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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda



MICT-12-09
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13 June 2012

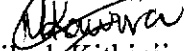
Dear Sir,

The Prosecutor v Phénéas MUNYARUGARAMA (Case No. ICTR 02-79-I)

Further to the *Decision on the Prosecutor's Ex-Parte and Confidential Request for leave to file an Amended Indictment* for Phénéas MUNYARUGARAMA of today's date, please find attached a hard copy of the Prosecutor's Amended Indictment.

Thank you for your assistance.

Yours Sincerely,


Milcah Kithinji
Associate Legal Officer,
Ext 5312

JUDICIAL RECORDS/ARCHIVES
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2012 JUN 13 P 11: 03



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED
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THE PROSECUTOR

V

PHÉNÉAS MUNYARUGARAMA

Case No. ICTR-2002-79-I

JUDICIAL RECORDS / ARCHIVES
UNICTR

2012 JUN 13 P 4: 13

AMENDED INDICTMENT

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:

PHÉNÉAS MUNYARUGARAMA

Pursuant to Article 2 of the Statute, with:

COUNT 1 – GENOCIDE

COUNT 2 – COMPLICITY IN GENOCIDE

COUNT 3 – DIRECT AND PUBLIC INCITMENT TO COMMIT GENOCIDE

Pursuant to Article 3 of the Statute, with:

COUNT 4 – EXTERMINATION as a CRIME AGAINST HUMANITY

COUNT 5 – MURDER as a CRIME AGAINST HUMANITY

COUNT 6 – PERSECUTION as a CRIME AGAINST HUMANITY

COUNT 7 – RAPE as a CRIME AGAINST HUMANITY

I. CHARGES

1. On the basis of the allegations set out in this indictment Phénéas MUNYARUGARAMA is charged with:

Count 1: Genocide pursuant to Article 2(3)(a) and 2(3)(b), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 20, 22-32, 36-45, 47, 49-59 and 61-64.

Count 2: Complicity in genocide pursuant to Articles 2(3)(e), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 20, 22-32, 36-45, 47 and 60-64.

Count 3, Direct and public incitement to commit genocide pursuant to Articles 2(3)(c), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 21, 23, 35, 36, 47-52, 54, 56-59 and 61-64.

Count 4: Extermination as a crime against humanity pursuant to Articles 3(b), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 20, 22-32, 36-45, 47, 49-59 and 61-64.

Count 5: Murder as a crime against humanity pursuant to Articles 3(a), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 20, 22-32, 36-45, 47, 49-59 and 61-64.

Count 6: Persecution as a crime against humanity pursuant to Articles 3(h), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 20, 22-33, 36-45, 47, 49-59 and 61-64.

Count 7: Rape as a crime against humanity pursuant to Articles 3(g), 6(1) and 6(3) of the Statute; charged on the basis of paragraph 41, 47, 49-51, 55-59 and 61-64.

2. Paragraphs 3 to 19 apply to all the charges in this indictment.

II. DEFINITIONS

3. In this indictment, the term "committed" refers to personal commission by a physical or principal perpetrator, the first and third categories of joint criminal enterprise ("JCE I" and "JCE III") or commission based on the fact that a person played an integral part in the commission of the crime.
4. The term "contribution," when used without qualification, refers to a mere, a significant or a substantial contribution.
5. The terms "aware" or "awareness," when used without qualification, include awareness of a certainty, awareness of a substantial likelihood, likelihood or probability, and awareness of a probability.
6. The terms "harming" or "harm," when used without qualification, refer to the infliction of serious bodily or mental harm and other bodily and/or mental harm.
7. "Limited JCE" means a JCE in which JCE members are alleged to have used persons who did not belong to the JCE, as pleaded in paragraph 54.
8. Unless otherwise stated, the terms:

- i. "soldiers from Gako camp" refers to soldiers from Gako military camp and other soldiers deployed to the Bugesera region;
- ii. "gendarmes" refers to members of the national *gendarmerie* force in Nyamata brigade;
- iii. "reservists" refers to a member of the military reserve force in the Bugesera region;
- iv. "interahamwe" refers to members of the *interahamwe* from Kanzenze *commune*, Bugesera region of Kigali-rural *préfecture*;
- v. "Hutu civilians" refers to Hutu civilians and militia from Kanzenze *commune*, Bugesera region of Kigali-rural *préfecture*;
- vi. "subordinates" (or MUNYARUGARAMA's subordinates) refers to all of the groups listed above under i-v.

