



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 2 June 2009

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

**DECISION ON DEFENCE MOTION OBJECTING
TO THE PROSECUTION'S PRE-TRIAL BRIEF**

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Brian Wallace
Mr. Iskandar Ismail

Defence Counsel

Mr. David C. Thomas

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),
SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding,
Solomy Balungi Bossa, and Mparany Rajohnson (the “Trial Chamber”);

BEING SEIZED of “Dr. Ngirabatware’s Objections, Pursuant to Rule 73*bis*, to the
Prosecution’s Pre-Trial Brief”, filed on 17 April 2009 (the “Motion”);

CONSIDERING:

a) The “Prosecutor’s Response to the Defence Objections, Pursuant to Rule 73*bis*, to the
Prosecution’s Pre-Trial Brief”, filed on 22 April 2009 (the “Response”); and

b) The “Defence’s Reply to the Prosecutor’s Response to the Defence Objections,
Pursuant to Rule 73*bis*, to the Prosecution’s Pre-Trial Brief”, filed on 27 April 2009 (the
“Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure
and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rule 73(A) of the Rules, on the basis of the
written briefs filed by the Parties.

INTRODUCTION

1. On 29 January 2009, The Trial Chamber granted in part the Prosecution’s motion to
amend the Indictment against the Accused.¹ On 5 February 2009, the Prosecution filed an
Amended Indictment.² On 9 February 2009, the Accused pleaded not guilty to all charges
contained in the Amended Indictment during his further appearance.

2. On 19 March 2009, the Prosecution filed its Pre-Trial Brief pursuant to Rule
73*bis*(B)(i) of the Rules.³

3. On 8 April 2009, the Trial Chamber granted in part the Defence preliminary motion
alleging defects in the Amended Indictment, and ordered the Prosecution to file a revised
Amended Indictment.⁴

4. On 14 April 2009, the Prosecution filed the revised Amended Indictment.⁵

¹ Decision on Prosecution Motion for Leave to Amend the Indictment, 29 January 2009, p. 11.

² Amended Indictment, filed on 5 February 2009.

³ The Prosecutor’s Pre-Trial Brief, filed on 19 March 2009 (“Pre-Trial Brief”).

⁴ Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 8 April 2009, p.
11.

⁵ Amended Indictment, filed on 14 April 2009 (“Amended Indictment”).

SUBMISSIONS OF THE PARTIES

Defence's Motion

5. The Defence alleges that the filing of the Prosecution Pre-Trial Brief is premature.⁶ In addition, it submits that the Prosecution did not comply with its obligations under Rule 73*bis* sub-paragraphs (B)(iv)(d) and (B)(v), since it neither indicated the length of the expected testimony of each Prosecution witness, nor did it produce a list of the exhibits it intends to offer.⁷ The Defence submits that it cannot complete its investigations without an exhibit list, and therefore requests that such list be disclosed immediately.⁸

6. The Defence also reiterates that the Prosecution has not complied with its disclosure obligations under Rule 66(A). It has not yet received the full identifying information for some of the Prosecution witnesses,⁹ the requested translated versions of witness statements and the missing supporting material as mentioned in the Defence Motion for Disclosure pursuant to Rule 66(A)(i).¹⁰

7. With regard to the substance of the Pre-Trial Brief, the Defence avers that several allegations in the Pre-Trial Brief were not pleaded in the Amended Indictment and therefore constitute new charges,¹¹ while other allegations are not specific enough¹² or constitute an attempt to broaden the charges against the Accused.¹³ The Defence submits that the purpose of the pre-trial brief is “to specify the legal and factual issues, and to present the Prosecutor’s case in accordance with the indictment.”¹⁴ An accused cannot be convicted for a crime not charged in the indictment, and the pre-trial brief cannot be used to amend the indictment.¹⁵ Neither the pre-trial brief nor witness statements can be used to introduce new material facts in lieu of seeking leave to amend the indictment.¹⁶

8. The Defence further submits that the Pre-Trial Brief is marked by a lack of consistency,¹⁷ and does not provide details regarding dates, locations, and the identity of the perpetrators and victims. Consequently, the Defence submits that the Amended Indictment remains defective.¹⁸

⁶ Motion, paras. 2-5.

⁷ Motion, paras. 6-7.

⁸ Motion, para. 7.

⁹ Motion, para. 8 (referring to Prosecution Witnesses ANAB, ANAC, ANAN and ANAP).

¹⁰ Motion, para. 8 (referring to the Defence Motion for Disclosure Pursuant to Rule 66 (A)(i), 11 March 2009. Issues raised in this motion have already been addressed by the Trial Chamber in the Decision on Ngirabatware’s Motion under Rule 66, 26 March 2009).

¹¹ Motion, paras. 11, 17-26, 28-29, 31-32, 34-36 (referring to allegations or elements of allegations mentioned in paras. 7-19, 25-37, 39-45, 47-75, 77-91).

¹² Motion, paras. 27, 30.

¹³ Motion, para. 33 (referring to para. 33 of the Pre-Trial Brief, which according to the Defence is an “attempt by the Prosecutor to broaden the charge of rape”).

¹⁴ Motion, para. 15.

¹⁵ Motion, para. 14.

¹⁶ Motion, para. 15.

¹⁷ Motion, para. 12.

¹⁸ Motion, paras. 9-10, 12, 16.

9. The Defence also raises objections to the Pre-Trial Brief based upon mistakes in its Annex A with respect to the events upon which witnesses are to testify,¹⁹ and discrepancies between the summaries provided by the Prosecution and the content of the written statements.²⁰

Prosecution's Response

10. The Prosecution submits that the Motion should be dismissed.²¹ It argues that it does not seek to introduce new allegations not contained in the Amended Indictment through its Pre-Trial Brief, but merely to set out in greater detail the Prosecution's theory of the case, including the background and the context of the case against the Accused.²² The Prosecution claims that the Defence arguments are irrelevant and premature, and notes that the Trial Chamber has already decided on the Defence's Motion to dismiss based upon defects in the Amended Indictment.²³ Furthermore, it avers that it is entitled to set out the broad parameters of the case against the Accused in order to establish the *mens rea* and *actus reus*, and that "the description of the alleged acts of the Accused in the Pre-Trial Brief which are not specifically pleaded in the Amended Indictment but which establish his conduct or intention does not provide a ground for striking out that portion of the Pre-Trial Brief."²⁴

