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UNITED NATIONS
NATIONS UNIES

ICTR-04-81-I
15-06-2007
(364-337)
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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364 S.N/11/009

Before: Judge Dennis C. M. Byron, *President of ICTR*

Registrar: Mr. Adama Dieng

Date filed: 15 June 2007

THE PROSECUTOR

v.

EPHREM SETAKO

Case No. ICTR-04-81-I

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**PROSECUTOR'S MOTION
FOR LEAVE TO AMEND INDICTMENT
[Rule 50 of the Rules of Procedure and Evidence]**

Office of the Prosecutor

Hassan Bubacar Jallow
Ms. Ifeoma Ojemeni Okali
Mr. Simba Mawere

Counsel for the Accused

Mr. Stefan Kirsh

A. — Nature of the Application and Procedural background

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(i) Overview

1. The Prosecutor applies for leave to amend the Indictment against Ephrem Setako (“the Accused”), dated 22 March 2004, pursuant to Rule 50 of the Rules of Procedure and Evidence (“The Rules”).

2. In the proposed Amended Indictment annexed to this Application¹, the Prosecutor seeks leave to amend the current Indictment, by:

- Adding two counts, namely Conspiracy to Commit Genocide and Direct and Public Incitement to Commit Genocide²;
- Providing details and clarification that reflect recent appellate jurisprudence, in relation to the modes of liability that give rise to the Accused’s responsibility, both as an individual and as a superior, pursuant to Articles 6(1) and 6(3) of the Statute, respectively; the basis for asserting that the Accused is responsible as a participant in a joint criminal enterprise, and the material facts underlying such responsibility with regard to each count in the proposed Amended Indictment;
- Deleting the proposed evidence in paragraphs 16, 19 to 19.5 and 20.3 in the current Indictment; and
- Adding details, including in relation to the Accused’s particulars, and new facts, in the existing factual allegations in support of the existing and the new charges, to make them more clear and precise.

3. The proposed amendments are justified in law and in fact and would not prejudice the Accused or cause undue delay in the proceedings.

¹ Annex A is in the form that the Prosecutor intends to file should this Application for Leave be granted.

² Count 1 and Count 4 in the proposed Amended Indictment.

4. The trial of Ephrem Setako is still at a pre-trial stage and a Trial Chamber is yet to be assigned. It is to be noted that a date is yet to be set for the commencement of the trial of the Accused before the Trial Chamber of the International Criminal Tribunal for Rwanda (The Tribunal).

5. The current indictment was confirmed on 22 March 2004 and charges the Accused with genocide, or alternatively complicity in genocide, murder as crime against humanity, extermination as crime against humanity, killing and causing violence to life, health and physical or mental well-being of persons as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II of 1977 and pillage as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II of 1977. At the initial appearance held on 22 November 2004, the Accused pleaded not guilty to all charges.

6. During the status conference of 7 May 2007 presided by the then ICTR President Erik Mose, the Prosecutor indicated his intention to request leave to amend the current Indictment.

B. — Submissions

(i) *The Application is justified in law and in fact*

7. The streamlining of the facts in support of the prosecution's case and the result of ongoing investigations show the need to bring new charges and provide further clarification and additional information. The additional details and clarifications, including new details and corrections in relation to the Accused's particulars, in the factual allegations in support of the existing and the new charges, make the indictment more clear and precise. In addition, the allegations in the proposed Amended Indictment reflect the evidence the Prosecutor intends to rely on.

8. Rule 50(A) of the Rule and the jurisprudence of the Tribunal allow for the amendment of an indictment after the initial appearance of the Accused.³ It is settled law that "[n]ew

³ Rule 50(A)(i), (ii) of the Rules. See also *Prosecutor v. Muhimana*, Decision on Motion to Amend Indictment,

charges do not prohibit a Chamber from granting the Prosecution leave to amend an indictment.”⁴ Leave to amend an indictment is at the discretion of the Trial Chamber. However, a Chamber “will typically grant such leave where the amendment in question has the prospect of helping to ‘ensure that the real issues in the case will be determined.’”⁵

9. The proposed amendments should therefore be allowed in the interest of justice, of which the right of the Accused to an expeditious trial is but one component. The Application will not result, at this stage of the proceedings, in any delay in the commencement of the trial or unfairly prejudice the Accused in the preparation of his defence.

