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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 15 December 2010

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-2000-55C-PT

JUDICIAL
2010 DEC 15 AM 11:31
Ildephonse Nizeyimana

**DECISION ON DEFENCE PRELIMINARY MOTION ON DEFECTS IN THE
INDICTMENT**

Rules 50(C) and 72(A)(ii) of the Rules of Procedure and Evidence

Office of the Prosecution:

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INTRODUCTION

1. The trial in this case is scheduled to commence on 17 January 2011.¹
2. The Accused, Ildephonse Nizeyimana, was initially indicted on charges of genocide, complicity in genocide, direct and public incitement to commit genocide and crimes against humanity on 23 January 2000.² The Accused made his initial appearance before the Tribunal on 14 October 2009.³
3. On 18 December 2009, the Prosecution filed a motion for leave to amend the Indictment.⁴ On 25 February 2010, the Pre-Trial Chamber granted the Prosecution motion in part.⁵ The Prosecution filed an amended indictment on 1 March 2010, charging the Accused with genocide; extermination, murder and rape as crimes against humanity; and murder and rape as violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II ("Amended Indictment").⁶
4. On 19 March 2010, the Defence filed a preliminary motion alleging defects in the amended indictment.⁷ On the same day, the Defence filed a motion requesting that the Prosecution comply with the Pre-Trial Chamber's decision of 25 February 2010.⁸ On 9 June 2010, the Pre-Trial Chamber issued a decision granting both Defence motions in part and ordering the Prosecution to make further revisions to the Amended Indictment.⁹
5. Pursuant to the Chamber's decision, the Prosecution filed a modified version of the Amended Indictment on 18 June 2010.¹⁰ On 12 July 2010, the Pre-Trial Chamber issued a decision ordering the Prosecution to comply with its 9 June 2010 decision on the Defence preliminary motion on defects in the Amended Indictment and to file a corrected indictment

¹ Scheduling Order (TC), 3 November 2010, Order II.

² [Original] Indictment, filed on 23 January 2000.

³ T. 14 October 2009.

⁴ Prosecutor's Request for Leave to File an Amended Indictment, filed on 18 December 2009.

⁵ Decision on Prosecutor's Request for Leave to File an Amended Indictment (TC), 25 February 2010.

⁶ Amended Indictment, filed on 1 March 2010.

⁷ Defence Preliminary Motion on Defects in the Indictment, filed on 19 March 2010.

⁸ Defence Motion to Order the Prosecution to Comply with a Trial Chamber Decision, filed on 19 March 2010.

⁹ Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment (TC), 9 June 2010 ("First Defects Decision").

¹⁰ Compliance with the Decision on Nizeyimana's Preliminary Motion on the Defects in the Amended Indictment, filed on 18 June 2010.

by 14 July 2010.¹¹ On 14 July 2010, the Prosecution filed a corrected version of the Amended Indictment.¹²

6. On 31 August 2010, the Prosecution filed a second motion for leave to amend the Indictment. On 22 September 2010, the Pre-Trial Chamber granted the Prosecution motion,¹³ and on 29 September 2010, the Prosecution filed its Second Amended Indictment.¹⁴

7. On 28 October 2010, the Defence filed a preliminary motion on defects in the Second Amended Indictment pursuant to Rule 50(C) of the Rules of Procedure and Evidence (“the Rules”).¹⁵ The Defence alleges defects in paragraphs 2, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 23, 25, 26 and 30 to 35 of the Second Amended Indictment. The Defence primarily submits that these paragraphs lack sufficient detail to allow the Accused to prepare his Defence.¹⁶

8. On 3 November 2010, the Prosecution filed a response to the Defence motion, arguing that the issues raised by the Defence have already been decided by the Pre-Trial Chamber and that information requested by the Defence is contained within the Prosecutor’s Pre-Trial Brief.¹⁷

DELIBERATIONS

Preliminary Matters

9. As a preliminary matter, the Chamber notes that the Defence directs its arguments to Count I of the Second Amended Indictment (genocide) but requests that the orders of the Trial Chamber be applied *mutatis mutandis* to Counts II to VI of the Second Amended Indictment. The Chamber applies its conclusions *mutatis mutandis* to Counts II to VI of the Second Amended Indictment.

On the Merits

10. Rule 72(A)(ii) of the Rules provides that preliminary motions alleging defects in the form of the indictment shall be made in writing and brought no later than thirty days after

¹¹ Decision on Nizeyimana’s Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment (TC), 12 July 2010 (“Compliance Decision”).

¹² [14 July 2010 Version of the] Amended Indictment, filed on 14 July 2010.

¹³ Decision on Prosecutor’s Request for Leave to File an Amended Indictment, 22 September 2010 (“Amendment Decision”).

¹⁴ Second Amended Indictment, filed on 29 September 2010.

¹⁵ Defence Preliminary Motion on Defects in the Indictment, filed on 28 October 2010 (“Motion”).

¹⁶ Motion, paras. 25-26, 30-31, 36-38, 44-46, 50-52, 55-58, 62-63, 66-69, 73, 75, 78-81, 85-86, 88, 91, 95-97.

¹⁷ Prosecution Response to Defence Preliminary Motion on Defects in the Indictment, filed on 3 November 2010 (“Response”).

disclosure by the Prosecutor to the Defence of all material and statements referred to in Rule 66(A)(i) of the Rules.

11. According to Rule 50(C), upon amendment of the indictment, “[t]he accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges[.]” Where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

12. The Defence submits in its motion that the Second Amended Indictment contains many allegations that are “fundamentally incomplete” or missing entirely; that it contains many references to orders that fail to provide the particular acts or particular course of conduct of the Accused as required by the Appeals Chamber jurisprudence; and that it contains numerous other allegations that are vague and lacking details required by law.¹⁸

Applicable Law

13. The Chamber recalls that Article 20(4)(a) of the Statute guarantees an accused the fundamental right “[t]o be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her”. The Appeals Chamber has interpreted this provision, in conjunction with Articles 17(4), 20(2), and 20(4)(b) of the Statute and Rule 47(C) of the Rules as requiring the Prosecution to state all material facts underpinning the charges in the indictment but not the evidence by which such facts are to be proven.¹⁹

14. Whether particular facts are “material” depends on the nature of the Prosecution case.²⁰ The Prosecution’s characterisation of the alleged criminal conduct and the proximity of the accused to the underlying offence are decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts in order to provide the accused with adequate notice.²¹

15. The Appeals Chamber has held, for example, that criminal acts that were physically committed by the accused must be set forth in the indictment specifically, including where

¹⁸ Motion, para. 3.

