

ICTR-99-54-T
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Before Trial Chamber II

Hon. Judge William Hussein Sekule, Presiding
Hon. Judge Arlette Ramaroson
Hon. Judge Solomy Bossa

Registrar: Mr. Adama Dieng

Date filed: 04 February 2009

The PROSECUTOR
v.
Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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AMENDED INDICTMENT

For the Prosecutor:

Wallace Kapaya
Patrick Gabaake
Brian Wallace
Iskandar Ismail

For the Accused:

David C Thomas

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:

Augustin NGIRABATWARE

with:

- Count 1 - CONSPIRACY TO COMMIT GENOCIDE;**
- Count 2 - GENOCIDE, or count 3 in the alternative to count 2,**
- Count 3 - COMPLICITY IN GENOCIDE**
- Count 4 - DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE;**
- Count 5 - EXTERMINATION as a CRIME AGAINST HUMANITY;**
- Count 6 - RAPE as a CRIME AGAINST HUMANITY;**

II. THE ACCUSED

1. **Augustin NGIRABATWARE** was born on 12 January 1957. He is originally from Nyamyumba Commune, Gisenyi Préfecture, Republic of Rwanda.
2. **Augustin NGIRABATWARE** has a Doctorate in Economics and was formerly a Professor at the National University of Rwanda. He held the position of Director General in the Ministry of Mines and Artisanat prior to his appointment as Minister of Planning on 9 September 1990.
3. **Augustin NGIRABATWARE** was at all times referred to in this indictment, unless otherwise stated:
 - a. Minister of Planning with the MRND Governments of 15 January 1989, 9 July 1990, 4 February 1991, and as part of the first pluralist government of 31 December 1991, the second multi-party government of 16 April 1992, the third multi-party government of 18 July 1993 and from 9 April 1994 to mid-July 1994 in the Interim Government. As such he exercised authority and control over all the institutions and staff members of his ministry.
 - b. An academic, whose participation in Government as the head of a key ministry that controlled significant funds, as well as his position as son-in-law of Felicien KABUGA (himself an extremely wealthy businessman closely aligned to President Juvénal Habyarimana), made him an influential person in Rwanda in general and in Gisenyi Préfecture in particular.
 - c. A senior member of the Prefectural Committee of the MRND for Gisenyi Préfecture.
4. As Minister of Planning between 1990 and 1994, **Augustin NGIRABATWARE** participated in the successful negotiation of several credit facilities and agreements between Rwanda and the World Bank, International Development Agency (IDA), International Monetary Fund (IMF), European Development Fund (EDA), African

Development Fund (ADF), and bilateral lenders and donors including Austria, Switzerland, Germany, the United States, Belgium and Canada.

5. As Minister of Planning, **Augustin NGIRABATWARE** had the portfolio responsibility for the management of external funds granted and loaned by donors such as the World Bank, International Development Agency (IDA), IMF, European Development Fund (EDA), African Development Fund (ADF), and bilateral lenders and donors including Austria, Switzerland, Germany, the United States, Belgium and Canada.

III. CHARGES AND CONCISE STATEMENT OF FACTS

6. At all times referred to in this indictment there existed in Rwanda a minority ethnic or racial group known as the Tutsis, officially identified as such by the government of Rwanda. The majority of the population of Rwanda was comprised of an ethnic or racial group known as Hutu, also officially identified as such by the government.
7. During the course of 1994, particularly between 6 April 1994 and 17 July 1994, throughout Rwanda, soldiers, *Interahamwe* militia and armed civilians targeted and attacked the civilian population based on ethnic or racial identification as Tutsi, or perceived sympathies to the Tutsi. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of these attacks, large numbers of ethnically or racially identified Tutsi were killed.
8. Between 6 April and 17 July 1994, genocide against the Tutsi group occurred in Rwanda.
9. The allegations contained in paragraphs 3 to 8 above are re-alleged and incorporated into each of the allegations set forth below.

COUNT 1: CONSPIRACY TO COMMIT GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3) (b) of the Statute of the Tribunal, in that on or between the dates of 1 January 1994 and 17 July 1994 **Augustin NGIRABATWARE** did conspire with several individuals including, but not limited to Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Felix NIYONIRINGIYE, Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke NYAKABWA, Mathieu NGIRUMPATSE, Mathias NYAGASAZA, Banzi WELLARS 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 such.

