zerothe, the Court of Appeal observes that, as stated in paragraph 612 of the appealed judgment, the trial court determined that the presented evidence does not establish the extent of his disability and its impact on his ability to work, thus not warranting the requested amount of sixty-eight million four hundred thousand francs (68,400,000Frw). Furthermore, there is a lack of evidence demonstrating the necessity of special treatment, which would justify the requested amount of fifty million francs (50,000,000Frw). It further observes that the trial court, on the contrary, determined that the requested amount for HABIMANA Zerothe was excessive, considering the evidence of him receiving medical treatment for the grenade wounds. Instead, the trial court exercised its discretion and awarded him a moral damages amount of two million francs (2,000,000Frw). The moral damages were granted for the incidents of being beaten, forced labor, abduction, and being taken to Nyungwe forest. Additionally, the trial court awarded him five hundred thousand francs (500,000Frw) for judicial expenses, resulting in a total award of two million five hundred thousand francs (2,500,000Frw).

[714] At the appeal level, HABIMANA Zerothe and his legal counsel request the present court to reexamine the previous claim for damages and increase the awarded amount, as they argue that the amount determined by the trial court is insufficient.

[715] However, it observes that HABIMANA Zerothe has expressed dissatisfaction with the amount of 2,000,000Frw in moral damages and 500,000Frw in judicial expenses awarded at the discretion of the court. They request the same amount of damages they claimed for in the previous court. However, it finds

that since he does not challenge the discretion of the trial court in awarding him the damages, there is no basis to modify the moral damages he was granted. Furthermore, the medical report submitted as evidence does not mention the alleged permanent disability raised by HABIMANA Zerothe's legal counsel.

[716] Regarding NIYONTEGEREJE Azèle, the Court of Appeal observes that, according to paragraph 613 of the appealed judgment, the trial court determined, based on the medical report provided by Kigeme Hospital in Nyamagabe at the request of the investigator, that NIYONTEGEREJE Azèle had a wound on her right shoulder. The trial court concluded that although she was injured by FLN assailants during the attack in Nyungwe forest on 15/12/2018, she is entitled to receive two million francs (2,000,000Frw) in moral damages instead of the requested amount of 5,500,000Frw, which included 5,000,000Frw in moral damages and 500,000Frw in disability compensation. It further finds that the trial court explained that NIYONTEGEREJE Azèle should not be awarded disability compensation because the medical report does not indicate that she suffered any disability as a result of the injuries sustained during the attack.

[717] At the appeal level, NIYONTEGEREJE Azèle and her legal counsel argue that she had originally requested damages amounting to five million five hundred thousand francs (5,500,000Frw). They further present a medical report, which they have filed in the system, as evidence of her ongoing disability, particularly in relation to her appearance. Therefore, they request the court to reconsider her claim as the awarded amount is deemed insufficient.

[718] The Court of Appeal concludes that the newly presented medical report in the case file does not warrant any modification

to the trial court's decision. Consequently, NIYONTEGEREJE Azèle should not be granted any damages regarding the alleged disability she may have sustained from the attack. The court notes that her legal counsel failed to substantiate how the evidence justifies the requested amount of 500,000Frw. Furthermore, the same medical report confirms the absence of any permanent disability (0%) resulting from the injury. Therefore, the present court is of the view that there is no justification for modifying the awarded moral damages of 2,000,000Frw as determined by the trial court.

[719] Regarding KAYITESI Alice, the Court of Appeal notes that, as stated in paragraph 614 of the appealed judgment, the trial court based its decision on the evidence available in the case file, including a medical report indicating that KAYITESI Alice was examined by a doctor at Kigeme Hospital in Nyamagabe on 16/12/2018, which confirmed an injury on her right leg. The trial court determined that since she was injured by FLN assailants during the attack in Nyungwe on 15/12/2018, she should be awarded moral damages in the amount of two million francs (2,000,000Frw). It further finds that the trial court, however, decided that she should not be awarded damages for the loss of beauty, citing a lack of evidence to prove the extent of the aesthetic loss, and also denied compensation for medical expenses incurred due to a lack of supporting evidence. Furthermore, the trial court dismissed her claim for compensation for belongings allegedly stolen during the attack, again due to a lack of supporting evidence.

[720] At the appeal level, KAYITESI Alice and her legal counsel argue that they have submitted a medical report as evidence, which indicates that she still has a 20% degree of

disability. They contend that since she initially requested 50,000,000Frw in damages but was only awarded 2,000,000Frw by the trial court, the current court should reconsider her claim and award her damages for the disability resulting from the attack in Nyungwe.

[721] The Court of Appeal finds that the new evidence presented, namely the medical report filed at this level, is unlikely to bring about a change to the decision of the trial court regarding the award of damages for the disability suffered by KAYITESI Alice as a result of the attack. This is because the mentioned report only indicates a temporary disability of 20% and not a permanent disability. Furthermore, the doctor who conducted the examination advised that they should wait until the end of the treatment to determine the status of any permanent disability. It further finds that the legal counsel representing KAYITESI Alice did not provide an explanation or justification for the requested amount of damages based on the mentioned evidence. Therefore, the Court of Appeal concludes that there is no basis upon which it can rely to modify the moral damages awarded to KAYITESI Alice by the trial court, which amounted to 2,000,000Frw.

[722] Regarding YAMBABARIYE Védaste, the Court of Appeal notes that in paragraph 618 of the appealed judgment, the trial court relied on the report issued by Ngungu Cell on 06/11/2020. The report indicated that YAMBABARIYE Védaste was shot in the attack launched in Nyungwe forest on 15/12/2018 and that he has been undergoing treatment for his injuries since that day. Based on this evidence, the trial court awarded him a discretionary amount of two million francs (2,000,000Frw) in moral damages, as he failed to provide sufficient evidence to substantiate his claim for other damages.

[723] At the appeal level, YAMBABARIYE Védaste and his legal counsel state that he requested damages amounting to 20,000,000Frw for the disability he sustained as a result of being shot in the attack. They have recently submitted new evidence in the form of a medical report. They also argue that the trial court did not adequately address YAMBABARIYE Védaste's claim as stated in paragraph 618 of the appealed judgment. This court had admitted the evidence presented by YAMBABARIYE Védaste, which justified the award of 2,000,000Frw. However, in its decision in paragraph 711, the trial court listed him among the claimants who were not granted damages. They conclude that the present court should rectify this mistake, reevaluate the merit of the 20,000,000Frw amount claimed by YAMBABARIYE Védaste at the trial court, and award it to him, as the 2,000,000Frw he was previously awarded is insufficient.

[724] Regarding the fact that the trial court determined that YAMBABARIYE Védaste should be awarded damages amounting to 2,000,000Frw, but this decision did not appear in the actual ruling where he was instead listed among the claimants who were not awarded damages, the present court finds that [77]this is a drafting error in the ruling that can be rectified at the appeal level, in accordance with the provisions of Article 141 of Law n° 22/2018 mentioned above. Consequently, it finds that he is entitled to the damages amounting to 2,000,000Frw that were awarded to him by the trial court.

This article reads as follow: "The party seeking the rectification or interpretation of a judgement at the appellate level must do so in his/her submissions, and the appellate court approves it at the same time as the other grounds of appeal. In this case, the lower court is no longer competent to correct these errors."

[725] Regarding the fact that YAMBABARIYE Védaste and his legal counsel request the court to consider new evidence in the form of a medical report to increase the awarded damages to 20,000,000Frw, which was awarded by the trial court, the present court finds that this evidence, issued by the medical doctor at Kigeme Hospital on 13/01/2022 and titled "Attestation de maladie chronique," is unlikely to change the ruling of the trial court. The trial court determined that YAMBABARIYE Védaste should not be awarded the full amount of damages requested for the sustained disability, as he is still undergoing treatment. Instead, the trial court awarded him moral damages for the injuries sustained during the attack. Despite the failure of his legal counsel to demonstrate how this evidence supports the requested amount of 20,000,000Frw in damages, it does not prove the existence of a permanent disability resulting from the injuries. In fact, the evidence supports the ruling of the trial court that YAMBABARIYE Védaste is currently ill and receiving treatment. It therefore finds that there is no justification to modify the moral damages awarded by the trial court to YAMBABARIYE Védaste, amounting to 2,000,000Frw.

[726] Regarding NDUTIYE Yussuf, the Court of Appeal notes that, according to paragraphs 599-600 of the appealed judgment, the trial court denied his request for compensation amounting to 8,000,000Frw for the value of his car, which was set on fire on 15/12/2018. The trial court based its decision on the fact that the proforma invoice, issued on 24/01/2020 after the incident, failed to establish a clear link between the car's value at the time of purchase and its value at the time of the incident, considering the period of usage. Instead, the trial court awarded him a discretionary amount of four million francs (4,000,000Frw).