¹⁹ *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 21. See also *Prosecutor v. Ntakirutimana and Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 470 (this case refers to Articles 20(2), 20(4)(a) and 20(4)(b) of the Statute); *Prosecutor v. Simić*, Case No. IT-95-9-A, Judgement (AC), 28 November 2006, para. 20; *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Judgement (AC), 3 May 2006, para. 23; *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement (AC), 23 October 2001, para. 88.

²⁰ *Karera v. Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 292; *Ntagerura et al.*, Judgement (AC), para. 23; *Naletilić and Martinović*, Judgement (AC), para. 24.

²¹ *Ntagerura et al.*, Judgement (AC), para. 23. See also *Karera*, Judgement (AC), para. 292.

feasible “the identity of the victim, the time and place of the events and the means by which the acts were committed.”²² In certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in matters such as the identity of the victims and the dates of the commission of the crimes.²³

16. Where it is alleged that the accused planned, instigated, ordered or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the “particular acts” or “particular course of conduct” on the part of the accused that form the basis for the charges in question.²⁴

17. If the Prosecution intends to rely on a theory of joint criminal enterprise, it must specifically plead this mode of liability in the indictment.²⁵ If the Prosecution relies on a theory of JCE, the purpose of the enterprise, the identity of its participants, the nature of the accused’s participation in the enterprise and the period of the enterprise must be pleaded in the indictment.²⁶ Additionally, the indictment should clearly indicate which form of JCE is specifically being alleged: basic, systemic, or extended.²⁷

18. Where the Prosecution intends to rely on a theory of superior responsibility under Article 6(3) of the Statute, the following material facts must be pleaded in the indictment: (1) that the accused is the superior of subordinates, sufficiently identified, over whom he had effective control (i.e., the accused had a material ability to prevent or punish criminal conduct by these subordinates) and for whose acts he is alleged to be responsible; (2) the criminal acts by subordinates for which the accused is alleged to be responsible; (3) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (4) the conduct

²² *Prosecutor v. Seromba*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008, para. 27; *Muhimana v. Prosecutor*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007, para. 76; *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007, para. 16; *Gacumbitsi v. Prosecutor*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 49; *Ntakirutimana and Ntakirutimana*, Judgement (AC), para. 32, quoting *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001, para. 89; *Muvunyi v. Prosecutor*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008, para. 120.

²³ *Muvunyi*, Judgement (AC), para. 94; *Muhimana*, Judgement (AC), para. 79; *Gacumbitsi*, Judgement (AC), para. 50; *Kupreškić et al.*, Judgement (AC), para. 89.

²⁴ *Karera*, Judgement (AC), para. 292; *Seromba*, Judgement (AC), paras. 27, 100; *Ntagerura et al.*, Judgement (AC), para. 25.

²⁵ *Ntagerura et al.*, Judgement (AC), para. 24; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005, para. 42.

²⁶ *Simba v. Prosecutor*, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007, para. 63; *Simić*, Judgement (AC), para. 22 (this case refers to “the nature and purpose”); *Ntagerura et al.*, Judgement (AC), para. 24; *Kvočka et al.*, Judgement (AC), para. 42.

²⁷ *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Judgement (TC), 27 February 2009, para. 24; *Simba*, Judgement (AC), para. 63; *Simić*, Judgement (AC), para. 22; *Ntagerura et al.*, Judgement (AC), para. 24. See generally *Ntakirutimana and Ntakirutimana*, Judgement (AC), paras. 478-484.

of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.²⁸

19. Finally, an indictment may also be defective when the material facts are pled without sufficient specificity, for example, when the times mentioned refer to broad date ranges, the places are only vaguely indicated and the victims are only generally identified.²⁹

Application

(i) Paragraph 2

20. Paragraph 2 of the Second Amended Indictment describes the Accused's alleged *de jure* and *de facto* authority during the period covered by the Indictment.³⁰ The Defence submits that the "Prosecution should be required to identify the subordinates referred to in paragraphs 2(C) and 2(D)" and that the groups used to identify these subordinates in the Second Amended Indictment are insufficiently specific.³¹

21. The Chamber recalls that in its 9 June 2010 decision on defects in the Amended Indictment, the Pre-Trial Chamber ordered the Prosecution "to plead the names of the members of the 'group of persons from Gisenyi *préfecture* who formed an influential corps aligned with the interests of northerners focused around former President Habyarimana'" or to strike this phrase from the Indictment.³² This information has been provided in paragraph 2(C) of the Second Amended Indictment.³³

22. The Chamber further recalls that the Pre-Trial Chamber rejected Defence challenges to paragraph 2(D) when it granted the Prosecution's motion for leave to amend the Indictment on 22 September 2010.³⁴

23. Having considered the submissions of the Parties and the decisions of the Pre-Trial Chamber, the Trial Chamber finds that paragraph 2 is sufficiently specific to enable the Accused to prepare his defence. In particular, the Chamber notes that the Appeals Chamber has previously held that "[a] superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6(3) of the

²⁸ *Muvunyi*, Judgement (AC), para. 19; *Ntagerura et al.*, Judgement (AC), para. 26.

²⁹ *Ntagerura et al.*, Judgement (AC), para. 27; *Kvočka et al.*, Judgement (AC), para. 31 (this case adds "unless there are special circumstances").

³⁰ Second Amended Indictment, para. 2.

³¹ Motion, para. 25.

³² First Defects Decision, para. 17.

³³ Second Amended Indictment, para. 2(C).

³⁴ Amendment Decision, para. 16.