III. GENERAL ALLEGATIONS

9. When carrying out the criminal conduct alleged in this indictment, MUNYARUGARAMA and the other participants had the intent to destroy in whole or in part persons identified as Tutsis ("Tutsis") and acted in order to discriminate against Tutsis, and persons identified as Hutus ("Hutus") considered to be associated with Tutsis or to be moderate on racial and political grounds. MUNYARUGARAMA was aware of the state of mind of the other participants.
10. When carrying out the acts of direct and public incitement to commit genocide alleged in this indictment, MUNYARUGARAMA had the intent to directly and publicly incite others to commit genocide.
11. At the time of the crimes pleaded in this indictment, MUNYARUGARAMA held the rank of Lieutenant Colonel in the *Forces Armées Rwandaises* ("the FAR") and was the highest ranking military officer and commander of Gako military camp ("Gako camp") and in the Bugesera region, Kigali-Rural *préfecture* ("the Bugesera region"). He had been the commander of Gako camp since early 1993 until on or about 14 May 1994 when the camp was captured by *Rwanda Patriotic Front* ("RPF") soldiers. MUNYARUGARAMA's subordinates as defined in paragraph 8 included soldiers in Gako camp, other soldiers deployed to Bugesera region, reservists and members of the national *gendarmerie* force in Nyamata brigade, the *interahamwe* and other Hutu civilians who were used by MUNYARUGARAMA to carry out or participate in the crimes charged in this indictment.
12. MUNYARUGARAMA intended and was aware that his subordinates and others identified in the indictment participated in the crimes pleaded because he personally participated in these crimes; incited and ordered his subordinates to commit these crimes; and the crimes committed by his subordinates were public knowledge. As the commander of Gako camp and the most senior military officer in that camp and the Bugesera region MUNYARUGARAMA was aware of the criminal activities of his subordinates after 6 April 1994 until on or about 14 May 1994 because he had effective control over his subordinates and was regularly briefed by junior officers and soldiers of Gako camp, reservists, members of national *gendarmerie* in Nyamata brigade, the *Sous-préfet* GASANA and the three *bourgmestres* of Gashora, Ngenda and Kanzenze *communes* about what was happening in the Bugesera region. He was also informed as pleaded in paragraphs 33 and 34. He also knew of the crimes because he participated in them.

13. As the commander of the Gako camp and the most senior officer in that camp and the Bugesera region, MUNYARUGARAMA had absolute authority, control, a position of authority, and effective control over all soldiers in Gako camp, all other soldiers deployed to Bugesera region, reservists, members of the national *gendarmérie* at the Nyamata brigade, *interahamwe* and Hutu civilians. MUNYARUGARAMA could therefore: (i) order his subordinates to act and prevent them from acting including participating in crimes; (ii) take, authorize and recommend disciplinary action including removal from service and criminal prosecutions with regard to criminal conduct; (iii) assign and re-assign members of the FAR to any unit or organization; (iv) import and control the distribution of arms, ammunition and other supplies to the FAR; and (v) issue weapons licenses to individuals, including reservists.
14. Because of his powers, position, and influence as pleaded in paragraphs 11 to 13 above, MUNYARUGARAMA's presence at the crime scenes and his approval of and acquiescence to the crimes encouraged and morally supported the perpetrators of those incidents where MUNYAGISHARI was present at the crime site. MUNYARUGARAMA was aware that his conduct would have this effect.

IV. THE ACCUSED

15. MUNYARUGARAMA:

- a) was born on 1 January 1948 in Kidaho *commune* of Ruhengeri *prefecture*. His father was Ubalijoro and mother Nyirabidega;
- b) held the rank of Lieutenant Colonel in the FAR;
- c) was the highest ranking military officer at Gako camp, Nyamata *secteur*, Kanzenze *commune*, Bugesera region of Kigali-rural *prefecture* between early 1993 and 14 May 1994;
- d) was appointed as the commander of Gako camp in early 1993 and served in that capacity until the camp was captured by RPF soldiers on or about 14 May 1994; and
- e) was in command of the four battalions based at Gako camp.

V. CONTEXT OF THE CRIMES

16. Between 6 April and 17 July 1994, citizens of Rwanda were identified according to the ethnic classifications: Hutu, Tutsi, and Twa. These were protected groups falling within the scope of the Genocide Convention of 1948.
17. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994; there were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons identified as Tutsis.
18. Between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.
19. The crimes alleged in this indictment formed part of the widespread or systematic attacks directed against a civilian population in Rwanda. MUNYARUGARAMA was aware of the attacks because he was in Gako camp in Bugesera region of Kigali-rural *préfecture* in Rwanda and was the commander of the camp and the most senior officer in Gako camp

and Bugesera region during the period of these attacks. He was also aware of the attacks and the fact that the crimes charged in this indictment formed part of them because the attacks were public knowledge and he was involved in the crimes together with his subordinates. Furthermore, the crimes in which MUNYARUGARAMA was directly involved and of which he therefore knew are, on their own, sufficient to constitute a widespread or systematic attack.

VI. NARRATIVE

A. DISTRIBUTION OF WEAPONS AND MAJOR MASSACRE SITES

20. On or about 10 April 1994, approximately ten reservists were brought to Gako camp in a Toyota pick-up by the *bourgmestre* of Kanzenze *commune*, Bernard GATANAZI. In MUNYARUGARAMA's presence and on his directions, Lieutenant Godilieve MUKAMURASI distributed weapons from the Gako camp armory ("the armory") to the reservists. MUNYARUGARAMA intended that the weapons be used to harm and kill Tutsis and told the reservists to harm and kill Tutsis. These weapons were later used by the reservists acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance to harm or kill Tutsis in the Bugesera region including at roadblocks such as at Gahembe centre (Maranyundo *secteur*, Kanzenze *commune*), at Nyamata church on or about 15 April 1994 and during searches for Tutsi in Maranyundo *secteur* between 15 to 20 April 1994. The Tutsi victims killed by these reservists using these weapons included Fidel Mutaganda, Mukandengo and her three children, Semvara and his child, Mr Kaligenzi's son and an old woman whose name is unknown.