[727] The Court of Appeal also notes that in those paragraphs of the appealed judgment, the trial court found that concerning the other damages claimed by NDUTIYE Yussuf, including the burning of his car, the fear experienced during the attack, and the hindrance to use his car for daily activities, he should be awarded moral damages in the amount of two million five hundred thousand francs (2,500,000Frw), as determined at the court's discretion. The trial court realized that the requested damages were excessive, as NDUTIYE Yussuf did not provide a basis for requesting the court to consider a daily rental amount of 20,000Frw. It further notes that the trial court awarded him five hundred thousand francs (500,000Frw) for judicial expenses, resulting in a total awarded amount of seven million francs (7,000,000Frw).

[728] At the appeal level, NDUTIYE Yussuf and his legal counsel raise criticism regarding the trial court's decision to award him 4,000,000Frw as compensation for the value of the car. They argue that this amount lacks a basis as it does not cover the cost of any car. As a result, they request the court to either award him the originally requested amount of 8,000,000Frw or to summon motor vehicle valuation experts to assess the value, taking into consideration the duration of usage and the manufacturing year. They also argue that there is a valid criticism regarding the fact that NDUTIYE Yussuf's car was set on fire, he experienced fear due to the attack, and he faced hindrances in using his car for daily activities. However, he was only awarded a cumulative amount of 2,500,000Frw as damages, which was determined at the court's discretion. They request the present court to consider awarding twenty thousand francs (20,000Frw) per day, as NDUTIYE Yussuf relied on his car for daily activities. They argue that during the period when he did not have access to

his car, he had to incur expenses to hire a substitute vehicle. They further allege that the amount of five hundred thousand francs (500,000Frw) awarded by the trial court as judicial expenses is insufficient. They argue that considering all the instances where NDUTIYE Yussuf appeared in court, both in Nyanza and after the case was transferred to Kigali, the expenses he incurred are higher. Therefore, they request the court to reconsider the amount and award the originally requested sum of 1,000,000Frw.

[729] The Court of Appeal finds that, in relation to the compensation for the value of NDUTIYE Yussuf's car that was set on fire, the proforma invoice's purpose is not to establish the value of the car at the time of purchase. Rather, its purpose is to demonstrate the value at which another individual interested in buying the same car model would pay at the time the proforma invoice was issued (the price of a car of the same model manufactured during that period). The present court also finds that the purpose of seeking compensation for the value of the damaged property is to enable the victim to replace the lost item and continue its use (full compensation). Such compensation is awarded based on the market value when there is no other means to determine the actual value.

[730] The Court of Appeal finds, therefore, that based on the fact that NDUTIYE Yussuf has provided the instant court with pieces of evidence that he owns such a car, including the fact that he used to subscribe to insurance from SONARWA and has indicated the market price of the same model car manufactured in the same year, none of the accused has provided contrary evidence to show that the same model of the car owned by NDUTIYE Yussuf could be purchased at a lower price. Therefore, the trial court should have considered such a proforma

invoice since there is no other way the car could currently be found for purchase.

[731] The Court of Appeal finds that the damages awarded by the trial court, amounting to 2,500,000Frw, are explained as moral damages. These damages encompass the fact that NDUTIYE Yussuf's car was set on fire, he was terrified by the attack, and he has been deprived of the right to use his car in his daily activities. However, NDUTIYE Yussuf had requested damages separately. He requested 2,000,000Frw for moral damages and also claimed expenses incurred for renting a new car for his daily activities. He requested these expenses to be calculated at 20,000Frw per day from the date the car was set on fire (on 15/12/2018) until the day of the judgment pronouncement.

[732] The Court of Appeal finds, therefore, that the trial court erred in encompassing moral damages and compensation for the deprivation of using his car in daily activities. These damages are not of the same nature, and their method of computation is not the same. It is noted that while moral damages are determined at the court's discretion since, most of the time, it is difficult to find a tangible basis as they cover emotional harm. On the other hand, pecuniary damages have a measurable basis, regardless of how approximate it may be. This is because the victim, deprived of the possibility to use his vehicle, seeks an alternative to maintain his usual living conditions, which can be evaluated in monetary terms.

[733] The Court of Appeal finds that, in line with its previous decisions, it awarded moral damages at its own discretion for the impact caused by the terrorist attacks. In this regard, it awarded a sum of 300,000Frw as moral damages. Therefore, NDUTIYE

Yussuf should also be awarded moral damages in the amount of 300,000Frw. Furthermore, regarding compensation for being deprived of the right to use his own car in his daily activities, the Court of Appeal finds that it cannot disregard the fact that NDUTIYE Yussuf incurs traffic expenses in order to pursue his daily occupations.

[734] At this stage, the present court notes the lack of evidence substantiating the daily amount of 20,000Frw to the extent that it can rely on it. Therefore, at its own discretion, the court awards him 5,000Frw per day, starting from the day the car was damaged on 15/12/2018 until 04/04/2022. This amounts to 1,190 days multiplied by 5,000Frw, resulting in a total of 5,950,000Frw.

[735] Regarding the five hundred thousand (500,000Frw) of judicial expenses awarded to NDUTIYE Yussuf by the trial court, of which he expresses dissatisfaction, considering the number of times he appeared in the hearing in Nyanza and the times he appeared since the case was transferred to Kigali, he demands that such expenses be increased to 1,000,000Frw as he had previously requested. The present court deems that the amount awarded by the trial court was determined due to the lack of evidence regarding the actual amount incurred by NDUTIYE Yussuf for the follow-up of his case. Furthermore, he persists in requesting the declined amount without providing supporting evidence or specifying his criticism of the trial court's discretion. Therefore, the present court lacks grounds to overturn the decision of the trial court. In general, the damages awarded to NDUTIYE Yussuf by the trial court have only been modified in terms of the compensation for the value of the car, which is now 8,000,000Frw, and the compensation for being deprived of the right to use the car, which amounts to 5,950,000Frw. The moral

damages remain at 300,000Frw, and an additional 500,000Frw is awarded for judicial expenses, as previously determined. The total amount awarded is thus 14,750,000Frw.

[736] Regarding OMEGA Express Ltd, the Court of Appeal notes that in paragraphs 601-603 of the appealed judgment, the trial court found that there were two motor vehicles of the coaster model for passengers that were set on fire in Nyungwe forest by MRCD-FLN assailants. The trial court further determined that damages should be awarded for the loss incurred as a result of that attack, including the value of the motor vehicles, the loss incurred by OMEGA Express Ltd for not being able to use them, and the judicial expenses incurred.

[737] The Court of Appeal finds that, regarding the value of the burned motor vehicles, the trial court, as stated above in the paragraphs of the appealed judgment, noted that the motor vehicle for which a compensation of 51,809,000Frw was sought had been in use for five (5) years. The trial court exercised its own discretion and decided to award a compensation of forty million francs (40,000,000Frw) for this vehicle. Similarly, for the other motor vehicle for which a compensation of 52,079,986Frw was sought and which had been in use for one year, the trial court awarded a discretionary compensation of forty-five million francs (45,000,000Frw).

[738] The Court of Appeal finds that, regarding the pecuniary damages for the loss incurred by OMEGA Express Ltd due to the period of time during which its motor vehicles were unable to be used after being set on fire, the trial court had determined that OMEGA Express Ltd failed to clearly demonstrate the basis for requesting such pecuniary damages. The trial court concluded that the allegations made by OMEGA Express Ltd, including the

claimed period of twenty (20) years during which each burned motor vehicle would have been in use and their daily income, were insufficient to justify the award of the requested damages. Exercising its own discretion, the Court of Appeal finds that the trial court, considering factors such as the nature of passenger vehicle operations whereby vehicles do not work all days, the reliance on estimated daily income by OMEGA Express Ltd, and the award of compensation for the value of the motor vehicle, decided to award pecuniary damages for a period of thirty-three (33) months. This period is computed from 15/12/2018, the time of the event, until the pronouncement of the judgment. The calculation is based on 24 days per month and a rate of fifty thousand francs (50,000Frw) per day. As a result, it determined that the pecuniary damages for both motor vehicles amount to seventy-nine million two hundred thousand francs (79,200,000Frw). The same court had also awarded five hundred thousand francs (500,000Frw) for judicial expenses.