Statute.”³⁵ In *Muvunyi*, for example, the Appeals Chamber concluded that the accused had sufficient notice of his alleged subordinates where the indictment alleged that the perpetrators were ESO soldiers and that ESO soldiers were under Muvunyi’s command.³⁶ Further, the Chamber notes that, while the pleading of Nizeyimana’s alleged subordinates in paragraph 2 may be general, the Prosecution has provided additional information regarding these alleged subordinates in the concise statement of facts. Thus, considering that paragraph 2 is a *chapeau* paragraph, the Chamber is satisfied that the categories of subordinates pled in this paragraph are sufficiently specific to allow the Accused to conduct his investigations.

(ii) Paragraph 5

24. Paragraph 5 of the Second Amended Indictment charges the Accused with individual criminal responsibility under Article 6(1) of the Statute for planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of the crimes charged in the Indictment.³⁷ It further alleges that Nizeyimana acted in concert with others as part of a joint criminal enterprise.³⁸ The Defence submits that it is impossible for the Accused to defend himself if he is not provided with further information regarding the identities of the alleged participants in the joint criminal enterprise with the Accused.³⁹

25. The Chamber recalls that, in its First Defects Decision, the Pre-Trial Chamber ordered the Prosecution to provide further identifying information for several categories of participants named in paragraph 5 of the Amended Indictment.⁴⁰ The Second Amended Indictment conforms to this decision.

26. The Chamber also notes that participants in a joint criminal enterprise may be identified by category and need not be named individually.⁴¹

27. Finally, the Chamber recalls that paragraph 5 is a *chapeau* paragraph and that additional information about the alleged JCE participants is provided in the concise statement of facts. The Chamber recalls, for example, that the Pre-Trial Chamber ordered the Prosecution to specify criminal acts of Civil Defence Forces.⁴² In paragraph 17 of the Second

³⁵ *Muvunyi*, Judgement (AC), para. 55.

³⁶ *Muvunyi*, Judgement (AC), para. 55. See also *Ntagerura et al.*, Judgement (AC), para. 153.

³⁷ Second Amended Indictment, para. 5.

³⁸ Second Amended Indictment, para. 5.

³⁹ Motion, para. 30.

⁴⁰ First Defects Decision, paras. 27-28.

⁴¹ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009, para. 156. See also *Simba*, Judgement (AC), paras. 72-73, quoting *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005, paras. 392-393.

⁴² First Defects Decision, Order III.

Amended Indictment, the Prosecution alleges that Civil Defence Forces participated in the attacks at the *Groupe Scolaire*.⁴³ In this paragraph, the Prosecution names several members of the Civil Defence Forces who allegedly participated in the killings at the *Groupe Scolaire*, thereby further identifying the Civil Defence Forces mentioned in paragraph 5.

28. For these reasons, the Chamber finds that the categories of participants named in paragraph 5 of the Second Amended Indictment are sufficiently specific to provide notice to the Accused.

(iii) Paragraph 6

29. Paragraph 6 of the Second Amended Indictment charges that, from 7 April 1994 until mid-July 1994, Nizeyimana ordered and instigated various groups of alleged perpetrators to construct and man roadblocks throughout Butare *prefecture*, which were used for the purpose of identifying and killing Tutsi civilians.⁴⁴ The Defence submits that paragraph 6 is “seriously lacking details” and that “no allegation indicates where, when and to whom orders were given by the Accused or instigation initiated that led to the erection and manning of the eight ... roadblocks mentioned in paragraph 6”.⁴⁵

30. The Chamber recalls that, in its First Defects Decision, the Pre-Trial Chamber ordered the Prosecution to state, if known, where and when the order, authorisation or instigation charged in paragraph 6 was given and to whom and by what means it was transmitted.⁴⁶ The Chamber further recalls that, in its 12 July 2010 Compliance Decision, the Pre-Trial Chamber held that, in accordance with the Chamber’s order, the Prosecution had provided the requested information “where it is known” and that the equivalent paragraph in the 18 June 2010 version of the Indictment, particularly the date range pled, was sufficiently specific to put the Accused on notice of the charges against him.⁴⁷ The Trial Chamber agrees with the decision of the Pre-Trial Chamber and finds that paragraph 6 is sufficiently specific to enable the Accused to conduct his investigations.

31. Further, the Chamber notes that additional information is provided in paragraph 10(iii) of the Second Amended Indictment. In that paragraph, the Prosecution alleges that on 20 April 1994, Nizeyimana gave orders regarding roadblocks to soldiers assembled at ESO.⁴⁸

⁴³ Second Amended Indictment, para. 17.

⁴⁴ Second Amended Indictment, para. 6.

⁴⁵ Motion, para. 36.

⁴⁶ First Defects Decision, Order II.

⁴⁷ Compliance Decision, paras. 4, 11.

⁴⁸ Second Amended Indictment, para. 10(iii).

32. For these reasons, the Chamber finds that the Defence submissions are without merit.

(iv) Paragraph 7

33. Paragraph 7 of the Second Amended Indictment charges the Accused with distributing weapons to *Interahamwe*, *bourgmestres* and civilians at ESO and authorising, ordering or instigating ESO soldiers to train civilians such as Burundian refugees and university students.⁴⁹ The Defence submits that paragraph 7 is impermissibly vague and that the Prosecution should be required to provide the dates, locations and recipients of any alleged weapons distribution and additional details regarding Nizeyimana's alleged authorisation, order or instigation of training of civilians.⁵⁰

34. First, the Chamber recalls that, in its 12 July 2010 Compliance Decision, the Pre-Trial Chamber held that the same date range in a similar paragraph in the 18 June 2010 version of the Indictment was sufficiently specific to allow the Accused to conduct his investigations.⁵¹ The Chamber agrees with the findings of the Pre-Trial Chamber.

