

ICTR-00-55C-PT
17-12-2010
(4800-4684)

4800
AM

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda



Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: +255 (27) 250-4207-11 250-4367-72 or +1(212) 963-2850
Fax: +255 (27) 250-4000/4373 or +1 (212) 963-2848/49

OFFICE OF THE PROSECUTOR – BUREAU DU PROCUREUR

<i>Date:</i>	17 December 2010	<i>Ref:</i>	ICTR-2000-55C-PT
<i>To:</i>	Mr. John PHILPOT (Defence Counsel)	<i>From:</i>	Drew WHITE (Prosecution Counsel)
<i>Through:</i>	Nouhou Diallo (LO, Coordinator TC I)		
<i>Cc:</i>			
<i>Subject:</i>	REFILED Second Amended Indictment: English & French		

1. Further to the Trial Chamber's Decision dated 15 December 2010 and filed 16 December, ordering corrections to the Second Amended Indictment that was filed on 29 September 2010, please find herewith the English original of the Second Amended Indictment with the ordered corrections, now having been re-signed and dated for today's date, plus a copy of the French translation.
2. Please note that the paragraph numbering remains unchanged.
3. Thank you and best regards.

DW

4793

International Criminal Tribunal for Rwanda



Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania

Tel: 255 27 2504207-11/4367-72 or 1 212 963 2850 — Fax: 255 27 2504000/4373 or 1 212 963 2848

TRIAL CHAMBER III

Before: Judge Lee Muthoga, Presiding Judge
Judge Seon Ki Park
Judge Robert Fremr

Registrar: Adama Dieng

Filed on: 17 December 2010

THE PROSECUTOR

v.

ILDEPHONSE NIZEYIMANA
(CASE No. ICTR-2000-55-PT)

SECOND AMENDED INDICTMENT

(Filed pursuant to Trial Chamber Order dated 15 December 2010)

I. The Prosecutor of the United Nations International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute") charges:

Ildephonse NIZEYIMANA

With:

Count I	- GENOCIDE, pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute;
Count II	- EXTERMINATION as a CRIME AGAINST HUMANITY, pursuant to Articles 3(b), 6(1) and 6(3) of the Statute;
Count III	- MURDER as a CRIME AGAINST HUMANITY, pursuant to Articles 3(a), 6(1) and 6(3) of the Statute;
Count IV	- RAPE as a CRIME AGAINST HUMANITY, pursuant to Articles 3(g), 6(1) and 6(3) of the Statute;
Count V	- MURDER as a violation of Article 3 common to the Geneva Conventions of 12 August 1949 ("Article 3 Common") and Additional Protocol II of 8 June 1977 relating to the Protection of Victims of Non-International Armed Conflicts ("Protocol II"), a crime stipulated in Article 4(a) of the Statute; and
Count VI	- RAPE as a violation of Article 3 Common and Protocol II, a crime stipulated in Article 4(e) of the Statute.

II. THE ACCUSED

1. **Ildephonse NIZEYIMANA** was born on 5th October 1963 in Mutura Commune, Gisenyi *préfecture*, Republic of Rwanda.

2. **Ildephonse NIZEYIMANA:**

(A) was, at all times referred to in this indictment, a Captain in the *Forces Armées Rwandaises* ("FAR");

(B) held the position of S2/S3, in charge of intelligence and military operations at the *École des Sous Officiers* ("ESO") in Butare *préfecture* during April 1994 and part of May 1994;

(C) was, at all times referred to in this indictment, a member of a group of persons from Gisenyi *préfecture*, including Theoneste Bagosora, Anatole Nsengiyumva, Aloys Ntabakuze, Augustin Ngirabatware, Vincent Ntezimana, Alphonse Higaniro, Michel Bagaragaza, Leon Mugesera, Omar Serushago, Hassan Ngeze, Mathias Nyagasaza, Wellars Banzi, and others, whose self-interest was in promoting and advancing their regional, familial and clan power and influence as 'Abakiga', who formed an influential corps aligned with the interests of northerners focussed around former President Habyarimana, and

4727

viewed by the soldiers at ESO, as well as the *Interahamwe* and other militia in Butare *préfecture* as being a leader of those who held extremist anti-Tutsi views. As such, he exercised power, authority and influence amongst all soldiers, *Interahamwe*, other militia and armed civilians in the region beyond his *de jure* military rank;

(D) consequently had, at all times referred to in this indictment, not only *de jure* and *de facto* control over all armed forces who were under his immediate command, namely the FAR officers, rank and file at ESO, but also *de facto* control, authority or influence over all armed forces in the region, including the *Interahamwe*, militia and armed civilians in the region, each of whom were under his command, control, authority or influence in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.