[739] At the appeal level, the legal counsel for OMEGA Express Ltd argues that the trial court has no basis to declare that the bus is only in use for 24 days per month. They contend that even when the driver takes a day off, there is nothing preventing the motor vehicle from being used. Additionally, they assert that the court failed to address the impact of the events on the trust customers had in OMEGA Express Ltd, which has continued to result in financial losses for the company. Therefore, they request the court to determine pecuniary damages based on 50,000Frw per day until the pronouncement of the judgment. They further argue that such damages should be calculated based on 30 days, as passenger buses operate every day, as confirmed by the witness RURANGWA, who was the driver. He also states that the judicial expenses he is requesting amount to 1,240,000Frw,

which includes 20,000Frw and 1,220,000Frw determined as a fixed amount. This is because they did not ask for invoices for the expenses incurred during the case follow-up.

[740] The Court of Appeal finds that, regarding compensation for the value of the two motor vehicles that were set on fire, the legal counsel for OMEGA Express Ltd criticizes the amount awarded by the trial court, stating that it is lower than the value proved by the evidence of the purchase invoices. They argue that, despite the five-year period of use for one vehicle and one-year period of use for the other, the value should have increased in monetary terms, taking into account the current market price of similar motor vehicle models. They contend that the trial court chose to apply depreciation to the vehicles over time.

[741] Regarding the issue of compensation for the value of the two burned motor vehicles, the Court of Appeal acknowledges that it is possible for the value of a vehicle to increase over time instead of depreciating. However, the court notes that such cases are exceptional, and the burden of proof lies with the legal counsel for OMEGA Express Ltd to demonstrate that the vehicles appreciated in value. Until now, the counsel has failed to provide evidence supporting this claim, as they have only presented the purchase invoices from five and one years ago respectively. Therefore, it concludes that the trial court had no other option but to exercise its discretion and estimate the value of the motor vehicles based on their purchase prices and the standard depreciation applied to all equipment. Therefore, it finds no reason to alter the trial court's decision regarding the determination of compensation for the value of the motor vehicles owned by OMEGA Express Ltd that were set on fire during the attack by the MRCD-FLN terrorist group.

[742] The Court of Appeal finds that in regards to the pecuniary damages for the potential income that both burned motor vehicles could have generated if they had not been set on fire, the argument made by the legal counsel for OMEGA Express Ltd that they should be calculated based on a 30-day month is not conclusive. The counsel's claim, based on the testimony of the driver, would have been more persuasive if they had provided the schedule of the motor vehicles' usage since their acquisition by OMEGA Express Ltd. This would have served as concrete evidence to substantiate the claim that the vehicles are indeed used every day without interruption. On the contrary, the Court of Appeal maintains that the method of determining the working days of the motor vehicles at the court's discretion was the only viable option to calculate such damages. It asserts that there was neither overestimation nor underestimation of the vehicles' work in concluding that they should have been in use for an average of 24 days per month. Therefore, the pecuniary damages determined in this manner should be upheld.

[743] Regarding the five hundred thousand (500,000Frw) of judicial expenses awarded to OMEGA Express Ltd by the trial court, the company has lodged an appeal claiming that the amount is insufficient. They have requested the same amount they claimed at the trial court level, which is 1,240,000Frw. This amount includes 20,000Frw and 1,220,000Frw computed at a flat rate, as they did not provide invoices for the expenses incurred during the case follow-up. The instant court finds that these arguments should not be given merit, as even the counsel for OMEGA Express Ltd acknowledges that the requested amount for compensation lacks invoices for expenses. However, the court finds that since the trial court proceeded on the basis that every court case incurs costs for the plaintiff in some way, it

exercised its discretion and awarded 500,000Frw. This decision was made due to the lack of evidence indicating the actual amount of damages sought by OMEGA Express Ltd. The court deems that there is no reason to change the damages awarded to OMEGA Express Ltd by the trial court.

[744] Regarding ALPHA Express Company Ltd, the court notes that according to paragraphs 604-605 of the appealed judgment, the trial court observed that one of its passenger motor vehicles was set on fire during the attack on 15/12/2018 in Nyungwe forest. As a result, the trial court concluded that ALPHA Express Company Ltd should be compensated for the loss it incurred due to the loss of its motor vehicle and the potential income it could have generated if it had not been destroyed. Additionally, it should be awarded judicial expenses for being involved in legal proceedings. It observes that the trial court did not award ALPHA Express Company Ltd the requested purchase value for the motor vehicle, which had been in use for four (4) years. Instead, exercising its discretion, the trial court awarded a sum of forty million francs (40,000,000Frw).

[745] The Court of Appeal observes that the trial court, taking into account the limitations of the passenger vehicle's daily use and the fact that ALPHA Express Company Ltd had already received compensation for the value of the motor vehicle, awarded pecuniary damages for a duration of thirty-three (33) months. The awarded amount is 39,600,000Frw, calculated from the date of the motor vehicle's destruction (15/12/2018) until the trial of the case. The calculation was based on 24 days per month, with a rate of fifty thousand francs (50,000Frw) per day. It further observes that the trial court awarded ALPHA Express Company Ltd five hundred thousand (500,000Frw) in judicial expenses.

[746] At the appeal level, the legal counsel for ALPHA Express Company Ltd criticizes the trial court's method of determining the value of the motor vehicle and calculating pecuniary damages. They allege that the value of the coaster model vehicle does not depreciate over time, but rather appreciates due to inflation. They argue that the trial court did not take these arguments into consideration when determining the value of the vehicle. Instead, it relied on the duration of use rather than considering the market value of the vehicle. He argues that pecuniary damages should be calculated based on a 30-day month since passenger vehicles are used every day. He further argues that ALPHA Express Company Ltd is requesting 1,000,000Frw for judicial expenses because from the start of the case hearing in Nyanza until now, it is unlikely that they have incurred only 500,000Frw as awarded by the court.

[747] The Court of Appeal finds that concerning the compensation for the value of the burned vehicle, the criticism made by the counsel for ALPHA Express Company Ltd about the amount determined by the trial court is based on the fact that it is lower than the value indicated in the purchase invoice issued four (4) years ago. They argue that the value of the vehicle should have increased in monetary terms, taking into account the current market price. However, the trial court chose to consider the depreciation of the motor vehicle over time. It finds that, as previously clarified, while it is possible for the value of a motor vehicle to increase over time, it is a rare occurrence. Typically, the normal expectation is that the value of equipment, including motor vehicles, depreciates over time. It finds, however, that the burden of proof lies with the legal counsel for ALPHA Express Company Ltd to demonstrate that the value of their vehicle appreciated over time. Until now, the counsel has failed to

provide evidence supporting this claim, as they have only presented purchase invoices from four (4) years ago. It finds, therefore, that there is no other way the trial court could have determined such an issue without exercising discretion and estimation. The court considered the purchase price, the duration of usage, and the typical depreciation of equipment to determine the value of the vehicle. Consequently, the instant court deems that there is no basis to change the position adopted by the trial court in determining the compensation for the value of the vehicle belonging to ALPHA Express Company Ltd, which was set on fire during the attack by the MRCD-FLN terrorist group.

[748] The Court of Appeal finds that in relation to pecuniary damages for the potential income that the burned vehicle could have generated had it not been set on fire, the counsel for ALPHA Express Company Ltd criticizes the trial court's decision. They argue that the computation of income from the day of the incident until the trial of the case was based on a 24-day month instead of a 30-day month, the argument of which he relies on the testimony given by the driver of such model vehicle. In contrast, the decision of the trial court was based on the fact that, under normal circumstances, every motor vehicle had to have a day off for maintenance purposes. It would have been more persuasive if they had provided the schedule of the motor vehicles' usage since their acquisition by ALPHA Express Company Ltd to substantiate the claim that the vehicles are indeed used every day without interruption. It finds, therefore, that the court's discretion in determining the working days of the motor vehicles was the only viable method to calculate such damages. It asserts that there was neither overestimation nor underestimation of the vehicles' work in concluding that they should have been in use for an

average of 24 days per month. Therefore, the pecuniary damages awarded through such method should be upheld.

[749] Regarding the five hundred thousand (500,000Frw) of judicial expenses awarded to ALPHA Express Company Ltd by the trial court, of which it expressed dissatisfaction, the Court of Appeal observes that the trial court determined the amount based on the lack of actual evidence regarding the expenses incurred for case follow-up. The court further notes that ALPHA Express Company Ltd continues to request the same amount without presenting the necessary evidence or indicating any fault in the trial court's discretion. Therefore, the Court of Appeal finds no basis to award the requested amount of 1,000,000Frw to ALPHA Express Company Ltd. In general, the Court of Appeal finds no reason to modify the damages awarded to ALPHA Express Company Ltd in the appealed judgment.