CONCISE STATEMENT OF FACTS FOR COUNT I

Individual Criminal Responsibility pursuant to Article 6(1) of the Statute

Pursuant to Article 6(1) of the Statute the Accused **Augustin NGIRABATWARE** is responsible for the crime of Conspiracy to Commit Genocide because he committed the act of agreeing with other individuals Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Felix NIYONIRINGIYE, Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke NYAKABWA, Mathieu NGIRUMPATSE, Mathias NYAGASAZA, Banzi WELLARS, JUMA and MAKUZE 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, the Tutsi ethnic group, and committed acts in furtherance of their agreement, such acts taking place between 1 January 1994 and 17 July 1994, as described in paragraphs 10 to 17.

10. Following the assassination of Martin BUCYANA in Butare on or about 22 February 1994, **Augustin NGIRABATWARE** attended a meeting in the residential house of Captain Ildefonse NIZEYIMANA in Butare town, along with Felicien KABUGA, Colonel Anatole NSENGIYUMVA, Théoneste BAGOSORA, amongst others, and agreed to kill members of the Tutsi ethnic group.
11. In late February or early March 1994, and in furtherance of the agreement referred to in paragraph 10, **Augustin NGIRABATWARE**, Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA and others, drew up a list of about 100 members of the Tutsi population for extermination. **Augustin NGIRABATWARE** specifically named Safari NYAMBWEWA, a mechanic, Nehemie MUNYENSANGA, a primary school teacher, THERESE, a business woman, BUTITIRA, a businessman, Jean Bosco RWAGASORE, SAFARI and Vincent KAYIHURA, both BRALIRWA employees, and MUKARUGAMBWA, a businesswoman from Nyamyumba commune, for inclusion in the list.
12. In March 1994 **Augustin NGIRABATWARE**, Felicien KABUGA, Colonel Anatole NSENGIYUMVA, among others, held a meeting in the house of Gersom NZABAHIRANYA in Nyamyumba commune, in which they agreed that the Tutsi were the enemy and had to be identified, arrested and killed.
13. In March 1994, **Augustin NGIRABATWARE** convened a meeting at the house of CENGE at *Centre Bruxelles* in Busheke cellule, Rushubi secteur, which was attended by Nyamyumba commune Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke NYAKABWA. The participants, including **Augustin NGIRABATWARE** agreed at the meeting to exercise vigilance against members of the Tutsi ethnic group who were identified as the enemy of Rwanda and who had to be exterminated.

14. In March 1994, **Augustin NGIRABATWARE** attended a meeting at the MRND Palace in Gisenyi, along with Felicien KABUGA, Colonel Anatole NSENGIYUMVA, Michel BAGARAGAZA, Casmir BIZIMUNGU and local MRND and CDR party officials. The participants, including **Augustin NGIRABATWARE**, agreed to provide the *Interahamwe* militia with food, logistics, and money, in order to enhance their ability to hunt for members of the Tutsi ethnic group who were identified as the enemy of Rwanda.

COUNT 2: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **GENOCIDE**, a crime stipulated in Article 2(3) (a) of the Statute of the Tribunal, in that from 1 January to 17 July 1994 throughout Rwanda, particularly in Gisenyi and Kigali prefectures, **Augustin NGIRABATWARE** 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 such.

Alternatively to Count 2,

COUNT 3: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, in that from 1 January to 17 July 1994 throughout Rwanda, particularly in Gisenyi and Kigali prefectures, **Augustin NGIRABATWARE** 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 such, or with knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his assistance would contribute to the crime of genocide.

CONCISE STATEMENT OF FACTS FOR COUNTS 2 AND 3

Individual Criminal Responsibility pursuant to Article 6(1) of the Statute

Pursuant to Article 6(1) of the Statute, the Accused, **Augustin NGIRABATWARE** is individually responsible for the crime of genocide because he instigated, ordered, committed or otherwise aided and abetted in the preparation or execution of these crimes. With respect to the commission of those crimes, **Augustin NGIRABATWARE** ordered those over whom he had authority as a result of his positions as described in Part II of this indictment, and he instigated and aided and abetted those over whom he did not have authority. In addition, **Augustin NGIRABATWARE** willfully and knowingly participated in a joint criminal enterprise whose common purpose was the commission of genocide against members of the Tutsi ethnic or racial group, and persons identified as Tutsi or presumed to support the Tutsi in Gisenyi and Kigali prefectures as well as throughout Rwanda. In order to fulfill this criminal purpose, **Augustin NGIRABATWARE** acted with Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Felix NIYONIRINGIYE, Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke

NYAKABWA, Mathieu NGIRUMPATSE, Mathias NYAGASAZA, Banzi WELLARS, JUMA and MAKUZE and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 1 January through 17 July 1994. The particulars that give rise to his individual criminal responsibility, including his participation in the joint criminal enterprise (category 1), are set forth in paragraphs 18 to 43.