(ii) *The new charges allow to capturing more accurately the totality of the Accused’s criminal conduct and liability*

10. The Prosecutor proposes to add Counts of Conspiracy to Commit Genocide and Direct and Public Incitement to Commit Genocide, respectively as Count 1 and Count 4, respectively.⁶ The proposed additions are appropriate in view of the evidence available. With these new counts, the Indictment will describe more accurately the totality of the Accused’s criminal conduct and liability.

11. Importantly, the material facts underlying the proposed new charges are the same as those pleaded in the current Indictment in support of the Counts of Genocide and Complicity in Genocide. The proposed charges are amply supported by the same set of facts relied on in support of the Counts of Genocide and Complicity in Genocide.

12. It is noteworthy that the supporting materials in relation to the Count of Genocide have been already reviewed by the confirming judge who determine that a *prima facie* case exists against the Accused for the Count of Genocide and Complicity in Genocide. The Prosecutor submits that the same supporting materials show that there is a *prima facie* case in relation to the proposed Counts of Conspiracy to Commit Genocide, Direct and Public

21 January 2004, para. 4.

⁴ *Prosecutor v. Muvunyi*, (Appeals Chamber) Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision on 23 February 2005, 12 May 2005, para. 38.

⁵ *Prosecutor v. Haradinaj et al.*, *Decision on Motion to Amended the Amended Indictment*, 12 January 2007, para. 12.

⁶ The paragraphs and the counts are re-numbered and rephrased to reflect the alterations occasioned by the proposed amendments.

Incitement to Commit Genocide, and War Crimes. The ongoing investigations have affirmed that the allegations can be sustained and the Prosecution can establish a *prima facie* case based on the existing and new evidence.⁷ There would therefore be no prejudice to the Accused.

13. The Prosecution proposes to make available to the designated Trial Chamber or Judge, *ex parte*, no later than Thursday, 21 June 2007, a Confidential Annotated Amended Indictment and the Confidential Revised Supporting Material, which contains the unredacted documents and witnesses statements, as well as new witnesses statements, it intends to rely on, in support of each allegation in the Amended Indictment. The Prosecutor will provide the Annotated Amended Indictment and the new supporting materials, including the witnesses statements in redacted form, to the Defence at the time required pursuant to Rule 66(A)(i) or earlier if the Chamber so orders.

14. In any event, if the Application is granted, the Accused will have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges. The Accused has also the right to enter a plea on those new charges.

(iii) The amendments in relation to the modes of participation are consistent with recent jurisprudence and provide additional notice of the case to be met

15. The proposed amendments provide a more precise link between the pleaded types of responsibility pursuant to Article 6(1) and to Article 6(3) in relation to each individual count against the Accused. They also reflect more fully the involvement of the Accused in the planning, instigation, ordering, commission or otherwise aiding and abetting in the planning, preparation, or execution of the crimes charged against him. The Prosecutor has incorporated language in this regard within the indictment describing, for each charge, the mode of liability faced by the Accused.

16. The proposed Amended Indictment therefore provides clarifications and details on the evidence specifying the particular nature of the responsibility alleged and the relationship

⁷ There is some additional supporting evidence, which was not available at the time of the confirmation of the indictment against the Accused.

between the individual acts of the Accused and the crimes charged. More information is also provided on the relationship between the Accused and other actors in the alleged joint criminal enterprise with the Accused.

17. The presentation of the modes of participation takes into account precepts outlined in this Tribunal and the International Criminal Tribunal for the Former Yugoslavia (ICTY)'s jurisprudence.

18. Since the modes of criminal liability asserted in connection with each factual allegation are set forth more clearly, the proposed Amended Indictment will provide the Accused ample information and precision with regard to the case to be met.⁸

(iv) Withdrawal of allegations not supported by available evidence

19. It became apparent from trial preparation and ongoing investigations that the prosecution would not be in a position to prove all the allegations set forth in the current Indictment for various reasons, including the facts that two important witnesses have died and other proved uncooperative. The Prosecution therefore requests leave to withdraw the proposed evidence relating to paragraphs 16, 19 to 19.5 and 20.3 in the current Indictment.

(v) Allowing the amendments would not cause unfair prejudice to the accused or result in undue delay

20. Granting leave to amend will not negatively impact the rights of the Accused or otherwise prejudice his right to a fair trial without undue delay. The Amended Indictment sets out in greater detail additional facts that specify the relationship between the individual acts of the Accused and the crimes. More information is also provided on the relationship between the Accused and other actors in a joint criminal enterprise with the Accused. The proposed amendments will not be unduly burdensome for the defence. Rather, the amendments bring more clarity and specificity, thereby enabling the accused further opportunity to prepare an effective defence.