- **Regarding the appellants who expressed dissatisfaction with the amount of damages awarded in relation to the attacks launched in Kamembe and Nyakarenzo Sectors in Rusizi district**

[750] Regarding NKURUNZIZA Jean Népomuscène, in paragraph 620 of the appealed judgment, the trial court relied on the medical report dated 07/10/2020. This report indicated that he has a permanent disability of 6% and an loss of beauty level of 2/6. Additionally, the court considered the report established by Kamembe Sector on 22/10/2020, which confirmed that he is one of the victims injured by a grenade. Based on this information, the trial court decided to award him a discretionary amount of 3,000,000Frw as compensation for the suffering he endured due to the injuries that resulted in disability and loss of beauty.

[751] At the appeal level, NKURUNZIZA Jean Népomuscène and his legal counsel argue that they have appealed against the awarded damages, considering them insufficient. They request the instant court to reconsider the damages and increase the amount accordingly.

[752] The Court of Appeal observes that NKURUNZIZA Jean Népomuscène requests an increase in damages, claiming that the trial court's discretion was not exercised properly. However, the Court of Appeal finds no justification to replace the trial court's discretion with its own unless NKURUNZIZA Jean Népomuscène and his legal counsel provide substantive evidence to support their criticism of the initial discretion. Additionally, it should be noted that even the amount which NKURUNZIZA Jean Népomuscène expressed dissatisfaction with was also determined at the trial court's discretion. Therefore, it finds that the total amount of damages awarded to NKURUNZIZA Jean Népomuscène by the trial court should not be modified.

[753] Regarding RUTAYISIRE Félix, the Court of Appeal observes that, according to paragraph 622 of the appealed judgment, it was based on the medical report dated 06/10/2020. The report indicated that RUTAYISIRE Félix sustained a 24% degree of disability and a 2/6 level loss of beauty. Additionally, the report established by Kamembe Sector on 22/10/2020 was taken into consideration. As a result, the Court of Appeal decided to award him a discretionary amount of damages amounting to four million francs (4,000,000Frw) for the suffering he endured and the disability he sustained due to the grenade injury. However, damages for loss of beauty were not awarded due to lack of evidence.

[754] At the appeal level, RUTAYISIRE Félix and his legal counsel argue that the awarded amount of damages is insufficient. They request the Court of Appeal to reconsider and grant him the requested damages of 5,000,000Frw.

[755] The Court of Appeal observes that RUTAYISIRE Félix requests an increase in damages, claiming that the trial court's discretion was not exercised properly. However, the Court of Appeal finds no justification to replace the trial court's discretion with its own unless RUTAYISIRE Félix and his legal counsel provide substantive evidence to support their criticism of the initial discretion. Therefore, it finds that the total amount of damages awarded to RUTAYISIRE Félix by the trial court should not be modified.

[756] Regarding NSABIMANA Joseph, the Court of Appeal observes that, according to paragraph 621 of the appealed judgment, it was based on the medical report dated 06/10/2020. The report indicated that he sustained an 8% degree of permenant disability. Additionally, the report established by Kamembe Sector on 22/10/2020 was taken into consideration. As a result, the Court of Appeal decided to award him a discretionary amount of damages amounting to three million francs (3,000,000Frw) for the suffering he endured and the disability he sustained due to the grenade injury.

[757] At the appeal level, NSABIMANA Joseph and his legal counsel argue that the awarded amount of damages is insufficient. They request the instant Court to reconsider the awarded damages, which include moral damages of 9,000,000Frw and damages of 6,000,000Frw for the 8% disability he sustained. This is the total amount he originally requested before the trial court.

[758] The Court of Appeal observes that NSABIMANA Joseph requests an increase in damages, claiming that the trial court's discretion was not exercised properly. However, the Court of Appeal finds no justification to replace the trial court's discretion with its own unless NSABIMANA Joseph and his legal counsel provide substantive evidence to support their criticism of the initial discretion. Additionally, it should be noted that even the amount which NSABIMANA Joseph expressed dissatisfaction with was also determined at the trial court's discretion. Therefore, it finds that the total amount of damages awarded to NSABIMANA Joseph by the trial court should not be modified.

[759] Regarding NZEYIMANA Paulin, the Court of Appeal observes that, according to paragraph 624 of the appealed judgment, the trial court awarded him moral damages based on the medical report dated 19/10/2019, which indicated that he sustained an injury from a grenade and the subsequent treatment he received from a surgeon. The trial court exercised its own discretion in determining the amount of moral damages, considering the requested amount of two million francs (2,000,000Frw) to be excessive. However, the trial court held that NZEYIMANA Paulin should not be awarded compensation for the value of his car mirrors, which he claimed were broken, and the payment he made to the person who installed new ones, due to the lack of evidence.

[760] At the appeal level, NZEYIMANA Paulin and his legal counsel argue that the damages he was awarded are insufficient. They request the instant court to reconsider the issue based on the medical report he submitted, which indicates that he sustained injuries, and to award him damages of 5,000,000Frw as he originally requested.

[761] The Court of Appeal observes that NZEYIMANA Paulin requests an increase in damages, claiming that the trial court's discretion was not exercised properly. However, the Court of Appeal finds no justification to replace the trial court's discretion with its own unless NZEYIMANA Paulin and his legal counsel provide substantive evidence to support their criticism of the initial discretion. Therefore, it finds that the total amount of damages awarded to NZEYIMANA Paulin by the trial court should not be modified.

[762] Regarding MAHORO Jean Damascène, the Court of Appeal observes that, according to paragraph 623 of the appealed judgment, the trial court awarded him moral damages based on the report established by Karangiro cell of Nyakarenzo sector dated 21/10/2020. The report indicated that his Dyna light truck was set on fire during the attack launched in Nyakarenzo flour milling factory where it was parked on the night of 08/07/2019. The trial court decided that he should be awarded damages since he owned the vehicle, but as he failed to provide evidence of its value, he was awarded a discretionary amount of five million francs (5,000,000Frw) as damages. Additionally, he was awarded moral damages of five hundred thousand francs (500,000Frw) for the fact that his truck was set on fire, but he was not awarded damages for the loss incurred due to lack of basis.

[763] The Court of Appeal observes that MAHORO Jean Damascène and his legal counsel argue that the trial court awarded him a cumulative amount of damages totaling 5,500,000Frw. However, they deem this amount insufficient because he purchased the light truck for 11,000,000Frw. It was used to transport flour to Congo twice a day, earning an income of 60,000Frw as one trip was paid 30,000Frw. They further claim

that the money he spent to purchase the light truck was a loan he borrowed from the bank, which has driven him into poverty that he is still unable to overcome to this day. They request the instant court to exercise discretion and award him the amount he originally requested, which is 11,000,000Frw for the value of his truck, 29,000,000Frw for the income it should have been generating as a business vehicle transporting flour to Congo and other locations, and 10,000,000Frw for moral damages. It also observes that they allege that the failure to provide evidence proving the activities of the light truck and its income generation was due to the fact that all its papers were burned inside the same vehicle.

[764] The Court of Appeal notes that the accused MATAKAMBA Jean Berchmas, who admitted to participating in the attack that occurred in Rusizi, including the events in Karangiro of Nyakarenzo sector where MAHORO Jean Damascène alleged his vehicle was set on fire, asserted during his defense regarding MAHORO Jean Damascène's allegations. He claimed to have knowledge of him and familiarity with his light truck that was burned, even stating that he knows where he bought it and the price he paid. However, he argues that during the attack on the factory in Karangiro, MAHORO Jean Damascène's light truck was not completely burned and rendered useless. It finds that he alleges, instead, that it is the cabin of the truck that was burned, but it has since been repaired and is currently in use. It also finds that MAHORO Jean Damascène should not have requested compensation for the value of his motor vehicle while it is still in use. Furthermore, he criticizes the fact that he did not provide evidence in form of photographs indicating that his motor vehicle was set on fire, unlike other civil

parties whose motor vehicles were burned and were able to provide such evidence.

[765] The Court of Appeal finds that in response to the defense of MATAKAMBA Jean Berchmas, MAHORO Jean Damascène, and their legal counsel, they did not provide any evidence to contradict him despite only repeating about the fact that the motor vehicle was burned and that his statements were mocking in nature towards the civil parties, whereas some of the members, including BYUKUSENGE Jean-Claude, who participated in the destruction of the motor vehicle, admitted to the facts.

[766] The Court of Appeal finds that the issue concerning the requested compensation for the vehicle belonging to Mahoro Jean Damascène, which was set on fire, does not revolve around whether or not it was set on fire. Rather, the issue at hand is to determine the extent of the destruction. The court needs to establish whether the vehicle was completely burned beyond repair or if it was partially burned but still capable of being repaired and used. This determination is crucial for the court to assess the appropriate amount of damages for the fire-related destruction.