11. Furthermore, the Prosecution argues that (i) the Defence's objections to paragraphs 17 to 23 of the Pre-Trial Brief are incorrect, as the context of the genocide is well known and documented throughout the jurisprudence of the Tribunal;²⁵ (ii) the Defence's arguments in paragraphs 26 to 36 of its Motion are premature since the Chamber will have sufficient time to consider which submissions are relevant in the context of the case, and the Defence will have sufficient opportunities to object to the testimony of witnesses which it may consider irrelevant or outside the scope of the Amended Indictment.²⁶

12. The Prosecution attaches to the Response an amended version of Annex I to its Pre-Trial Brief. It submits that the new version of Annex I contains the anticipated length of testimony as well as the correct paragraphs in the Amended Indictment supported by the relevant witnesses,²⁷ and that the inconsistencies in the subject matter of the witnesses' anticipated testimony alleged by the Defence in paragraphs 37 to 49 of the Motion are corrected in the amended Annex I to the Pre-Trial Brief.²⁸

¹⁹ Motion, paras. 37-43, 46-49 (referring to Witnesses ANAA, ANAD, ANAE, ANAF, ANAG ANAH, ANAI, ANAL, ANAN, ANAO and ANAP).

²⁰ Motion, paras. 44-45, 47 (referring to Witnesses ANAJ, ANAK and ANAN).

²¹ Response, para. 2.

²² Response, paras. 9-10, 15.

²³ Response, para. 11.

²⁴ Response, para. 13.

²⁵ Response, para. 12.

²⁶ Response, para. 14.

²⁷ Response, paras. 5-6.

²⁸ Response, para. 16.

13. The Prosecution also attaches a list of exhibits to its Response and indicates that it will file a bundle of exhibits as soon as it is in position to do so.²⁹

14. Regarding its disclosure obligations, the Prosecution submits that it disclosed the identifying information of all witnesses, except for Witness ANAN, in confidential Annex C to the Response. Further, it submits that the translations and any remaining information will be disclosed as soon as the Prosecution is in a position to do so.³⁰

Defence's Reply

15. The Defence submits that the Prosecution has not specifically addressed any of the Defence submissions that the Pre-Trial Brief introduces new allegations. It submits that the Prosecution fails to demonstrate how the allegations in the Pre-Trial Brief bring more specificity and greater detail to the Prosecution's case.³¹ The Defence maintains that the Pre-Trial Brief contains new allegations which expand the scope of the Amended Indictment.³²

16. Furthermore, the Defence avers that its submissions are not premature, as they relate to allegations pleaded in the Amended Indictment and not to evidence presented during trial. It further submits that the Accused has the right to prepare his defence based only on the material facts contained in the indictment.³³

17. It also reiterates all its submissions regarding the new allegations contained in the Pre-Trial Brief which fall outside the scope of the Amended Indictment,³⁴ as well as its submissions that the allegations against the Accused are too vague regarding dates and locations.³⁵

18. The Defence avers that the Prosecution's list of exhibits does not comply with the requirement of the Interoffice Memorandum sent to the Parties by the Chamber on 20 April 2009.³⁶ It also points out that the Prosecution has not yet served on the Defence copies of the exhibits listed and thus the Defence is not in a position to adequately prepare for the trial.³⁷

19. With regard to the Prosecution's witness list, the Defence claims that the revised list of witnesses still contains numerous errors, and that this situation is highly prejudicial to the Accused and the preparation of his defence.³⁸

²⁹ Response, para. 7.

³⁰ Response, para. 8.

³¹ Reply, para. 8.

³² Reply, para. 9.

³³ Reply, para. 10 (referring to paragraphs 26 to 36 of the Motion).

³⁴ Reply, para. 11.

³⁵ Reply, para. 12.

³⁶ Reply, paras. 18-21.

³⁷ Reply, paras. 21-22.

³⁸ Reply, para. 23.

20. The Defence further argues that it cannot provide for an estimate of the expected time for the cross-examination of Prosecution witnesses as requested in Interoffice Memorandum of 20 April 2009.³⁹

21. Finally, the Defence submits that the identifying information and contact details of Witness ANAN have not been disclosed yet, and that therefore the Prosecution has not complied with its obligations under Rule 66(A)(ii).⁴⁰

DELIBERATIONS

22. As a preliminary matter, the Trial Chamber notes that the Response and the Reply to this Motion include submissions that were filed in response to the Interoffice Memorandum sent to the Parties by the Chamber on 20 April 2009. Moreover, some of the Parties' submissions are not supported by accurate references in the footnotes.⁴¹ The Chamber directs the Parties to respond to Chamber's instructions as required and in a timely manner; to provide relevant details and accurate references; and to ensure that the title of each filing addresses the Chamber's instructions.

Disclosure Issues

23. The Chamber notes that after the filing of the Motion, the Prosecution disclosed additional information to the Defence.⁴² Both the Defence and the Prosecution addressed the issue of outstanding disclosure in their respective submissions regarding an appropriate trial date,⁴³ as well as during the Status Conference held on 19 May 2009. The Chamber recalls that during the Status Conference, it pointed out that the Rules provide for different categories of disclosure, and directed the Parties to identify the specific Rule governing any of their disclosure filings. The disclosure issues raised in the Motion for appropriate trial date will be addressed when dealing with that specific Motion.

³⁹ Reply, paras. 13-16.

⁴⁰ Reply, paras. 6-7.

⁴¹ For example *see* para. 23 of the Motion, where the Defence alleges that certain factual allegations were pleaded in the original indictment, but does not provide references to the original indictment, and the Response, which does not include references to the jurisprudence of the Tribunal as well as to the Indictment or the Pre-Trial Brief.

⁴² Prosecution's Reply of 22 April 2009 to the Chamber's Interoffice Memorandum sent to the Parties by the Chamber on 20 April 2009; Prosecution's Disclosure to Ngirabatware, filed on 8 May 2009; More Disclosure to Ngirabatware Augustin, filed on 15 May 2009; Supplement Disclosure to Ngirabatware Augustin (revised), filed on 18 May 2009; Disclosure to Ngirabatware Augustin (continuous), filed on 20 May 2009.