III. CHARGES AND CONCISE STATEMENT OF FACTS

- 3. At all times referred to in this indictment there existed in Rwanda a minority ethnic group known as the Tutsi, officially identified as such by the government of Rwanda. The majority of the population of Rwanda was comprised of an ethnic group known as the Hutus, also officially identified as such by the government of Rwanda.
- 4. Between 6 April 1994 and 17 July 1994 inclusive, throughout Rwanda, and in Butare *préfecture* in particular, *Interahamwe*, soldiers of the FAR and armed civilians, targeted and attacked the civilian population based on ethnic identification as Tutsi, or perceived sympathies to the Tutsi. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of these attacks, large numbers of ethnically identified Tutsi were killed.

Count I: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, particularly in Butare *préfecture*, **Ildephonse NIZEYIMANA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi ethnic group, including acts of sexual violence, with intent to destroy, in whole or in part, an ethnic group, as such, as outlined in paragraphs 5 through 35 herein.

CONCISE STATEMENT OF FACTS FOR COUNT I

Individual Criminal Responsibility

- 5. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for genocide because he planned, instigated, ordered,

committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed genocide by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of genocide against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatura of the Butare *Gendarmerie*, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Ezechiel Gakwerere, Alphonse Ndayambaje, and Tharcisse Ngendahimana, Chief Warrant Officers Francois Ntibiramira, Damien Ntamuhanga, and Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraphs 6 through 35 herein.

Roadblocks

6. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** ordered and instigated soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, militias affiliated with the MRND, MDR, PL, CDR and PSD parties, local citizens and demobilized soldiers who were all members of the joint criminal enterprise referred to in paragraph 5 herein, and in particular Sous-Lieutenants Bizimana and Gatsinzi, who acted in concert with Sergeant Ezechier Rwaza, to construct and man roadblocks throughout Butare *préfecture* including those at:
 - (i) Tumba;
 - (ii) Rwabuye;
 - (iii) Rwasave;
 - (iv) in the Arab quarter (aka 'Cyarabu');
 - (v) the junction leading to Groupe Scolaire;
 - (vi) outside Hotel Faucon in Butare town;
 - (vii) near the entrance to Butare University and

(viii) the main roads leading to Butare town from both Kigali and Gikongoro; used for the purpose of identifying and killing Tutsi civilians in furtherance of the joint criminal enterprise referred to in paragraph 5 herein.

Training and distribution of weapons

7. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** distributed weapons to *Interahamwe*, including Bourgmestres and civilians at ESO who were members of the joint criminal enterprise referred to in paragraph 5 herein, and authorised, ordered or instigated ESO soldiers to train civilians such as Burundian refugees and University students at various locations including in a valley below ESO, at Butare Hospital and in a forest near the Butare University. In particular, in accordance with instructions of the Accused, Sous-Lieutenant Jean-Pierre Bizimana trained youths at Butare Hospital and Sous-Lieutenant Ezechiel Gakwerere, commander of the first company in *Nouvelle Formule* at ESO, utilized a number of subordinate FAR soldiers and students from ESO to facilitate the training and cooperation with *Interahamwe*. These acts of training and distributing weapons were done in furtherance of the purposes of such joint criminal enterprise.

The Killing Campaign in Butare

8. On or about 7 April 1994, following the death of President Habyarimana, **Ildephonse NIZEYIMANA** convened a meeting of FAR officers and soldiers at the ESO where he personally spoke and ordered soldiers to kill Tutsi civilians and to rape Tutsi women. Many of the FAR officers and soldiers in attendance were members of the joint criminal enterprise referred to in paragraph 5 herein. It was this same initiating order that was subsequently followed by the Accused's subordinates during the period of 7 April 1994 through mid July 1994, with respect to the crimes committed in Butare *préfecture*. This initiating order was never rescinded and subsequent orders by the Accused were consistent with and flowed from the course set by this order.
9. From 7 April 1994 until mid July 1994, **Ildephonse NIZEYIMANA** regularly met with participants in the joint criminal enterprise referred to in paragraph 5 herein, including soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, as well as militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties, at various locations in Butare *préfecture* including the ESO, and roadblocks manned by ESO soldiers and others, and together identified and listed Tutsi civilians to be killed.
10. With respect to the preceding paragraph and in greater particularity, the Accused participated in meetings at various times and dates throughout Butare *préfecture*, including at:
 - (i) ESO on 7 April 1994 with FAR officers and ESO soldiers, including Sous-Lieutenants Bizimana, Gakwerere, Ndayambaje, Gatsinzi, and Chief Warrant Officer Ntibiramira, among others;
 - (ii) ESO on 8 April 1994, in an assembly with numerous FAR soldiers, including Lt Col Muvunyi, during which the Accused said to fight Tutsi;

4724

- (iii) ESO on 20 April 1994, in assembly with numerous FAR soldiers, both outside at approximately 9:00 am at which time the Accused gave orders regarding roadblocks, and inside in a meeting room with Lt Col Muvunyi and approximately one dozen other ESO officers;
- (iv) Dr. Theophile Gatsinzi's bar during the second half of April 1994, with FAR officers, soldiers from ESO and Ngoma Camp, local administrative officials, militiamen and *Interahamwe*, and
- (v) Gahenerezo in Ngoma commune on 21 or 22 April 1994 with FAR officers, soldiers from ESO and Ngoma Camp, local administrative officials, *Interahamwe* and civilians;

at which meetings the Accused ordered and instigated selected soldiers and militiamen to carry out attacks on Tutsi civilians throughout Butare *préfecture*. As a result, soldiers and militiamen acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed many Tutsi civilians throughout Butare *préfecture*, as elaborated elsewhere in this Indictment.