[767] The Court of Appeal finds that a discrepancy exists between the claim made by MAHORO Jean Damascène, alleging that his motor vehicle, for which he seeks compensation, was completely burned and rendered unusable, and the statement given by MATAKAMBA Jean Berchmas, one of the defendants, asserting that the motor vehicle was not burned to such an extent and was actually partially burned and subsequently reused. In this case, the provisions of Law nº. 15/2004 of 12/6/2004 relating to evidence and its production should be applied. Article 12 of Law

n°. 22/2018 of 29/04/2018, mentioned earlier[78], establishes the same general principle of law, stating that the burden of proof rests with the plaintiff, and subsequently the defendant can prove otherwise. This principle is commonly expressed in Latin as follows: "*Actori incumbit probatio, reus in excipiendo fit actor*".

[768] Based on the foregoing, the Court of Appeal finds that MAHORO Jean Damascène, both at the trial court and at the appeal level, has failed to provide any evidence to substantiate his claim that his motor vehicle, for which he sought damages equivalent to its full value, was indeed burned to the extent that it could not be restored to functioning condition. Consequently, the compensation awarded to him by the trial court, amounting to five million francs (5,000,000Frw), lacks merit and should be overturned. The Court of Appeal deems it unnecessary to further assess the merit of pecuniary damages related to the potential income the motor vehicle could have generated if it had not been set on fire. This is because there is no concrete evidence to substantiate the claim that the arson incident occurred and rendered the vehicle unusable.

[769] However, the Court of Appeal maintains the award of moral damages amounting to five hundred thousand francs (500,000Frw) for MAHORO Jean Damascène, as awarded by the trial court. Both parties agree on the occurrence of arson to the motor vehicle, with the only discrepancy being the extent of the damage caused.

[78]This provision reads that: "The claimant must prove a claim, failing which the respondent wins the case. Likewise, a party who alleges that he/she has been discharged from an obligation established by evidence must justify the cause as a result of which the obligation has extinguished. Failure to do so, the other party wins the case."

[770] The Court of Appeal finds, therefore, that the damages awarded to MAHORO Jean Damascène by the trial court should be modified by excluding the 5,000,000Frw awarded for the compensation of the entire value of his burned motor vehicle. The total amount to be maintained is five hundred thousand francs (500,000Frw).

b) Regarding appellants who claimed to have not been awarded any damage at all

[771] Regarding the grounds of appeal that the civil parties were not awarded any amount of damages despite providing substantial evidence, and thus they request that the damages awarded by the trial court be reconsidered by the appellate court, the Court of Appeal shall examine whether there is any evidence presented to justify the award at this level of court. Although the civil parties allege that they had produced sufficient evidence before the trial court to support their claim for damages, and they have even provided additional evidence at this appellate level in accordance with Article 154, Paragraph 3 of Law nº. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure[79], they believe that the court has no alternative but to exercise its own discretion in determining their damages.

[772] During the examination of the aforementioned issue, where evidence was produced before the trial court, the court should recall that, as evidenced in paragraph 594 (pertaining to

[79] Article 154, paragraph 3 of Law nº. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure reads: "It is not prohibited to submit in appeal new arguments or elements of evidence that were not heard at the first level".

victims who were not awarded any damages in relation to the Nyabimata sector attacks), paragraphs 595-596 (pertaining to victims who were not awarded any damages in relation to the Kivu sector attacks), paragraph 619 (pertaining to victims who were not awarded any damages in relation to the Kitabi-Nyungwe sector attacks), and paragraph 625 (pertaining to a victim who was not awarded any damages in relation to the Nyakarenzo sector attacks); the trial court had considered the lack of evidence on the part of the victims to prove that they were assaulted, their belongings were plundered, they were abducted, and a significant amount of time passed without them being able to work for themselves, and that there are their relatives who were abducted and are still missing to this day. It should be understood that if these pieces of evidence were presented at the first instance level and were deemed relevant, but the trial court failed to award the sought damages, or if they were absent at that level but are now available at this appellate level, then such damages should be awarded. Nonetheless, if the absence of evidence persists, such damages should not be awarded in accordance with article 12 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure stating that the claimant must prove a claim, and article 3 of the Law n° 15/2004 of 12/6/2004 relating to evidence and its production reading that each party must prove their claim, and failure to do so results in losing the case.

- **Regarding appellants who claimed to have not been awarded any damage at all with respect to attacks launched in Nyabimata sector**

[773] Regarding HABIMANA Viateur, NGIRUWONSANGA Venuste, BENINKA Marcelline, NYIRAMINANI Mélanie, NYIRAHORA Godelive, RUHIGISHA Emmanuel,

MUNYENTWARI Cassien, BANGAYANDUSHA Jean-Marie Vianney, NSABIMANA Straton, SEBAGEMA Simon, BARAYANDEMA Viateur, NYIRAGEMA Joséphine, NSAGUYE Jean, NYIRAZIBERA Dative, NDIKUMANA Callixte, NYIRASHYIRAKERA Théophila, KANGABE Christine, NANGWAHAFI Callixte, NYIRAHABIMANA Vestine, NYIRAMANA Bellancille, HABYARIMANA Damascène, and KARERANGABO Antoine, the Court of Appeal observes that, according to paragraph 594 of the appealed judgment, the trial court had found no basis to award them the requested damages for their plundered belongings, assault, abduction, and forced carriage of looted belongings to Nyungwe forest. The court had noted that they failed to provide evidence to support their claims, and furthermore, the report from the executive secretary, which they presented as evidence, does not list them among the victims of such acts nor mention the owners of the plundered belongings.

[774] At the appellate level, except for Karemangingo Antoine, SEBAGEMA Simon, and BARAYANDEMA Viateur, none of the other 20 individuals listed above who filed an appeal claiming that they were not awarded any damages provided new evidence at this level to substantiate the damages they were not granted by the trial court, as explained in the previous paragraph. They only refer to the report established by Nyabimata sector, which does not mention the names of the victims of the attacks they rely on as evidence for their request for damages. Their sole basis for claiming damages is the existence of damaged properties mentioned in the report. They further argue that one of the charges against the accused in this case is the crime of armed robbery as an act of terrorism. Therefore, they request the instant court to award each of them the same amount of damages they

had requested at the trial court. Their legal counsel prays that, in the context of the law, the instant court would consider these grounds in conjunction with the text of Article 104 of the Law nº. 15/2004 of 12/06/2004 relating to evidence and its production. This article states that the judge may draw inferences from known facts to establish unknown facts. In this case, the known fact is that these civil parties, who were not awarded damages by the trial court, are residents of Nyabimata Sector, where acts of stealing and plundering occurred during the attacks carried out by MRCD-FLN.

[775] Before this appellate court, they clarify that Article 104 of the aforementioned Law nº 15/2004 of 12/06/2004, which provides for circumstantial evidence, is applicable in cases where obtaining direct evidence is challenging. They request the court to consider that, during the analysis, even though the report provided by the Nyabimata sector administration does not specify the quantity or nature of the stolen belongings, it should be treated as an inference drawn from a known fact to establish an unknown fact. They argue that the missing details regarding the specific amount of each victim's alleged stolen items, supported by the evidence they have presented, should be considered as the commencement of documentary evidence or the initial step in establishing the truth of the facts. They further argue that the theft of various belongings did occur, as mentioned in the report of the Nyabimata sector, witness statements, and videos submitted to the court. These pieces of evidence indicate that during the attacks, the assailants would steal money and provisions from the victims. Additionally, the statements of NSABIMANA Callixte, also known as Sankara, support this claim. He declares that due to logistical difficulties, they resorted to stealing food for their survival in the forest where they were

camping, with no intention of selling the stolen items. Moreover, there are the accused individuals who were found guilty by the trial court for crimes including armed robbery as an act of terrorism. Therefore, they believe that the aforementioned Article 104 establishes a presumption, while the other elements of evidence mentioned above should be considered as the initial step of documentary evidence that the court can rely on to award damages to these civil parties.

[776] Regarding Sebagema Simon, the court of appeal has observed that both he and his legal counsel are requesting the instant court to base its decision on a document provided by the Rwanda Revenue Authority. This document was filed in the appellate level system and serves as proof that, during the relevant period, Simon paid taxes amounting to 20,000 Frw, which corresponded to the classification of his small business. However, it is important to note that this tax payment does not establish the amount of stolen belongings or the nature of the taxed assets.

[777] Regarding Barayandema Viateur, the Court of Appeal observes that both he and his legal counsel specifically request that the instant court rely on a document issued by the Rwanda Revenue Authority filed in the system. This document indicates that Barayandema Viateur was a taxable trader, and as a result, they seek an award of damages as requested in the trial court.

[778] Furthermore, regarding Karerangabo Antoine, the Court of Appeal observes that both Counsel Munderere Léopold and Counsel Hakizimana Joseph pray to this court for the award of damages amounting to 1,500,000 Frw, as well as judicial expenses and counsel fees amounting to 1,500,000 Frw. They request that these amounts be paid jointly by all the defendants.