⁴³ Dr. Ngirabatware's Submission Regarding an Appropriate Trial Date Pursuant to the Trial Chamber Scheduling Order, filed on 18 May 2009; Observations du Procureur sur "Dr. Ngirabatware's Submission Regarding an Appropriate Trial Date Pursuant to the Trial Chamber Scheduling Order", filed on 19 May 2009.

Rule 73 bis

24. The Chamber notes that Rule 73bis does not set a specific filing time limit for the pre-trial brief, and therefore a pre-trial brief may be filed prior to a Pre-Trial Conference. The Chamber therefore concludes that the filing of the Prosecution Pre-Trial Brief was not premature.

Witness and Exhibit Lists

25. The Chamber recalls that on 20 April 2009, by way of an Interoffice Memorandum it instructed the Prosecution to file a revised Annex I to the Prosecution Pre-Trial Brief as well as a list of exhibits, if any, that the Prosecution intended to offer. It further directed the Prosecution to indicate with respect to each exhibit the name of the author of the document, its date of issuance, its origin, if possible and to which paragraph(s) of the Indictment and the Prosecution Pre-Trial Brief the exhibit relates. It also instructed the Prosecution to serve on the Defence copies of the exhibits listed, and directed the Defence to inform the Chamber and the Prosecution whether it had any objection to the authenticity of the listed exhibits within five days of the receipt of copies of these exhibits.

26. On 22 April 2009, the Prosecution filed an exhibit list and a revised witness list as attachments to its Response to the present Motion. The Chamber notes that the filing of the exhibit list, and the exhibit list itself were not in accordance with the Chamber's instructions.

27. On 19 May 2009, by way of an Interoffice Memorandum sent to the Parties, the Chamber reiterated its instruction to the Parties to comply with the obligations detailed in the Interoffice Memorandum of 20 April 2009, and instructed the Prosecution to file a revised Pre-Trial Brief with the relevant annexes and copies of the exhibits within five days. Further, the Chamber instructed the Defence to state whether it had any objections to the authenticity of the listed exhibits within five days of the receipt of the copies of these exhibits.

28. At the Status Conference held on 19 May 2009, the Prosecution submitted that it provided the Defence with copies of the exhibits on 15 May 2009. The Defence replied that it had not yet received these copies. The Chamber instructed the Defence to inform the Chamber and the Prosecution whether it has any objection to the authenticity of the listed exhibits within five days of the receipt of these copies.

29. On 25 May 2009, the Prosecution filed a revised Pre-Trial Brief, with Annex I the list of Prosecution Witnesses and Witness Summaries, Annex II the list of Exhibits and Exhibits. The Chamber notes that this submission is in accordance with the Chamber's instructions to the parties dated 20 April and 18 May 2009, save for the Exhibit List, which does not provide information on the paragraph(s) of the Amended Indictment or the Pre-Trial Brief the Exhibits relate to. The Prosecution should give the missing information not later than five days from the date of this decision.

30. In view of the above, the Chamber considers that the submissions raised by the Defence in this Motion with respect to the Prosecution's witness and exhibit lists have been addressed by the Chamber, and there is no need to further elaborate on them in this decision.

Defence's Objections to the Substance of the Pre-Trial Brief

31. The Chamber notes that the objective of the Pre-Trial Brief is to address the "factual and legal issues" required to clarify the Prosecution case. The Pre-Trial Brief is relevant to the case only as far as it develops such strategy in accordance with the Indictment.⁴⁴ The Chamber also recalls that the indictment is the primary accusatory instrument, and that any other accusatory instrument cannot add charges or material facts amounting to charges that were not pleaded in the indictment.

32. The Chamber will address the Defence's objections to specific paragraphs of the Prosecution Pre-Trial Brief. The Chamber will examine whether or not the factual allegations contained in the paragraphs to which the Defence objects relate to allegations already contained in the Amended Indictment or add new charges. Where these factual allegations broaden the scope of allegations in the Amended Indictment, the Chamber will consider whether they may lead to unfairness and/or prejudice to the Accused.

Paragraphs 7-19 of the Prosecution Pre-Trial Brief

33. The Defence submits that the Prosecution (i) tries to bring in new allegations that are not contained in the Amended Indictment;⁴⁵ (ii) mingles judicially noticed facts with other highly disputable ones;⁴⁶ (iii) in paragraphs 10-15, refers to facts that are prior to January 1994 and that are thus not relevant to the context of the case and fall outside the temporal jurisdiction of the Tribunal;⁴⁷ (iv) in paragraphs 7-19, mentions the "Akazu, the civil self-defence programme, the 'Hutu Power' ideology, the creation of the *Interahamwe*, the Power Wings or the policies of the Interim Government", thus trying to reintroduce allegations which give rise to an entirely new case and cause prejudice to the Accused;⁴⁸ and (v) in paragraph 18, raises a new allegation not contained in the Amended Indictment that "the targeted persons of the alleged plan was every person opposed to the MRND."⁴⁹

⁴⁴ *The Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-PT, Decision on Defence Motion to Exclude some Parts of the Prosecution Pre-Trial Brief, 30 September 2005, para. 2.

⁴⁵ Motion, para. 17.

⁴⁶ Motion, para. 18, the Defence submits that "[f]or instance, at paragraph 9, the Prosecutor relying on the *Akayesu* Judgement, attempts to infer from the existence of three ethnic groups in Rwanda that these groups were also officially identified by the Government. However, nothing in the quoted paragraph of the *Akayesu* Judgement supports the Prosecutor's assertion".

⁴⁷ Motion, para. 19.

⁴⁸ Motion, paras. 20, 22. With regards to the alleged membership of the Accused in the Akazu, the Defence submits that the Prosecution introduces this new allegation, which amounts to a new charge in the Pre-Trial Brief, while this allegation is not contained in the Amended Indictment and not supported by the disclosed witness statements. The Defence argues that the Prosecution "attempts to draw a connection between the alleged membership of the Accused in the Akazu, and the MRND, and the alleged facts." Motion, para. 20.

⁴⁹ Motion, para. 21.

34. After careful review of paragraphs 7 to 19 of the Prosecution Pre-Trial Brief, the Chamber considers that some of the allegations mentioned in paragraphs 7 to 19 appear in the Amended Indictment.⁵⁰ Those allegations that do not appear in the Amended Indictment are only relevant to the background and the context of the specific allegations brought against the Accused in the Amended Indictment. Therefore, the Chamber concludes, that they do not introduce new charges, or invalidate the Pre-Trial Brief and that their timely disclosure does not lead to unfairness or prejudice to the Accused.