Kanzenze Communal Office

21. On or about 10 April 1994, in the afternoon, *bourgmestre* GATANAZI acting with others including MUNYARUGARAMA, Pastor Jean UWINKINDI and *Sous-préfet* of Nyamata Djuma Firmin GASANA, presided over a meeting in the courtyard of the Kanzenze *communal* office in Nyamata *secteur*, attended by both Hutu and Tutsi civilians during which GATANAZI incited those present to kill Tutsis because the *inkontanyi* rebels who had attacked Rwanda were Tutsi. MUNYARUGARAMA's presence throughout the meeting provided approval of the speech reinforcing its message and encouraging GATANAZI.

22. On a day between 11 and 15 April 1994, attackers armed with guns, grenades and machetes acting in accordance with MUNYARUGARAMA's design and upon MUNYARUGARAMA's and GATANAZI's instructions, prompting, encouragement and assistance launched a large-scale attack on approximately two thousand Tutsis who had sought refuge at Kanzenze *communal* office. The attack lasted approximately 3 hours. The attackers included MUNYARUGARAMA, Major BARIHENDA, Pastor UWINKINDI, Désiré BITERO (the president of *Mouvement Démocratique Républicain*), SEBAZUNGU (chief of the *gendarmerie* of Kanzenze *commune*) and local administrative leaders including *bourgmestre* GATANAZI, Christophe BIZIMANA, Leonard RWARAKABIJE, NDAGIJE, NTAMBARA, Gratien MWONGERERA, Gervais NGOMBWA, GASHARANKWANZI, KARERANGABO, WACESEMA and Martin BAKUNDIKWANO, and numerous soldiers from Gako camp, *gendarmes*, *interahamwe* and Hutu civilians. They killed and harmed many Tutsis. Moreover, MUNYARUGARAMA's approval displayed at the meeting pleaded in paragraph 21 encouraged and provided moral support to those who attended the meeting and when they participated in the attack. MUNYARUGARAMA was aware of the effect his approval

had. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA, *bourgmestre* GATANAZI, Major BARIHENDA, and Pastor UWINKINDI. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

Nyamata Catholic Church

23. On or about 14 April 1994, Colonel KABILIGI, Colonel BAGOSORA and Major NTABAKUZE met with MUNYARUGARAMA in his office at Gako camp. During the meeting, Colonel BAGOSORA told MUNYARUGARAMA that he did not want to hear there was a single RPF accomplice remaining in Bugesera. Immediately after their meeting MUNYARUGARAMA instructed soldiers who were Gako camp drivers to ensure their vehicles were refueled. Soon after the refueling, many *interahamwe* and Hutu civilians entered the camp on board civilian vehicles. MUNYARUGARAMA addressed the soldiers from Gako camp, the *interahamwe*, the Hutu civilians and the reservists, and told them to attack Nyamata Catholic Church, Kanazi *secteur*, Kanzenze *commune* ("Nyamata Church") where thousands of Tutsis had taken refuge. Also, on MUNYARUGARAMA's directions weapons were distributed to the *interahamwe* and Hutu civilians. The attackers left the camp in ONATRACOM buses and went to Nyamata Church. MUNYARUGARAMA and Major BARIHENDA led and supervised the attackers including the soldiers from Gako camp (including Lieutenant MUKAMURASI, Corporals MBARUHIRE, SEKWENE and BARIMENSHI), *interahamwe*, Hutu civilians, reservists and members of the national *gendarmerie*. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, they launched a large scale attack on the Tutsis in the Church and the surrounding area. MUNYARUGARAMA also assisted, encouraged and provided moral supported for the attackers by being present and by providing soldiers from Gako camp who took part in the attack. As intended by MUNYARUGARAMA, and as he was aware, the attackers used the weapons that they had received from him. Once the shooting stopped, the *interahamwe*, Hutu civilians and reservists entered the church and killed any Tutsi survivors with traditional weapons. The attackers killed thousands of Tutsis including Marie Rose Umulinga, Donata Murebwayire and her children Sano and Mugeni, Alexis MUKONO, and MUKONO's six children. Many of those not killed were harmed and injured. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and Major BARIHENDA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.
24. Between 15 and 16 April 1994, MUNYARUGARAMA returned to Nyamata Church to assess the success of the attack. Gako soldiers and *interahamwe* acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, killed the injured and surviving Tutsis at and around Nyamata Church. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.