15. As Minister of Planning, **Augustin NGIRABATWARE** during the period January to July 1994 diverted and misapplied external development funds for the purchase of weapons and support of the *Interahamwe* and Hutu militia who used the weapons to kill Tutsi in Gisenyi and Kigali prefectures, and throughout Rwanda. In so doing, Augustin NGIRABATWARE planned, instigated, committed and/or aided and abetted the genocide of the Tutsis.
16. In April 1994, after the death of President HABYARIMANA, **Augustin NGIRABATWARE** transported weapons to Nyamyumba commune, Gisenyi where he gave these weapons to Faustin BAGANGO, Bourgemestre of Nyamyumba commune for distribution to the *Interahamwe* militia for the purpose of eliminating members of the Tutsi ethnic group in Gisenyi during the period April to July 1994. In so doing, Augustin NGIRABATWARE instigated and aided and abetted the genocide of the Tutsi.
17. Part of the preparation for the genocide in Gisenyi was the appointment of perfectural and local authorities that would implement the ant-Tutsi policies and directives of the MRND leadership at the national level. Since his family originated in Gisenyi, **Augustin NGIRABATWARE** often returned to his home commune of Nyamyumba in Gisenyi Prefecture, where he continued to exercise considerable influence in local affairs between January and July 1994. **Augustin NGIRABATWARE** was instrumental in having Faustin BAGANGO appointed Bourgemestre in Nyamyumba in April 1994. Faustin BAGANGO, who had an established record of persecuting the civilian Tutsi population, was perceived by local residents as the eyes and "arms" of **Augustin NGIRABATWARE** in the commune.
18. **Augustin NGIRABATWARE's** open support of Faustin BAGANGO, the known president of the *Interahamwe* in Nyamyumba during the period April to July 1994, was part of the larger plan to prepare and orchestrate the killings of the Tutsi. Given the predominance of the MRND in Gisenyi and the demonstrated capacity of **Augustin NGIRABATWARE** to direct development funds and projects to his native commune, **Augustin NGIRABATWARE's** anti-Tutsi pronouncements were a clear message to local residents of the likely rewards that would follow their support for the MRND policy of exterminating the "enemy".
19. Around mid-May 1994 **Augustin NGIRABATWARE**, along with Anatole NSENGIYUMVA, Casmir BIZIMUNGU, and others, brought arms and ammunition to Gisenyi in two Benz lorries and a Toyota pick-up truck for distribution to the *Interahamwe* militia in Gisenyi. These arms and ammunition were used to kill or cause serious bodily or mental harm to members of the Tutsi population in Gisenyi during the period May to July 1994 with the goal of destroying the Tutsi ethnic group. In so doing, Augustin NGIRABATWARE instigated and aided and abetted the genocide of the Tutsi.