35. With regard to the Defence's assertion that the Pre-Trial Brief "mingles" judicially noticed facts with other highly disputable ones, the Chamber notes that the bench is composed of professional judges who can distinguish between those facts, which may have been judicially noticed and other facts.

36. As to the alleged membership of the Accused in the Akazu as well as his alleged objection to the Arusha Accords,⁵¹ the Chamber notes that these allegations do not appear in the Amended Indictment. However, the Chamber considers that they provide additional context to allegations brought against the Accused in the Amended Indictment, and do not amount to new charges. Furthermore, the Chamber notes that reference to the Akazu was already made in two statements of Witness ANAI, which were disclosed to the Defence on 13 November 2008 and 4 February 2009.⁵² Therefore, the Chamber concludes, that the more specific allegations regarding the membership of the Accused in the Akazu and his objection to the Arusha Accords do not introduce new charges and that their timely disclosure does not lead to unfairness or prejudice to the Accused.

37. Regarding the identity of the targeted persons, the Chamber notes that while the Amended Indictment refers to the targeting of "the civilian population based on ethnic or racial identification as Tutsi, or perceived sympathies to the Tutsi", the Pre-Trial Brief refers to the targeting of "Rwanda's Tutsi population and persons perceived to be politically opposed to the MRND, characterized as accomplices of the enemy, namely the RPF".⁵³ When read in context, it is clear that the Prosecution Pre-Trial Brief merely clarifies what according to the Prosecution's case constitutes "sympathies of the Tutsis". The Chamber considers that this alleged fact does not introduce new charges and that its timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraphs 25-32, 35-36, 39, 41-45, 47-61, 63-75, 77, 79-80 and 86-88 of the Prosecution Pre-Trial Brief

38. The Defence submits that a number of factual allegations summarized in paragraphs 25-32, 35-36, 39, 41-45, 47-61, 63-75, 77, 79-80 and 86-88 of the Pre-Trial Brief were pleaded in the original indictment, but not in the Amended Indictment.⁵⁴

⁵⁰ Amended Indictment, paras. 6-8.

⁵¹ Prosecution Pre-Trial Brief, para. 14.

⁵² Prosecution Pre-Trial Brief, para. 14; *see also* disclosure of the same statement dated 3, 4, 8 June and 5, 6 October 2004 in its French redacted version on 5 February 2009.

⁵³ Paragraph 28 of the Prosecution Pre-Trial Brief refers to a plan to destroy the Tutsi population and to eliminate members of the opposition, including those perceived to be supporting the Tutsis.

⁵⁴ Motion, para. 23.

39. The Chamber notes that most of the factual allegations included in these paragraphs are mentioned in paragraphs 4-5, 10-19, 21-28, 31-33, 37-39, 41-43, 46-48, 52-52, and 54 of the Amended Indictment.⁵⁵ Therefore, the Chamber will examine those factual allegations that are not explicitly mentioned in the Amended Indictment, and evaluate whether they constitute new charges against the Accused, or otherwise prejudice the Accused.

40. Paragraph 28 of the Prosecution Pre-Trial Brief adds "members of the Gisenyi Prefectoral Committee [...] as well as Presidential Guard soldiers, gendarmes and *Interahamwe*"⁵⁶ to the list of alleged members of the joint criminal enterprise to destroy Tutsis and to eliminate members of the opposition, mentioned in the Amended Indictment⁵⁷. However, the fact that the Pre-Trial Brief provides additional particulars to the pleading of joint criminal enterprise with respect to its participants does not introduce new charges and the timely disclosure does not lead to unfairness or prejudice to the Accused.

41. The Chamber considers that paragraphs 41 to 44 provide details as to the alleged methods of diverting funds by the Accused for the purchase of weapons used to kill Tutsis. Although not contained in the Amended Indictment, the substance of these paragraphs only specifies the allegations contained in paragraph 15 of the Amended Indictment.⁵⁸ The Chamber thus considers that the factual allegations contained in paragraphs 41 to 44 of the Pre-Trial Brief do not introduce new charges and that their timely disclosure does not lead to unfairness or prejudice to the Accused. With respect to the Defence's submissions that the allegations supported by Witnesses ANAB and ANAC do not implicate the Accused,⁵⁹ the Chamber considers that such submissions should be left for the trial stage.

42. Paragraph 47 of the Prosecution Pre-Trial Brief mentions alleged visits of the Accused to his parents' house during the period of January to July 1994 during which the

⁵⁵ The Chamber notes that paragraphs 25-26 of the Pre-Trial Brief correspond to paragraphs 4-5 of the Amended Indictment; paragraph 29-32 of the Pre-Trial Brief correspond to paragraphs 10-13 and 32 of the Amended Indictment; paragraphs 35-36 of the Pre-Trial Brief correspond to paragraphs 33 and 37 of the Amended Indictment; paragraph 39 of the Pre-Trial Brief corresponds to paragraphs 5 and 15 of the Amended Indictment; paragraph 45 of the Pre-Trial Brief corresponds to paragraph 38 of the Amended Indictment; paragraphs 48-56 of the Pre-Trial Brief correspond to paragraphs 16-18, 22-23 and 27 of the Amended Indictment; paragraphs 63-64 of the Pre-Trial Brief correspond to paragraphs 21, 24, and 41 of the Amended Indictment; paragraphs 66-75 of the Pre-Trial Brief correspond to paragraphs 25-26, 28, 31, 39, 41-43, 46-48, 51-52, and 54, of the Amended Indictment; paragraph 77 of the Pre-Trial Brief corresponds to paragraph 23 of the Amended Indictment; paragraphs 86 and 88 of the Pre-Trial Brief correspond to paragraph 61 of the Amended Indictment. Paragraph 27 of the Prosecution Pre-Trial Brief is a general summary of the part of the case against the Accused.

⁵⁶ See pp. 3-4 of the Amended Indictment.

⁵⁷ The Amended Indictment mentions that members of the *Interahamwe* were engaged in a joint criminal enterprise with the Accused to exterminate the civilian Tutsi population. Amended Indictment, paras. 61-63.