Ntarama Catholic Church

25. On or about 15 April 1994, MUNYARUGARAMA and Major BARIHENDA led and supervised soldiers from Gako camp, *interahamwe*, Hutu civilians, reservists, and administrative authorities including the *Préfet* of Kigali-rural, Francois KARERA in a large scale attack on the thousands of Tutsis who had taken refuge in Ntarama Catholic

Church, Ntarama *secteur*, Kanzenze *commune* ("Ntarama Church"). Soldiers from Gako camp were transported to Ntarama Church on board ONATRACOM buses; the *interahamwe* and Hutu civilians travelled in civilian vehicles. The attackers were armed with guns, grenades and traditional weapons, and surrounded the church and buildings. They used heavy weapons such as mortars, machine guns, and grenades to blow holes in the church and buildings, and then shot and killed the Tutsis within. Once the shooting stopped, *interahamwe*, Hutu civilians and reservists entered the church to kill any survivors with traditional weapons. The attackers killed thousands of Tutsis, and harmed many more. The attack lasted two days. The perpetrators acted in accordance with MUNYARUGARAMA's design and upon his instructions, prompting, encouragement and were assisted by Gako camp soldiers he provided. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and Major BARIHENDA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

Nyamata Secteur

26. Between 7 and 16 April 1994, MUNYARUGARAMA acting with Major BARIHENDA, Lieutenant MUKAMURASI and Adjutant Chef GATERA sent soldiers from Gako camp, *interahamwe* and Hutu civilians to Nyamata secteur to search for and kill Tutsis. On or about 14 April 1994 until 16 April 1994, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, the soldiers killed many Tutsis in Nyamata secteur. They used guns, grenades, machetes and other traditional weapons. Their Tutsi victims included Aaron Butera killed at his house, Aloys Gakumba a teacher killed at Aaron Butera's house, 'Gahutu' Lambert Musabyimana a gas station owner killed at an unknown location in Nyamata town, François Gahima a wealthy businessman killed at Nyamata centre, Vital Gatari killed at his house, Leonidas Sebazungu killed at Nyamata centre, Emile a driver killed at an unknown location in Nyamata town, Paul Kamanzi killed at an unknown location in Nyamata town, Raphael Muberuka killed at his house, Leonard Rwerekana killed at Nyamata centre and Jerome Udirashebuja killed at Nyamata centre. They also killed Christian Hakizimana, a Hutu, at Nyamata centre because he belonged to the Parti Social Démocrate (PSD) party. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA, Major BARIHENDA, Lieutenant MUKAMURASI and Adjutant Chef GATERA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

Cyugaro Primary School and Ntarama Swamps

27. In mid April 1994, soon after the attack of Ntarama Church, MUNYARUGARAMA and Major BARIHENDA led and supervised soldiers from Gako camp, *interahamwe*, Hutu civilians and reservists in an attack on Tutsis who had taken refuge at Cyugaro primary school and in the Ntarama swamps. The attackers, who acted in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, were armed with guns, grenades and traditional weapons and were transported by vehicles including ONATRACOM buses to Ntarama secteur. On that day they killed and harmed many Tutsis. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and Major BARIHENDA. Alternatively, all perpetrators

identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

28. On or about 22 April 1994, *counseiller* BASIGAYABO of Muyenzi *secteur* and *counseiller* Leonard BIZIMAZIKI of Mayange *secteur* called approximately 60 reservists from Muyenzi and Mayange *secteurs* to Gako camp on behalf of MUNYARUGARAMA. At Gako camp, MUNYARUGARAMA told Lieutenant MUKAMURASI to distribute a Kalashnikov and a magazine of 30 bullets to each of them, which she did. MUNYARUGARAMA told the reservists to hunt down the Tutsis in Ntarama *secteur* and to kill them as they are "our enemies". As intended and foreseen by MUNYARUGARAMA the weapons were used by the reservists to harm or kill Tutsis between 22 to 24 April 1994 in Musenyi and Ntarama *secteurs*. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance the reservists killed Tutsis, including on 23 April 1994 when, upon direction from MUNYARUGARAMA, some of the reservists, were taken to Ntarama *secteur* by a Gako camp military vehicle carrying six soldiers under the command of Chief Warrant Officer RINGO to kill Tutsi survivors. On the way, they killed two Tutsis. When they reached Cyugaro Primary school they found some soldiers with looted property including bicycles, radios and goats. They joined them in the hunt for Tutsi survivors in the Ntarama swamps. Muteteli, a Tutsi woman, who had escaped from Rilima prison where she worked, was shot dead by soldiers from Gako camp at an unknown location in Muyenzi *secteur*, Kanzenze *commune*. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.
29. Further attacks continued until early May 1994. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, the attackers (pleaded in paragraph 27) killed many more Tutsis. In total at least one thousand Tutsis who had taken refuge at Cyugaro primary school and in the Ntarama swamps were killed, including Bandora who was killed with guns and traditional weapons in the Ntarama swamps. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.