35. Further, Chamber recalls that "a broad date range, in and of itself, does not invalidate a paragraph of an indictment" and that at times "the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of victims and the dates of the commission of the crimes."⁵² The Chamber notes in particular that a broad date range may be sufficient to provide notice to the Accused where the Prosecution intends to prove the existence of a series of events reflecting a pattern of conduct.⁵³ In this case, the Chamber finds that the allegation in paragraph 7 that Nizeyimana authorised, ordered or instigated the training of civilians is intended to allege a series of events amounting to a pattern of conduct. Consequently, the Chamber finds that the date range pled is sufficiently specific to put the Accused on notice of the charges against him and that additional information regarding the timing of the instructions and the alleged training is not required.

36. Finally, the Chamber notes that paragraph 7 alleges that the Accused "distributed weapons to *Interahamwe*, including *Bourgmestres* and civilians at ESO". The language of this paragraph suggests that the Accused physically distributed weapons to members of the groups pled. The Chamber recalls that, where the Prosecution alleges that the accused

⁴⁹ Second Amended Indictment, para. 7.

⁵⁰ Motion, paras. 44, 47.

⁵¹ Compliance Decision, para. 12.

⁵² *Muvunyi*, Judgement (AC), para. 58.

⁵³ See *Muvunyi*, Judgement (AC), para. 59.

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physically committed the criminal acts in question, it is required to plead the identity of the victim(s), the place and approximate date of the alleged criminal acts and the means by which the acts were committed.⁵⁴ In this case, the Chamber notes that paragraphs 65 to 70 of the Prosecutor's Pre-Trial Brief, which was filed on the same day as the Second Amended Indictment, provide additional details regarding the dates, locations and recipients of particular instances of weapons distribution.⁵⁵ Thus, while this information should have been included in the Second Amended Indictment, the Chamber finds that any defect in the Indictment has been cured by the Prosecution's Pre-Trial Brief. Furthermore, because this information was provided to the Accused on 29 September 2010, the Chamber finds that the Accused has not been prejudiced by its omission from the Second Amended Indictment.

(v) Paragraphs 9 and 10

37. Paragraphs 9 and 10 of the Second Amended Indictment allege that between 7 April and mid-July 1994, Nizeyimana participated in meetings with members of the alleged joint criminal enterprise at various locations in Butare *préfecture*.⁵⁶ The Defence submits that paragraph 9 should be stricken from the Indictment because it could open the door to previously unknown meetings involving unnamed and unidentified persons.⁵⁷ With respect to paragraph 10, the Defence submits that the concluding language "does not specify which killings were committed by which soldiers or militiamen ... and when such killings occurred, or whether this sentence refers to specific paragraphs in the Indictment."⁵⁸

38. The Prosecution suggests that any vagueness or defect in paragraph 9 of the Second Amended Indictment has been cured through the Prosecution's disclosure of witness statements and trial transcripts.⁵⁹ The Chamber does not agree. While defects in an indictment can be cured through the provision of timely, clear and consistent information in the Prosecution's post-indictment submissions, such as a Pre-Trial Brief and annexed witness summaries, the opening statement and motions to vary witness lists,⁶⁰ mere service of witness

⁵⁴ *Seromba*, Judgement (AC), para. 27; *Ntagerura*, Judgement (AC), para. 23; *Naletilic and Martinovic*, Judgement (AC), para. 24; *Kupreskic et al.*, Judgement (AC), para. 89.

⁵⁵ Prosecutor's Pre-Trial Brief, filed on 29 September 2010, paras. 65-70.

⁵⁶ Second Amended Indictment, paras. 9, 10.

⁵⁷ Motion, para. 50.

⁵⁸ Motion, para. 52.

⁵⁹ Response, para. 47.

⁶⁰ See, e.g., *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 35; *Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 197. See also *Muhimana*, Judgement (AC), para. 82.

statements pursuant to disclosure obligations does not suffice to inform the Accused of the material facts that the Prosecution intends to prove at trial.⁶¹

39. The Chamber, however, is not convinced that paragraph 9 should be removed from the Indictment at this stage. While the Chamber acknowledges that paragraph 9 is relatively vague, the Chamber finds that, when read in conjunction with paragraph 10, paragraph 9 is clearly intended to be an introduction. The Chamber reminds the Prosecution, however, that an accused can only be convicted of crimes that are charged in the indictment⁶² and that omitted charges can only be incorporated through a formal amendment of the indictment pursuant to Rule 50 of the Rules.⁶³

40. The Prosecution submits that the Pre-Trial Chamber addressed the Defence submissions with respect to paragraph 10 in its First Defects Decision.⁶⁴ However, the paragraphs cited by the Prosecution are unrelated to the Defence's instant request. Having considered the submissions of the Parties, the Chamber finds that the last sentence of paragraph 10 is impermissibly vague, as it does not specify whether the killings alleged are those discussed elsewhere in the Indictment or additional killings, about which material facts have not been provided.

41. Accordingly, the Chamber orders the Prosecution to clarify whether the killings described in the last sentence of paragraph 10 are those elaborated elsewhere in the Indictment and, if not, to immediately provide additional details, where that information is known, regarding the dates, locations, victims and perpetrators of the killings in question.

(vi) Paragraph 12

42. Paragraph 12 of the Amended Indictment alleges that between 6 April and 17 July 1994, soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp and others acting on the authority or orders or at the instigation of the Accused forcibly removed Tutsi civilians from locations within Butare and killed them.⁶⁵ The Defence submits that this

⁶¹ *Ntakirutimana and Ntakirutimana*, Judgement (AC), para. 27, quoting: *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001, para. 62. See also *Simić*, Judgement (AC), para. 24; *Naletilić and Martinović*, Judgement (AC), para. 27.

⁶² *Muvunyi*, Judgement (AC), para. 18. The Chamber recalls that in *Muvunyi*, the Appeals Chamber held that a paragraph in the indictment containing a non-exhaustive list of massacre sites was defective "because it fails to enumerate the Mukura forest among the massacre sites, thus omitting a material fact which, in part, formed the basis of Muvunyi's conviction for genocide." *Muvunyi*, Judgement (AC), para. 94.

⁶³ *Karera*, Judgement (AC), para. 293.

⁶⁴ Response, para. 49.