⁵⁸ The Chamber considers that in paragraph 15 of the Amended Indictment it is alleged that the Accused diverted and misapplied external development funds for the purchase of weapons and support of the *Interahamwe* and the Hutu militias, see also paras. 18 and 38 of the Amended Indictment.

⁵⁹ Motion, para. 29.

Accused met with and addressed the local population, "spreading the message of hatred of the Tutsis and the need to exterminate them." The Chamber notes that the Amended Indictment provides details about several meetings that the Accused held with attackers at his parents' house between April and May 1994 and the statement made by the Accused in each meeting.⁶⁰ It further notes that paragraph 47 of the Pre-Trial Brief referring to meetings that were allegedly held "[d]uring the period of January to July 1994", and in which the Accused allegedly addressed "the local population", is less specific than the allegations contained in the corresponding paragraphs of the Amended Indictment. However, in the circumstances, the Chamber does not consider that this allegation introduces new charges and furthermore, its timely disclosure does not lead to unfairness or prejudice to the Accused.

43. Paragraphs 57 to 61 of the Prosecution Pre-Trial Brief refer to the alleged arrival of the Accused at the Petit Bruxelles in his car a few days after the death of the President; a meeting of the Accused with *Interahamwe* in front of his parents' house; the distribution of machetes to the *Interahamwe*; and a reception at the house of the Accused's parents for the people present for the distribution of the weapons. These paragraphs correspond to paragraph 50 of the Amended Indictment and elaborate on the allegations detailed therein.⁶¹ They, however, also correspond to paragraph 27 of the Amended Indictment, which is identical to paragraph 56 of the Prosecution Pre-Trial Brief.⁶² The Chamber does not consider that this constitutes a new charge but instructs the Prosecution to clarify to which allegation in the Amended Indictment the material facts detailed in paragraphs 57 to 61 of the Prosecution Pre-Trial Brief refer.

44. Paragraph 65 of the Prosecution Pre-Trial Brief refers to the same alleged event mentioned in paragraphs 24 and 41 of the Amended Indictment. Paragraph 41 of the Amended Indictment states that the Accused addressed the *Interahamwe* youth manning the roadblock at the Customs Office on the Cyanika-gisa tarred road. Paragraph 65 of the Prosecution Pre-Trial Brief provides the details of the alleged statement made by the Accused on that occasion. Therefore, the Chamber does not consider that the Defence challenge to paragraph 65 of the Prosecution Pre-Trial Brief is founded.

⁶⁰ See the following paragraphs of the Indictment: para. 42 (referring to an alleged meeting of the Accused with attackers at around mid-April 1994 at the home of the Accused's parents, where the Accused told the audience to kill the Tutsis who had sought refuge at the Pfunda tea factory), para. 44 (referring to an alleged meeting of the Accused with attackers towards the end of April 1994, at the house of the Accused's parents, where the Accused gave the key of his vehicle to Bagango and told audience to search for and kill Tutsis), and para. 45 (referring to an alleged meeting of the Accused with the *Interahamwe* militia at the area of residence of his parents, where he told the audience to kill Tutsis and spare their houses for Hutus). The Amended Indictment also provides details about meetings the Accused held in other locations, such as MRND party meetings and different roadblocks, and the statement made by the Accused in each meeting; Amended Indictment, paras 39-41, 46-49.

⁶¹ Paragraph 50 of the Amended Indictment alleges that in mid-April 1994, the Accused provided machetes to Bagango and *Interahamwe* militia for the extermination of Tutsis and that the machetes were used to exterminate Tutsis in Nyamyumba commune between mid-April and mid-July 1994.

⁶² Paragraph 27 of the Amended Indictment alleges around mid-April 1994 the Accused ordered Bagango to distribute machetes to attackers which were used to kill or cause grievous bodily or mental harm to Tutsis in Nyamyumba commune.

45. Paragraphs 69 to 70 of the Prosecution Pre-Trial Brief refer to an alleged meeting of the Accused with attackers, including Bagango, around the middle of April at the house of his parents, where he allegedly instigated them to kill Tutsis who had sought refuge at the Pfunda tea factory. In paragraph 71 of the Prosecution Pre-Trial Brief it is alleged that Bagango provided 25 *Interahamwe* with grenades in front of the Accused and that the following day the *Interahamwe* reported to the Accused that they had killed 10 Tutsis. The Chamber finds that paragraphs 69 to 71 of the Prosecution Pre-Trial Brief correspond to paragraphs 25-26, 42-43 and 51-52 of the Amended Indictment and elaborate on the allegations contained therein. Therefore they do not introduce new charges and their timely disclosure does not lead to unfairness or prejudice to the Accused.

46. Paragraphs 54-55 and 77 of the Prosecution Pre-Trial Brief appear to refer to the same alleged meeting held at the Kanyabuhombo School in early 1994. The Chamber notes that the participation of the Accused in such a meeting is also alleged in the Amended Indictment⁶³ and that it appears that paragraphs 54-55 and 77 of the Pre-Trial Brief refer to the same alleged meeting. The Chamber directs the Prosecution to clarify whether paragraphs 54-55 and 77 of the Prosecution Pre-Trial Brief refer to the same meeting or not, and, if possible, to indicate the date of the alleged meeting.

47. Paragraph 79 of the Prosecution Pre-Trial Brief refers to an alleged statement of the Accused. Paragraph 80 alleges that the Accused came to his brother's house, advised him not to hide Tutsis at his house, and warned him in the presence of Bagango that if he hid Tutsis he would be shot with them. The factual allegations contained in these paragraphs are not mentioned in the Amended Indictment, but they appear in the summary of witness ANAL's statement. The Prosecution submits that Witness ANAL's statement is relevant to paragraphs 27, 50, 52, 55, and 62 of the Amended Indictment.⁶⁴ The Chamber considers that these paragraphs should not be considered in isolation. When read in the context of the Amended Indictment, these paragraphs appear to provide details relevant to charges already contained in the Amended Indictment. They therefore do not introduce new charges and their timely disclosure does not lead to unfairness or prejudice to the Accused. With regards to alleged statement of the Accused mentioned in paragraph 79, the Chamber notes that this paragraph does not mention the date of the statement. The Chamber therefore directs the Prosecution to provide the statement's date in the Pre-Trial Brief, with as much precision as possible.