11. On or about 20 April 1994, subsequent to President Sindikubwabo's speech inciting the people in Butare to kill Tutsis, **Ildephonse NIZEYIMANA** and Tharcisse Muvunyi authorized or convened a meeting of unknown FAR soldiers at the ESO who were members of the joint criminal enterprise referred to in paragraph 5 herein and authorized or ordered them to kill Tutsis in Butare, in reference to the speech of President Sindikubwabo.
12. Between 6 April and 17 July 1994, soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and other participants of the joint criminal enterprise referred to in paragraph 5 herein acting on the authority or orders or at the instigation of **Ildephonse NIZEYIMANA** forcibly removed civilian citizens of Rwanda identified as Tutsi from locations within Butare, including but not limited to the Prefectural offices, Cyahinda parish, Butare University, Butare Hospital, Groupe Scolaire, Buye cellule and the homes of civilian citizens and killed them.

Cyahinda Parish

13. From on or about 15 April 1994 until 20 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties, Burundian refugees and armed civilians from Nyakizu and surrounding communes who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Tutsi civilians who had taken refuge at Cyahinda Parish. In greater particular:
 - (i) on or about 17 April 1994, Ildephonse NIZEYIMANA and the prefet Jean-Baptiste Habyalimana went to Cyahinda Parish and met with the Tutsi refugees, after which it was decided that soldiers would be sent to the Parish;
 - (ii) on or about 18 April 1994, following the instructions of the Accused, a number of subordinate FAR soldiers from ESO platoons and others, led by Warrant Officer Paul Kanyeshyamba and a number of Gendarmes, led by Second Lieutenant Majoro, exercised their command to target the civilian victims;

as a result, soldiers, militiamen and armed civilians all acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed thousands of Tutsi civilians who had sought refuge at Cyahinda Parish.

Butare University

14. From on or about 16 April 1994, **Ildephonse NIZEYIMANA** ordered and instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill many Tutsi civilians at Butare University, with words to the effect that no Tutsi should remain. In greater particular:

- (i) under the authorization of the Accused, Chief Warrant Officer Damien Ntamuhanga engaged a number of subordinate FAR soldiers from his platoon, including Sergeant Major Innocent Sibomana and others, and exercised his command to target the civilian victims, using lists and identity cards to assist with that purpose;
- (ii) on or about 19 April 1994, attacks occurred at the University against students identified as Tutsi, during which gunshots were fired and female victims were targeted by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* militia who were members of the joint criminal enterprise referred to in paragraph 5 herein committing crimes of sexual violence;
- (iii) on or about 22 April 1994, **Ildephonse NIZEYIMANA** led unknown FAR soldiers and *Interahamwe* to the University and personally shot and killed four female civilians identified as Tutsi in a building at the University;
- (iv) during the period of late April and May 1994 civilians identified as Tutsi were taken to the University where many were killed at the site of a large pit near the University laboratory by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred to in paragraph 5 herein;

as a result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** forcibly removed and killed civilians identified as Tutsi at Butare University.

Butare Hospital

15. From on or about 20 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe*, who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill many civilians identified as Tutsi at Butare Hospital. In greater particular:

- (i) following the instructions of the Accused, Corporal Fulgence Niyibizi and a number of other ESO and FAR soldiers, including Theobard Hagenimana, Placide Mbarushimana, "Jean de Dieu", "Mutimura", "Edison", "Said", "Mandela" and "Bola Mungu" targeted civilians in the hospital identified as Tutsi or without an identity card in order to remove them from the sanctity of the hospital and kill them;
- (ii) Corporal Fulgence Niyibizi along with a soldier called Mandela, killed an elderly male civilian by beating him to death with sticks near a place called 'post hospital';