⁸ *Prosecutor v. Muhimana*, Decision on Motion to Amend Indictment, 21 January 2004, para. 6.

21. In addition, there is no likelihood of delay in commencing the trial. No date has been set for trial and there is no reason to anticipate that the setting of a date is imminent. The matter is yet to be allocated to a Trial Chamber.

22. Consequently, allowing the Application would not lead to a postponement or undue delay in the commencement of the trial, or adversely affect the Accused's right to a fair trial without undue delay pursuant to Articles 19(1) and 20(4)(c) of the Statute.

(vi) Conclusion

23. The proposed amendments should be allowed in the interest of justice, of which the right of the Accused to an expeditious trial is but one component.

C. — Relief Sought

24. For all the foregoing reasons, the Prosecutor requests that:

- (a) Leave be granted to amend the indictment against the Accused, as proposed in the Amended Indictment attached to this Application;
- (b) a further initial appearance of the Accused be ordered as soon as practicable
- (c) any other or further orders that the Trial Chamber may deem fit and proper to make in the interest of justice.

Respectfully submitted,



Ifeoma Ojemeni Okali
Simba Mawere

Office of the Prosecutor

ANNEX A

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CASE NO. ICTR-2004-81-I

THE PROSECUTOR

AGAINST

LIEUTENANT COLONEL EPHREM SETAKO

PROPOSED AMENDED INDICTMENT

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:

LT-COLONEL EPHREM SETAKO

With:

- COUNT 1 - CONSPIRACY TO COMMIT GENOCIDE pursuant to Articles 2 (3) (b) and 6 (1) of the Statute;
- COUNT 2 - GENOCIDE pursuant to Articles 2 (3) (a), 6 (1) and 6 (3) of the Statute, or alternatively;
- COUNT 3 - COMPLICITY IN GENOCIDE pursuant to Articles 2 (3) (e), 6 (1) and 6 (3) of the Statute;
- COUNT 4 - DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE pursuant to Articles 2 (3) (c), 6 (1) and 6 (3) of the Statute;
- COUNT 5 - MURDER as a CRIME AGAINST HUMANITY pursuant to Articles 3 (a), 6 (1) and 6 (3) of the Statute;
- COUNT 6 - EXTERMINATION as a CRIME AGAINST HUMANITY pursuant to Articles 3 (b), 6 (1) and 6 (3) of the Statute;
- COUNT 7 - 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 8 - 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:

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1. **LT-COLONEL 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, **LT-COLONEL 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 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 is 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, **LT-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, **LT-COLONEL EPHREM SETAKO** possessed authority in Rwandan society and as a result, he could order soldiers, communal police, local civilian population 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, **LT-COLONEL EPHREM SETAKO** had de facto control over the local population, communal police, soldiers and militiamen in *Ruhengeri* prefecture and *Kigali-ville*. In addition, the Accused's role in the supervision and provision of military training and distribution of weapons to militiamen, communal police, local civilian population and civilian authorities further strengthened his de facto authority over them.
8. Between April and July 1994, **LT-COLONEL EPHREM SETAKO** was the unofficial Liaison Officer between the Ministry of Defence and the *Interahamwe* of *Kigali-ville*, 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*, 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 Protocols 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:

LT-COLONEL EPHREM SETAKO is individually criminally responsible, pursuant to Article 6 (1) of the Statute of the Tribunal, for the crimes of Conspiracy to Commit Genocide, Genocide, or alternatively Complicity in Genocide, Direct and Public Incitement to Commit 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. **LT-COLONEL 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, excepting conspiracy to commit genocide, namely: Genocide, or alternatively, Complicity in Genocide, Direct and Public Incitement to Commit Genocide, Murder as a Crime Against Humanity and 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. **LT-COLONEL 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. **LT-COLONEL 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, **LT-COLONEL 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 prefecture.
19. The joint criminal enterprise, of which **LT-COLONEL 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, **LT-COLONEL 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, NYABUSORE, Esdras BAHEZA, Fabian MANIRAGABA, Mathias MHIRANYA, Shadrack SENDUGU, Gabriel MBYARIYEHE, Assiel NDISETSE, Michel NIYIGABA, Bernard MANIRAGABA, Gervais HARERIMANA, IYAMUREMYE, KABUTURA, Augustin HABİYAMBERE, other known and unknown participants. These persons are collectively hereinafter referred to, variously, by name or as "co-perpetrators". In addition, the persons just described are co-conspirators with the Accused, for the purposes of Count 1 of this Amended Indictment, charging **LT-**

COLONEL EPHREM SETAKO with the crime of Conspiracy to Commit Genocide.