48. Paragraphs 86 to 88 of the Prosecution Pre-Trial Brief refer to the alleged rapes of two Tutsi women in April 1994. The Chamber notes that paragraphs 86 and 88 correspond to paragraphs 61 and 62 of the Amended Indictment, and that paragraph 87 elaborates on the alleged role of Bagango in the first rape. In light of the above, the Chamber considers that these paragraphs do not introduce new charges and that their

⁶³ Amended Indictment, paras. 22 and 40.

⁶⁴ See Annex I to the Prosecution Pre-Trial Brief. The Chamber notes that paragraph 27 of the Amended Indictment refers to the count of complicity to commit genocide; paragraphs 50, 52, and 55 of the Amended Indictment refer to the count of extermination; and paragraph 62 of the Amended Indictment refers to the count of rape.

timely disclosure does not lead to unfairness or prejudice to the Accused. The Defence's submissions with regard to these paragraphs are rejected.

Paragraph 33 of the Prosecution Pre-Trial Brief

49. The Defence submits that paragraph 33 of the Pre-Trial Brief refers to a speech allegedly made by the Accused at a meeting at the MRND Palace in Gisenyi in March 1994; that this factual allegation is not pleaded in the Amended Indictment; and that it constitutes a new charge. The Defence also argues that the fact that Witness ANAI refers to this speech does not allow the Prosecutor to insert this allegation to its Pre-Trial Brief. The Defence requests that this allegation be rejected and that this portion of ANAI's anticipated testimony be excluded.⁶⁵

50. The Chamber notes that in support of the count of conspiracy to commit genocide, paragraph 14 of the Amended Indictment alleges that the Accused attended a meeting at the MRND Palace in Gisenyi in March 1994. The paragraph, however, does not mention that the Accused made a speech at the meeting. Furthermore, under the count of direct and public incitement to commit genocide, paragraph 39 of the Amended Indictment alleges that the Accused made statements against Tutsis in MRND meetings in Nyamyumba commune in March 1994. This paragraph, however, does not mention the specific speech mentioned in paragraph 33 of the Prosecution Pre-Trial Brief. In the circumstances, the Chamber considers that the alleged speech mentioned expands the scope of the factual allegations supporting the charges brought against the Accused, as detailed in paragraphs 14 and 39 of the Amended Indictment and may be relevant. However, it does not introduce new charges and its timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraph 34 of the Prosecution Pre-Trial Brief

51. The Defence submits that the allegations contained in paragraph 34 of the Prosecution Pre-Trial Brief regarding psychological and physical preparation of the *Interahamwe* by the Accused were not pleaded in the Amended Indictment, and thus constitute a new charge. The Defence requests the Chamber to reject these allegations and exclude the anticipated testimony of witness ANAI in relation to these allegations.⁶⁶

52. The Chamber notes that the Amended Indictment alleges that in early 1994 the Accused created a group of *Interahamwe*,⁶⁷ and that in March 1994, in a meeting at the MRND palace in Gisenyi, the Accused agreed to provide the *Interahamwe* militia with food, logistics, and money.⁶⁸ Furthermore, the Amended Indictment contains specific allegations regarding the distribution of weapons and the granting of 30,000 francs to members of the *Interahamwe*.⁶⁹ The Chamber further notes that according to paragraph 34 of the Prosecution Pre-Trial Brief, "[w]itness ANAI will testify that in these meetings

⁶⁵ Motion, para. 24.

⁶⁶ Motion, para. 25.

⁶⁷ Amended Indictment, para. 21.

⁶⁸ Amended Indictment, para. 14.

⁶⁹ Amended Indictment, paras. 15-16, 19-20, 22, 24, 27, 30, 36, 41, 50, 52.

youths were prepared psychological[ly] and physically by the officials including Augustin Ngirabatware for the subsequent elimination of the Tutsi in Rwanda." The Chamber considers that the factual allegations contained paragraph 34 of the Prosecution Pre-Trial Brief relate to allegations already pleaded in the Amended Indictment and merely expand on their factual basis, with respect to the support provided by the Accused to the *Interahamwe*. They do not introduce new charges and their timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraph 37 of the Prosecution Pre-Trial Brief

53. The Defence avers that the allegations contained in paragraph 37 of the Prosecution Pre-Trial Brief regarding the Accused's support in the training and organization of the *Interahamwe* as well as his contribution to the facilitation of the arming of the local population in Gisenyi prefecture were not pleaded in the Amended Indictment and constitute new charges. It thus requests the Chamber to reject them as well as the anticipated testimony of witness ANAI on this issue.⁷⁰

54. The Chamber notes that paragraph 21 of the Indictment alleges that the Accused created a group of *Interahamwe* militia over whom he had *de facto* control. Moreover, the Indictment alleges that the Accused armed the *Interahamwe*.⁷¹ The Chamber considers that the factual allegations in paragraph 37 the Pre-Trial Brief, *i.e.* that the Accused participated in and facilitated the organizing, arming, training and clothing of the *Interahamwe*, appears to broaden the scope of the role played by the Accused with regards to the *Interahamwe*. Paragraph 37 also adds the local population as recipients of arms. However, the Chamber considers that these factual allegations do not introduce new charges and that their timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraph 38 of the Prosecution Pre-Trial Brief

55. With regard to Paragraph 38 of the Prosecution Pre-Trial Brief, the Defence acknowledges that these allegations have been pleaded in the Amended Indictment, but points to the fact that the timeframe referred to in the Pre-Trial Brief ("during the month of May") broadens the scope of the timeframe referred to in the Amended Indictment ("in late May"), thus contributing to the vagueness of the allegations.⁷²

56. The Chamber notes that paragraph 38 of the Prosecution Pre-Trial Brief expands the timeframe mentioned in paragraph 29 of the Amended Indictment. However, it also considers that it does not introduce new charges, and, although it broadens the timeframe of the allegations contained in paragraphs 29 and 45 of the Amended Indictment, the timely disclosure of this information does not lead to unfairness or prejudice to the Accused.

⁷⁰ Motion, para. 26.

⁷¹ See paragraphs 27, 30, 50, 52 of the Amended Indictment.

⁷² Motion, para. 27 (referring to paragraphs 29 and 45 of the Amended Indictment).