B. INDIVIDUAL MURDERS

30. Sometime in April 1994 immediately after 6 April 1994, MUNYARUGARAMA acting with others including Major BARIHENDA, dispatched Major Sergeant NDAGIJIMANA and a group of soldiers from Gako camp to Kigali city with specific directions to kill Major François Kambanda, a Tutsi officer from Gako camp and his family. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance they shot and killed Major Kambanda and his family at his house at Gatsata *cellule*, Gisozi *secteur*, Nyarugenge *commune*, Kigali *préfecture*. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and Major BARIHENDA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.
31. On or about 8 April 1994, George Ruzindana, a Tutsi soldier from Gako camp, went to Gasarwe *cellule*, Rilima *secteur* to evacuate his Tutsi *fiancée*. Upon arrival, Ruzindana discovered that his *fiancée* had been killed by *interahamwe* and Hutu civilians, and he started shooting into the air. MUNYARUGARAMA was told about this. On or about 14 or 15 April 1994, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouraged by his presence and with his assistance, Gako camp soldiers killed Ruzindana after tying his hands and legs together and then beating

him. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.

C. KILLING CAMPAIGN

32. On or about 8 April 1994, Marc last name unknown, the Conseillier of Mbyo met with MUNYARUGARAMA at Gako camp. Soon after their meeting, MUNYARUGARAMA instructed and prompted Gako camp soldiers to prevent Tutsis around Gako camp from seeking protection within the camp. As MUNYARUGARAMA intended and was aware, this encouraged, morally supported and assisted *interahamwe* and Hutu civilians outside the camp in killing these Tutsis. One victim was Kagemanyi, who was attacked and killed by *interahamwe* and Hutu civilians, using machetes.
33. On or about 8 April 1994, MUNYARUGARAMA told approximately eight soldiers from Gako camp to go and assess the security situation outside the camp. The soldiers returned at midday with eight civilian vehicles loaded with goods and informed MUNYARUGARAMA about the killing of Tutsis and looting of their property that was taking place throughout the Bugesera region by soldiers from Gako camp accompanied by *interahamwe*, Hutu civilians, members of the national *gendarmerie*, and reservists. From that day onwards MUNYARUGARAMA allowed the property looted from murdered Tutsis (including vehicles, television sets, refrigerators and cows) by soldiers from the Gako camp, soldiers who came from Mutara to Gako camp and Hutu civilians, to be stored at Gako camp by soldiers until they withdrew from Gako camp. MUNYARUGARAMA was aware of the looting and had reason to know about it.
34. On or about 10 April 1994, in the morning, MUNYARUGARAMA led a meeting at Gako camp attended by some local administrative leaders including the *Sous-préfet* GASANA, *bourgmestres* GATANAZI, Francois NTIVUNWA (from Gashora *commune*) and HATEGIKIMANA (from Ngenda *commune*), and some military officers from Gako camp including Major BARIHENDA, Lieutenant MUKAMURASI and Adjutant Chef GATERA. During the meeting, the local administrative leaders asked MUNYARUGARAMA to ensure the security of the population and their property in the Bugesera region and MUNYARUGARAMA was told by *bourgmestre* HATEGIKIMANA that the killing of Tutsis had already started in his *commune*. MUNYARUGARAMA said that he was aware of this but the best he could do was to send some soldiers to patrol in the *communes* as a large number of his force was at the war front. Contrary to his assurance, MUNYARUGARAMA continued to send Gako camp soldiers to harm and kill Tutsis in various locations of Bugesera region including Nyamata City between 8 and 15 April 1994 as pleaded in more detail below in paragraphs 35 to 45.
35. Between 10 and 11 April 1994, MUNYARUGARAMA acting with others including Major BARIHENDA, Lieutenant MUKAMURASI and Adjutant Chef GATERA dispatched approximately 150 soldiers from Gako camp in four military vehicles to a bar at Gahembe trading centre, Muyange *cellule*, Maranyundo *secteur*, Kanzenze *commune* where many Hutu civilians had gathered, to incite to them to attack and kill Tutsis who were fleeing from Kayumba *secteur*, Maranyundo *secteur*, and Kanazi hills and to loot their property. Once the soldiers from the Gako camp had arrived, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, the soldiers incited the Hutu civilians to go and kill Tutsis at Nyamata Centre with traditional weapons, which they did. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA, Major BARIHENDA, Lieutenant

MUKAMURASI and Adjutant Chef GATERA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