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, **LT-COLONEL 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, **LT-COLONEL 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. **LT-COLONEL EPHREM SETAKO** is also individually criminally responsible as a superior for Conspiracy to Commit Genocide, Genocide, or alternatively Complicity in Genocide, Direct and Public incitement to commit 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, **LT-COLONEL EPHREM SETAKO** exercised effective control over the following subordinates: Soldiers of the FAR, local Hutu civilian population and members of the militiamen.
26. **LT-COLONEL 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. **LT-COLONEL 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: CONSPIRACY TO COMMIT GENOCIDE:

LT-COLONEL EPHREM SETAKO is charged with committing the crime of **CONSPIRACY TO COMMIT GENOCIDE**, pursuant to Articles 2 (3) (b) and 6 (1) of the Statute, in the period which includes the dates between 1 January 1994 and 17 July 1994 in Rwanda, and particularly in *Ruhengeri* and *Kigali-ville* Prefectures, by conspiring together with all or some of the others described in paragraph 20 of this Amended Indictment, to destroy, in whole or in part, the Tutsi ethnic group.

28. Over the course of a period of several years, beginning in 1990 and continuing up to and including the period between the dates of 1 January 1994 and 17 July 1994, in furtherance of the scheme to eliminate the members of the Tutsi ethnic group, **LT-COLONEL EPHREM SETAKO** agreed with some of the co-conspirators, to plan and prepare the destruction of Tutsi population in Rwanda, particularly the killing of persons identified as Tutsi and committed acts in furtherance of this agreement. However, there were other meetings held within these prefectures at the same time in furtherance of the objective of the joint criminal enterprise.

Pre-1994 Events:

29. In furtherance of this agreement, the Accused attended and participated in several meetings including MRND meetings between 1991 and June 1994 held at different times and locations within *Ruhengeri* and *Kigali-ville* prefectures as more specifically described hereunder, where the plan to eliminate, the plans to implement the elimination, and the manner of the implementation of the plan for elimination of the Tutsi were agreed upon as described herein:
30. At a meeting held at the *Mukingo* communal office on or about 25 January 1991, after the attack of the RPF on the *Ruhengeri* prison, the Accused acting in concert with his co-conspirators notably: Joseph Nzirorera, Colonel Augustin Bizimungu, Juvenal Kajelijeli and Assiel Ndisetse, instigated and ordered the local Hutu population to identify Tutsi suspected to be accomplices of the *Inyenzi* enemy, particularly, the intellectuals men amongst them and to prepare a list for their elimination. The local authorities prepared the list and the communal police arrested and took away these Tutsi men and some were never seen again.
31. In furtherance of the agreement to eliminate the Tutsi, at a meeting held at *Mutovu* cellule sometime in February 1992, the Accused in concert with his co-conspirators notably: Lt Hasengineza, Juvenal Kajelijeli and Mathias Mpiranya instructed and encouraged the youths to dump the dead bodies of the Tutsi into *Nyaruhonga* cave rather than beside the roadblock by his residence in *Nkuli* commune so as to avoid the attention of human rights organizations

Creation of Interahamwe/Amahindure:

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32. Among other things, over the course of the years 1991 to 1994, the accused agreed to create, and to participate in the creation of *Interahamwe* that would respond to the call to attack, kill and destroy the Tutsi population
33. At two meetings held at *Kurupango* and a football pitch in *Nkuli* commune between 1992 and early 1993, the Accused, in concert with his co-conspirators notably: Joseph Nzirorera, Juvenal Kajelijeli, Colonel Bangamwabo and local authorities agreed to mobilize the youth and provide military training for them for purposes of fighting the enemy and their accomplices. The Accused promised to provide them with both arms and a military instructor for the military training.
34. Sometime, towards the end of 1992 or early 1993, at a meeting held at the *Mukingo* communal office, the Accused in concert with his co-conspirators notably: Joseph Nzirorera, Colonel Augustin Bizimungu, Colonel Bonaventure Ntibitura, Esdras Baheza and local civilian authorities agreed to set up the *Interahamwe* group and arm them to defend the region against the *Inkontanyi* and also, to draw up a list of young men who would be trained in weapon handling. The Accused promised to provide weapons for their use for patrol which would be stored at the *Ruhehe* hills, opposite the *Mukingo* communal office.
35. As part of the agreement to enlist and train the *Interahamwe* militia, the accused agreed that the militiamen would be used in the plan to destroy and kill the Tutsi group, using the *Interahamwe* to set up and man roadblocks to find and kill any and all Tutsi. The Accused in concert with other co-perpetrators of the joint criminal enterprise agreed to indoctrinate the members of the public and the militiamen at meetings and during military training on the Hutu extremist ideology and the identification of the enemy as Tutsi as described herein.
36. Sometime in late 1993, at a meeting held at *Mukingo* communal office, the Accused in concert with his co-conspirators Joseph Nzirorera, Juvenal Kajelijeli, Casmir Bizimungu, Augustin Bizimungu, Dominique Gatsimbanyi and Esdras Baheza agreed to form a militia group called the *Amahindure* otherwise known as "Volcanic Lava Force" and to provide them with military training and arms for the purposes of the elimination of the Tutsi and their accomplices. The Accused encouraged them to kill the Tutsi and specifically stated that those to be killed included Tutsi at front and Tutsi at home and Hutu married to Tutsi and promised to provide them with both arms and an Instructor for the military training.

Military Training, Distribution of Weapons and Establishment of Roadblocks:

37. As part of the agreement, the accused also agreed to be involved with, and was involved in, the training of the militiamen, and agreed to, and did, supply weapons to the *Interahamwe* militia to be used in furtherance of the agreement to eliminate the Tutsi.
38. In furtherance of the agreement, the Accused in concert with his co-conspirators notably: Colonel Augustin Bizimungu, Colonel Bizabarimana, Colonel Bonaventure Ntibitura, Colonel Bivugabagabo, Lt Hasengeza, Warrant Officer Karorero,

Juvenal Kajelijeli, Casmir Bizimungu and Joseph Nzirorera provided military training to the youths which was conducted at various locations in *Nkuli*, *Kigombe* and *Mukingo* communes including *Isimbi* in *Mukingo* commune, football pitch and *Mukamira* camp in *Nkuli* commune; Gendarmerie camp and *Cabararika* forest in *Kigombe* commune and the compound of *Nkuli* and *Mukingo* communal offices.

39. Also, the Accused in concert with his co-perpetrators notably: Casmir Bizimungu, Joseph Nzirorera, Colonel Augustin Bizimungu, Colonel Bizabarimana and Lt Hasengeza provided the militia groups with weapons and the military instructors as promised and Warrant Officer Karorero was the main instructor for the military training for the youths and *Interahamwes* of both communes.
40. The Accused in concert with others occasionally supervised and facilitated the military training. During this period, the Accused would indoctrinate the *Interahamwe* on who the enemy was and also, evaluate what their needs were. On or about 15 April 1993, the Accused in concert with Colonel Bizabarimana supervised the military training of *Interahamwes* from parts of the *Ruhengeri* prefecture and provided them with bamboo sticks as replica of guns for the training and promised to train them further at their various communes.
41. Similarly, sometime in June 1993, the Accused in company of one Barayarwiza supervised the military training of the youths of CDR party called *Impuzamugambi* in *Ruhengeri* town and provided them with some grenades in fulfillment of his promise at one of their meetings that the Accused had previously attended. Also, the Accused instigated and incited them to identify the Tutsi and their accomplices who were the enemy of their country for elimination at the appropriate time and he further instructed them to use the grenades in fighting the RPF if they infiltrate their area and their rival political parties.

January to March 1994 Events:

42. Sometime in early 1994, at a meeting held at the *Nkuli* communal office, the Accused in concert with his co-perpetrators notably: Joseph Nzirorera, Juvenal Kajelijeli, Gatsimbanyi, Shadrack, Sendugu, Colonel Bagosora, parliamentarians and local authorities directly and publicly incited and instigated the local population to identify the enemy who were the Tutsi whom he referred to as Inyenzi Inkotanyi and encouraged the strong members of the population to receive military training. Thereafter, the local civilian authorities and *Interahamwe* arrested and took away some Tutsi who never seen again.
43. Sometime in January 1994, **LT-COLONEL EPHREM SETAKO** in keeping with his promise to supply weapons to the militiamen, delivered ammunitions to the military position located at the *Ruhehe* hills and instructed the soldiers that the ammunitions were for the use of the *Amahindure* during night patrols. The *Interahamwe/Amahindure* and local civilian population used these weapons in the killing of Tutsi and their accomplices between 7 April and 15 July 1994.
44. Between January and March 1994, **LT-COLONEL EPHREM SETAKO** in concert with his co-perpetrators met regularly, particularly, during weekends at the residences of Joseph Nzirorera and his mother in *Mukingo* commune to espouse the