20. In mid-May 1994, **Augustin NGIRABATWARE** a member of the Gisenyi Prefectoral Committee of the MRND in Gisenyi and others including Anatole NSENGIYUMVA and Casmir BIZIMUNGU distributed arms and ammunition to members of the *Interahamwe* militia in Gisenyi. As such, **Augustin NGIRABATWARE** aided and abetted the *Interahamwe* militia in Gisenyi to kill Tutsis, in that they used the said arms and ammunition between mid-May and mid July 1994 to exterminate the ethnic Tutsi population in Gisenyi prefecture.
21. In early 1994, **Augustin NGIRABATWARE** created a group of *Interahamwe* militia over whom he had effective *de facto* control, and positioned them at Gitarako crossing point in Nyamyumba *commune*, between Lake Kivu and Congo in order to capture and kill members of the Tutsi population with intention of causing death or serious bodily or mental harm with the goal of destroying the Tutsi ethnic group.
22. In early 1994 **Augustin NGIRABATWARE** convened a meeting at Kanyabuhombo School in Nyamyumba *commune*, Gisenyi prefecture where he distributed firearms and grenades to the *Interahamwe* which were used to kill or cause serious bodily or mental harm to members of the Tutsi population in Nyamyumba *commune* with the intention of destroying the Tutsi ethnic group.
23. In early 1994 **Augustin NGIRABATWARE** convened a meeting at Kanyabuhombo School in Nyamyumba *commune*, Gisenyi prefecture, where he publicly addressed the audience and instigated those present to hunt for Tutsi and kill them.
24. In February 1994, following the killing of CDR Chairman BUCYANA, **Augustin NGIRABATWARE**, went to the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba *commune*, and gave 30,000 Francs to the *Interahamwe* youths manning the roadblock, including Honoré NDAYAMIYEMENSHI, as encouragement for their work in capturing and killing Tutsis, and thereby planned, instigated, ordered and aided and abetted the involvement of the youths manning the roadblock, in the capture and extermination of members of the Tutsi population with the intent to destroy the Tutsi population as such.
25. Around mid-April 1994, **Augustin NGIRABATWARE** convened a meeting with attackers, including *Interahamwe* militia and Nyamyumba Bourgmestre Faustin BAGANGO at the residence of his parents in Busheke cellule, Rushubi secteur Nyamyumba *commune* and instigated them to kill the Tutsi who had sought refuge at the Pfunda tea factory. These Tutsis were subsequently killed.
26. Around mid-April 1994, **Augustin NGIRABATWARE** instigated members of the *Interahamwe* militia from Nyamyumba *commune*, to kill ten (10) members of the Tutsi population, including a lady named MYAMUNINI, in Rubavu Commune, Gisenyi Prefecture, with intent to destroy in whole or in part the Tutsi ethnic group, as such.
27. Around mid-April 1994, **Augustin NGIRABATWARE** ordered Faustin BAGANGO, the Nyamyumba Bourgmestre, over whom he had effective *de facto* control, to distribute machetes to attackers which were used to kill or cause grievous bodily or mental harm to

members of the Tutsi population in Nyamyumba commune, with intent to destroy in whole or in part the Tutsi population.

28. Towards the end of April 1994, **Augustin NGIRABATWARE** convened a meeting with attackers including Faustin BAGANGO at his parents' residence at Busheke cellule, Rushubi secteur, Nyamyumba commune and ordered, instigated and/or aided and abetted them to kill members of the Tutsi ethnic group, by stating that the inhabitants of Gisenyi had not done their work; that they had not done anything, or words to that effect, and handed the ignition key of his vehicle to BAGANGO and ordered them to go and search for Tutsi and kill them. These actions by Augustin NGIRABATWARE facilitated their movements to the massacre sites, including Rubavu Commune in Gisenyi prefecture where they exterminated members of the Tutsi population.
29. In late May 1994, **Augustin NGIRABATWARE** convened a meeting with the *Interahamwe* militia at the area of residence of his parents in Busheke cellule Rushubi secteur, where he instigated them to kill members of the Tutsi population but spare their houses for occupation by members of the Hutu population. Tutsis were killed and their houses looted in the prefecture of Gisenyi as a result.
30. In late May 1994, **Augustin NGIRABATWARE** planned, instigated, ordered and aided and abetted the killing of Tutsi at the *Centre de Bruxelles* roadblock in Busheke cellule, Rushubi secteur, Nyamyumba commune, by distributing rifles to the *Interahamwe* militia manning the roadblock, including Hassan TUBARAMURE, who used these weapons to kill members of the Tutsi population.
31. In late May 1994, at Busheke cellule Rushubi secteur, Nyamyumba commune, **Augustin NGIRABATWARE** ordered, instigated, and/or aided and abetted the *Interahamwe* militia manning the *Petit Bruxelles* roadblock, to kill a Tutsi girl named Immacule DUSABE at the *Petit Bruxelles* roadblock, with intent to destroy in whole or in part the Tutsi ethnic group, as such.
32. In late February 1994, in furtherance of an agreement made at Captain Ildefonse NIZEYIMANA'S residence in Butare Town, **Augustin NGIRABATWARE**, Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA and others, drew up a list of about 100 members of the Tutsi population for extermination. **Augustin NGIRABATWARE** named specifically Safari NYAMBWEKA, a mechanic, Nehemie MUNYENSANGA, a primary school teacher, THERESE, a businesswoman, BUTITIRA, a businessman, Jean Bosco RWAGASORE, SAFARI and Vincent KAYIHURA, BRALIRWA employees, and MUKARUGAMBWA, a businesswoman from Nyamyumba commune, for inclusion in the list.
33. On 8 April 1994, in furtherance of the agreement referred to above, Felix NIYONIRINGIYE executed MUKARUGAMBWA, a Tutsi businesswoman from Nyamyumba commune who was listed for extermination by **Augustin NGIRABATWARE**. By listing members of the Tutsi population, including MUKARUGAMBWA for extermination, **Augustin NGIRABATWARE** planned, instigated, ordered and aided and abetted their killing by Felix NIYONIRINGIYE and other *Interahamwe* militia.