36. On or about 10 April 1994, MUNYARUGARAMA acting with Major BARIHENDA and Lieutenant MUKAMURASI instructed Corporal SEBUTIMBIRI, a soldier of Gako camp, to incite Hutu civilians from Mwendo *secteur*, Gashora *commune* to commence killing Tutsis in Mwendo *secteur* including at *Institut de Science et D'Agronomie Rurale* ("ISAR") Mwendo *secteur*, Gashora *commune* on the following day. Corporal SEBUTIMBIRI acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, did so. On or about 10 April 1994, the soldiers from Gako camp, *interahamwe* and armed Hutu civilians also killed Tutsis with guns, and machetes including Martin Bahinyunza (killed by Corporal SEBUTIMBIRI), Munyaneza, Mukandori and his ten year old son Kayiranga. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA, Major BARIHENDA and Lieutenant MUKAMURASI. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.
37. The following day, on or about 11 April 1994, Corporal SEBUTIMBIRI on the directions of MUNYARUGARAMA and Major BARIHENDA, accompanied by twenty soldiers from Gako camp and communal police transported *interahamwe* and Hutu civilians in 3 vehicles from Mwendo *secteur* to ISAR where many Tutsis had gathered. MUNYARUGARAMA and Major BARIHENDA directed Warrant Officer Déo KARIMUNDA a soldier of Gako camp, to tell the Hutu civilians and soldiers from Gako camp at ISAR to surround ISAR and kill the Tutsis, thereby designing the crime as well as instructing, prompting, assisting and encouraging them, to carry out that attack. The attackers threw grenades and shot at the Tutsis. Tutsis who tried to escape were killed by *interahamwe* and Hutu civilians armed with machetes. As the attack continued, Warrant Officer KARIMUNDA advised that he was going to see the Colonel to get more rounds of ammunition and reinforcements from the camp. Warrant Officer KARIMUNDA returned with more weapons and additional soldiers from Gako camp. In accordance with MUNYARUGARAMA's design, instructions, prompting and with his assistance through encouragement and otherwise many Tutsis were killed at ISAR. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and Major BARIHENDA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.
38. On or about 11 April 1994, MUNYARUGARAMA acting with others including Major BARIHENDA, Lieutenant MUKAMURASI and Adjutant Chef GATERA led a convoy of four lorries full of soldiers from Gako camp to Nyamata town. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance from 11 April until 8 May 1994 the soldiers from Gako camp deployed in Nyamata town checked peoples' identity cards, killing those with Tutsi identity cards immediately and forcing those with Hutu identity cards to show them where the Tutsis lived, so that they could be killed. The soldiers killed many Tutsis in Nyamata town including Muberuka, a Tutsi agronomist and his wife and children who were shot at their home. During this period, MUNYARUGARAMA supervised the killing of Tutsis by soldiers from Gako camp in Nyamata town. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA, Major BARIHENDA, Lieutenant MUKAMURASI

- and Adjutant Chef GATERA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.
39. On or about 11 April 1994, MUNYARUGARAMA told soldiers from Gako camp to kill a large group of Tutsis who had taken refuge at Kayumba hill in Nyamata *secteur*. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, the soldiers from Gako camp surrounded the Tutsis on Kayumba hill, threw grenades and shot and killed many Tutsis. Some of the Tutsi survivors from this attack took refuge at the *commune* office, while others went to Nyamata Catholic Church. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.
40. On or about 11 April 1994, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, soldiers from Gako camp and *interahamwe* went to Nyamata city centre in a white Daihatsu where they started searching for and killing Tutsis, and looting their property. MUNYARUGARAMA was immediately informed by the *Sous-préfet* GASANA of Nyamata of what was happening and said he could not do anything since the soldiers from Gako camp were avenging the President's death. He advised the *Sous-préfet* GASANA not to interfere to avoid being killed. The soldiers and *interahamwe* killed approximately 300 Tutsi civilians in Nyamata City Centre. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.
41. On or about 12 April 1994, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, Janvier KANYAMIKENKE, alias Rwabidadi, a soldier from Gako military Camp and a group of attackers led by him, which included his brother NGOMBWA, Martin BAKUNDINKWANO an agronomist who used to be a soldier in Habyarimana's army, soldiers from Gako Camp and many *interahamwe* carried out an attack against the Tutsi family of André Rwasamirera, at Ruganda *cellule*, Kanazi *secteur*, Kanzenze *commune*. During this attack, they brutally killed Clementine Mushambokazi, Spéciose Muhongerwa, Eugenie Mukamana and twenty eight other family members using guns and traditional weapons. Martin BAKUNDINKWANO and members of the *interahamwe* raped Clémentine Mushambokazi, Spéciose Muhongerwa and Eugeme Mukamana. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.
42. Between 13 and 14 April 1994, MUNYARUGARAMA sent soldiers from Gako camp (including reservists) under the command of his subordinate Sergeant Anaclet Kagaba NBONA to join *interahamwe* and Hutu civilians in an attack against Tutsis who had resisted the attacks from *interahamwe* and armed Hutu civilians on Rebero hill (near Gahembe trading centre) between 11 and 14 April 1994. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting, and encouragement and with his assistance, Sergeant NBONA and the Gako soldiers used 60mm mortars to throw bombs from Gahembe trading centre at Rebero and surrounding hills, killing many Tutsis who had taken refuge on those hills. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.
43. On or about 15 April 1994, MUNYARUGARAMA acting with others including *bourgmestre* GATANAZI sent Gako soldiers, *interahamwe* and Hutu civilians to attack Tutsis seeking refuge in the office of the *Sous-préfet* of Nyamata. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance the attackers shot Tutsis and threw grenades at the

office of the *Sous-préfet* of Nyamata killing many of the Tutsis. For the purpose of paragraph 54(i) below, the persons alleged to have been the members of the JCE for this incident are MUNYARUGARAMA and *bourgmestre* GATANAZI. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 54(ii) below.