They criticize that the trial court declined to award damages due to a lack of evidence regarding his assault and admission to the hospital. However, the Court of Appeal notes that in paragraph 47 of the appealed judgment, the trial court itself held that he was indeed assaulted by the defendants and admitted to Munini hospital. This was because his condition was severe, as evidenced by the medical report issued by Dr. Byamungu Jean de Dieu, who treated his head injuries. Additionally, there was a witness named Muhirwa Médard who testified that he saw him among the victims who sustained injuries as a result of that attack. They allege that it is not surprising that Karerangabo Antoine is not listed in the report issued by the administration of Nyabimata sector, which indicates the victims of the attacks that occurred there. They argue that this report is brief, with limited content on just a few lines, and his absence in the report may have been due to an oversight.

[779] The Court of Appeal finds that, with the exception of Karerangabo Antoine, others in general and namely HABIMANA Viateur, NGIRUWONSANGA Venuste, BENINKA Marcelline, NYIRAMINANI Mélanie, NYIRAHORA Godelive, RUHIGISHA Emmanuel, MUNYENTWARI Cassien, BANGAYANDUSHA Jean-Marie Vianney, NSABIMANA Straton, NYIRAGEMA Joséphine, NSAGUYE Jean, NYIRAZIBERA Dative, NDIKUMANA Viateur, NDIKUMANA Callixte, NYIRASHYIRAKERA Théophila, KANGABE Christine, NANGWAHAFI Callixte, NYIRAHABIMANA Vestine, NYIRAMANA Bellancille, HABYARIMANA Damascène, Sebagema Simon, and Barayandema Viateur have not presented any new evidence to the appellate court that would warrant overturning the trial court's decision to deny damages for the properties they claimed were

stolen or destroyed due to a lack of evidence. This court bases its findings on the fact that these appellants themselves acknowledge that the presented evidence does not clearly list the names of the victims of the attack or the extent of damage to their properties. Therefore, regarding the damages related to the properties, the verdict of the case being lost is upheld due to their failure to provide evidence, even at the appellate court level.

[780] The Court of Appeal, however, finds that despite the failure of the aforementioned appellants to provide evidence regarding the stolen or damaged properties, including their quantities and values that would enable the court to assess damages, there are pertinent details in the arguments they have raised. For instance, they are residents of Nyabimata sector and were generally affected by the attacks perpetrated by the MRCD-FLN terrorist group. Considering the explanations provided about the modus operandi of the assailants from that group and their attacks, the appellants deserve to be awarded moral damages at the court's discretion.

[781] In this context, the Court of Appeal finds that, as clarified above, moral damages awarded to individuals such as Havugimana Jean-Marie Vianney, Habimana Viateur, Ngiruwonsanga Venuste, Beninka Marcelline, Nyiraminani Mélanie, Nyirahora Godelive, Ruhigisha Emmanuel, Munyentwari Cassien, Bangayandusha Jean-Marie Vianney, Nsabimana Straton, Nyiragema Joséphine, Nsaguye Jean, Nyirazibera Dative, Ndukumana Viateur, Ndukumana Callixte, Nyirashyirakera Théophila, Kangabe Christine, Nangwahafi Callixte, Nyirahabimana Vestine, Nyiramana Bellancille, and Habyarimana Damascène, as well as Sebagema Simon and Barayandema Viateur, are justified due to the consequences they

have suffered as a result of their involvement in the offense of belonging to a terrorist group, for which the accused were found guilty, causing disruption to public order. Therefore, the instant court, exercising its own discretion, determines that each of these appellants should be awarded an amount of three hundred thousand Rwandan francs (300,000 Frw) as moral damages by the convicted individuals involved in the membership of the terrorist group.

[782] In particular, regarding KARERANGABO Antoine, the court of appeal finds that the medical records provided by Dr. Byamungu Jean de Dieu confirm that he received treatment at Munini Hospital for injuries sustained from a head assault. Additionally, the testimony dated 20/07/2018 by Muhirwa Médard indicates the severity of the effects of the FLN attacks that he experienced, especially when compared to the other aforementioned victims. It is evident that Karerangabo Antoine is one of the injured victims who was also hospitalized. Based on these findings, it is appropriate to award him the requested damages. Therefore, at its own discretion, he is awarded moral damages of 1,000,000 Frw and counsel fees and judicial expenses amounting to 1,000,000 Frw.

- **Regarding appellants who claimed to have not been awarded any damages with respect to attacks launched in Nyungwe sector within Kitabi sector**

[783] Regarding Nyaminani Daniel, Mugisha Gashumba Yves, Bwimba Vianney, and Ntibaziyaremeye Samuel, the Court of Appeal notes that in paragraph 619 of the appealed judgment, the trial court determined that there is insufficient justification to grant them the damages they are seeking in relation to the injuries

they sustained during the attack in Nyungwe forest, as well as for their stolen or damaged properties due to a lack of evidence.

[784] In this regard, NYAMINANI Daniel, MUGISHA GASHUMBA Yves, BWIMBA Vianney, and NTIBAZIYAREMYE Samuel, along with their legal counsels, request that the instant court exercise its discretion and award them damages based on the new evidence they have submitted, which consists of medical reports. Regarding NYAMINANI Daniel, they request damages amounting to 45,000,000 Frw, which includes compensation for suffering and expenses incurred, as evidenced by the medical report filed in the system. The report states that NYAMINANI Daniel currently suffers from a 50% degree of disability and a 4/6 level of loss of beauty. Regarding MUGISHA GASHUMBA Yves, damages amounting to 50,000,000 Frw are requested due to a 25% degree of disability, as proven by the medical report filed in the system. Regarding BWIMBA Vianney, damages amounting to 209,500,000Frw are requested due to a 65% degree of disability, as proven by the medical report filed in the system. Furthermore, in the case of NTIBAZIYAREMYE Samuel, damages amounting to 50,000,000 Frw are requested due to a 25% degree of disability, as substantiated by the medical report filed in the system.

[785] The Court of Appeal finds that all of them have presented medical reports proving that they were affected by the attack launched in Nyungwe forest, as each of them has sustained a certain degree of disability. Therefore, they deserve to be awarded damages calculated at the court's discretion in the amounts of 2,000,000 Frw for NYAMINANI Daniel, 1,000,000 Frw for MUGISHA GASHUMBA Yves, 1,500,000 Frw for

BWIMBA Vianney, and 1,000,000 Frw for NTIBAZIYAREMYE Samuel.

- **Regarding the appellant who claimed to have not been awarded any damages with respect to attacks launched in Nyakarenzo sector of Rusizi district**

[786] The Court of Appeal notes that according to paragraph 625 of the appealed judgment, the trial court ruled that GAKWAYA Gérard should not be entitled to the requested damages. The trial court based its decision on the medical report dated 07/10/2020, which stated that Gérard has a pre-existing mental illness unrelated to the alleged attack. Additionally, the report from Karangiro cell dated 21/10/2020 does not include Gérard's name among the victims of the said attacks.

[787] At the appellate level, GAKWAYA Gérard and his legal counsel request that the instant court, at its discretion, award him moral damages of 11,000,000Frw for the back injury and trauma he suffered as a result of the attack on MAHORO Jean Damascène's factory, where Gérard worked as a watchman and his motor vehicle was set on fire.

[788] The Court of Appeal also notes that the analysis of the medical report dated 07/10/2020 clearly states that GAKWAYA Gérard has a permanent mental illness, as expressed in the following French terms: "après l'examen psychologique de son état mental, nous concluons qu'il a des problèmes psychologiques chroniques compliqués d'une affection mentale nécessitant une prise en charge psychosomatique pendant plus de six mois." This report does not indicate in any way that the mental illness was a result of the attack on the factory where Gérard worked as a watchman, as he alleges to justify the award of damages to him.

Therefore, these damages also lack merit because the evidence provided by Gakwaya GAKWAYA Gérard is doubtful, and his appeal lacks merit.

[789] The Court of Appeal, however, finds that, as explained in relation to others, he deserves moral damages due to the impact of the crime of membership in a terrorist group, which committed atrocities and for which the accused were found guilty, on him. Therefore, at the court's discretion, the moral damages that should be awarded to him by the accused convicted of membership in a terrorist group amount to three hundred thousand francs (300,000 Frw).