34. In March 1994 **Augustin NGIRABATWARE**, Felicien KABUGA, Colonel Anatole NSENGIYUMVA, among others, held a meeting in the house of Gersom NZABAHIRANYA in Nyamyumba commune, in which they agreed that the Tutsi were the enemy and had to be identified, arrested and killed.
35. In March 1994, **Augustin NGIRABATWARE** convened a meeting at the house of CENGE at *Centre Bruxelles* in Busheke cellule, Rushubi secteur, which was attended by Nyamyumba commune Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND president GAHAMANGO, Sectoral level CDR president BANDESIMINSI, Communal level CDR president Jean Bosco MUREKUMBAZE, and Communal level MRND president Mateke NYAKABWA. The participants agreed at the meeting to exercise vigilance against the Tutsi who were identified as the enemy of Rwanda and who had to be exterminated.
36. In March 1994, **Augustin NGIRABATWARE** attended a meeting at the MRND Palace in Gisenyi, along with Felicien KABUGA, Colonel Anatole NSENGIYUMVA, Michel BAGARAGAZA, Casmir BIZIMUNGU and local MRND and CDR party officials. The participants, including **Augustin NGIRABATWARE**, agreed to provide the Interahamwe militia with food, logistics, and money, in order to enhance their ability to hunt for the Tutsi who were identified as the enemy.
37. In April 1994, in furtherance of the agreement made at the February 1994 Butare and March 1994 MRND Palace meetings, Interahamwe militia sought for and killed hundreds of Tutsi civilians in Gisenyi prefecture, including SAFARI, NEHEMIE and others listed at the Butare 22 February 1994 meeting in Butare Town, referred to herein above.

Criminal Responsibility as a Superior pursuant to Article 6(3) of the Statute

Pursuant to Article 6(3) of the Statute, the Accused **Augustin NGIRABATWARE** is responsible for the crimes of genocide or complicity in genocide because specific criminal acts were committed by subordinates of **Augustin NGIRABATWARE** and **Augustin NGIRABATWARE** knew or had reason to know that such subordinates had committed such acts and **Augustin NGIRABATWARE** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included departmental heads and other staff in the Ministry of Planning, such as Telesphore BIZIMUNGU and other unknown persons. The particulars of the acts are set forth in paragraph 44.

38. **Augustin NGIRABATWARE**, as Minister of Planning, was responsible for the management of external funds granted and loaned by donors such as the World Bank, International Development Agency (IDA), IMF, European Development Fund (EDA), African Development Fund (ADF), and bilateral lenders and donors for development projects. During 1994, employees in the Ministry of Planning, including Telesphore BIZIMUNGU diverted the funds earmarked for development, to the purchase of weapons, including grenades, machetes, hoes, pick-axes, sickles, scythes and spades from France, Belgium, South Africa, China, the United Kingdom, Egypt and others. The use of

the funds for the purchase of weapons and to support the *Interahamwe* and Hutu militia was not authorized under the terms of the loans/grants. **Augustin NGIRABATWARE** knew or had reason to know that his subordinates were diverting development funds to the purchase of weapons which were used to kill members of the Tutsi ethnic group, and failed to prevent or punish these acts.

COUNT 4: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, in that between 1 January 1994 and 17 July 1994, throughout Rwanda **Augustin NGIRABATWARE** was responsible for direct and public incitement to kill or cause 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 such and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute for which he is individually responsible pursuant to Article 6(1) of the Statute.

CONCISE STATEMENT OF FACTS FOR COUNT 4

Individual Criminal Responsibility under Article 6(1) of the Statute

Pursuant to Article 6(1) of the Statute **Augustin NGIRABATWARE** is responsible for Direct and Public Incitement to Commit Genocide by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the preparation or execution of the crime charged, in that he directly and publicly incited other persons to destroy in whole or in part the Tutsi racial or ethnic group as set forth in paragraphs 45 to 55.