⁶⁵ Second Amended Indictment, para. 12.

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paragraph is superfluous, unacceptably wide and opens the door to unknown murders in unknown places.⁶⁶

43. The Chamber recalls that the Pre-Trial Chamber found in its 22 September 2010 decision on the Prosecution motion to file any amended indictment that this paragraph was acceptable because it was introductory in nature and was elaborated in the Prosecutor's Pre-Trial Brief.⁶⁷ In its response to the instant motion, the Prosecution maintains that this paragraph is intended to be an introduction.⁶⁸

44. While the Chamber agrees with the Defence that the language of paragraph 12 suggests that it is not limited to the locations specifically listed in the Second Amended Indictment, the Chamber accepts the Prosecution's submission that paragraph 12 is intended to be introductory in nature. Accordingly, the Chamber finds it unnecessary to order the Prosecution to remove this paragraph from the Second Amended Indictment. Nevertheless, the Chamber reminds the Prosecution that an accused can only be convicted of crimes that are charged in the indictment.⁶⁹

(vii) Paragraph 13

45. Paragraph 13 of the Second Amended Indictment alleges that the Accused authorised, ordered or instigated killings at Cyahinda Parish.⁷⁰ The Defence submits that paragraph 13 fails to describe the particular acts and course of conduct by the Accused that form the basis for the Accused's alleged responsibility for these killings.⁷¹

46. The Chamber recalls that the Pre-Trial Chamber found that a corresponding paragraph in the Prosecution's 18 June 2010 version of the Indictment was sufficient to enable Nizeyimana to conduct his investigations.⁷² The Chamber further notes that paragraph 13(i) of the Second Amended Indictment adds additional detail that was not included in the corresponding paragraph in the 18 June 2010 version of the Indictment.⁷³ For these reasons, the Chamber finds that the Defence submission is without merit and that the allegations in

⁶⁶ Motion, paras. 56, 58.

⁶⁷ Amendment Decision, para. 18.

⁶⁸ Response, para. 51.

⁶⁹ *Muvunyi*, Judgement (AC), para. 18. The Chamber recalls that it *Muvunyi*, the Appeals Chamber held that a paragraph in the indictment containing a non-exhaustive list of massacre sites was defective "because it fails to enumerate the Mukura forest among the massacre sites, thus omitting a material fact which, in part, formed the basis of Muvunyi's conviction for genocide." *Muvunyi*, Judgement (AC), para. 94.

⁷⁰ Second Amended Indictment, para. 13.

⁷¹ Motion, paras. 60, 62.

⁷² Compliance Decision, para. 4.

⁷³ Compare Second Amended Indictment, para. 13 to Compliance with the Decision on Nizeyimana's Preliminary Motion on the Defects in the Amended Indictment, filed on 18 June 2010, para. 9.

paragraph 13 of the Second Amended Indictment are sufficiently specific to enable the Accused to prepare his defence.

(viii) Paragraph 14

47. Paragraph 14 of the Second Amended Indictment alleges that from 16 April 1994, Nizeyimana ordered and instigated soldiers and *Interahamwe* to kill Tutsi civilians at Butare University.⁷⁴ The Defence submits that the introduction to the paragraph is superfluous and that sub-sections 14(i) and 14(iv) are impermissibly vague.⁷⁵

48. First, the Chamber is not convinced that the introduction to the paragraph is superfluous. Not only is the introduction a *chapeau*, which helps to frame the following sub-sections, but it also pleads the starting date for and alleged recipients of Nizeyimana's orders or instigation. In contrast, the following sub-sections state the alleged outcomes of those orders or instigations.

49. Second, the Chamber recalls that the Pre-Trial Chamber held in its 12 July 2010 Compliance Decision that a less specific paragraph in the 18 June 2010 version of the Indictment was sufficiently specific in enable the Accused to conduct his investigations.⁷⁶ Considering that paragraph 14 of the Second Amended Indictment contains additional detail that was not included in the 18 June 2010 Indictment, the Chamber is not convinced that paragraph 14 is impermissibly vague.

50. With regard to paragraph 14(i), the Chamber recalls that this allegation, without the date, was accepted by the Pre-Trial Chamber in its decision on the Prosecution motion for leave to amend the Indictment.⁷⁷ The Chamber also notes that, while this sub-section does not contain a date, the structure of the Indictment and the Prosecution's Pre-Trial Brief suggest that these activities followed shortly after Nizeyimana's alleged order or instigation on or about 16 April 1994.⁷⁸ Thus, the Chamber finds that, in light of the other details contained in this sub-section, paragraph 14(i) is sufficiently specific for the Accused to prepare his defence.

51. Next, the Chamber notes that sub-section 14(ii) alleges that "soldiers and militia" committed acts of sexual violence at the university on or about 19 April 1994.⁷⁹ The Chamber

⁷⁴ Second Amended Indictment, para. 14.

⁷⁵ Motion, paras. 66-69.

⁷⁶ Compliance Decision, para. 4.

⁷⁷ Amendment Decision, paras. 21, 23.

⁷⁸ Second Amended Indictment, para. 14; Prosecutor's Pre-Trial Brief, para. 125.

⁷⁹ Second Amended Indictment, para. 14(ii).

recalls that the Pre-Trial Chamber previously held that the groups “soldiers” and “militia” were impermissibly vague and ordered the Prosecution to provide further identifying information.⁸⁰ In accordance with that decision, the Trial Chamber orders the Prosecution to identify the camp where the alleged soldiers were based or to use the phrase “unknown FAR soldiers”. The Chamber further orders the Prosecution to strike or provide further clarification regarding the expression “militia” in sub-section 14(ii).

52. The Defence submits that the date range in sub-section 14(iv)—late April and May 1994—is overly broad.⁸¹ The Chamber recalls, however, that “a broad date range, in and of itself, does not invalidate a paragraph of an indictment.”⁸² In this case, the Chamber finds that the date range pled is sufficiently specific to enable the Accused to conduct his investigations, particularly if it refers to a recurring event. On the other hand, the Chamber notes that paragraph 14(iv) does not allege any specific perpetrators. As a result, it is unclear how the alleged killings described in sub-section (iv) relate to the orders of the Accused described in the introduction. For these reasons, the Chamber orders the Prosecution to strike sub-section (iv) from paragraph 14 of the Indictment or, if known, to identify the alleged perpetrators of the killings described in paragraph 14(iv).