44. On or about 16th April 1994, MUNYARUGARAMA acting with others including Major BARIHENDA, Lieutenant MUKAMURASI and *bourgmestre* GATANAZI told Gako soldiers to attack and kill Tutsis who had taken refuge at Nyamata hospital. Acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance, the soldiers from Gako camp killed many Tutsis at Nyamata hospital.
45. Between 23 and 25 April 1994, General BIZIMUNGU, Colonel KABILIGI and four military personnel landed in a military helicopter at Gako camp in the morning and were received by MUNYARUGARAMA. During this visit, General BIZIMUNGU made an inciting speech telling the soldiers that the Tutsi are the only enemy they have. After the departure of General BIZIMUNGU and other members of his delegation, MUNYARUGARAMA deployed Gako camp soldiers into positions from Bugesera region to the Sake area. The following day, acting in accordance with MUNYARUGARAMA's design and upon his instructions, prompting and encouragement and with his assistance soldiers from both Mutara and Gako camp, *interahamwe* and Hutu civilians killed Tutsis and looted their property at Nyamata *secteur*, Gashora *commune*, Rilima *secteur*, Ruhuha *secteur* and Nyabagendwa *cellule*, the Mbyo *secteur* shopping center, the youth center, and at Gahanga Parish, all in Bugesera region. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 55 below.

VII. RESPONSIBILITY

46. Paragraphs 1 to 19 apply to all charges.

Crimes

47. MUNYARUGARAMA is charged – as further specified in paragraphs 48 to 64 below – with:
 - a. Genocide for killing and harming – including by raping – persons identified as Tutsis (paragraphs 20, 22-32 and 36-45);
 - b. Complicity in genocide (paragraphs 20, 22-32 and 36-45);
 - c. Direct and public incitement to commit genocide against Tutsis (paragraphs 21, 23, 35 and 36);
 - d. Extermination as a crime against humanity (paragraphs 20, 22-32 and 36-45);
 - e. Murder as a crime against humanity (paragraphs 20, 22-32 and 36-45);
 - f. Persecution as a crime against humanity for killing, harming and raping Tutsis as well as for violating the fundamental rights of Tutsis and Hutus including

the rights to security, dignity and the right not to be subjected to serious psychological abuse (paragraphs 20, 22-33 and 36-45); and

- g. Rape as a crime against humanity (paragraph 41).

Responsibility under Article 6(1) of the Statute

Personal and Integral Part Commission

48. MUNYARUGARAMA is responsible for personally committing incitement to commit genocide by his conduct charged in paragraph 23.
49. MUNYARUGARAMA is responsible for committing the crimes charged in paragraphs 20, 22-31 and 35-45 because his conduct was as much an integral part of these crimes as the carrying out of their *actus reus*. MUNYARUGARAMA intended that the crimes should occur and was aware of their occurrence.

JCE I

50. MUNYARUGARAMA is responsible under JCE I for the twenty criminal incidents pleaded in paragraphs 22-31, 35-43 and 45. Each of these paragraphs charges a separate criminal incident.
51. For each of these incidents a separate JCE is pleaded.

Members of the JCEs

52. The JCE membership for eleven of these twenty incidents is alleged in paragraph 54. For each of these eleven incidents a limited JCE and, alternatively, a JCE that includes all perpetrators involved, is pleaded.
53. The JCE membership for the remaining nine incidents is alleged in paragraph 55. For these nine incidents no limited JCE is pleaded; all perpetrators involved are alleged to have been JCE members.

Members of the JCEs for eleven of the twenty incidents

54. For each of the eleven incidents described in paragraphs 22, 23, 25-27, 30, 35-38 and 43, respectively, MUNYARUGARAMA is charged with two alternative varieties of JCE I: (i) the principal allegation, that MUNYARUGARAMA was a member of a limited JCE in which the JCE members used non-members to carry out criminal conduct; (ii) alternatively, that MUNYARUGARAMA was a member of a JCE in which all perpetrators in the criminal conduct were JCE members.
- i. Under the principal allegation, for each of the eleven incidents referred to above, a separate limited JCE is alleged. The members of each of these limited JCEs are identified in the penultimate sentence of the paragraph describing the incident. The remaining perpetrators alleged for the incident were non-members who were used as principal/physical perpetrators by the JCE members.
- ii. Under the alternative allegation, for each of the eleven incidents, all perpetrators identified in the paragraph describing the incident were JCE members, as pleaded in the respective paragraph's last sentence.

Members of the JCEs for the nine remaining incidents

55. For each of the nine incidents which are described in paragraphs 24, 28, 28, 31, 39-42 and 45, the respective JCE consisted of MUNYARUGARAMA and all other perpetrators identified in the paragraph describing the incident as pleaded in the respective paragraph's last sentence.