39. **Augustin NGIRABATWARE** made statements that the Tutsi were the enemy and warned the people that the enemy was right next to them, in March 1994 at MRND party meetings in Nyamyumba commune. Members of the Tutsi population were attacked and killed following this speech. Characterizations of the Tutsi as an "enemy" to be exterminated made by highly placed, powerful government officials such as **Augustin NGIRABATWARE** were public invitations to kill with impunity, and were part of a larger campaign to organize and prepare the civilian population and civilian militia to commit genocide against the Tutsi.
40. In early 1994 **Augustin NGIRABATWARE** convened a meeting at Kanyabuhombo School in Nyamyumba commune, Gisenyi prefecture, where he publicly addressed the audience and told those present to hunt for Tutsi and kill them.
41. In February 1994, following the killing of CDR Chairman BUCYANA, **Augustin NGIRABATWARE**, went to the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba commune, addressed them and paid 30.000 Francs to the *Interahamwe* youths manning the roadblock, including Honoré NDAYAMIYEMENSHI as encouragement and incitement for their work in capturing and killing Tutsis, with the intent to destroy the Tutsi population as such.

42. Around mid-April 1994, **Augustin NGIRABATWARE** convened a meeting with attackers, including *Interahamwe* militia and Nyamyumba Bourgmestre Faustin BAGANGO at the residence of his parents in Busheke cellule, Rushubi secteur Nyamyumba commune and publicly addressed them and told them to kill the Tutsi who had sought refuge at the Pfunda tea factory.
43. Around mid-April 1994, **Augustin NGIRABATWARE** publicly incited members of the *Interahamwe* militia from Nyamyumba commune, to kill ten (10) members of the Tutsi population, including a lady named MYAMUNINI, in Rubavu Commune, Gisenyi Prefecture.
44. Towards the end of April 1994, **Augustin NGIRABATWARE** convened a meeting with attackers, including Faustin BAGANGO at his parents' residence at Busheke cellule, Rushubi secteur, Nyamyumba commune and incited them to kill Tutsi, by stating publicly that the inhabitants of Gisenyi had not done their work or words to that effect, and handing the ignition key of his vehicle to BAGANGO and telling them to go and search for Tutsi and kill them.
45. In late May 1994, **Augustin NGIRABATWARE** convened a meeting with the *Interahamwe* militia at the area of residence of his parents in Busheke cellule Rushubi secteur, where he told them to kill members of the Tutsi population but spare their houses for occupation by members of the Hutu population.
46. In late May 1994, **Augustin NGIRABATWARE** attended the *Centre de Bruxelles* roadblock in Busheke cellule, Rushubi secteur, Nyamyumba commune, where he publicly addressed those manning the roadblock, inciting them to kill Tutsi and distributing rifles to the *Interahamwe* militia manning the roadblock, including Hassan TUBARAMURE for use in capturing and killing members of the Tutsi population.
47. In late May 1994, at Busheke cellule Rushubi secteur, Nyamyumba commune, at a public meeting **Augustin NGIRABATWARE** incited the *Interahamwe* militia manning the *Petit Bruxelles* roadblock, to kill a Tutsi girl named Immacule DUSABE at the *Petit Bruxelles* roadblock.
48. Towards the end of February 1994, following the killing of CDR Chairman BUCYANA, **Augustin NGIRABATWARE** went to the Electrogaz roadblock in Nyambyumba commune, and addressed the youths manning the roadblock, telling them to kill members of the Tutsi population, by stating that their Hutu colleague had been killed in Butare, a victim of a Tutsi plot and they no longer had anything to lose. He implored them to do everything in their power to track down the imbeciles, reminding them that they had been tolerant enough or words to that effect. This was done with the intent to destroy, in whole or in part, the Tutsi population on ethnic grounds.
49. Towards the end of February 1994, following the killing of CDR Chairman BUCYANA, **Augustin NGIRABATWARE** went to the roadblock at the Customs Office on the Cyanika-Gisa tarred road in Nyamyumba Commune and addressed the youths who were present, including the person in charge of the roadblock Honoré NDAYAMIYEMENSHI and incited them to kill members of the Tutsi population, by telling them that the Hutu

leader was murdered the night before, and called on them to kill all the Tutsi. He implored them to ensure that nobody escaped, and that they were to strengthen the roadblocks as well so no Tutsi escaped through Lake Kivu or words to that effect. This was done with the intent to destroy, in whole or in part, the Tutsi population on ethnic grounds.

COUNT 5: EXTERMINATION AS A CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **EXTERMINATION as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of the Tribunal, in that between 1 January and 17 July 1994 throughout Rwanda **Augustin NGIRABATWARE** was responsible for Extermination of persons as part of a widespread or systematic attack against the civilian population on political, ethnic or racial grounds and thereby committed a **CRIME AGAINST HUMANITY**, as stipulated in Article 3(b) of the Statute.