(ix) Paragraph 15

53. Paragraph 15 of the Second Amended Indictment alleges that on or about 20 April 1994, Nizeyimana authorised, ordered or instigated soldiers and *Interahamwe* to kill Tutsi civilians at Butare Hospital.⁸³ The Defence submits that the introduction to this paragraph is superfluous and should be stricken from the Indictment.⁸⁴

54. The Chamber is not convinced that the introduction to this paragraph is superfluous. The introduction contains the particular acts or course of conduct by the Accused that give rise to Nizeyimana’s alleged responsibility under Article 6(1) of the ICTR Statute, including the commencement date for the Accused’s orders, instigation or authorisation and the alleged recipients thereof.

55. Furthermore, the Chamber recalls that the Pre-Trial Chamber previously found that, with the exception of the identities of the soldiers who allegedly participated in these killings, the corresponding paragraph in the 18 June 2010 version of the Indictment contained

⁸⁰ First Defects Decision, para. 28, Orders V and VI.

⁸¹ Motion, para. 69.

⁸² *Muvunyi*, Judgement (AC), para. 58.

⁸³ Second Amended Indictment, para. 15.

⁸⁴ Motion, para. 73.

sufficient information to enable the Accused to conduct his investigations.⁸⁵ For these reasons, the Chamber finds that the Defence submission is without merit.

56. The Chamber notes, however, that paragraphs 15(iii), 15(iv) and 15(vi) do not fully comply with the Pre-Trial Chamber's First Defects Decision and Compliance Decision.⁸⁶ In its 12 July 2010 Compliance Decision, the Pre-Trial Chamber ordered the Prosecution to name the camp where the alleged FAR soldiers were based or to use the phrase "unknown FAR soldiers" where the Prosecution did not possess further identifying information with respect to a particular group of soldiers.⁸⁷ Notwithstanding this order, paragraphs 15(iii), 15(iv) and 15(vi) still refer to "soldiers" and "FAR".⁸⁸ Accordingly, the Chamber orders the Prosecution to name the camp(s) where these soldiers referred to in these sub-sections were based or to use the phrase "unknown FAR soldiers".

(x) *Paragraphs 16 and 17*

57. Paragraphs 16 and 17 of the Second Amended Indictment allege that the Accused authorised, ordered or instigated attacks on Tutsi civilians at the *Groupe Scolaire* in Butare on or about 21 April 1994 and on or about 29 April 1994.⁸⁹ The Defence submits that the "general terms of paragraphs 16 and 17 prior to the words 'in particular' are superfluous".⁹⁰

58. The Chamber recalls that the language the Defence wishes to strike was added by the Prosecution in response to the Pre-Trial Chamber's order that the Prosecution state "where and when the order, authorization or instigation took place; by what means it was transmitted; and to whom it was transmitted, where this information is known, in paragraphs ... 11 to 18 ... of the Amended Indictment."⁹¹ The Chamber further recalls that the Pre-Trial Chamber found in its 12 July 2010 Compliance Decision that the corresponding paragraphs in the 18 June 2010 version of the Indictment provided details of when and to whom the orders, authorisations or instigations were made and that the information was generally sufficient to allow Nizeyimana to conduct his investigations.⁹²

59. Having carefully considered the language of these paragraphs as well as the relevant procedural history, the Chamber finds that the lines in question are not superfluous. Rather,

⁸⁵ Compliance Decision, paras. 4, 7.

⁸⁶ First Defects Decision, paras. 28, 29, Order VI; Compliance Decision, para. 7.

⁸⁷ Compliance Decision, para. 7.

⁸⁸ Second Amended Indictment, paras. 15(iii), 15(iv), 15(vi).

⁸⁹ Second Amended Indictment, paras. 16-17.

⁹⁰ Motion, para. 75.

⁹¹ First Defects Decision, Order II. See also Amended Indictment, paras. 13-14.

⁹² Compliance Decision, para. 4.

they contain the dates on which the relevant orders, instigation or authorisation are alleged to have been given and the alleged recipients thereof. Moreover, the language challenged by the Defence is not redundant with the following sentences as those sentences set forth the alleged results of Nizeyimana's orders, instigation or authorisation and not the particular acts or course conduct of the Accused.

(xi) *Paragraph 18*

60. Paragraph 18 of the Second Amended Indictment alleges that on or about 20 April 1994, Nizeyimana ordered soldiers from the ESO, Ngoma and Butare *Gendarmerie* Camps to kill Tutsi civilians living in Buye *cellule* in Butare-Ville in Ngoma Commune.⁹³ The Defence submits that paragraph 18 is impermissibly vague and should be stricken from the Indictment.⁹⁴ The Defence further submits that the introductory sentence is superfluous.⁹⁵

61. The Chamber recalls that the Pre-Trial Chamber found that, with the exception of the Prosecution's identification of the location of "Buye", an equivalent paragraph in the 18 June 2010 version of the Indictment was sufficiently specific to provide notice to the Accused.⁹⁶ The Chamber notes that, in accordance with the Chamber's order, the Prosecution has fully identified the location of "Buye" in the Second Amended Indictment.⁹⁷

62. In addition, the Chamber notes that although "Buye *cellule*" may be a somewhat vague location, the Prosecution alleges that the killings in Buye occurred on a single day "on or about 20 April 1994" and were led by a certain Sous-Lieutenant Bizimana.⁹⁸ Other alleged perpetrators are also specifically named in the Second Amended Indictment.⁹⁹ Finally, the Chamber notes that paragraph 18 identifies all of the alleged perpetrators, whether named or not, as members of Sous-Lieutenant Bizimana's platoon.¹⁰⁰ In view of Prosecution's detailed description of the date and alleged perpetrators, the Chamber is not persuaded by the Defence submission that paragraph 18 "is a *carte blanche* for the [P]rosecutor to attempt to hold the Accused responsible for any unidentified death which occurred in Buye *cellule*."¹⁰¹

63. Finally, as with paragraphs 16 and 17, the Chamber does not consider the first sentence of paragraph 18 to be superfluous. Rather, this sentence provides the alleged date

⁹³ Second Amended Indictment, para. 18.