plan to kill the Tutsi, particularly, about reinforcement of roadblocks to prevent the Tutsi and their accomplices from escaping, weapons and military training. After each meeting, one of the co-conspirators, particularly Juvenal Kajelijeli would give instructions to the *Interahamwe* on how to execute their plans.

45. After one of the regular meetings in March 1994 **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and ordered the *Interahamwe* and the local authorities to set up roadblocks to track down Tutsi and their accomplices including those Hutu civilians who were opposing the MRND politically, for elimination. The *Interahamwe* and local population immediately complied with the Accused's orders by setting up roadblocks at many locations in *Mukingo* commune including in front of the *ISAE* and at *Byamgabo* trading centre to hunt down and they identified Tutsi using their identity card and killed them.

COUNT 2: GENOCIDE

LT-COLONEL 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* Prefectures, in that **LT-COLONEL 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 3: COMPLICITY IN GENOCIDE

Alternatively, **LT-COLONEL 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* Prefectures, in that **LT-COLONEL 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.

46. **LT-COLONEL 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:

47. In the early hours of the morning of 7 April 1994, at a meeting held at the residence of the mother of Joseph Nzirorera, **LT-COLONEL EPHREM SETAKO** in concert with his co-perpetrators notably: military, political and civilian authorities including Colonel Augustin Bizimungu, Joseph Nzirorera, Nyabusore, Esdras Baheza, Jonathan Bombonye, Niyoyita, 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 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.
48. 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 by the *Interahamwe* and local civilian authorities; Colonel Augustin Bizimungu delivered ammunitions to the *Mukingo* communal office that same day.
49. 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.
50. Immediately, a certain Tutsi man called Rukara was arrested and killed by militiamen, particularly, Michel Niyigaba and Musafari, 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.
51. 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.
52. 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.

53. 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.
54. The same morning of 7 April 1994, at a meeting held at the residence of a businessman called Rukabu in *Nkuli* commune, **LT-COLONEL 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.
55. 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.
56. **LT-COLONEL EPHREM SETAKO** in concert with his co-perpetrators notably, Colonel Tharcisse Renzaho, Colonel Anatole Nsengyumva and Colonel Theoneste Bagosora distributed weapons to the *Interahamwe* of Kigali-ville, particularly, those of Gitega and *Rugenge secteurs* in Kigali-ville led by Bernard Maniragaba and Angeline respectively, with which they executed the objective of the joint criminal enterprise between April to July 1994.
57. On or about 10 April 1994, **LT-COLONEL EPHREM SETAKO** in keeping with his supervisory role at roadblocks in Kigali-ville distributed arms to the *Interahamwe* manning a roadblock located at Sopecya petrol station in *Kiyovu*.
58. On or about 11 April 1994, **LT-COLONEL EPHREM SETAKO** instigated, ordered, and aided and abetted the killing of Tutsi civilians throughout the various communes in *Ruhengeri* prefecture 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.
59. Consequently, on or about 14 April 1994, **LT-COLONEL EPHREM SETAKO** in concert with his co-perpetrators, notably: Augustin Bizimungu, Basile, Fabian Maniragaba, Colonel Bivugabagabo, Colonel Ntiburura, and other military and civilian authorities, further instigated, encouraged, aided and abetted the *Interahamwes* from the various parts of the *Ruhengeri* prefecture to kill about 100-300 Tutsi refugees within 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.

60. In the month of April 1994, **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and supervised several roadblocks in Kigali-ville and at each roadblock, he instigated and encouraged the *Interahamwe* and soldiers manning it to continue killing the Tutsi.
61. On or about 25 April 1994, at a meeting, **LT-COLONEL 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.
62. Thereafter, on the same day, the soldiers and members of civil defence erected roadblocks 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 **LT-COLONEL EPHREM SETAKO**'s orders and their bodies were dumped in a pit called *IBIBARE* within the camp.