- (iii) On or about the late evening of 22 April 1994, approximately 40 bed-ridden patients identified as Tutsi were taken from the hospital by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* and armed civilians who were members of the joint criminal enterprise referred to in paragraph 5 herein, and killed behind the hospital wards;
 - (iv) On or about 23 April 1994, medical personnel and bed-ridden patients were selected by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, with the use of a list, apprehended and killed, including three *Medecins Sans Frontieres* (MSF) hospital nurses Nadine Iradukuze, Rose and Sabine, who was of Hutu ethnicity but married to a Tutsi and was 7 months pregnant;
 - (v) On or about 24 April 1994, in the same manner, two additional MSF hospital workers were killed, named Alexis Nkundwanimana and Jean Marie Vianney;
 - (vi) between 20 and 24 April 1994, the Accused performed as a military liaison between the FAR and Butare Hospital, and met repeatedly with medical personnel and other authorities with respect to activities at the Hospital. During this period the Accused operated as the FAR officer with responsibility over the hospital. In service to that responsibility the medical personnel reported to the Accused and informed him of violence and killings at the hospital perpetrated against civilian patients by the FAR. On or about 23 April 1994, the Accused informed medical personnel of his intention to conduct some form of investigation into the crimes. On or about 24 April the Accused reported to medical personnel and acknowledged crimes at the hospital by soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and said that he no longer guaranteed any security or protection for the patients or medical personnel;
- in the result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed Tutsi civilians at Butare Hospital.

Groupe Scolaire

16. On or about 21 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* including Jean Marie Vianney Ngabonziza who were members of the joint criminal enterprise referred to in paragraph 5 herein to identify and kill Tutsi civilians who had sought refuge at Groupe Scolaire. In particular, following the instructions of the Accused, Sous-Lieutenants Bizimana, Gatsinzi and Ndayambaje and Corporal Aloys Mazimpaka took with them to the Groupe Scolaire a number of subordinate FAR soldiers from their units and others, and exercised command in concert with armed civilians, separating and targeting civilians identified as Tutsi, most of whom were released after the soldiers extorted money in exchange for the victims lives. As a result, soldiers and *Interahamwe* acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** went to Groupe Scolaire, and forcibly removed approximately 14 (fourteen) civilians identified as Tutsi to kill them, but after further extorting money in exchange for the lives of the 14 victims, all were returned alive but one, a child known as Jean Luc.
17. On or about 29 April 1994, **Ildephonse NIZEYIMANA** authorized, ordered or instigated soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and *Interahamwe* who were members of the joint criminal enterprise referred

to in paragraph 5 herein to kill Tutsi civilians who had sought refuge at Groupe Scolaire. In particular, **Ildephonse NIZEYIMANA** and Lieutenant Ildephonse Hategekimana led Sous-Lieutenant Modeste Gatsinzi and a number of subordinate FAR soldiers from Ngoma Camp and ESO to Groupe Scolaire. The Accused supervised as these soldiers, following the instructions of the Accused, exercised command, using a written list to separate and target civilians identified as Tutsi, in concert with *Interahamwe* including Jean Marie Vianney Ngabonziza and ZBH, and armed "Civil Defense Forces" including Diogene Dusabe, Faustin Niyonzima, Emmanuel or Faustin Twagirayezu and Callixte Rubaya. As a result, soldiers, *Interahamwe* and armed civilians acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** who attended at Groupe Scolaire, forcibly extracted from the Groupe Scolaire premises approximately 100 or more civilians identified as Tutsi and killed them at the nearby Rwasave valley.

Buye Cellule

18. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Tutsi civilians living in Buye Cellule in Butare-Ville in Ngoma Commune in Butare *préfecture*. In particular, following the instructions of the Accused, Sous-Lieutenant Bizimana engaged a number of subordinate FAR soldiers from his platoon including 'Jerome', Charles Hakizimana, and 'Savimbi', all from Gisenyi *préfecture*, and others, including Chief Warrant Officer Francois Ntibiramira and exercised their command to target the civilian victims. As a result, soldiers acting on the orders of **Ildephonse NIZEYIMANA** killed many Tutsi civilians.

Murder

19. Between 16 April and 19 April 1994, members of the Ruhutinyanya family were forcibly apprehended by ESO soldiers including First Sergeant Nyirimanzi, who were members of the joint criminal enterprise referred to in paragraph 5 herein. The apprehension took place at a roadblock manned by *Interahamwe* on the way to Burundi, from where the **Ruhutinyanya** family was forced to return to the ESO and then killed on the orders or at the instigation of **Ildephonse NIZEYIMANA**. In particular, following the instructions of the Accused, Sous-Lieutenant Bizimana engaged a number of subordinate FAR soldiers from his platoon and others, including Chief Warrant Officers Paul Kanyeshyamba and Francois Ntibiramira and first Sergeant Nyirimanzi, and exercised their command to target the civilian victims.
20. On or about 20 April 1994, ESO soldiers including Sous-Lieutenant Alphonse Ndayambaje and militiamen affiliated with the MRND, MDR, PL, CDR and PSD parties who were members of the joint criminal enterprise referred to in paragraph 5 herein acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** killed civilian citizens of Rwanda identified as Tutsi, namely Jerome Ngarambe and members of his family, near his home.
21. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered FAR soldiers including Sous-Lieutenant Alphonse Ndayambaje and armed civilians including

Innocent Nkuyubwatsi who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Jean-Marie Vianey **Maniraho** and members of his family at their home. As a result soldiers and armed civilians acting on the orders of the Accused killed Jean-Marie Vianey **Maniraho** and members of his family.