- **Regarding the appellant who claimed to have not been awarded any damage at all with respect to attacks launched in Kivu sector**

[790] The Court of Appeal finds that, regarding NGAYABERURA Emmanuel, DUSENGIMANA Solange, KANYANDEKWE Venant, NYIRAMYASIRO Verediana, HAGENIMANA Patrice, SANGIYEZE Emmanuel, and NYIRAKOMEZA Claudine, the trial court noted in paragraph 597 of the appealed judgment that, according to Article 12 of Law n°. 22/2018 of 29/04/2018 relating to civil, commercial, labour, and administrative procedure, and Article 3 of Law n°. 15/2004 of 12/06/2004 relating to evidence and its production, stating that each party has the burden of proving the facts it alleges, they should not be awarded damages. This is because they have not presented evidence to establish ownership of the belongings they claim or their value, and there is no basis to determine moral damages for missing persons since nothing proves that they are among the abducted victims.

[791] At the appeal level, all these appellants and their legal counsel criticize the trial court in general. They argue that in paragraph 149 of the appealed judgment, the trial court mentioned the attacks carried out in Kivu sector but failed to award damages to the victims of these attacks citing a lack of evidence on their part. They state that before the instant Court of Appeal, they present new evidence in the form of a report established by the administration of Kivu sector, which is filed in the system. They explain that this report pertains to the attack launched on June 12, 2018, whereas it is the attack launched on August 14, 2018, where detailed information regarding each person and the plundered belongings are listed. The report includes the names of seven civil parties and their properties that were damaged or stolen. They clarify that the individuals mentioned in that report are NYIRAMYASIRO Verediana, who was listed as one of the owners whose belongings were plundered on August 14th. The perpetrators stole 10 kilograms of beans and consumed her meals. HAGENIMANA Patrice had 6 kilograms of beans, 4 kilograms of peas, 4 trousers, and 3 vests stolen from him. He was also abducted and forced to carry the looted belongings. He was released the following day. Additionally, there is NYIRAKOMEZA Claudine, whose stolen items included 5 kilograms of beans, 4 kilograms of peas, 6 kilograms of maize, and her cooked meals were consumed. SANGIYEZE Emmanuel had 10 kilograms of beans, 7 kilograms of maize, clothing items including vests and trousers stolen from him. He was subsequently abducted.

[792] Before the instant court, they also request that it consider the new report established by the administration of Kivu sector and award them damages as follows: Regarding NGAYABERURA Emmanuel, an amount of 6,000,000Frw is

requested for the suffering he endured due to the abduction of his still missing child. Regarding DUSENGIMANA Solange, an amount of 21,200,000Frw is requested, consisting of 11,200,000Frw for the income they would have earned since the abduction of her husband, and 10,000,000Frw for moral damages due to the loss of her husband and the impact on her children. Regarding KANYANDEKWE Venant, an amount of 1,000,000Frw is requested, including 500,000Frw for the value of his damaged properties and 500,000Frw for moral damages. Regarding NYIRAMYASIRO Verediana, an amount of 530,000Frw is requested, comprising 30,000Frw for her stolen belongings and 500,000Frw for moral damages. Regarding HAGENIMANA Patrice, an amount of 33,000Frw is requested for his stolen belongings and 1,000,000Frw for moral damages. Regarding SANGIYEZE Emmanuel, an amount of 120,000Frw is requested for his stolen belongings and 600,000Frw for moral damages. Regarding NYIRAKOMEZA Claudine, an amount of 47,500Frw is requested for her stolen belongings and 500,000Frw for moral damages.

[793] The Court of Appeals finds that the report from the administration of the Kivu sector does not list all the names of the civil parties who were allegedly affected by this attack, except for NYIRAMYASIRO Verediana, HAGENIMANA Patrice, NYIRAKOMEZA Claudine, and SANGIYEZE Emmanuel. The report indicates the quantities of the looted belongings but does not provide their values. It finds that NGAYABERURA Emmanuel, DUSENGIMANA Solange, and KANYANDEKWE Venant do not appear in the report, and it does not mention their stolen belongings or abducted siblings. Therefore, it finds that since they are not mentioned among the victims of the attacks, they should not be awarded damages because they do not provide

supporting evidence beyond mere statements. Additionally, it finds that although NYIRAMYASIRO Verediana, HAGENIMANA Patrice, NYIRAKOMEZA Claudine, and SANGIYEZE Emmanuel mention the quantities of their stolen belongings, there is no basis to award them the amount of damages they request as long as they do not provide supporting evidence. Therefore, their appeal claims lack merit.

[794] The Court of Appeal, however, finds that, as explained above for others regarding moral damages, they also deserve to be awarded them for having been affected by the offense for which the accused were convicted, namely membership in a terrorist group. Therefore, each of them should be awarded a discretionary amount of three hundred thousand francs (300,000 Frw) in moral damages.

- **Regarding the appellants who claimed to have not been awarded any damage at all with respect to attacks launched in Ruheru sector in Nyaruguru District**

[795] The Court of Appeal finds that, regarding MANIRIHO Théogene, GASHONGORE Samuel, NZABIRINDA Viateur, NIYOMUGABA, NDAYISENGA Edouard, BIGIRIMANA Samuel, BARAGAMBA, RUTIHUNZA Enos, BARIRWANDA Innocent, NSABIYAREMYE Pascal, HABIMANA Innocent, HARERIMANA Emmanuel, NZAJYIBWAMI Yoramu, SEBARINDA Emmanuel, NKUNDIZERA Damascène, and HABAKURAMA Gratien, the trial court, in paragraph 595 of the appealed judgment, based once again on Article 12 of Law N°22/2018 of 29/04/2018 and Article 3 of Law N°15/2004 of 12/06/2004 stated above, held that they should not be awarded damages. This is because, despite alleging that the attack affected

them, none of the civil parties from Ruheru sector provided evidence proving damage to their properties by the attack, and even the report of the local administration listing the belongings damaged by the attack and their owners is not included in the file.

[796] In their appeal, those civil parties allege that, based on the provisions of Article 154 of Law Nº. 22/2018 of 29/04/2018 stated above, which allows a party to submit new evidence even at the appeal level, they have filed in the system the report established by Ruheru sector on 13/01/2001. This report supports the fact that they were affected by the attack that occurred in that same sector. They also allege that this evidence supports other evidence they submitted before, including testimony from various witnesses, other official reports that were established, and documents from various individuals interrogated by the prosecution and mentioned in its indictment. These documents clarify how the attacks were carried out. They also refer to the defense of NSENGIMANA Herman, as mentioned in paragraph 596 of the appealed judgment, where he boasted about the attack that occurred in Ruheru sector. They conclude their arguments by requesting the instant court to examine these pieces of evidence and award them the same amount of damages they requested at the previous court instance.

[797] The Court of Appeal finds that the civil parties in this category have submitted the report issued by Ruheru sector on 13/01/2021, which proves the list of names of seven (7) individuals affected by the attacks carried out by assailants within the Ruheru sector. The individuals listed are SEBARINDA Emmanuel, NIYOMUGABA, BIGIRIMANA Fanuel, RUTIHUNZA Enosi, NDAYISENGA Edouard, BARAGAMBA, BARIRWANDA Innocent, and

HARERIMANA Emmanuel. The report also indicates the damages they suffered, such as roofing tiles, a cow that miscarried, roofing sheets, house walls, and house fence. However, it does not include the names of the remaining individuals who are also requesting damages in the same category.

[798] During the analysis of this report, which listed the names of the victims and their damaged belongings, the Court of Appeal finds that it does not provide specific information regarding the quantity and value of their belongings, apart from what the owners themselves have stated. Therefore, it should not be relied upon to determine the compensations, especially since the evidence they claim to support it also does not provide detailed information about the victims of this attack. With regard to the rest who are not mentioned in this report, the instant court finds that they should also not be awarded any compensation for their alleged damaged properties, as they have failed to provide evidence. Therefore, the Court finds that there is no basis to award them any compensation, and their appeal lacks merit.

[799] The Court of Appeal, however, finds that, as explained in relation to others and moral damages, they also deserve to be awarded them due to the consequences they faced as a result of the offense of membership in a terrorist group, for which the accused were convicted, that committed the acts that traumatized them. Therefore, at the discretion of the instant court, they deserve to be awarded moral damages amounting to three hundred thousand francs (300,000Frw) each, to be paid by the convicts of the offense of membership in a terrorist group.

III. DECISION OF THE COURT

[800] Finds the appeal of the prosecution to have merit in certain aspects.

[801] Rejects the cross appeals lodged by KWITONDA André, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène and NIKUZWE Siméon.

[802] Finds the appeal lodged by NSABIMANA Callixte alias Sankara with merit.

[803] Finds the appeal lodged by NSABIMANA Jean Damascène alias Motard with merit in parts.