May 1994 Events:

63. Sometime in May 1994, **LT-COLONEL 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 the bodies into a pit known as *CND* located within the compound of a certain Tutsi man called Straton.
64. Sometime in May 1994, **LT-COLONEL EPHREM SETAKO** in concert with Major Bivamvagara, instigated and encouraged the *Interahamwe* of *Rugenge* secteur to kill about 30 Tutsi refugees in their presence.
65. On or about 11 May 1994, **LT-COLONEL 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.
66. On or about 17 May 1994, **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and ordered the local Hutu population to destroy the property of Tutsi and to allocate their landed property to themselves. Immediately, his orders were executed.
67. In mid-May 1994, at a ceremony held at the football ground nearby *Mukingo* communal office, **LT-COLONEL 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 Inkotanyi.

June 1994 Events:

68. Sometime in June 1994, at an impromptu meeting held outside the compound of *Kiyovu* Hotel, Kigali, **LT-COLONEL 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 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 4: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

LT-COLONEL EPHREM SETAKO is charged with planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of the crime of **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, pursuant to Articles 2 (3) (c) 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* Prefectures, in that he directly and publicly incited others to commit genocide; 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 March 1994 Events:

69. Sometime in early 1994, at a meeting held at the *Nkuli* communal office, the Accused in concert with his co-perpetrators notably: Joseph Nzirorera, Juvenal Kajelijeli, Gatsimbanyi, Shadrack, Sendugu, Colonel Bagosora, parliamentarians and local authorities, directly and publicly incited and instigated the local population to identify the enemy who were the Tutsi whom he referred to as *Inyenzi Inkotanyi* and encouraged the strong members of the population to receive military training. Thereafter, Tutsi were arrested by the local civilian authorities and *Interahamwe*, taken away and never seen again.
70. After one of the regular meetings in March 1994 **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and ordered the *Interahamwe* and the local civilian authorities to set up roadblocks to track down Tutsi and their accomplices including those Hutu civilians who were opposing the MRND politically for elimination. Immediately, the *Interahamwe* and local population complied with the Accused's orders by setting up roadblocks at many locations in *Mukingo*

commune including in front of ISAE to hunt down the Tutsi and they did identify Tutsi and killed them.

April 1994 Events:

71. Similarly, in the morning of 7 April 1994, at a meeting held at the residence of a businessman called Rukabu in *Nkuli* commune, **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and encouraged the *Interahamwe* and local civilian population to kill the Tutsi under the pretext that it was the Tutsi who killed President Habyarimana.
72. In the month of April 1994, **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and supervised several roadblocks in *Kigali-ville* and at each roadblock, he instigated and encouraged the *Interahamwe* and soldiers manning it to continue killing the Tutsi.
73. On or about 25 April 1994, at a meeting, **LT-COLONEL 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. Immediately, the soldiers and civil defence erected the roadblock and arrested several Tutsi and killed them along with the 30-50 Tutsi refugees in the camp.

May 1994 Events:

74. On or about 17 May 1994, **LT-COLONEL EPHREM SETAKO** directly and publicly incited, instigated and ordered the local Hutu population to destroy the property of Tutsi and to allocate their landed property to themselves. Immediately, his orders were executed in the night of the same day.

COUNT 5: MURDER as a CRIME AGAINST HUMANITY:

LT-COLONEL 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* Prefectures, in that **LT-COLONEL 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.

January to July 1994 Events:

75. Between 1 January and July 1994, **LT-COLONEL EPHREM SETAKO** acting in concert with his co-perpetrators notably: Juvenal Kajelijeli, Joseph Nzirorera, Colonel Ntibitura, 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* and *Kigali-ville* préfectures, in furtherance of the objective of the joint criminal enterprise.

January to March 1994 Events

76. Sometime in February 1994, after one of the regular meetings held at the residence of the mother of Joseph Nzirorera, **LT-COLONEL 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 police.

April 1994 Events:

77. 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.
78. 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.
79. Thereafter, in the same morning of 7 April, at the Rwankeri School of Adventists, in *Mukingo* Commune, **LT-COLONEL 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 **LT-COLONEL EPHREM SETAKO**.
80. Also, in the morning of 7 April 1994, **LT-COLONEL 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*.
81. On or about 8 April 1994, in the presence of the local Hutu population, **LT-COLONEL EPHREM SETAKO** shot dead a Tutsi lady called Rachel in the compound of his residence in *Nkuli* commune.

COUNT 6: EXTERMINATION as a CRIME AGAINST HUMANITY:

LT-COLONEL 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* Prefectures, in that **LT-COLONEL 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:

82. Between 1 January and July, 1994, **LT-COLONEL 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 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.
83. Between the months of April and July 1994, the Accused in concert with his co-perpetrators notably: Colonel Tharcisse Renzaho, Colonel Bagosora, Colonel Anatole Nsengiyumva, Major Patrice Bivamvagara, instigated, ordered, aided and abetted the *Interahamwe* of *Kigali-ville*, particularly those of *Gitega* and *Rugenge* secteurs to search for and kill 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* including St Famille, St Paul, Chinese house at *Celtar* in *Kiyovu*.

April 1994 Events:

84. 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.
85. Similarly, on or about 14 April 1994, **LT-COLONEL EPHREM SETAKO** in concert with his co-perpetrators Augustin Bizimungu, Basile, Fabian Maniragaba, Colonel Bivugabagabo, Colonel Ntubitura, and other military and civilian authorities, instigated, aided abetted, and encouraged the *Interahamwe* from the various parts of the *Ruhengeri* prefecture to kill the Tutsi refugees in the Court of Appeal building and compound and several hundreds of Tutsi refugees were killed by these *Interahamwe*.

86. 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 **LT-COLONEL 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 7: - 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* Prefectures, in that **LT-COLONEL 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:

87. 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. **LT-COLONEL EPHREM SETAKO** was a member of the FAR and a combatant in the non-international armed conflict against the RPF.
88. As a combatant in the non-international armed conflict between the FAR and RPF, **LT-COLONEL EPHREM SETAKO** acting in concert with others 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.

89. Between 1 January and 17 July 1994, on the orders, instigation or encouragement of **LT-COLONEL EPHREM SETAKO**, the militiamen, soldiers 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 **LT-COLONEL EPHREM SETAKO** the militiamen, soldiers and *Interahamwe* sought out civilian refugees at various locations in Kigali-ville and *Ruhengeri* prefectures 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* prefectures particularly in pits known as *CND*, *IBIBARE* and *NYARUHONGA CAVE* located in *Rugenge*, Kigali, *Mukamira* camp and *Nkuli* commune, respectively and a mass grave located in *Rwinzovu* secteur.

January to March 1994 Events:

90. In March 1994, after a particular meeting during the period that the RPF had advanced to *Rushashi* commune in Kigali Rural prefecture, **LT-COLONEL EPHREM SETAKO** ordered *Interahamwe* to set up roadblocks 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 1994 Events:

91. 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, **LT-COLONEL 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 and militiamen identified Tutsi civilians as accomplices of the RPF and searched for and killed them.

COUNT 8 - **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 Prefectures, in that **LT-COLONEL 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.

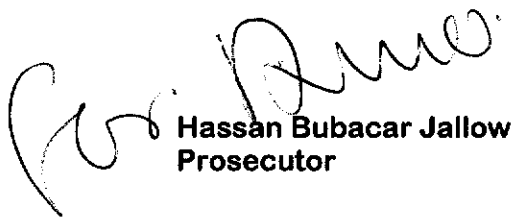
CONCISE STATEMENTS OF FACTS FOR COUNT 8:

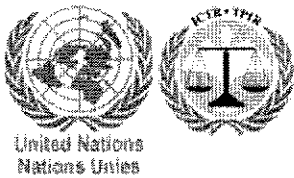
January to July 1994 Events:

92. 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. **LT-COLONEL EPHREM SETAKO** was a member of the FAR and a combatant in the non-international armed conflict against the RPF.
93. Between 1 January and 17 July 1994, on the orders, instigation or encouragement of **LT-COLONEL EPHREM SETAKO** various attacks by the militiamen and soldiers were directed at the property of the civilian population in *Kigali-ville* and *Ruhengeri* prefectures resulting in the looting and destruction of many personal and public properties in *Kigali-ville* and *Ruhengeri* prefectures.
94. In addition, during the period of April to July 1994, on the orders, instigation or encouragement of **LT-COLONEL 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.

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

Dated at Arusha, this 15th day of June 2007:


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 checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office Mbabazi Betty (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Setako		Case Number: ICTR-04-81-1	
Dates:	Transmitted: 15-06-07		Document's date: 15-06-07	
No. of Pages:	29	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Prosecutor's Motion for leave to amend indictment against Lieutenant Colonel Ephrem Setako to which is attached the proposed amended indictment marked "Annex A"			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex-Parte		<input 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
<input type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input checked="" type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused 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 checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input checked="" 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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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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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:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:

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