

# INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2001- 62 -I

2001 FEB 21 A 11:00

JUDICIAL PROCEEDINGS  
ICTR

## THE PROSECUTOR AGAINST SAMUEL MUSABYIMANA

### INDICTMENT

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

**SAMUEL MUSABYIMANA**

with GENOCIDE; or in the alternative COMPLICITY IN GENOCIDE; CONSPIRACY TO COMMIT GENOCIDE; and EXTERMINATION as a CRIME AGAINST HUMANITY; offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below:

#### II. THE ACCUSED:

**Samuel MUSABYIMANA** was born on 6 July 1956 in Mwendo *commune*, Kibuye *préfecture*, in the Republic of Rwanda. At the time of the events referred to in this indictment, **Samuel MUSABYIMANA** was Bishop of the Anglican Church in Shyogwe Diocese, Gitarama *préfecture*.

#### III. CHARGES, including a CONCISE STATEMENT OF FACTS:

##### Count 1: GENOCIDE, or alternatively COMPLICITY IN GENOCIDE:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Samuel MUSABYIMANA** with *GENOCIDE*, a crime stipulated in Article 2(3)(a) of the

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: *Dr. MINAH K. M. Anderson*  
SIGNATURE: *[Signature]* DATE: *29.03.2001*

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*Statute*, in that on or between the dates of 7 April 1994 and 30 May 1994 in Gitarama *préfecture*, Rwanda, **Samuel MUSABYIMANA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group;

*or alternatively,*

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Samuel MUSABYIMANA** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the *Statute*, in that on or between the dates of 7 April 1994 and 30 May 1994 in Gitarama *préfecture*, Rwanda, **Samuel MUSABYIMANA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group, as follows:

*Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *or alternatively,*

*Pursuant to Article 6(3) of the Statute:* by virtue of his actual and constructive knowledge of the acts and omissions of soldiers, gendarmes, communal police, *Interahamwe*, civilian militia, junior clergy and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged, in that:

1. During the events referred to in this indictment, the Tutsi, the Hutu and the Twa were identified as ethnic or racial groups.
2. The victims referred to in this indictment were Tutsi civilians from Gitarama *préfecture*, and other civilian Tutsis that sought refuge in Gitarama.
3. During the period following 10 April 1994, groups of Tutsi civilian refugees fled to Shyogwe Diocese to escape attack from local militias that chased them and set fire to their homes. They took refuge in various buildings on the Shyogwe church compound. Later, in late April 1994, numerous Hutu refugees (including civilians, soldiers and pastors coming from other dioceses) that fled the zones of combat between the *Rwandese Patriotic Front*, a politico-military opposition group, and the *Forces Armées Rwandaises*, the Rwandan government armed forces, also took refuge at Shyogwe diocese. During this period the total number of refugees at Shogwe diocese was approximately 500, of which roughly 100 were Tutsi and 400 were Hutu.
4. During April and May 1994, following the escalation of the non-international armed conflict in the region of Shyogwe diocese and the increasing numbers of killings in the *communes* of Gitarama *préfecture*, Bishop **Samuel MUSABYIMANA** publicly stated that the situation for the Tutsi was very bad and that their end had arrived and that it was no use trying to hide them.