Common purpose, contribution, mens rea, and time period for each JCE

56. For each incident for which a JCE is pleaded in paragraph 50:

- i. the JCE members' common purpose was the commission of the crimes committed during that incident;
- ii. the contributions for each JCE were MUNYARUGARAMA's and the other JCE members' conduct during that incident as pleaded in the paragraph describing the incident (these contributions were at least significant and amounted to: (a) personal commission of crimes, (b) conduct that was an integral part of the crime, (c) use of JCE non-members to carry out criminal conduct; and/or (d) other significant contributions);
- iii. the *mens rea* of MUNYARUGARAMA and all other members of each JCE was the intent that the crimes committed during the incident be carried out; and
- iv. the JCE existed during the time period over which the incident is alleged to have taken place, as pleaded in the paragraph describing the incident.

JCE III

57. Should the common purpose of any of the JCEs charged above (paragraph 50) have been limited to one or more of the crimes charged in paragraph 56 (i), MUNYARUGARAMA is responsible under JCE III for the remainder of these crimes. MUNYARUGARAMA was aware of the possibility that the other members of any JCE would carry out or participate in the remainder of these crimes, personally, by conduct that was an integral part of the carrying out of the crimes, and by using the principal perpetrators. With this awareness MUNYARUGARAMA decided to participate in the JCE.

Ordering, instigating, planning and aiding and abetting

58. MUNYARUGARAMA is responsible under the modes of liability of ordering, instigating and planning for the crimes charged in paragraphs 20, 22-31 and 35-45; MUNYARUGARAMA instructed and prompted the perpetrators to carry out conduct in the course of which they carried out and participated in the crimes. He had a position of authority which compelled the perpetrators to follow his instructions. He also designed the conduct in the course of which the crimes were carried out. His orders, instigation, and planning had a direct and substantial effect on and constituted a substantial contribution to the commission of the crimes. MUNYARUGARAMA intended or was aware of the substantial likelihood that in the course of the execution of his orders, instigations and plans the crimes would be committed.
59. MUNYARUGARAMA is responsible under the mode of liability of aiding and abetting, because, by his conduct, he assisted, furthered, encouraged and lent moral support to the crimes (paragraphs 20-33, 35-45; see also paragraph 14). His conduct at least

substantially contributed to the commission of the crimes. He was at least aware of the likelihood that the crimes would occur and that his conduct would assist the crimes.

Complicity in genocide

60. MUNYARUGARAMA is responsible for complicity in genocide as charged in paragraphs 20, 22-32 and 36-45; see also paragraph 14. He assisted, furthered, encouraged and lent moral support to genocide. His conduct represents a contribution to these crimes. He was aware that these crimes would occur and that his conduct would assist in their commission.

Responsibility under Article 6(3) of the Statute

61. MUNYARUGARAMA incurred superior responsibility for the crimes charged in paragraphs 20, 22-33 and 35-45 that were carried out by his subordinates, charged in paragraph 11 above.

62. Because of his power and position as pleaded in paragraphs 11 to 13, MUNYARUGARAMA had effective control over his subordinates in the sense that he had a material ability to prevent or punish their criminal conduct.

63. MUNYARUGARAMA knew and had reason to know of his subordinates' criminal conduct as pleaded in paragraph 11.

64. MUNYARUGARAMA failed to use his powers as set out in paragraph 13 above to prevent or punish his subordinates' commission of or participation in the crimes or to investigate or punish his subordinates who had committed and participated in those crimes.

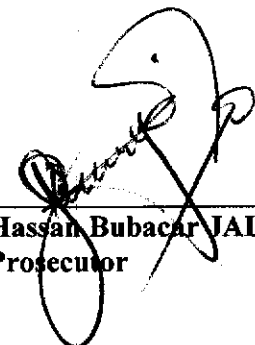
VIII. AGGRAVATING CIRCUMSTANCES

65. All facts stated in this indictment are also alleged as aggravating circumstances.

66. Other aggravating circumstances against MUNYARUGARAMA include: i) his abuse of his position and the trust placed into him; ii) his pre-meditation; iii) the cruel and humiliating treatment of his victims; iv) the duration of the offences; v) the persistence with which he kept committing crime after crime; vi) the vulnerability of the victims and the effect of the crimes on them, including their suffering; (vii) the civilian status of the victims; and (viii) his protracted evasion of arrest and prosecution for the crimes he is accused of.

The acts and omissions of MUNYARUGARAMA detailed herein are punishable under Articles 22 and 23 of the Statute.

Dated at Arusha this 13th day of June 2012

Fed

Hassan Bubacar JALLOW
Prosecutor



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Team I N. M. Diallo	<input checked="" type="checkbox"/> Team II C. K. Hometowu N. M. Diallo	<input type="checkbox"/> Team III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office Richard KAREGYESA (names)
			<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Pheneas MUNYARUGARAMA		Case Number: ICTR-2002-79-I
Dates:	Transmitted: 13 June 2012		Document's date: 13 June 2012
No. of Pages:	16	Original Language:	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	AMENDED INDICTMENT		
Classification Level:	TRIM Document Type:		
<input checked="" type="checkbox"/> Ex Parte	<input checked="" type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
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			<input type="checkbox"/> Submission from non-parties
			<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accessed particulars

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date: