

ICTR-04-81-1
23-06-2008
(1857-1841)

1857
ivan

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. ICTR-2004-81-I

THE PROSECUTOR

AGAINST

EPHREM SETAKO

2008 JUN 23 1 P 5: 09
DIGITAL RECORDS/ARCHIVES
RECEIVED
[Signature]

AMENDED INDICTMENT

[pursuant to the Trial Chamber's decision on Defence motion
concerning Defects in Indictment delivered on 17 June 2008]

DATED at Arusha: 23 June 2008

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

1856

CASE NO. ICTR-2004-81-I

THE PROSECUTOR

AGAINST

EPHREM SETAKO

AMENDED INDICTMENT (CORRIGENDUM)

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("Statute of the Tribunal" or "Statute"), charges:

EPHREM SETAKO

With:

- COUNT 1 - **GENOCIDE** pursuant to Articles 2 (3) (a), 6 (1) and 6 (3) of the Statute, or alternatively;
- COUNT 2 - **COMPLICITY IN GENOCIDE** pursuant to Articles 2 (3) (e), 6 (1) and 6 (3) of the Statute;
- COUNT 3 - **MURDER as a CRIME AGAINST HUMANITY** pursuant to Articles 3 (a), 6 (1) and 6 (3) of the Statute;
- COUNT 4 - **EXTERMINATION as a CRIME AGAINST HUMANITY** pursuant to Articles 3 (b), 6 (1) and 6 (3) of the Statute;
- COUNT 5 - **VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and Additional Protocol II of 1977, pursuant to Articles 4(a), 6(1) and 6(3) of the Statute; and**
- COUNT 6 - **PILLAGE as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and Additional Protocol II of 1977, pursuant to Articles 4(f), 6(1) and 6(3) of the Statute**

on the basis of the concise statement of facts herein, all of which facts, being relevant to each of the Counts herein:

FACTS IDENTIFYING THE ACCUSED AND HIS POSITION:

1. **EPHREM SETAKO** (hereinafter referred to by name, or as "the Accused"), was born in May 1949 in *Mukamira* cellule, *Nkuli* commune, *Ruhengeri* préfecture, Rwanda. During the times covered by this Amended Indictment, the Accused maintained residences in *Kiyovu* in *Kigali-Ville* préfecture and *Nkuli* commune in *Ruhengeri* préfecture.

2. At all times relevant to this Amended Indictment, **EPHREM SETAKO** :
 - i. was a Lieutenant-Colonel in the Forces Armées Rwandaises (FAR), the Rwandan Army;
 - ii. was the Director in charge of the Judicial Affairs Division of the Ministry of Defence of Rwanda which was under the supervision of the Minister of Defence;
 - iii. was previously a Judicial Adviser in the Ministry of Defence and later, in the Personnel Section in the Office of the Chief of Staff of the Rwandan Army, before proceeding to the Ministry of Internal Affairs of Rwanda, as the Director of the Communal Police;
 - iv. was a member of the War Council, which was a military court which tried military personnel who committed offences within the FAR;
 - v. was also a Judge at the Court of National Security, which was responsible for trying civilians and military personnel considered to be traitors or perpetrators of other security threats inside the Rwandan State or accomplices of the Rwandan Patriotic Front (RPF) which was considered to be the enemy of the Rwandan State;
 - vi. was a senior public officer by virtue of his participation:
 - a. on behalf of the then Rwandan Government, in the Neutral Military Observer Group (NMOG) established by the Organisation of African Unity (OAU) to monitor the implementation of the cease-fire agreements signed by the RPF and the Government of the Republic of Rwanda; and
 - b. as a member of the delegation of senior military officers of the FAR charged with the negotiation for a cease-fire with the RPF, on behalf of the Interim Government, supervised by the United Nations Assistance Mission in Rwanda (UNAMIR)
 - c. as a representative of Rwandan government on the Permanent Commission of Security set by the Communauté Economique des Pays des Grands Lacs with offices at Butare in Rwanda, Goma in Congo DRC and Cibitoke in Burundi.

3. The FAR were composed of the Rwandan Army and the Gendarmerie Nationale and they did not have a unified general staff. They were supervised by the Minister of Defence, under the direct authority of the President of the Republic, the Commander in Chief of the Armed Forces.
4. According to the laws governing the FAR then in force, all military officers had a duty to enforce general rules of discipline in respect of all soldiers under their authority, even those who were not members of their units.
5. As a Lieutenant-Colonel, **EPHREM SETAKO** was a superior officer in the FAR with effective control over members of the FAR under his authority and even those not under his direct authority but junior to him. As a result, the Accused could order such persons to commit or refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.
6. By virtue of his rank and positions of authority and influence within and outside the FAR during the 21 years of his professional career, coupled with his close association with high ranking military officers and political stalwarts, **EPHREM SETAKO** possessed authority in Rwandan society and as a result, he could order soldiers, local civilian population including a known communal policeman and militiamen particularly, *Interahamwe* or *Amahindure* and civil defence residing within his area of origin and residence and their neighbouring area to commit or refrain from committing unlawful acts, as well as to discipline or punish them for unlawful acts. These militia groups namely: *Interahamwe* or *Amahindure* and civil defence are collectively hereinafter referred to as militiamen.
7. Consequently, **EPHREM SETAKO** had de facto control over the local population including a known communal policeman, soldiers and militiamen in *Ruhengeri* and *Kigali-Ville préfectures*. In addition, the Accused's role in the supervision and provision of military training and distribution of weapons to militiamen, local civilian population and civilian authorities further strengthened his de facto authority over them.
8. Between April and July 1994, **EPHREM SETAKO** was the unofficial Liaison Officer between the Ministry of Defence and the *Interahamwe* of *Kigali-Ville, préfecture* particularly, those of *Kiyovu* cellule, *Rugenge* and *Gitega secteurs* of *Nyarugenge* commune, for the purposes of supply of weapons. His position as a high ranking military officer reinforced his de facto authority over the soldiers and militiamen in *Kigali-Ville préfecture*, particularly, those manning roadblocks located in *Nyarugenge* commune.

FACTS DESCRIBING THE CONTEXT IN WHICH THE ACCUSED ACTED:

9. Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), having acceded to it on 16 April 1975.

10. Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977, having acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and having acceded to Additional Protocol II of 1977 on 19 November 1984.
11. Between 1 January 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948.
12. Between 6 April 1994 and 17 July 1994, genocide against the Tutsi ethnic group occurred in Rwanda.
13. 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 of Tutsi ethnic identity.
14. Between 6 April 1994 and 17 July 1994, there was an armed conflict in Rwanda that was not of an international character. The belligerents in this armed conflict were the FAR and the RPF.
15. The term "non-combatants" used in this indictment means persons taking no active part in the hostilities.

COUNTS AND FURTHER FACTS ESTABLISHING THE INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED FOR THE CRIMES CHARGED:

Individual criminal responsibility of the Accused, under Article 6 (1) of the Statute:

EPHREM SETAKO is individually criminally responsible, pursuant to Article 6 (1) of the Statute of the Tribunal, for the crimes of Genocide, or alternatively Complicity in Genocide, Crimes Against Humanity (Murder and Extermination) and War crimes (Violence to life, health and physical or mental well-being of Persons and Pillage). The Accused planned, instigated, ordered, or committed these crimes, or he otherwise aided and abetted in the planning, preparation and execution of these crimes.

Depending on the particular facts described herein, the term "committed" used in this Amended Indictment, in relation to every Count where it appears, means that the Accused committed the crime, by his direct or physical perpetration of the crime, including by acting through other persons, or creating and contributing to conditions for the perpetration of the crime by others; or that the Accused committed the crime through his participation in a joint criminal enterprise, as the case may be.

Participation of the Accused in a joint criminal enterprise (first, or basic, type of joint criminal enterprise):

16. **EPHREM SETAKO** and other high ranking military officers of the FAR together with politicians, civilian authorities, businessmen and leaders of militia groups as identified in this Amended Indictment willfully and knowingly participated in a joint criminal enterprise.
17. The common purpose of the joint criminal enterprise was the destruction of the Tutsi population and their property in Rwanda and the destruction of persons considered to support the Tutsi. This enterprise encompassed all of the crimes charged in this Amended Indictment namely: Genocide, or alternatively, Complicity in Genocide, Murder as a Crime Against Humanity, Extermination as a Crime Against Humanity, Violence to Life, Health and Physical or Mental Well-being of Persons as a War Crime, and Pillage as a War Crime.
18. **EPHREM SETAKO** possessed the criminal intent and state of mind required to commit the crimes charged in this Amended Indictment, and in relation to joint criminal enterprise, his acts (as well as his failure to take actions), as described by the facts herein, in different ways promoted the success of the joint criminal enterprise. **EPHREM SETAKO's** participation in the joint criminal enterprise included providing military training to, indoctrinating, encouraging, and distributing arms to the executors of the objectives of the joint criminal enterprise, notably: militiamen, local Hutu population and soldiers of the FAR. Moreover, **EPHREM SETAKO** took no steps to discourage other members of the joint criminal enterprise from perpetrating crimes against the Tutsi even when he had full knowledge that they were committing those crimes in *Kigali-Ville* and *Ruhengeri préfectures*.
19. The joint criminal enterprise, of which **EPHREM SETAKO** was a member and a key participant, was conceived and designed before January 1994 and continued until at least July 1994.
20. At all times relevant to this Amended Indictment, **EPHREM SETAKO** participated in the joint criminal enterprise with a plurality of persons, including military, political and civilian authorities, leaders of militia groups and businessmen groups, notably: Augustin BIZIMANA, Colonel Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Colonel Tharcisse RENZAHO, Colonel Marcel BIVUGABAGABO, Colonel NTIBITURA, Major BIZABARIMANA, Captain HASENGINEZA, Joseph NZIRORERA, Casimir BIZIMUNGU Juvenal KAJELIJELI, Dominique GATSIMBANYI, Jean Damascence NIYOYITA, Jonathan BAMBONYE, General Augustin BIZIMUNGU, Major Patrice BIVAMVAGARA, Warrant Officer KARORERO, Jean Baptiste NYABUSORE, Esdras BAHEZA, Fabian MANIRAGABA, Basile NSABUMUGISHA, Mathias MPIRANYA, Shadrack SENDUGU, Gabriel MBYARIYEHE, Assiel NDISETSE, Michel NIYIGABA, Bernard MANIRAGABA, Gervais HARERIMANA, IYAKAREMYE, Anastase KABUTURA, Augustin HABIAMBERE, and other known and unknown participants. These persons are collectively hereinafter referred to, variously, by name or as "co-perpetrators".

21. Each member of the joint criminal enterprise shared the same intent to effect the common purpose and worked in concert with each other and with other members of the joint criminal enterprise and acted either directly or through others, including members of the FAR, local Hutu population and members of the militiamen.
22. In order for the joint criminal enterprise to succeed in its objective, **EPHREM SETAKO** worked in concert with or through several individuals in the joint criminal enterprise, as described in the facts herein. Each individual or participant within the joint criminal enterprise played his own role or roles that significantly contributed to the overall common purpose of the enterprise.

Alternatively, participation of the Accused in a joint criminal enterprise (third, or extended, type of joint criminal enterprise):

23. Alternatively, **EPHREM SETAKO** is liable for the crimes charged in this Amended Indictment on the basis of the extended form of joint criminal enterprise, in that he intended to further the common purpose of the joint criminal enterprise and the crimes were the natural and foreseeable consequences of the execution of the common purpose of the joint criminal enterprise. Despite his awareness of the possible consequences of his conduct, he willingly took part in the joint criminal enterprise and accepted the risk that these crimes, which were the natural and foreseeable consequences of it, would in fact be committed.

Individual criminal responsibility of the Accused, as a superior, under Article 6 (3) of the Statute:

24. **EPHREM SETAKO** is also individually criminally responsible as a superior for Genocide, or alternatively Complicity in Genocide, Crimes Against Humanity (Murder & Extermination) and War Crimes (Violence to Life, Health and Physical or Mental Well-being of Persons and Pillage), in that he failed to take necessary and reasonable measures to prevent the criminal acts or omissions of his subordinates, which he knew, or had reason to know, they were about to commit, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed, pursuant to Article 6(3) of the Statute of the Tribunal.
25. From January 1994 to at least July 1994, **EPHREM SETAKO** exercised effective control over the following subordinates: Soldiers of the FAR, local Hutu civilian population including a known communal policeman and members of the militiamen.
26. **EPHREM SETAKO** knew or had reason to know that his subordinates were about to commit or had committed the crimes charged in this indictment. The crimes were so widespread and were committed on such a large scale and so openly that the Accused knew or had reason to know that the crimes were about to be or had been committed by those subordinates
27. **EPHREM SETAKO** had the material ability to prevent or punish the commission of the crimes committed by his subordinates. The Accused failed to take the reasonable measures available to him to prevent the crimes or to punish the crimes committed by his subordinates.

COUNT 1: GENOCIDE

1850

EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or execution of the crime of **GENOCIDE**, pursuant to Articles 2 (3) (a), and 6 (1) of the Statute, and with individual criminal responsibility for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, and particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group with intent to destroy, in whole or in part, the Tutsi racial or ethnic group, as such; or that his subordinates were responsible for such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

Alternatively,

COUNT 2: COMPLICITY IN GENOCIDE

Alternatively, **EPHREM SETAKO** is charged with committing the crime of **COMPLICITY IN GENOCIDE**, pursuant to Articles 2 (3) (e), and 6 (1) of the Statute, and with individual criminal responsibility as a superior for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** substantially contributed to the commission of the crime of Genocide, by providing assistance to other persons, notably, soldiers, militiamen and local Hutu population, to kill or cause serious bodily or mental harm to members of the Tutsi racial or ethnic group, knowing that these other persons intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and knowing that by thus aiding and abetting them the crime of Genocide would be committed; or that his subordinates were responsible for such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

28. **EPHREM SETAKO**'s intention to destroy the Tutsi population in whole or in part as a group was manifested in many ways, including his incitements at meetings, indoctrination on Hutu extremist ideology and the definition of the enemy as Tutsi, establishment of militia groups, provision of weapons and setting up of roadblocks as described herein.

April 1994 Events:

29. In the early hours of the morning of 7 April 1994, at a meeting held at the residence of the mother of Joseph Nzirorera, **EPHREM SETAKO** in concert with his co-perpetrators notably: military, political and civilian authorities including Colonel Augustin Bizimungu, Joseph Nzirorera, Jean Baptiste Nyabusore, Esdras Baheza,

Jonathan Bambonye, Jean Damsence Niyoyita, Dominique Gatsimbanyi and Juvenal Kajelijeli, agreed to implement the plan to eliminate the Tutsi. They then instigated and ordered the *Interahamwe* to kill the Tutsi population in *Mukingo* commune and to reinforce the roadblocks located within the commune to prevent the Tutsi and their accomplices from escaping. They also agreed to reinforce the weapons stored at the *Mukingo* communal office and *Ruhehe* hills, and to provide the *Interahamwe* with other material that would facilitate the objective of the joint criminal enterprise.

30. The decisions arrived at the meeting were fully executed in furtherance of the agreement of the objective of the joint criminal enterprise: Roadblocks were reinforced at various locations in *Mukingo* commune particularly those located at *Byangabo* Trading Center, in front of the Kajelijeli shop by *ISAE* junction leading to the *Busogu* Parish, by Petrol Rwanda, in front of the *Busogu* parish and on tarmac of *Ruhengeri/Gisenyi* road directly opposite *Mukingo* Communal Office manned by the *Interahamwe* and local civilian authorities. Colonel Augustin Bizimungu delivered ammunitions to the *Mukingo* communal office that same day.
31. Right after the meeting, that morning, in furtherance of the agreement at the meeting, Juvenal Kajelijeli in company of other co-perpetrators namely Esdras Baheza and Jonathan Bambonye addressed the militiamen who were already awaiting instructions from these superior authorities at the *Byangabo* trading center and ordered them to start the killing of the Tutsi and to kill them all.
32. Immediately, a certain Tutsi man called Rukara was arrested and killed by militiamen, particularly, Michel Niyigaba and Musafiri, using clubs with nails, and axes at the *Byangabo* trading center in full glare of the population and his body was dumped by the roadside until the following day. Shortly thereafter, the same militiamen arrested and killed his brother, Lucien.
33. Thereafter, the *Interahamwe* armed with weapons and moving in groups in collaboration with the local Hutu population and the soldiers from the *Mukamira* Camp went to various locations in *Mukingo* commune including *Busogo* Parish, *Rwankeli* School of Adventist, residences of Tutsi at *Busogo secteur* and *Shingiro*, and *Nyakinamana* cellules, attacking and killing Tutsi as well as looting and destroying their properties.
34. During these attacks in *Mukingo* commune, the attackers consisting of *Interahamwe/Amahindure*, soldiers, communal policemen and local Hutu civilian population killed several hundreds of members of the Tutsi ethnic group including the families of RUDATINYA, SEBAHUTU, and KAMAKORA. In the course of these attacks on 7 April, Juvenal Kajelijeli reinforced the attackers with more weapons in furtherance of the agreement at the meeting.
35. On or about 8 April, 1994, Juvenal Kajelijeli and Colonel Augustin Bizimungu ordered the local authorities and local Hutu civilian population to bury the bodies of these Tutsi killed on 7 April at various locations in *Mukingo* commune in mass graves in *Rwinzovu secteur*.
36. The same morning of 7 April 1994, at a meeting held at the residence of a businessman called Rukabu in *Nkuli* commune, EPHREM SETAKO directly and publicly incited, instigated and encouraged the *Interahamwe* and local civilian

population to search for and kill the Tutsi in their area under the pretext that it was the Tutsi who killed President Habyarimana. The Accused promised and did, in fact provide more weapons for this purpose.

37. Shortly after the meeting, the local Hutu population of *Nkuli* commune, armed with weapons and in collaboration with soldiers, started killing the Tutsi at *Mukamira*, *Kabera* and *Gitwa secteurs*, looting and destroying their property.
38. On or about 11 April 1994, **EPHREM SETAKO** instigated, ordered, and aided and abetted the killing of Tutsi civilians throughout the various communes in *Ruhengeri préfecture* by expanding membership in the *Amahindure* from 80 to over 600 youths, by providing further military training, rifles, and grenades to the *Amahindure*, and ordering them to go to various parts of *Ruhengeri* even to Butaro, the farthest commune in *Ruhengeri* bordering Uganda, and to kill all Tutsi there.
39. Consequently, on or about 14 April 1994, **EPHREM SETAKO** in concert with his co-perpetrators, notably: Augustin Bizimungu, Basile Nsabumugisha, Fabian Maniragaba, Colonel Bivugabagabo, Colonel Ntibitura, and other military and civilian authorities, further instigated, encouraged, aided and abetted the *Interahamwes* from the various parts of the *Ruhengeri préfecture* to kill about 100-300 Tutsi refugees within the compound and inside the building of the Court of Appeal in *Ruhengeri* which resulted in the death of several hundreds of Tutsi refugees. The Accused was present during this attack and had before the attack incited the *Interahamwe* that the only enemy of the country was the Tutsi and that they must be exterminated with no exception.
40. On or about 25 April 1994, at a meeting, **EPHREM SETAKO** acting in concert with his co-perpetrators directly and publicly incited, instigated and ordered members of civil defence and soldiers of the *Mukamira* Camp to kill about 30 to 50 Tutsi refugees in the camp and also, to erect roadblocks to hunt down Tutsi and their accomplices for elimination.
41. Thereafter, on the same day, the soldiers and members of civil defence erected roadblocks at the main *Mukamira* junction, across the road to *Kabaya* close to the *Ruhengeri/Gisenyi* road and arrested several Tutsi refugees who were traveling in two pickups and later that night, killed them along with the 30-50 Tutsi refugees in the camp in compliance with **EPHREM SETAKO**'s orders and their bodies were dumped in a pit called *IBIBARE* within the camp.

May 1994 Events:

42. Sometime in May 1994, **EPHREM SETAKO** brought two Tutsi girls to the roadblock located in *Kiyovu* in Kigali known as *peage* and handed them over to one of the *Interahamwe* manning that roadblock called FIDELE and said "*Bajane*" meaning at that time (TAKE THEM AND KILL THEM). Immediately, the *Interahamwe* executed the Accused's order by killing the girls and throwing their bodies into a pit known as *CND* located within the compound of a certain Tutsi man called Straton.

43. Sometime in May 1994, **EPHREM SETAKO** in concert with Major Bivamvagara, instigated and encouraged the *Interahamwe* of *Rugenge secteur* to kill about 30 Tutsi refugees in the compound of the Tutsi man called *Straton* located at *Rugenge secteur*, in their presence.
44. On or about 11 May 1994, **EPHREM SETAKO** brought 9 Tutsi, including a child to the *Mukamira* camp on board a military landrover and ordered Captain Hasengineza to have them killed and the Captain executed the order and their bodies were thrown into a pit known as *IBIBARE* within the *Mukamira* camp.
45. In mid-May 1994, at a ceremony held at the football ground nearby *Mukingo* communal office, **EPHREM SETAKO** in concert with his co-perpetrators notably: Joseph Nzirorera, Juvenal Kajelijeli, Casmir Bizimungu, Esdras Baheza and other military, political and civilian authorities congratulated the *Interahamwe/Amahindure* for the good work they did in killing the Tutsi in *Mukingo* commune and encouraged them to proceed to the neighbouring communes as far as Butaro commune to continue killing Tutsi so as to free that commune from the *Inkontanyi*.

June 1994 Events:

46. Sometime in June 1994, at an impromptu meeting held outside the compound of *Kiyovu* Hotel, Kigali, **EPHREM SETAKO** in concert with his co-perpetrators namely, Colonel Bagosora and Colonel Tharcisse Renzaho directly and publicly incited and instigated and ordered *Interahamwe* and local population to kill the Tutsi and encouraged the Tutsi hiding in neighbouring areas to come out of their hiding. Immediately, about 8 Tutsi came out and were instantly killed by the *Interhamwe* in the presence of the Accused and his co-perpetrators.