[804] Finds the appeal lodged by NIZEYIMANA Marc, NSENGIMANA Herman, NSHIMIYIMANA Emmanuel, MATAKAMBA Jean Berchmas, NTIBIRAMIRA Innocent, BYUKUSENGE Jean-Claude, SHABANI Emmanuel, BIZIMANA Cassien alias Passy, NIYIRORA Marcel, IYAMUREMYE Emmanuel, MUKANDUTIYE Angelina, NSANZUBUKIRE Félicien and MUNYANEZA Anastase, without merit.

[805] Declares NSABIMANA Callixte alias Sankara, RUSESABAGINA Paul, and NIZEYIMANA Marc guilty of committing acts of terrorism that resulted in terrorist attacks carried out by the MRCD-FLN combatants in various districts, namely Rusizi, Nyamasheke, Nyaruguru, and Nyamagabe, rather than participating in acts of terrorism committed by such combatants.

[806] Declares RUSESABAGINA Paul, NSABIMANA Callixte alias Sankara, NIZEYIMANA Marc, BIZIMANA Cassien alias Passy, NSENGIMANA Herman, IYAMUREMYE Emmanuel, NIYIRORA Marcel, KWITONDA André, NSHIMIYIMANA Emmanuel, NDAGIJIMANA Jean Chrétien, NSANZUBUKIRE Félicien, MUNYANEZA Anastase, and HAKIZIMANA Théogène not guilty of the offense of formation of an irregular armed group.

[807] Declares RUSESABAGINA Paul not guilty of the offence of terrorism financing provided by Law nº69/2018 of 31/08/2018 on prevention and punishment of money laundering and terrorism financing.

[808] Declares NSABIMANA Jean Damascène alias Motard not guilty of the offence of conspiracy and incitement to commit a terrorist act.

[809] Sentences NSABIMANA Callixte, alias Sankara, to a penalty of fifteen (15) years of imprisonment, instead of the twenty years (20) of imprisonment imposed by the trial court.

[810] Sentences NSENGIMANA Herman to a penalty of seven (7) years of imprisonment, instead of five (5) years of imprisonment he was imposed by the trial court.

[811] Sentences MUKANDUTIYE Angelina to a penalty of twenty years (20) of imprisonment, instead of the five (5) years of imprisonment imposed by the trial court.

[812] Upholds the sentences for RUSESABAGINA Paul, NIZEYIMANA Marc, NSHIMIYIMANA Emmanuel, MATAKAMBA Jean Berchmas, NTIBIRAMIRA Innocent,

BYUKUSENGE Jean-Claude, SHABANI Emmanuel, NTABANGANYIMANA Joseph, BIZIMANA Cassien alias Passy, NIYIRORA Marcel, IYAMUREMYE Emmanuel, NSABIMANA Jean Damascène alias Motard, KWITONDA André, NDAGIJIMANA Jean Chrétien, HAKIZIMANA Théogène, NIKUZWE Siméon, NSANZUBUKIRE Félicien, and MUNYANEZA Anastase.

[813] Declares the appeals lodged by ALPHA Express Company Ltd, HABAKUBAHO Adéline, HABIMANA Zerothe, HABYARIMANA Jean-Marie Vianney, HAKIZIMANA Denis, KAREGESA Phénias, KAYITESI Alice, KIRENGA Darius, MBONIGABA Richard, MUKANKUNDIYE Alphonsine, MUKESHIMANA Diane, MURENGERANTWALI Donat, RUDAHUNGA Dieudonné, RUDAHUNGA Ladislas, NDIKUMANA Isaac, NGENDAKUMANA David, NGIRABABYEYI Désiré, NIYONTEGEREJE Azèle, NKURUNZIZA Jean Népomuscène, NSABIMANA Anastase, NSABIMANA Joseph, NYIRANDIBWAMI Mariane, NYIRANGABIRE Valérie, NYIRAYUMVE Eliane, NZEYIMANA Paulin, OMEGA Express Ltd, RUTAYISIRE Félix, RWAMIHIGO Alexis, SEMIGABO Déo, SHUMBUSHA Damascène, SHUMBUSHO David, SIBORUREMA Vénuste, RUGERINYANGE Dominique, NTABARESHYA Dative, UMURIZA Adéline, UZAYISENGA Liliane, and VUGABAGABO Jean-Marie Vianney, without merit, and upholds the ruling of the previous court regarding them.

[814] Declares the appeal lodged by MAHORO Jean Damascène without merit, modifies the damages he was awarded in the appealed judgment, and orders that he should be paid five

hundred thousand francs (500,000Frw) instead of the 5,000,000Frw awarded by the trial court.

[815] Declares the appeal lodged by BAPFAKURERA Vénuste, HAVUGIMANA Jean-Marie Vianney, INGABIRE Marie Chantal, MUKASHYAKA Joséphine, NDUTIYE Yussuf, NSENGIYUMVA Vincent, UWAMBAJE Françoise, BANGAYANDUSHA Jean-Marie Vianney, BARAGAMBA, BARAYANDEMA Viateur, BARIRWANDA Innocent, BENINKA Marceline, BIGIRIMANA Fanuel, BWIMBA Vianney, DUSENGIMANA Solange, GAKWAYA Gérard, GASHONGORE Samuel, HABAKURAMA Gratien, HABIMANA Innocent, HABIMANA Viateur, HABYARIMANA Damascène, HAGENIMANA Patrice, HARERIMANA Emmanuel, KANGABE Christine, KANYANDEKWE Vénant, MANARIYO Théogène, MUGISHA GASHUMBA Yves, MUNYENTWALI Cassien, NANGWAHAFI Callixte, NDAYISENGA Edouard, NDIKUMANA Callixte, NDIKUMANA Viateur, NGAYABERURA Emmanuel, NGIRUWONSANGA Venuste, NIYOMUGABA, NKUNDIZERA Damascène, NSABIMANA Straton, NSABIYAREMYE Pascal, NSAGUYE Jean, NSANGIYEZE Emmanuel, NTIBAZIYAREMYE Samuel, NYAMINANI Daniel, NYIRAGEMA Joséphine, NYIRAHABIMANA Vestine, NYIRAHORA Godelive, NYIRAKOMEZA Claudine, NYIRAMANA Bellancille, NYIRAMINANI Mélanie, NYIRAMYASIRO Verediana, NYIRASHYIRAKERA Théophila, NYIRAZIBERA Dative, NZABIRINDA Viateur, NZAJYIBWAMI Yoramu, RUHIGISHA Emmanuel, RUTIHUNZA Enos, SEBAGEMA Simon, SEBARINDA Emmanuel, YAMBABARIYE Védaste, KARERANGABO Antoine, with merit in some parts.

[816] Orders all the defendants, except NSANZUBUKIRE Félicien and MUNYANEZA Anastase, to jointly pay the damages awarded to the civil parties mentioned in the previous paragraph, which replace those awarded by the trial court as follows:

BAPFAKURERA Vénuste

HAVUGIMANA Jean-Marie Vianney

INGABIRE Marie Chantal

MUKASHYAKA Joséphine

NDUTIYE Yussuf

NSENGIYUMVA Vincent

UWAMBAJE Françoise

BANGAYANDUSHA Jean-Marie Vianney

BARAGAMBA

BARAYANDEMA Viateur

BARIRWANDA Innocent

BENINKA Marceline

BIGIRIMANA Fanuel

BWIMBA Vianney

DUSENGIMANA Solange

GAKWAYA Gérard

GASHONGORE Samuel

HABAKURAMA Gratien

HABIMANA Innocent
HABIMANA Viateur
HABYARIMANA Damascène
HAGENIMANA Patrice
HARERIMANA Emmanuel
KANGABE Christine
KANYANDEKWE Vénant
MANARIYO Théogène
MUGISHA GASHUMBA Yves
MUNYENTWALI Cassien
NANGWAHAFI Callixte
NDAYISENGA Edouard
NDIKUMANA Callixte
NDIKUMANA Viateur
NGAYABERURA Emmanuel
NGIRUWONSANGA Venuste
NIYOMUGABA
NKUNDIZERA Damascène
NSABIMANA Straton
NSABIYAREMYE Pascal
NSAGUYE Jean
NSANGIYEZE Emmanuel

NTIBAZIYAREMYE Samuel

NYAMINANI Daniel

NYIRAGEMA Joséphine

NYIRAHABIMANA Vestine

NYIRAHORA Godelive

NYIRAKOMEZA Claudine

NYIRAMANA Bellancille

NYIRAMINANI Mélanie

NYIRAMYASIRO Verediana

NYIRASHYIRAKERA Théophila

NYIRAZIBERA Dative

NZABIRINDA Viateur

NZAJYIBWAMI Yoramu

RUHIGISHA Emmanuel

RUTIHUNZA Enos

SEBAGEMA Simon

SEBARINDA Emmanuel

YAMBABARIYE Védaste

[817] Holds that the court fees correspond to the judicial proceedings undertaken in this case.