Paragraph 40 of the Prosecution Pre-Trial Brief

57. The Defence submits that the last sentence of paragraph 40 of the Prosecution Pre-Trial Brief, referring to the Accused's alleged responsibility to report to the Government on the use of funds, was not pleaded in the Amended Indictment.⁷³

58. The Chamber considers that paragraph 40 of the Prosecution Pre-Trial Brief, alleging that the Accused had to report on the use of the funds to the government, appears to be a material fact regarding the duties and responsibilities of the accused as the Minister of Planning, and does not introduce new charges and that its timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraph 46 of the Prosecution Pre-Trial Brief

59. The Defence alleges that paragraph 46 of the Pre-Trial Brief is not specific enough as it does not identify any of the authorities appointed in Gisenyi to implement anti-Tutsi policies.⁷⁴

60. The Chamber notes that paragraph 46 of the Prosecution Pre-Trial Brief is identical to the first part of paragraph 17 of the Amended Indictment.⁷⁵ The second part of paragraph 17 of the Amended Indictment corresponds to paragraph 50 of the Prosecution Pre-Trial Brief. The Chamber recalls that in its Decision on the Defence's Motion to Dismiss Based upon Defects in Amended Indictment of 8 April 2009, it had already rejected the Defence submissions that paragraph 17 of the Amended Indictment was "too imprecise". The Chamber therefore rejects the Defence's submission.

Paragraph 62 of the Prosecution Pre-Trial Brief

61. As regards Paragraph 62 of the Prosecution Pre-Trial Brief and the roadblocks mentioned therein, the Defence objects to the Prosecution's allegations that the latter were used by the Accused to perpetrate the genocidal plan in Gisenyi, as such allegation was not pleaded in the Amended Indictment.⁷⁶

62. The Chamber notes that paragraph 62 of the Prosecution Pre-Trial Brief should be considered in the context of paragraphs 21, 24, 30, 41 and 46 of the Amended Indictment.⁷⁷ In view of these paragraphs, it is clear that paragraph 62 of the Prosecution

⁷³ Motion, para. 28.

⁷⁴ Motion, para. 30.

⁷⁵ Paragraph 46 of the Prosecution Pre-Trial Brief alleges that part of the preparation for the genocide in Gisenyi was the appointment of prefectural and local authorities that would implement the anti-Tutsi policies and directives of the MRND leadership at the national level. Furthermore, it is alleged that the Accused often returned to his home commune of Nyamyumba in Gisenyi Prefecture, where he continued to exercise considerable influence in local affairs between January and July 1994.

⁷⁶ Motion, para. 31; paragraph 62 of the Prosecution Pre-Trial Brief alleges that the use of roadblocks to capture and kill Tutsis was widespread during the period of the genocide and was one of the tools employed by the Accused and his cohorts in the Gisenyi area during 1994 to perpetrate their genocidal plan.

⁷⁷ Paragraph 21 of the Amended Indictment alleges that in early 1994, the Accused created a group of *Interahamwe* militia over whom he had effective *de facto* control and positioned them at Gitarako crossing

Pre-Trial Brief does not introduce a new charge, but merely sets the background and provides an overall view about more specific acts of the Accused that are alleged in the Amended Indictment, and that its timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraph 78 of the Prosecution Pre-Trial Brief

63. With respect to paragraph 78, the Defence alleges that the details provided in the Pre-Trial Brief as regards the extension of the allegations to the interpretation of Rwandan culture are inadmissible as the Prosecution did not plead the cultural context of the offence in the Amended Indictment.⁷⁸

64. The Chamber considers that paragraph 78 of the Pre-Trial Brief alleges that the Accused asked the *Interahamwe* militia "to remove all the dirt from between their teeth", and told them to "pull up all the weeds from the millet field". Moreover, it alleges that the Accused's words were a call to exterminate Tutsis, and that "[i]n the context of the Rwandan culture, this message was well received and many members of the Tutsi population in Gisenyi were exterminated as a result." In the Chamber's view, the addition of the cultural context to the allegations contained in paragraph 78 of the Prosecution Pre-Trial Brief only clarifies the Prosecution case, and therefore does not introduce new charges and its timely disclosure does not lead to unfairness or prejudice to the Accused.

Paragraphs 81 to 85 of the Prosecution Pre-Trial Brief

65. The Defence alleges that the Prosecution attempts to broaden the charges of rape in paragraph 81 of the Prosecution Pre-Trial Brief. It also points out that those charges are the subject of contention in a Defence motion previously filed and requests the Chamber to reject this paragraph.⁷⁹ With regard to paragraphs 81 to 85 of the Pre-Trial Brief and the allegations contained therein, the Defence asserts that they have not been pleaded in the Amended Indictment and also introduce new charges based on evidence adduced in

point in Nyamyumba commune in order to capture and kill Tutsis. Moreover, paragraphs 24 and 41 of the Amended Indictment allege that in February 1994, the Accused gave money to the *Interahamwe* youths manning the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba commune as encouragement for their work in capturing and killing Tutsis. Paragraphs 30 and 46 of the Amended Indictment allege that the Accused distributed rifles to the *Interahamwe* militia manning the Centre de Bruxelles roadblock, and that the rifles were used for killing Tutsis.

⁷⁸ Motion, para. 32. Paragraph 68 of the Prosecution Pre-Trial Brief reads as follow: "The Prosecution will prove that following the killing of CDR Chairman Martin Bucyana in February 1994, Augustin Ngirabatware went to the Electrogaz roadblock in Nyamyumba commune, and addressed the youths manning the roadblock, encouraging them to kill members of the Tutsi population, by stating that their Hutu colleague had been killed in Butare, a victim of a Tutsi plot and they no longer had anything to lose. He implored them to do everything in their power to track down the imbeciles, reminding them that they had been tolerant enough or words to that effect."

⁷⁹ Motion, para. 33 (referring to the Defence Motion to Dismiss Based Upon Defects in Amended Indictment, filed on 11 March 2009). The Chamber notes that the Defence's submissions that were raised in the Defence Motion to Dismiss Based Upon Defects in Amended Indictment have already been addressed by the Trial Chamber, Decision on Defence Motion to Dismiss Based Upon Defects in Amended Indictment, 8 April 2009, paras. 32-34.

other cases before the Tribunal. The Defence alleges that the Prosecution is thereby quoting supporting material that has never been disclosed to the Defence.⁸⁰

66. The Chamber notes that paragraphs 81 to 85 of the Prosecution Pre-Trial Brief allege that during the period April to July 1994, many Tutsi women were raped as a part of the genocidal activities of the *Interahamwe*; that rape during the genocide was known by the civilian leadership; that the sexual violence was an intended method of implementing the genocide; that the civilian authorities were present during sites of massacres and mass rapes and ordered or perpetrated rapes; and that mass rape and sexual violence took place publicly in broad daylight in every prefecture of Rwanda. Paragraphs 84 and 85 allege that acts of rape should be considered in the "context of the genocide", and that the "common patterns occurring across the country are evidence of an orchestrated or implicit understanding to encourage and commit rape through the stereotyping of Tutsi women in order to destroy the Tutsi population."