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5. When refugees arrived at the diocese, Pastor Athanase NGILINSHUTI (a subordinate of Bishop **Samuel MUSABYIMANA** in the Anglican church hierarchy) registered their names in a book and indicated their ethnic or racial identity and their location on the church compound.
  6. The registering of refugees was conducted on the basis of their official government-issued identification cards. Those that did not have official identification cards were registered as Tutsi.
  7. Bishop **Samuel MUSABYIMANA** specifically instructed Pastor NGILINSHUTI to register refugees by ethnic or racial group, as described above, or was aware that Pastor NGILINSHUTI made such listings and on several occasions was present while refugees were being registered.
  8. This list of refugees, identifying them by ethnic or racial group and indicating their location on the church compound, was used to select Tutsi refugees at Shyogwe diocese to be transported to Kabgayi (a nearby massacre site), or to other unknown destinations, in order to be killed.
  9. During April 1994, the killings started at Shyogwe diocese and intensified in number during the following month (May 1994). Vehicles (notably a red *pick-up* and a white truck) with soldiers and militias aboard arrived regularly at the diocese to transport Tutsi refugees to Kabgayi and other unknown destinations, where they were killed.
  10. Pastor Athanase NGILINSHUTI (a subordinate of Bishop **Samuel MUSABYIMANA**) assisted soldiers and militias in identifying Tutsis by referring to the pre-established register of refugees. While Tutsi civilians were transported out of Shyogwe diocese to be killed, Hutu refugees at the diocese were protected and left unharmed.
  11. On or about 7 May 1994 soldiers and militias arrived at Shyogwe diocese aboard a red pick-up vehicle to transport civilian Tutsi refugees to Kabgayi or to an unknown destination for purposes of killing them. On that day Bishop **Samuel MUSABYIMANA** was present and, addressing the soldiers and militias, publicly stated that he did not oppose the killing of Tutsis, but that he did not want killings at the diocese and that the Tutsis should be taken to Kabgayi to be killed.
  12. Immediately thereafter, Pastor Athanase NGILINSHUTI (a subordinate of Bishop **Samuel MUSABYIMANA**) led and accompanied the soldiers and militias to Mikoto Home, a dormitory on the church compound that housed Tutsi and Hutu refugees. Using the same list that he had previously prepared himself, Pastor NGILINSHUTI assisted soldiers in separating the Hutu refugees from the Tutsi refugees. Hutu refugees were left unperturbed. Soldiers beat the Tutsi refugees and forced them to leave the premises.
  13. Later Bishop **Samuel MUSABYIMANA** arrived at Mikoto Home, accompanied by Dr. OSWALD and Interim Government Minister Eliezer NIYITEGEKA, who, in addressing the soldiers, ordered them not to kill on

the premises of the diocese since the church authorities did not want blood spilled on the church grounds, and also inquired how many persons could be killed with the arms that they had.

14. After beating the Tutsi refugees, soldiers and militias loaded them onto a pick-up truck and transported them to an unknown destination. None of the Tutsi civilians that were loaded onto the vehicle and taken away were ever seen again.
15. Bishop **Samuel MUSABYIMANA** was present when civilian Tutsi refugees were loaded onto the vehicle and, fully aware of the fate that awaited the Tutsi refugees, only intervened to save a Hutu youth (son of Nelson MUTUSHI) that soldiers and militias had mistaken for Tutsi and loaded onto the vehicle to be killed with the others. Bishop **Samuel MUSABYIMANA** publicly inveighed upon the soldiers to free the youth since he was Hutu, not Tutsi. The soldiers and militias obeyed Bishop **Samuel MUSABYIMANA** and allowed the youth to disembark, while the other Tutsi refugees were led away, never to be seen again.
16. Among those that were beaten, forcibly loaded onto the vehicle and transported out of the diocese and eventually killed were Fidel MWANANKABANDA, his wife and three of his sons, Wellars KAMANZA and his wife, and Emmanuel SEGONGA, all identified as or perceived to be Tutsi.
17. On or about 12 May 1994, soldiers and militias forcibly transported other Tutsi refugees from Shyogwe diocese to unknown destinations where they were killed.
18. Among those that were forcibly transported were Juvénal MPANUMUSINGO and five members of his family, Leonard KAYITARE and PARFUM, the assistant bourgmestre of Nyamabuye commune. None of these persons were ever seen alive again.
19. During the months of April and May 1994 roadblocks were mounted in the areas surrounding Shyogwe diocese under orders or authorization from or with the consent of Bishop **Samuel MUSABYIMANA**. The roadblocks were manned by students and employees of the diocese and were used to identify and monitor and control the movement of Tutsi civilians in the area surrounding the diocese. As a direct consequence, numerous Tutsi civilians were killed at roadblocks adjoining Shyogwe diocese.
20. Under the pretext of ensuring the security of the diocese, Bishop **Samuel MUSABYIMANA** requested firearms for the diocese at a meeting held in his residence at Shyogwe diocese in May 1994. Lieutenant Col. Tharcisse RENZAHU participated in the meeting and complied with the bishop's request by ordering delivery of firearms to the diocese, including a number of Kalachnikovs.