CONCISE STATEMENT OF FACTS FOR COUNT 5

Individual Criminal Responsibility under Article 6(1) of the Statute

Pursuant to Article 6(1) of the Statute, the Accused **Augustin NGIRABATWARE** is responsible for the crime of extermination under Article 3(b) of the Statute because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the crime charged. With respect to the commission of the crime, **Augustin NGIRABATWARE** willfully and knowingly participated in a joint criminal enterprise whose common purpose was the extermination of the Tutsi. To fulfill this common purpose **Augustin NGIRABATWARE** acted with others including Protais ZIGIRANYIRAZO, Ildefonse NIZEYIMANA, Gersom NZABAHIRANYA Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Felix NIYONIRINGIYE, Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke NYAKABWA, Mathieu NGIRUMPATSE, Mathias NYAGASAZA, Banzi WELLARS and other unknown participants, all such action being taken between 1 January and 17 July 1994. The particulars that give rise to the Accused person's criminal responsibility, including his participation in the joint criminal enterprise (category 1) are set forth in paragraphs 56 to 66.

50. In mid-April 1994, **Augustin NGIRABATWARE** provided machetes to Faustin BAGANGO and *Interahamwe* militia for the purpose of exterminating Tutsi civilians. Faustin BAGANGO and the *Interahamwe* militia received the said machetes and used them to exterminate Tutsi civilians in Nyamyumba commune between mid-April and mid-July 1994. In so doing **Augustin NGIRABATWARE** aided and abetted the extermination of Tutsi in Nyamyumba commune as part of a widespread and systematic attack on the Tutsi population on ethnic grounds.
51. Around mid-April 1994, **Augustin NGIRABATWARE** convened a meeting with attackers, including *Interahamwe* militia and Nyamyumba Bourgmestre Faustin BAGANGO at the residence of his parents in Busheke cellule, Rushubi secteur

Nyamyumba commune and instigated them to kill the Tutsi who had sought refuge at the Pfunda tea factory as part of a widespread and systematic attack on the Tutsi population on ethnic grounds. These Tutsis were subsequently killed as a result.

52. Around mid-April 1994, **Augustin NGIRABATWARE** brought hand grenades to the *Interahamwe* militia who had convened at his parents' residence at Busheke cellule, Rushubi secteur for extermination of Tutsi civilians in Gisenyi prefecture. By supplying the *Interahamwe* militia with the grenades for killing members of the Tutsi population **Augustin NGIRABATWARE** aided and abetted the extermination of members of the Tutsi civilian population in Gisenyi prefecture as part of a widespread and systematic attack against the Tutsi population on ethnic grounds.
53. Towards the end of April 1994, at Busheke cellule, Rushubi secteur, Nyamyumba commune, **Augustine NGIRABATWARE** aided and abetted the killing of members of the Tutsi population by providing the *Interahamwe* militia with his vehicle that facilitated their movements to the massacre sites, including Rubavu Commune in Gisenyi prefecture where they exterminated members of the Tutsi population as part of a widespread and systematic attack against the Tutsi population on ethnic grounds.
54. In late May 1994, at Busheke cellule Rushubi secteur, Nyamyumba commune, **Augustin NGIRABATWARE** instigated, aided and abetted the *Interahamwe* militia manning the *Petit Bruxelles* roadblock to kill a Tutsi girl named Immacule DUSABE at the *Petit Bruxelles* roadblock, as part of a widespread or systematic attack against members of the Tutsi civilian population on ethnic grounds.
55. Around April 7 1994, in Nyamyumba Commune, Gisenyi Prefecture, **Augustin NGIRABATWARE** told members of the *Interahamwe* militia that he was asking them to remove all the dirt between their teeth; and that they must pull up all the weeds from the millet field. In so saying **Augustin NGIRABATWARE** instigated the *Interahamwe* to exterminate the Tutsi as part of a widespread and systematic attack against the Tutsi population on ethnic grounds. Many members of the Tutsi population in Gisenyi were exterminated as a result.
56. Following the assassination of Martin BUCYANA in Butare on 22 February 1994, **Augustin NGIRABATWARE** attended a meeting in the residential house of Captain Ildefonse NIZEYIMANA in Butare town, along with Felicien KABUGA, Colonel Anatole NSENGIYUMVA, Théoneste BAGOSORA, amongst others, and agreed to draw up a list of Tutsi to be exterminated. This was part of a widespread or systematic attack against the Tutsi civilian population.
57. In February 1994, in furtherance of the decision passed at the meeting at the residence of Captain Ildefonse NIZEYIMANA, **Augustin NGIRABATWARE**, Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA and others, drew up a list of about 100 members of the Tutsi population for extermination. **Augustin NGIRABATWARE** named specifically Safari NYAMBWEGA who was a mechanic, Nehemie MUNYENSANGA, who was a primary school teacher, THERESE who was a business woman, BUTITIRA, a businessman, Jean Bosco RWAGASORE, SAFARI who was a BRALIRWA employee, Vincent KAYIHURA, another BRALIRWA employee,