67. The Chamber considers that under count 6 of the Amended Indictment the Accused is charged with the commission of rape through participation in a joint criminal enterprise (category 3). It is alleged that the Accused participated in a joint criminal enterprise to exterminate the Tutsi civilian population; that the risk of rape was a natural and foreseeable consequence of the execution of the common design; and that the Accused was reckless or indifferent to that risk.⁸¹ The Chamber considers that paragraphs 81 to 85 of the Prosecution Pre-Trial Brief set the alleged background to the Prosecution case with respect to the count of rape, and clarify the Prosecution's thesis regarding the alleged responsibility of the Accused for the crime of rape. These paragraphs do not introduce new charges and their timely disclosure does not lead to unfairness or prejudice to the Accused.

68. The Chamber further notes that footnotes 9 to 11 of the Prosecution Pre-Trial Brief refer to witnesses, but it is unclear whether these witnesses are listed in the Prosecution's witness list. The Chamber instructs the Prosecution to delete from the footnotes any reference to witnesses who are not expected to testify in this case, but to leave any reference to witnesses who are expected to testify in this case, and to refer to them by their pseudonyms where applicable.

Paragraphs 89 to 91 of the Prosecution Pre-Trial Brief

69. The Defence objects to paragraphs 89 to 91 of the Prosecution Pre-Trial Brief since they constitute new allegations with respect to the criminal responsibility of the Accused to the crime of rape. The Defence also requests the Chamber to exclude the anticipated testimony of witness ANAG on this issue.⁸² In particular with regard to paragraphs 90 and 91 of the Pre-Trial Brief, the Defence alleges that the Prosecution is trying to make

⁸⁰ Motion, para. 34 (referring in particular to footnotes 9-11 of the Pre-Trial Brief).

⁸¹ Amended Indictment, p. 15.

⁸² Motion, para. 35.

new assertions that were not pleaded in the Amended Indictment with regard to the connection between the Accused and some members of the *Interahamwe*.⁸³

70. The Chambers notes that paragraph 89 of the Prosecution Pre-Trial Brief corresponds to paragraph 63 of the Amended Indictment. Paragraph 63 of the Amended Indictment alleges that members of the *Interahamwe*, including Juma and Makuze, acting in concert with Bagango, and who were engaged in a joint criminal enterprise with the Accused to exterminate Tutsis, raped a Tutsi woman. Paragraph 89 of the Prosecution Pre-Trial Brief states that the perpetrators were Bagango's, and by extension the Accused's, *Interahamwe*. Paragraphs 90 and 91 of the Prosecution Pre-Trial Brief add that Juma and Makuze had often visited the Accused at his parents' home before and after the rape, and that they, among others, had also previously received weapons from the Accused and Bagango. In light of paragraph 63 of the Amended Indictment, the Chamber considers that the factual allegations in paragraphs 89 to 91 only elaborate on and further clarify factual allegations already contained in the Amended Indictment, and do not introduce new charges and that their timely disclosure does not lead to unfairness or prejudice to the Accused.

Identification of Subjects to Which Witnesses will Testify

71. In its reply, the Defence submits that the revised Annex I to the Prosecution Pre-Trial Brief is still flawed.⁸⁴ The Defence submits that certain paragraphs of the Amended Indictment are not supported by the statements of witnesses alleged by the Prosecution.⁸⁵

72. The Prosecution submits that the Defence's challenges to the relevance of the proposed testimonies of certain witnesses are premature.⁸⁶

73. The Chamber notes that the original Indictment, as well as the Amended Indictment against the Accused, accompanied with supporting materials, were confirmed by a Judge.⁸⁷ In addition, the Chamber considers that the Defence's submissions appear to challenge the relevancy of proposed testimonies and are therefore premature and should be left to the trial stage.

74. With regards to the Defence's submission that the revised Annex I of the Pre-Trial Brief still contains numerous errors, the Chamber notes that the Defence's submission is general, and lacks reference to specific flaws in the revised Annex I. Without references to specific flaws the issue remains unsubstantiated and the Chamber is not in a position to make a determination. Therefore, this submission is rejected.

⁸³ Motion, para. 36.

⁸⁴ Reply, paras. 23-34.

⁸⁵ The Chamber notes that in the Motion the Defence listed more paragraphs that are not supported by witnesses' statements. However, in its Reply it appears to revise its submissions.

⁸⁶ Response, para. 14.

⁸⁷ Confirmation of the Indictment and Order for Non-Disclosure, filed on 1 October 1999; Decision on Prosecution Motion for Leave to Amend the Indictment, filed on 29 January 2009.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion in part;

ORDERS the Prosecution to carry out the following within five days:

- submit a new exhibit list with references to paragraphs of the Amended Indictment and Pre-Trial Briefs the exhibits are relevant to;
- clarify to which allegation in the Amended Indictment the material facts detailed in paragraphs 57 to 61 of the Prosecution Pre-Trial Brief refer;
- clarify whether paragraphs 54-55 and 77 of the Prosecution Pre-Trial Brief refer to the same meeting or not, and, if possible, to indicate the date of the alleged meeting;
- provide the date of the alleged statement of the Accused mentioned in paragraph 79 of the Pre-Trial Brief, with as much precision as possible;
- delete from the footnotes any reference to witnesses who are not expected to testify in this case, but to leave any reference to witnesses who are expected to testify in this case, and to refer to them by their pseudonyms.

DENIES the Motion in all other respect.

Arusha, 2 June 2009

William H. Sekule
Presiding Judge

(Read and approved)
Solomy Balungi Bossa
Judge
(Absent at the time of
signature)

Mparany Rajohnson
Judge

[Seal of the Tribunal]