⁹⁴ Motion, paras. 79-81.

⁹⁵ Motion, para. 78.

⁹⁶ Compliance Decision, paras. 4, 8.

⁹⁷ Second Amended Indictment, para. 18.

⁹⁸ Second Amended Indictment, para. 18.

⁹⁹ Second Amended Indictment, para. 18.

¹⁰⁰ Second Amended Indictment, para. 18.

¹⁰¹ Motion, para. 80.

and recipients of Nizeyimana's order. The following sentences, by contrast, describe the crimes that were allegedly committed in furtherance of that order.

(xii) *Paragraph 20*

64. Paragraph 20 of the Second Amended Indictment alleges that on or about 20 April 1994, ESO soldiers and militiamen, acting on the orders or at the instigation of the Accused, killed Jerome Ngarambe and members of his family near Ngarambe's home.¹⁰² The Defence submits that the paragraph is impermissibly vague because it does not state the *commune*, *secteur* or *cellule* where Ngarambe's house was located.¹⁰³

65. The Chamber recalls that the 1 March 2010 Amended Indictment contained a virtually identical paragraph to that at issue here.¹⁰⁴ The Defence, however, did not challenge the Prosecution's pleading of the location of Ngarambe's house at that stage, nor has the Defence argued that it has not been able to investigate this allegation without the precise location of the victim's house.

66. Having carefully considered the impugned paragraph, as well Parties' submissions, the Chamber is of the opinion that paragraph 20 is sufficiently specific to inform the Accused of the charge against him. Furthermore, as the Prosecution submits, paragraph 164 of the Prosecutor's Pre-Trial Brief, which was filed on the same day as the Second Amended Indictment, specifies that Ngarambe's house was located in Buye *cellule*.¹⁰⁵ Thus, even if the Chamber had found that paragraph 20 was impermissibly vague, any defect in the Indictment has been cured through the provision of timely, clear and consistent information in the Prosecutor's Pre-Trial Brief.

(xiii) *Paragraph 23*

67. Paragraph 23 of the Second Amended Indictment alleges that Nizeyimana ordered or authorised soldiers from the ESO, Ngoma and Butare *Gendarmerie* Camps and armed civilians to kill Rosalie Gicanda.¹⁰⁶ The Defence submits that the introductory paragraph, except for the date, is superfluous in light of the particulars provided.¹⁰⁷

¹⁰² Second Amended Indictment, para. 20.

¹⁰³ Motion, paras. 85-86. The Chamber notes that paragraphs 21 and 22 of the Second Amended Indictment contain similar allegations, which the Defence has not challenged.

¹⁰⁴ Amended Indictment, para. 12.

¹⁰⁵ Prosecutor's Pre-Trial Brief, para. 164.

¹⁰⁶ Second Amended Indictment, para. 23.

¹⁰⁷ Motion, para. 88.

68. The Chamber recalls that the Pre-Trial Chamber held in its 12 July 2010 Compliance Decision that, with the exception of the identification of the soldiers involved, a corresponding paragraph in the Prosecution's 18 June 2010 version of the Indictment was sufficient to enable Nizeyimana to conduct his investigations.¹⁰⁸ The Pre-Trial Chamber ordered the Prosecution to name the camp where the FAR soldiers were based or to use the phrase "unknown FAR soldiers".¹⁰⁹ The Chamber notes that the Prosecution has complied with this order in the Second Amended Indictment¹¹⁰ and that this is precisely the language that the Defence wishes to have removed from the Indictment.

69. Having considered the language of the paragraph and the Parties' submissions, the Chamber finds that the introduction to paragraph 23 is not superfluous because it alleges the particular acts or particular course of conduct of the Accused as well as the recipients of the alleged order or authorisation. In contrast, the subsequent sentences give the alleged results of this order or authorisation.

(xiv) *Paragraphs 25 and 26*

70. Paragraph 25 of the Second Amended Indictment alleges that Nizeyimana ordered ESO soldiers to kill Professor Pierre Claver Karenzi, a Tutsi civilian.¹¹¹ Paragraph 26, moreover, alleges that unknown FAR soldiers, acting on the orders or authorisation of the Accused, killed Professor Karenzi's wife.¹¹² The Defence submits that these two paragraphs are impermissibly vague because they do not state who received the orders, who carried out the killings or how the orders were transmitted.¹¹³

71. The Chamber recalls that the Pre-Trial Chamber held in its 12 July 2010 Compliance Decision that, with the exception of the identification of the soldiers involved, the corresponding paragraphs in the 18 June 2010 version of the Indictment were sufficiently pled.¹¹⁴ In accordance with the order of the Pre-Trial Chamber, the Prosecution has provided additional information regarding the identities of these soldiers in paragraphs 25 and 26 of the Second Amended Indictment.¹¹⁵

¹⁰⁸ Compliance Decision, paras. 4, 7.

¹⁰⁹ Compliance Decision, para. 7.

¹¹⁰ Second Amended Indictment, para. 23.

¹¹¹ Second Amended Indictment, para. 25.

¹¹² Second Amended Indictment, para. 26.

¹¹³ Motion, para. 91.

¹¹⁴ Compliance Decision, paras. 4, 7.

¹¹⁵ Second Amended Indictment, paras. 25, 26.

72. Having considered the contents of these paragraphs and the decisions of the Pre-Trial Chamber, the Chamber finds that paragraphs 25 and 26 of the Second Amended Indictment provide sufficient information regarding the orders or authorisation of the Accused, the recipients of the alleged orders or authorisation and the alleged perpetrators of the crimes to enable the Accused to prepare his defence.

(xv) Paragraph 30 to 35

73. Paragraphs 30 through 35 allege that between 6 April and 17 July 1994, soldiers from the ESO, Ngoma and Butare *Gendarmerie* Camps and others, acting on the orders, instigation or authorisation of the Accused, committed acts of sexual violence at various locations in Butare *préfecture*.¹¹⁶ The Defence submits that the orders, instigation or authorisation of the Accused are insufficiently pled, that the introductory sentence in paragraph 31 is superfluous and that the date range in paragraph 31(v) is overly broad.¹¹⁷

74. First, the Chamber recalls that the Pre-Trial Chamber held in its 12 July 2010 Compliance Decision that the corresponding paragraphs in the 18 June 2010 version of the Indictment were sufficiently specific to allow the Accused to prepare his defence.¹¹⁸

75. Second, the Chamber notes that, together, paragraphs 8 and 30 of the Second Amended Indictment give the dates, recipients and nature of orders allegedly given by the Accused on 6 and 7 April 1994.¹¹⁹ It is not necessary for the Accused to have ordered sexual violence against particular victims. The question of whether a particular act of sexual violence can be traced to an order of the Accused is a question of fact to be addressed at trial.

76. Further, the Chamber is not convinced that the introduction in paragraph 31 should be stricken from the Indictment. While the Chamber acknowledges that this sentence is somewhat redundant with the following sub-sections, it nevertheless helps to frame the following allegations and clarify that the crimes in question were allegedly carried out in furtherance of Nizeyimana's orders.

77. The Chamber notes, however, that the introduction to paragraph 31 makes reference to rapes of Tutsi women at the residence of Lieutenant Ildéphonse Hategekimana without elaborating on this allegation in the following sub-sections. Thus, in contrast to the other allegations in paragraph 31, the Prosecution has not identified, even in general terms, the

¹¹⁶ Second Amended Indictment, paras. 30-35.

¹¹⁷ Motion, paras. 95-100.

¹¹⁸ Compliance Decision, para. 4.

¹¹⁹ Second Amended Indictment, paras. 8, 30.

victims of the alleged rapes perpetrated at Hategekimana's residence, the number of incidents, the dates of these alleged rapes or the alleged perpetrators thereof. Nor has this information been provided in the Prosecution's Pre-Trial Brief. Accordingly, the Chamber finds that the Indictment is defective and orders the Prosecution to strike "the residence or Lieutenant Ildephonse Hategekimana" from paragraph 31 of the Second Amended Indictment or to immediately provide the following information, where known: the identities (or at least the number) of victims allegedly raped at Hategekimana's residence; the identities of the alleged perpetrators; and the dates of the alleged crimes.

78. Finally, with respect to paragraph 31(v), the Chamber recalls that "a broad date range, in and of itself, does not invalidate a paragraph of an indictment" and at times "the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of victims and the dates of the commission of the crimes."¹²⁰ In this case, however, the broad date range is not the only ambiguity in the paragraph. Instead, the Chamber notes that paragraph 31(v) does not identify the alleged victims, even by number or ethnicity, nor does it comply with the Pre-Trial Chamber's orders regarding the proper pleading of FAR soldiers. For these reasons and in view of the upcoming start of the trial, the Chamber orders the Prosecution to strike paragraph 31(v) from the Second Amended Indictment.

(xvi) *Other*

79. The Chamber notes that Counts V and VI of the Second Amended Indictment charge the Accused with murder and rape as violations of common Article 3 and Additional Protocol II to the Geneva Conventions.¹²¹ The *chapeaus* to each of these counts allege that Nizeyimana "was responsible for [killings or rape] of non-combatant Tutsi ... during the period of 7 April 1994 through 3 July 1994 when in Butare *préfecture*, there was a non-international armed conflict".¹²² Paragraphs 51 and 55 subsequently allege that Nizeyimana participated with others in a joint criminal enterprise whose object, purpose and foreseeable outcome was the commission of war crimes against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*.¹²³ These paragraphs

¹²⁰ *Muvunyi*, Judgement (AC), para. 58.

¹²¹ *Second Amended Indictment*, pp. 20-23.

¹²² *Second Amended Indictment*, pp. 20, 22.

¹²³ *Second Amended Indictment*, paras. 51, 55.

state the timeframe for the joint criminal enterprise and crimes alleged as “at least the period of 6 April 1994 through 17 July 1994 inclusive”.¹²⁴

80. The Chamber finds that the timeframes provided by the Prosecution are incompatible. Article 3 common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 only *apply during non-international armed conflicts*. Thus, an accused can only be convicted of violations of Article 3 Common and Additional Protocol II for crimes committed during the existence of a non-international armed conflict. According to the language of the Second Amended Indictment, a non-international armed conflict only existed in Butare *préfecture* from 7 April 1994 through 3 July 1994. However, according to paragraphs 51 and 55, the Accused is responsible for actions taken directly or through subordinates between 6 April and 17 July 1994.¹²⁵ A joint criminal enterprise to commit war crimes cannot extend beyond the existence of the relevant armed conflict. Accordingly, the Chamber orders the Prosecution to revise the dates pled in Counts V and VI to conform to the relevant legal principles for violations of Article 3 common and Additional Protocol II under Article 4 of the Statute.

FOR THESE REASONS, THE CHAMBER

GRANTS the Defence motion in part;

ORDERS the Prosecution:

- I. to clarify whether the killings described in the last sentence of paragraph 10 of the Second Amended Indictment are those elaborated elsewhere in the Indictment and, if not, to provide additional details regarding the dates, locations, victims and perpetrators of the killings in question, where that information is known;
- II. to identify the camp(s) where the soldiers mentioned in paragraph 14(ii) were based or to use the phrase “unknown FAR soldiers”;
- III. to strike or provide further clarification regarding the expression “militia” in paragraph 14(ii);
- IV. to identify the alleged perpetrators of the killings described in paragraph 14(iv) or to strike sub-section 14(iv) from the Second Amended Indictment;

¹²⁴ Second Amended Indictment, paras. 51, 55.

¹²⁵ Second Amended Indictment, paras. 51, 55.