22. On or about 20 April 1994, **Ildephonse NIZEYIMANA** led ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to the homes of Jean-Baptiste **Matabaro** and Zephania **Nyirinkwaya** where the Accused forcibly removed and killed Jean-Baptiste **Matabaro** and Zephania **Nyirinkwaya**. In particular, following the instructions of the accused, these soldiers forcibly removed and killed members of the **Matabaro**, **Nyirinkwaya**, **Hitimana**, **Ntakirutinka**, **Nyandwi** families and others in a field near Jean-Baptiste **Matabaro**'s home. As a result of **Ildephonse NIZEYIMANA**'s actions, Jean-Baptiste **Matabaro**, Zephania **Nyirinkwaya** and their families were killed.
23. On or about 21 April 1994, **Ildephonse NIZEYIMANA** ordered or authorized soldiers from the ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and armed civilians who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Rosalie **Gicanda**. In particular, following the instructions of the Accused, Sous-Lieutenant Jean Pierre Bizimana took a number of subordinate FAR soldiers with him including Corporal Aloys Mazimpaka and others, and armed civilians including Dr. Kageruka, to the home of the victim under the auspices of conducting a search. As a result, soldiers acting under the orders or authorization of **Ildephonse NIZEYIMANA** forcibly removed and killed Rosalie **Gicanda** and other persons who were residing at her home.
24. On or about 21 April 1994, **Ildephonse NIZEYIMANA**, who was physically present at the roadblock, personally ordered unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill two civilian citizens of Rwanda identified as Tutsi, namely Remy **Rwekaza** and ZAV, near a roadblock leading into Butare town from Kigali, a short distance past the Gikongoro road junction. As a result, soldiers acting on the direct orders of **Ildephonse NIZEYIMANA**, and under his personal supervision, shot and killed Remy **Rwekaza** and shot and wounded ZAV leaving him for dead.
25. On or about 21 April 1994, **Ildephonse NIZEYIMANA** ordered ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill a civilian citizen of Rwanda identified as Tutsi, namely Professor Pierre Claver **Karenzi**, at the roadblock outside Hotel Faucon in Butare town. As a result, soldiers acting on the orders or under the authority of **Ildephonse NIZEYIMANA** killed Professor Pierre Claver **Karenzi**.
26. On or about 21 April 1994, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** went to home of Professor Pierre Claver **Karenzi** and killed his wife, Ms. Alphonsine **Mukamusoni**.

27. On or about 30 April 1994, soldiers from the FAR, ESO and Ngoma Camp, including Lieutenant Hategekimana, Sous-Lieutenants Ndayambaje and Ngendahimana and armed civilians including ZBH, who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA**, went to the *Maison Generalice* of the Benebikira Sisters and forcibly removed and killed approximately 25 children identified as Tutsi, including members of the **Karenzi family**. The victims were taken to a site below the Ineza Motel, where they arrived at the same time as a lorry in which the Accused was a passenger. The lorry was loaded with other civilian victims from a roadblock near the front of Ngoma camp. All of the victims from the convent and the roadblock were killed at the same time, in the presence of the Accused.
28. In late April or early May 1994, **Ildephonse NIZEYIMANA** and Vincent Ntezimana both ordered Innocent Nkuyubwatsi to kill a **female youth** identified as Tutsi at the home of Vincent Ntezimana. Vincent Ntezimana provided Innocent Nkuyubwatsi with the knife that was used to kill the victim. As a result, Innocent Nkuyubwatsi acting on the orders of **Ildephonse NIZEYIMANA** and Vincent Ntezimana killed the female youth identified as Tutsi.
29. On or about 5 May 1994, **Ildephonse NIZEYIMANA** who was physically present at the roadblock, personally ordered unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill a civilian citizen of Rwanda identified as Tutsi, namely **Beata Uwambaye**, near a roadblock leading into Butare town from Kigali at the Gikongoro road junction. As a result, soldiers acting on the direct orders of **Ildephonse NIZEYIMANA** killed Beata Uwambaye.