COUNT 3: MURDER as a CRIME AGAINST HUMANITY

EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of **MURDER AS A CRIME AGAINST HUMANITY**, pursuant to Articles 3 (a), and 6 (1) of the Statute, and with individual criminal responsibility as a superior for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** with intent to kill members of the Tutsi racial or ethnic group or persons identified as Tutsi or presumed to support the Tutsi, was responsible for killing such persons as part of a widespread or systematic attack against that civilian population on racial or ethnic or political grounds; or that his subordinates committed such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

227 612
1846

January to July 1994 Events:

47. Between 1 January and July 1994, **EPHREM SETAKO** acting in concert with his co-perpetrators notably: Juvenal Kajelijeli, Joseph Nzirorera, Colonel Bonaventure Ntubitura, Dominique Gatsimbanyi and Colonel Augustin Bizimungu committed, planned, instigated, ordered, encouraged, participated in or otherwise aided and abetted the killing of persons identified as Tutsi or deemed to be sympathetic to the Tutsi, or to support the RPF, or to be politically opposed to the MRND in *Ruhengeri préfecture*, in furtherance of the objective of the joint criminal enterprise.

January to March 1994 Events

48. Sometime in February 1994, after one of the regular meetings held at the residence of the mother of Joseph Nzirorera, **EPHREM SETAKO** ordered a known communal policeman to kill a Tutsi man called Bernard Bajyagahe and the Accused's order was immediately executed in furtherance of the objective of the joint criminal enterprise by this communal policeman.

April 1994 Events:

49. Immediately after the meeting of the early morning of 7 April 1994 at the residence of the mother of Joseph Nzirorera, and the address of the *Interahamwe* by a co-perpetrator of the Accused, Juvenal Kajelijeli, Michel Niyigaba, the President of *Interahamwe* in *Mukingo* commune, acting in concert with others arrested and killed a certain Tutsi man called Rukara and his brother, Lucien at the *Byangabo* trading center.
50. Similarly, on the same day of 7 April, a known *Interahamwe* acting in concert with others killed a staff of ISAE called SEBIRAYI and two farmers, called GASOMINARI and KARASANKIMA at their places of refuge within *Mukingo* commune in furtherance of the objective of the joint criminal enterprise.
51. Thereafter, in the same morning of 7 April, at the *Rwankeri* School of Adventists, in *Mukingo* Commune, **EPHREM SETAKO** caused the death of a young Tutsi girl by ordering a known male adult, to pour petrol upon the Tutsi girl and set her alight, which orders were carried out resulting in the death of the young Tutsi girl in the presence of **EPHREM SETAKO**.
52. Also, in the morning of 7 April 1994, **EPHREM SETAKO** instigated and encouraged *Interahamwe* to kill two Tutsi men called Ziragwira and Bambasi arrested at the roadblock located by the Accused's residence in *Nkuli* commune known as *Sodeparal*.
53. On or about 8 April 1994, in the presence of the local Hutu population, **EPHREM SETAKO** shot dead a Tutsi lady called Rachel in the compound of his residence in *Nkuli* commune.

COUNT 4: EXTERMINATION as a CRIME AGAINST HUMANITY

EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of **EXTERMINATION AS A CRIME AGAINST HUMANITY**, pursuant to Articles 3 (b) and 6 (1) of the Statute, and with individual criminal responsibility as a superior for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** with intent to kill members of the Tutsi racial or ethnic group or persons identified as Tutsi or presumed to support the Tutsi, was responsible for killing such persons on a large scale as part of a widespread or systematic attack against that civilian population on racial or ethnic or political grounds; or that his subordinates committed such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

January to July 1994 Events:

- 54. Between 1 January and July, 1994, **EPHREM SETAKO** acting in concert with his co-perpetrators committed, planned, instigated, ordered, encouraged, participated in or otherwise aided and abetted the killing of hundreds of civilian population in several massive, systematically coordinated attacks against a group of persons identified as Tutsi, or deemed to be sympathetic to the Tutsi, or to support the RPF, or to be politically opposed to the MRND in *Ruhengeri* and *Kigali-Ville préfectures*, in furtherance of the objective of the joint criminal enterprise.
- 55. On an almost daily basis during the period of 7 April to 4 July 1994, the Accused in concert with his co-perpetrators notably: Colonel Tharcisse Renzaho, Colonel Bagosora, Colonel Anatole Nsengiyumva and Major Patrice Bivamvagara, instigated, ordered, aided and abetted the *Interahamwe* of *Kigali-Ville préfecture*, particularly those of *Kiyovu cellule*, *Gitega* and *Rugenge secteurs* to search for and kill the Tutsi. The *Interahamwe* complied with the orders of these high ranking military officers in furtherance of the objective of the joint criminal enterprise which resulted in the death of hundreds of Tutsi at several locations in *Kigali-Ville préfecture* including St Famille, St Paul, *Centre d'Etudes des Langues Africaines (CELA)* and *CND* located in *Rugenge secteur* and Chinese House at *Kiyovu*.

April 1994 Events:

- 56. On or about 7 April 1994, during the attack on the members of the Tutsi ethnic group in *Mukingo* commune following the meeting at the residence of Nzirorera's mother, the attackers comprising of militiamen, communal policemen and soldiers killed hundreds of Tutsi at various locations in *Mukingo* commune, particularly, *Busogo* Parish, *Busogo*, *Rwankeli*, *Shigiro* and *Nyakinamana* cellules.
- 57. Similarly, on or about 14 April 1994, **EPHREM SETAKO** in concert with his co-perpetrators Augustin Bizimungu, Basile Nsabumugisha, Fabian Maniragaba, Colonel Bivugabagabo, Colonel Ntubitura, and other military and civilian authorities, instigated, aided and abetted, and encouraged the *Interahamwe* from the various parts

of the *Ruhengeri préfecture* to kill the Tutsi refugees in the Court of Appeal building and compound in *Ruhengeri* and several hundreds of Tutsi refugees were killed by these *Interahamwe*.

58. On or about 25 April 1994, members of the civil defence and soldiers killed several Tutsi refugees at night at the *Mukamira* Camp in furtherance of the orders of **EPHREM SETAKO**, at a meeting held at the camp on the same day in which the Accused ordered them to kill the Tutsi refugees in the camp and also, to erect roadblocks to hunt down the Tutsi and their accomplices for elimination.

COUNT 5: - VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and ADDITIONAL PROTOCOL II OF 1977, AS INCORPORATED IN ARTICLE 4 (a) OF THE STATUTE.

EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of the crime of **CAUSING SERIOUS VIOLATIONS TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and ADDITIONAL PROTOCOL II OF 1977**, pursuant to Articles 4 (a) and 6(1) of the Statute, and with individual criminal responsibility as a superior for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** committed or ordered to be committed violence to life, health and physical or mental well-being of persons, including the murder, torture, mutilation and corporal punishment of non-combatants, in furtherance, or under the guise, of the existing armed conflict, which was not of an international nature; or that his subordinates committed such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

January to July 1994 Events:

59. Between 1 January 1994 and 17 July 1994 there was an armed conflict not of an international character between the Rwanda Armed Forces (FAR) and the Rwanda Patriotic Front (RPF) in the territory of the Republic of Rwanda. **EPHREM SETAKO** was a member of the FAR and a combatant in the non-international armed conflict against the RPF.
60. As a combatant in the non-international armed conflict between the FAR and RPF, **EPHREM SETAKO** acting in concert with others notably military, political and local authorities including Augustin BIZIMANA, Colonel Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Colonel Tharcisse RENZAHO, Colonel Marcel BIVUGABAGABO, Colonel NTIBITURA, Major BIZABARIMANA, Major Patrice BIVAMVAGARA, Captain HASENGINEZA, Joseph NZIRORERA, Casimir BIZIMUNGU Juvenal KAJELIJELI, Dominique GATSIMBANYI, Jean

Damascence NIYOYITA, Jonathan BAMBONYE, General Augustin BIZIMUNGU, Warrant Officer KARORERO, Bernard MANIRAGABA, Fabian MANIRAGABA committed, planned, instigated, ordered, encouraged, participated in or otherwise aided and abetted the killing of many civilians protected under common Article 3 of the four 1949 Geneva Conventions and Additional Protocol II of 1977.

61. Between 1 January and 17 July 1994, on the orders, instigation or encouragement of **EPHREM SETAKO**, the militiamen, soldiers, communal policemen and *Interahamwe* attacked, tortured and killed many civilians not participating in the non-international armed conflict between the FAR and the RPF. On the orders, instigation or encouragement of **EPHREM SETAKO** the militiamen, soldiers and *Interahamwe* sought out civilian refugees at various locations in Kigali-Ville and Ruhengeri *préfectures* arrested and unlawfully detained them, beat, tortured, maimed and killed or buried them alive in pits and mass graves scattered all over the Kigali-Ville and Ruhengeri *préfectures* particularly in pits known as *CND*, *IBIBARE* and *NYARUHONGA CAVE* located at *Rugenge* in Kigali, *Mukamira* camp and *Nkuli* commune, respectively and a mass grave located in *Rwinzovu secteur*.

January to March 1994 Events:

62. In March 1994, after a particular meeting during the period that the RPF had advanced to *Rushashi* commune in Kigali Rural *préfecture*, **EPHREM SETAKO** ordered *Interahamwe* to set up roadblocks in *Mukingo* commune to track down the Tutsi and their accomplices for elimination by exterminating all of them with no exception, if the RPF advanced to *Ruhengeri*. The RPF did advance to *Ruhengeri* and many Tutsi civilians were killed by the *Interahamwe*.

April and June 1994 Events:

63. In furtherance of the war efforts, at three meetings held at *Mukamira* Camp, within the compounds of a certain business man known as Rukabu in *Nkuli* commune and *Kiyovu* Hotel in Kigali on or about 7 and 25 April 1994, and in June 1994, respectively, **EPHREM SETAKO** publicly accused and characterized all Tutsi civilians not participating in the non-international armed conflict between the FAR and the RPF as the enemy of Rwanda or accomplices of the RPF. Consequently, local Hutu civilians, soldiers, communal policemen and militiamen identified Tutsi civilians as accomplices of the RPF and searched for and killed them.
64. In addition to paragraphs 59 to 63, the Prosecutor adopts and incorporates for the purposes of Count 5, all facts as described and detailed in paragraphs 29 to 58 of this Indictment.

COUNT 6 - **PILLAGE as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977, AS INCORPORATED IN ARTICLE 4 (f) OF THE STATUTE**

EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of the crime of **PILLAGE as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977**, pursuant to Articles 4(f) and 6(1) of the Statute, and with individual criminal responsibility as a superior for this crime, pursuant to Article 6 (3) of the Statute, between the dates of 1 January 1994 and 17 July 1994 in Rwanda, particularly in *Ruhengeri* and *Kigali-Ville Préfectures*, in that **EPHREM SETAKO** committed or ordered to be committed pillage of property of non-combatants, in furtherance, or under the guise, of the existing armed conflict, which was not of an international nature; or that his subordinates committed such acts or omissions, which he failed to take necessary and reasonable measures to prevent or punish, knowing, or having reason to know, the acts or omissions were about to be committed, or he failed to punish the perpetrators of such acts or omissions, which he knew or had reason to know they had committed.

CONCISE STATEMENTS OF FACTS FOR COUNT 6:

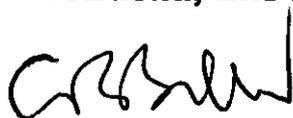
January to July 1994 Events:

- 65. Between 1 January 1994 and 17 July 1994 there was an armed conflict not of an international character between the Rwanda Armed Forces (FAR) and the Rwanda Patriotic Front (RPF) in the territory of the Republic of Rwanda. **EPHREM SETAKO** was a member of the FAR and a combatant in the non-international armed conflict against the RPF.
- 66. Between 1 January and 17 July 1994, on the orders, instigation or encouragement of **EPHREM SETAKO** various attacks by the militiamen and soldiers were directed at the property of the civilian population in *Kigali-Ville* and *Ruhengeri préfectures* resulting in the looting and *destruction* of many personal and public properties in *Kigali-Ville préfecture particularly at Kiyovu cellule, Gitega and Rugenge secteurs*, and *Ruhengeri préfecture particularly at Mukingo, Nkuli and Kigombe communes*
- 67. In addition, during the period of April to July 1994, on the orders, instigation or encouragement of **EPHREM SETAKO** the attackers notably: militiamen and soldiers, looted and destroyed the property of the Tutsi civilian population who were not participating in the non-international armed conflict in furtherance of the war efforts and/or in exploitation of the environment created by the war.
- 68. In addition to paragraphs 65 to 67, the Prosecutor adopts and incorporates for the purposes of Count 6, all facts as described and detailed in paragraphs 29, 31, 33, 34, 36, 37, 39, 40, 41, 45, 55, 56, 57 and 58 of this Indictment

1841

The acts and omissions of **EPHREM SETAKO** detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated at Arusha, this 23 June 2008:



Hassan Bubacar Jallow
The Prosecutor