21. Major Anne Marie NYIRAHAKIZIMANA and Pastor Athanase NGILINSHUTI distributed the firearms that were delivered to Shyogwe diocese to militias, students and several pastors.
22. Bishop **Samuel MUSABYIMANA** knew that the firearms were distributed to militias and to students and employees of the diocese that were manning the roadblocks, and that the firearms would, or could, be used to kill Tutsi civilians.
23. On or about the morning of 28 May 1994, Bishop **Samuel MUSABYIMANA** sent a message to the Tutsi refugees that had taken refuge at the diocese and its surroundings through Pastor MUTIMURA (who had the confidence of the refugees), encouraging them to abandon their hiding places because he would help them to escape. When the refugees exposed themselves, the bishop sped off in a vehicle.
24. The Tutsi refugees that followed Bishop **Samuel MUSABYIMANA**'s instructions and came out of hiding were attacked by militias. Those that could not escape were either killed or thrown alive into a hole, where they remained until they died. Among the victims of this attack were several old women, one of whom is identified as Emilienne NYIRAGISIGAYI.
25. Later that same afternoon, Bishop **Samuel MUSABYIMANA** returned to Shyogwe diocese accompanied by an armed soldier. After being informed that all the refugees had been killed, Bishop **Samuel MUSABYIMANA** paid the militias that had launched the attack. Shortly thereafter, Bishop **Samuel MUSABYIMANA** loaded several remaining Tutsi refugees aboard his vehicle so that they would accompany him in his flight from the diocese. During his exile, Bishop **Samuel MUSABYIMANA** used the presence of these Tutsi refugees to solicit funds from international organizations and to justify several of his public statements.
26. Among the militias that Bishop **Samuel MUSABYIMANA** paid for their services in killing the refugees were MUHIRWA IRENEE, alias "Captain", JOSEPH (last name unknown), MULIGANDE, NDAHIMANA, SISI and KIBWANA.
27. Bishop **Samuel MUSABYIMANA** exercised authority over pastors and other junior members of the clergy in Shyogwe diocese, as well as over employees of the diocese and members of the congregation of the church in Shyogwe, including students at the diocese secondary school and civilians that joined the militias.
28. Bishop **Samuel MUSABYIMANA** often publicly associated and kept counsel with political leaders, particularly the leadership of the MRND and Ministers of State and the President of the Republic. By virtue of these associations, coupled with his hierarchical authority in the Anglican Diocese at Shyogwe, particularly in light of the influence of the diocese on local affairs and the local administration in Gitarama *préfecture*, Bishop **Samuel MUSABYIMANA** exercised *de facto* authority over soldiers, gendarmes,

communal police and the civilian population that resided, worked or sought shelter in Shyogwe diocese, including members of the civilian militias. By virtue of that same authority Bishop **Samuel MUSABYIMANA** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

29. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** knew, or should have known, that students and employees of the diocese mounted roadblocks in the vicinity of the diocese for purposes of identifying and killing Tutsi civilians, as detailed above, and did nothing to stop or discourage them, or to discipline, sanction or punish them.
30. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** knew, or should have known, that Pastor NGILINSHUTI assisted soldiers and militias in the identification and forced removal of Tutsi refugees from the diocese for the purpose of killing them, as detailed above, and did nothing to stop or discourage them, or to discipline, sanction or punish them.
31. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** knew, or should have known, that firearms that were requested or provided for the diocese under the guise of ensuring security were intended and used by civilians subject to his authority for purposes of killing Tutsi civilians, as detailed above, and did nothing to stop or discourage them, or to discipline, sanction or punish them.
32. As a direct consequence, numerous Tutsi civilians were killed. The killings furthered the national Government campaign against the RPF, particularly its strategy of enlisting local administrative authorities and civilians, organized as ~~civilian militias or acting individually~~, to exterminate the Tutsi, as such, to defeat the RPF.
33. Between 7 April and 30 May 1994, in Gitarama *préfecture*, Bishop **Samuel MUSABYIMANA** participated in a campaign of extermination against Tutsi civilians, resulting in numerous deaths. The campaign intended the destruction, in whole or in part, of the Tutsi ethnic group. Killings took place at roadblocks on public thoroughfares and at notorious killing sites in the areas surrounding Shyogwe diocese. Bishop **Samuel MUSABYIMANA** participated in, or facilitated, the killings by specifically instructing subordinates to assist soldiers and militias, and by directly or indirectly providing firearms to civilians, under circumstances where he knew, or should have known, that Tutsi civilians were, or would be, killed. The identity of each victim and the proximate number of fatalities and the exact circumstances of each death cannot be detailed exhaustively due to the overwhelming devastation of the non-international armed conflict and the enforced secrecy of the campaign of extermination.
34. Bishop **Samuel MUSABYIMANA**, in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a

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common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent.

## Count 2: CONSPIRACY TO COMMIT GENOCIDE:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Samuel MUSABYIMANA** with **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute, in that on or between the dates of 7 April 1994 and 30 May 1994 in Gitarama prefecture, Rwanda **Samuel MUSABYIMANA** did conspire with others, including, but not limited to, local administrative officials, *Interahamwe* leaders, communal police, and the political leadership of the MRND at the regional and national levels, including, though not limited to, Eliezer NIYITEGEKA, Daniel MBANGURA and other members of the Interim Government of 8 April 1994, to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as follows:

*Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged, in that:

35. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** regularly consorted with several ministers of the Interim Government, including Minister of Information Eliézer NIYITEGEKA and Minister of Higher Education Daniel MBANGURA and Interim President Théodore SINDIKUBWABO, and traveled abroad on State missions with members of the Interim Government and acted as an emissary of the Government to legitimize its policies, at a time when those policies were known to include a plan of extermination of the Tutsi and the Hutu political opposition.
36. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** organized and chaired meetings with high level government and military officials, ostensibly to discuss problems of security in the diocese. The objective of such meetings was to arm the civilian Hutu population and to encourage them to adopt the Interim Government policy of targeting, and killing, Tutsi civilians as enemy-accomplices of the RPF. One such meeting was attended by Minister of the Interior Edouard KAREMERA and Lt. Col. Tharcisse RENZAHU, among others, during a period when the Interim Government policy of *civil defense* specifically encouraged the mounting of roadblocks by civilian militias for purposes of killing civilian Tutsi.
37. During that meeting Bishop **Samuel MUSABYIMANA** requested firearms for the diocese, which Lt. Col. Tharcisse RENZAHU agreed to supply. Less than one week later, several firearms were delivered to the church complex. **Samuel MUSABYIMANA** directed that the weapons be distributed to

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civilian militias manning the roadblocks near the diocese, knowing that they would be used in attacks upon civilian Tutsi. The guns were, in fact, used to kill Tutsi civilians.

38. Bishop **Samuel MUSABYIMANA**, by the very nature of his approving public association with members of the Interim Government, both increased his own personal authority in the diocese and conferred the authority of his clerical office on the policies of the Interim Government and its ministers. These associations were integral to the plan to enlist civilians in a campaign of extermination against the Tutsi, as such.
39. During the events referred to in this indictment, thousands of civilian Tutsis were killed in Gitarama *préfecture*. Killings took place at roadblocks in the vicinity of the Anglican Diocese at Shyogwe and at massacre sites in Kabgayi. Many of the victims were civilian Tutsi that sought refuge at the Anglican diocese, but were instead delivered to government forces for extermination by Bishop **Samuel MUSABYIMANA**. The killings were products of the Government campaign to defeat the RPF by enlisting local administrative authorities and civilians, organized as civilian militias or acting individually, to exterminate the Tutsi.

### Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Samuel MUSABYIMANA** with **EXTERMINATION as a CRIME AGAINST HUMANITY**, as stipulated in Article 3(b) of the Statute, in that on or between the dates of 6 April 1994 and 30 May 1994 in Gitarama *préfecture*, Rwanda, **Samuel MUSABYIMANA** was responsible for killing persons, or causing persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

*Pursuant to Article 6(1) of the Statute:* by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *or alternatively,*

*Pursuant to Article 6(3) of the Statute:* by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

40. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** instructed one of the Shyogwe Diocese pastors, Rev. Athanase NGILINSHUTI, to list the names of all of the refugees at the church complex and to register them by ethnic group and to identify their locations among the several blocks of housing in the diocese. The list was prepared with Bishop **Samuel MUSABYIMANA**'s knowledge and under his supervision



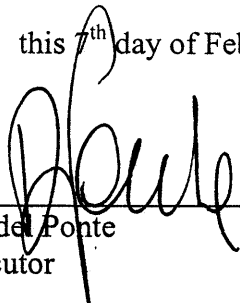
and was intended to facilitate the identification and forcible removal and killing of civilian Tutsi refugees.

41. On or about 7 May 1994, Pastor Athanase NGILINSHUTI accompanied several soldiers about the church complex and identified the Tutsi by referring to the prepared list. The Tutsi refugees were forced to separate from the others, and were led to another location where the soldiers beat them. Over the course of several days, soldiers and militias forcibly removed Tutsi refugees from the church complex to undisclosed locations.
42. Bishop **Samuel MUSABYIMANA** was aware that soldiers and civilian militias would kill Tutsi refugees when they removed them from the diocese and did not protest or attempt to stop the soldiers and militias from taking the refugees away. Instead, Bishop **Samuel MUSABYIMANA** directed civilian militia and soldiers at the church complex to remove Tutsi refugees to Kabgayi in order to kill them there, rather than kill them on the premises of the Anglican diocese. Bishop **Samuel MUSABYIMANA** was actually present on several occasions when soldiers and civilian militias transferred Tutsi refugees from the church complex in order to kill them.
43. The soldiers and militiamen later killed the refugees. Among those that were forcibly removed from the diocese and subsequently killed were were Fidel MWANANKABANDA, his wife and three of his sons, Wellars KAMANZA and his wife, and Emmanuel SEGONGA, all identified as or perceived to be Tutsi.
44. Bishop **Samuel MUSABYIMANA** exercised authority over pastors and other junior members of the clergy in Shyogwe diocese, as well as over employees of the diocese and members of the congregation of the church in Shyogwe, including students and civilians that joined the militias.
45. During the events referred to in this indictment, Bishop **Samuel MUSABYIMANA** knew, or should have known, that Pastor NGILINSHUTI assisted soldiers and militias in the identification and forced removal of Tutsi refugees from the diocese for the purpose of killing them, as detailed above, and did nothing to stop or discourage them, or to discipline, sanction or punish them.
46. As a direct consequence, numerous Tutsi civilians were killed at roadblocks adjoining Shyogwe diocese or at various killing sites in the areas surrounding the diocese. The identity of each victim and the proximate number of fatalities and the exact circumstances of each death cannot be detailed exhaustively due to the overwhelming devastation of the non-international armed conflict and the enforced secrecy of the campaign of extermination.
47. By virtue of his hierarchical authority in the Anglican Diocese at Shyogwe, particularly in light of the influence of the diocese on local affairs and the local administration in Gitarama *préfecture*, Bishop **Samuel MUSABYIMANA** ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute and kill or facilitate

the killing of civilian Tutsi. By virtue of that same authority Bishop **Samuel MUSABYIMANA** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

*The acts and omissions of Samuel MUSABYIMANA detailed herein are punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.*

Dated: this 7<sup>th</sup> day of February 2001

  
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Carla del Ponte  
Prosecutor