Sexual Violence

30. Beginning the night of 6 April 1994, the Accused issued orders to FAR soldiers stationed in Butare prefecture at both Ngoma camp and ESO, to kill Tutsis generally but specifically to rape Tutsi women and then kill them. That same order was repeated the following day near mid-day, on the premises of ESO, directed to an audience of FAR gendarmes, soldiers and officers from Ngoma camp and ESO, including Lieutenant Hategekimana of Ngoma camp, Major Cyriaque Habyarabatura of the Butare *Gendarmerie*, Sous-Lieutenants Gatsinzi and Bizimana of ESO and many other officers from the region, including Gikongoro and Nyanza.
31. Between 6 April 1994 and 17 July 1994, soldiers from the FAR, ESO, Ngoma Camp and Butare *Gendarmerie* Camp, and other participants of the joint criminal enterprise referred to in paragraph 5 herein acting on the orders or at the instigation of **Ildephonse NIZEYIMANA** raped Tutsi women at Butare Hospital, Butare University and at various other locations in Butare prefecture, including the residence of Rosalie Gicanda, ~~and at the residence of Lieutenant Ildephonse Hategekimana~~. In greater particular:
- (i) in April 1994 at the residence of Rosalie Gicanda more than one dozen FAR soldiers were present during the rape of a female civilian identified as Tutsi of

approximately age 18-20. The soldiers were all from Ngoma camp or ESO and included Sergeant Nginshuti;

- (ii) Commencing on or about 10 April 1994, FAR soldiers recognized as being stationed locally in barracks at ESO and Ngoma were observed to be occupying the Butare Hospital premises;
- (iii) During the period of late April and mid-May 1994, MKA and other women were raped by FAR soldiers at the Hospital on several occasions. On the first occasion five FAR soldiers entered a maternity ward at the Hospital and raped several patients, including MKA. On a second occasion approximately 3 days later MKA was again raped by a FAR soldier. On a third occasion, in early to mid-May after MKA had given birth she was raped by an unknown male in the presence of four other women who were also being raped by unknown men in the same maternity ward.
- (iv) Towards the end of May 1994 ZBL was repeatedly raped by two FAR soldiers at the Hospital, in a room where she was kept for three days. ZBL was raped by an *Interahamwe* behind the hospital in the presence of another woman who was also raped by an *Interahamwe* and later killed.
- (v) ~~Between 6 April 1994 and 17 July 1994 other women were raped at the hospital and surrounding grounds by FAR soldiers and the victims either informed or were raped in the presence of MKA, ZBL, DCO or other women.~~

all of which was within the *de facto* and *de jure* operational region, command and influence of the Accused.

32. Between 6 April 1994 and 9 April 1994, approximately 14 FAR soldiers from both the ESO and Ngoma Camps acting under the authority or on the orders of **Ildephonse NIZEYIMANA** raped BUQ and two other women multiple times over the course of three days in a house near the ESO camp:

- (i) Late on the night of 6 April 1994, approximately 6 soldiers came from the homes of the Accused and Lieutenant Ildephonse Hategikimana, forcibly entered the home where BUQ, ALAB and CEL were present, and told the victims "We have received orders from our superiors to rape all Tutsi women and girls and kill them." One of the perpetrators was named Rubaga and known to be a driver who was stationed at the ESO;
- (ii) The following day, four more soldiers forcibly entered the home and committed multiple rapes, ordering the victims not to move from the premises;
- (iii) The next day, three more soldiers came to the house and spent many hours committing multiple rapes;
- (iv) On the morning of the fourth day, a soldier who identified himself as Innocent Ndererimana, stationed at Ngoma camp as an escort to Lieutenant Hategikimana, took BUQ into his custody and held her in a nearby but different home for approximately two weeks, during which time he repeatedly committed multiple rapes;

all of which was within the *de facto* and *de jure* operational region, command and influence of the Accused.

33. During April 1994, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** raped BJW. On or about 18 April 1994, BJW was raped in her parent's home in Butare by a FAR soldier who said his name was Alexis Karemera, and who was in command of at least two other FAR soldiers in the operational zone of Rusatira commune, within the *de facto* and *de jure* operational region, command and influence of the Accused.
34. On or about 23 April 1994, at approximately 11 pm, unknown FAR soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders or at the instigation of **Ildephonse NIZEYIMANA** raped two young girls in Butare prefecture, near Butare town, in Ngoma commune, near the Muslim quarter, in the house of a woman whose husband had just been killed. The precise identities of the rape victims and the precise identities of the rape perpetrators are unknown, except that the victims' Rwandan mother had just been killed and their European father lived abroad, and that the perpetrators were FAR soldiers of low rank, in the operational zone of Ngoma commune, and were known by and under the instructions of FAR soldier Ismael Rubayiza, and were thus within the *de facto* and *de jure* operational region, command and influence of the Accused.
35. Between May and July 1994, soldiers from the FAR, ESO and Ngoma Camp who were members of the joint criminal enterprise referred to in paragraph 5 herein acting under the authority or on the orders of **Ildephonse NIZEYIMANA** regularly raped DCO and other women on several occasions in various locations on the Butare Hospital premises:
- (i) From the beginning of May, the FAR soldiers came more frequently to the Hospital, demanding to see identity cards, selecting only Tutsi and killing them just outside the ward, generally after raping the less educated women;
 - (ii) Approximately mid-May, three FAR soldiers entered a Hospital ward where care was being given to a sick child, forcibly removed DCO and then one of the soldiers took DCO outside to a nearby mass grave, raping her on the ground;
 - (iii) Sometime during the month of June, four FAR soldiers came into the Hospital ward and forcibly removed four women, including DCO, took the victims outside behind the maternity unit and raped them on the ground in the open;
 - (iv) In early July, in the belief that RPF troops were nearby, DCO and others were asked to leave the Hospital, and when DCO went just outside the premises she was apprehended by four FAR soldiers, one of whom immediately began to rape her;
- these repetitive crimes occurred within the *de facto* and *de jure* operational region, command and influence of the Accused.

Criminal Responsibility of a Superior for a Subordinate

36. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for genocide because specific criminal acts were committed by

subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Tharcisse Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraphs 6 through 35 herein.

Count II

EXTERMINATION as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **EXTERMINATION as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute, in that between 6 April and 17 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with intent to exterminate members of the *Tutsi ethnic group or persons identified as Tutsi or persons presumed to support the Tutsi* such as moderate Hutu, was responsible for the killing of such persons as part of a widespread or systematic attack against that civilian population on ethnic and political grounds, as set forth in paragraphs 37 through 42 herein.

CONCISE STATEMENT OF FACTS FOR COUNT II

Individual Criminal Responsibility

37. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for extermination as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the *Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi,

Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Tharcisse Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *prefecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraphs 38 through 40 herein.

38. Paragraphs 6 through 35 above are incorporated by reference herein.
39. On or about 20 April 1994, **Ildephonse NIZEYIMANA** ordered FAR soldiers including Sous-Lieutenant Alphonse Ndayambaje and armed civilians including Innocent Nkuyubwatsi who were members of the joint criminal enterprise referred to in paragraph 5 herein to kill Jean-Marie Vianey Maniraho and members of his family at their home. As a result soldiers and armed civilians acting on the orders of **Ildephonse NIZEYIMANA** killed Jean-Marie Vianey Maniraho and members of his family.
40. On or about 20 April 1994, **Ildephonse NIZEYIMANA** led ESO soldiers who were members of the joint criminal enterprise referred to in paragraph 5 herein to the homes of Jean-Baptiste Matabaro and Zephania Nyirinkwaya where the Accused forcibly removed and killed Jean-Baptiste Matabaro and Zephania Nyirinkwaya. In particular, following the instructions of the accused, these soldiers forcibly removed and killed members of the Matabaro, Nyirinkwaya, Hitimana, Ntakirutinka, Nyandwi families and others in a field near Jean-Baptiste Matabaro's home. As a result of **Ildephonse NIZEYIMANA's** actions, Jean-Baptiste Matabaro, Zephania Nyirinkwaya and their families were killed.

Criminal Responsibility of a Superior for a Subordinate

41. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for extermination as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the

necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 42 herein.

42. Paragraphs 6 through 35 and 39 through 40 above are incorporated by reference herein.

Count III: MURDER as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **MURDER as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute, in that between 6 April and 17 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with intent to kill members of the Tutsi ethnic group or persons identified as Tutsi or persons presumed to support the Tutsi such as moderate Hutu, was responsible for the killing of such persons as part of a widespread or systematic attack against that civilian population on ethnic and political grounds, as set forth in paragraphs 43 through 46 herein.

CONCISE STATEMENT OF FACTS FOR COUNT III

Individual Criminal Responsibility

43. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for murder as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana,

Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *prefecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 44 herein.

44. Paragraphs 6 through 29 and 39 through 40 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

45. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for murder as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars

that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 46 herein.

46. Paragraphs 6 through 29 and 39 through 40 above are incorporated by reference herein.

Count IV: RAPE as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **RAPE as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of the Statute, in that between 6 April 1994 and 3 July 1994 in Butare *préfecture*, **Ildephonse NIZEYIMANA**, with the intention that rape of members of the Tutsi ethnic group or persons identified as Tutsi occur, was responsible for the rape of Tutsi as part of a widespread or systemic attack against that civilian population on ethnic grounds, as set forth in paragraphs 47 through 50 herein.

CONCISE STATEMENT OF FACTS FOR COUNT IV

Individual Criminal Responsibility

47. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for rape as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed rape as a crime against humanity by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatura of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions

being taken either directly or through subordinates, for at least the period of 6 April 1994 through 17 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 48 herein.

48. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

49. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for rape as a crime against humanity because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA's** orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 50 herein.

50. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

COUNT V: MURDER AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **MURDER as a violation of Article 3 Common and Protocol II**, a crime stipulated in Article 4(a) of the Statute, in that **Ildephonse NIZEYIMANA** was responsible for the killings of non-combatant Tutsi during the period 7 April 1994 through 3 July 1994 when in Butare *préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the killing of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict, all as is set forth in paragraphs 51 to 54 herein.

CONCISE STATEMENT OF FACTS FOR COUNT V

Individual Criminal Responsibility

51. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for murder as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused wilfully and knowingly participated 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*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatuma of the Butare *Gendarmerie*, Sous-Lieutenant Jean Pierre Bizimana, Sous-Lieutenant Modeste Gatsinzi, Sous-Lieutenant Ezechiel Gakwerere, Sous-Lieutenant Alphonse Ndayambaje, Sous-Lieutenant Ngendahimana, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 7 April 1994 through 3 July 1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other

members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 52 herein.

52. Paragraphs 19 through 29 and 39 through 40 above are incorporated by reference herein.

Criminal Responsibility of a Superior for a Subordinate

53. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for murder as a violation of Article 3 Common and Protocol II because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 54 herein.

54. Paragraphs 19 through 29 and 39 through 40 above are incorporated by reference herein.

COUNT VI: RAPE AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Ildephonse NIZEYIMANA** with **RAPE as a violation of Article 3 Common and Protocol II**, a crime stipulated in Article 4(e) of the Statute, in that **Ildephonse NIZEYIMANA** was responsible for the rape of non-combatant Tutsi women during the period 6 April 1994 through 3 July 1994 when in Butare *préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the rape of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict, all as is set forth in paragraphs 55 through 58 herein.

CONCISE STATEMENT OF FACTS FOR COUNT VI

Individual Criminal Responsibility

55. Pursuant to Article 6(1) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is individually responsible for rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Ildephonse NIZEYIMANA** ordered those over whom he had authority as a result of his military rank, position and social influence described in paragraph 2 herein. In addition, the Accused committed rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 by wilfully and knowingly participating in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of crimes against humanity against the Tutsi ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Butare *préfecture*. To fulfil this criminal purpose, the Accused acted with leaders and members of the FAR, including Colonel Tharcisse Muvunyi, Lieutenant Ildephonse Hategekimana, Lieutenant Cyriaque Habyarabatura of the Butare *Gendarmerie*, Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Ezechiel Gakwerere, Alphonse Ndayambaje, and Tharcisse Ngendahimana, Chief Warrant Officers Francois Ntibiramira, Damien Ntamuhanga, and Paul Kanyeshyamba, Sergeant Ezechiel Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; the "Civil Defense Forces"; militias acting as a group in loose organisation, namely militias affiliated with the MRND, MDR, PL, CDR and PSD parties and armed civilians acting as individuals in a common purpose; communal police and local administrative officials from communes in Butare *préfecture*, including Ngoma, Huye, Gishamvu, Nyaruhengeri, Ndora, Shyanda, Mbazi, Nyakizu, Kigembe, Ntyazo, Ruhashya, Mugusa and Kibayi, among others; other known participants, such as Vincent Ntezimana, Innocent Nkuyubwatsi; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 7 April 1994 through 3 July

1994 inclusive. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(1) of the Statute are set forth in paragraph 56 herein.

56. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

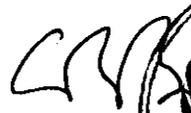
Criminal Responsibility of a Superior for a Subordinate

57. Pursuant to Article 6(3) of the Statute, the Accused, **Ildephonse NIZEYIMANA**, is responsible for rape as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because specific criminal acts were committed by subordinates of the Accused over whom he had *de jure* and *de facto* authority. The Accused knew or had reason to know that such subordinates were about to commit such acts before they were committed and failed to take the necessary and reasonable measures to prevent such acts or knew or had reason to know that such subordinates had committed such acts and failed to punish the perpetrators thereof. These subordinates were FAR soldiers over whom the Accused exercised effective control, including Sous-Lieutenants Jean Pierre Bizimana, Modeste Gatsinzi, Alphonse Ndayambaje, Ngendahimana and Ezechiel Gakwerere, Chief Warrant Officer Francois Ntibiramira, Chief Warrant Officer Damien Ntamuhanga, Chief Warrant Officer Paul Kanyeshyamba, Sergeant Ezechier Rwaza, Sergeant Major Innocent Sibomana, Corporal Fulgence Niyibizi, and a number of other officers, soldiers and recruits from ESO; the *Interahamwe*, including Jean Marie Vianney Ngabonziza; and other militias and armed civilians who were members of the joint criminal enterprise. Each of the above-named members of the joint criminal enterprise acted in concert with various other members, often acting on **Ildephonse NIZEYIMANA**'s orders, authorization or instigation. The particulars that give rise to the Accused's individual criminal responsibility pursuant to Article 6(3) of the Statute are set forth in paragraph 58 herein.

58. Paragraphs 8 and 30 through 35 above are incorporated by reference herein.

The acts and omissions of **Ildephonse NIZEYIMANA** detailed in this indictment are punishable pursuant to Articles 22 and 23 of the Statute.

Signed at ARUSHA, Tanzania, this 17th day of December, 2010


HASSAN B. JUMA
PROSECUTOR