and MUKARUGAMBWA who was a businesswoman from Nyamyumba commune, for inclusion in the list.

58. On 8 April 1994, in furtherance of the decision passed at the meeting at the residence of Captain Ildefonse NIZEYIMANA, **Augustin NGIRABATWARE** instigated Felix NIYONIRINGIYE to MUKARUGAMBWA, a Tutsi businesswoman from Nyamyumba commune who was listed for extermination by **Augustin NGIRABATWARE**. By listing members of the Tutsi population, including MUKARUGAMBWA for extermination, **Augustin NGIRABATWARE** planned, instigated, ordered and aided and abetted their killing by Felix NIYONIRINGIYE and other *Interahamwe* militia as part of a widespread or systematic attack against the civilian Tutsi population.
59. In March 1994 **Augustin NGIRABATWARE**, Felicien KABUGA, Colonel Anatole NSENGIYUMVA, among others, held a meeting in the house of Gersom NZABAHIRANYA in Nyamyumba commune, in which they agreed that the Tutsi were the enemy and had to be identified and arrested. This was part of a widespread or systematic attack against the Tutsi civilian population.
60. In April 1994, in furtherance of the agreement made at the February 1994 Butare and March 1994 MRND Palace meetings, **Augustin NGIRABATWARE** instigated the *Interahamwe* militia to seek for and exterminate Tutsi civilians in Gisenyi prefecture. The *Interahamwe* sought for and exterminated hundreds of Tutsi civilians, including SAFARI, NEHEMIE and others listed at the Butare February 1994 meeting, referred to herein above, as part of a widespread and systematic attack against the civilian Tutsi population.

COUNT 6: RAPE AS A CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin NGIRABATWARE** with **RAPE as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of the Statute of the Tribunal, in that between 1 January and 17 July 1994 throughout Rwanda **Augustin NGIRABATWARE** was responsible for the rape of persons as part of a widespread or systematic attack against the civilian population on political, ethnic or racial grounds and thereby committed a **CRIME AGAINST HUMANITY**, as stipulated in Article 3(g) of the Statute.

CONCISE STATEMENT OF FACTS FOR COUNT 6

Individual Criminal Responsibility pursuant to Article 6(1) of the Statute

Pursuant to Article 6(1) of the Statute, the Accused **Augustin NGIRABATWARE** is responsible for the crime of rape under Article 3(g) of the Statute because **Augustin NGIRABATWARE** willfully and knowingly participated in a joint criminal enterprise whose common purpose was the extermination of the Tutsi civilian population. To fulfill this common purpose **Augustin NGIRABATWARE** acted with others including Ildefonse NIZEYIMANA, Gersom NZABAHIRANYA, Felicien KABUGA, Théoneste BAGOSORA, Colonel Anatole NSENGIYUMVA, Felix NIYONIRINGIYE, Bourgmestre Faustin BAGANGO, Conseiller for Rushubi secteur Jean SIMPUNGA, Sectoral level MRND President GAHAMANGO, Sectoral

level CDR President BANDESIMINSI, Communal level CDR President Jean Bosco MUREKUMBAZE, and Communal level MRND President Mateke NYAKABWA, Mathieu NGIRUMPATSE, Mathias NYAGASAZA, Banzi WELLARS, JUMA and MAKUZE and other unknown participants, all such action being taken between 1 January and 17 July 1994. The risk of rapes of female members of the Tutsi population was a natural and foreseeable consequence of the execution of the common design and **Augustin NGIRABATWARE** and his co-perpetrators were reckless or indifferent to that risk. The particulars that give rise to the Accused person's criminal responsibility, including his participation in the joint criminal enterprise (category 3) are set forth above and in paragraphs 67 to 69 below.

61. Around April 1994, in Nyamyumba Commune, Gisenyi Prefecture, members of the *Interahamwe*, acting in concert with Faustin BAGANGO, the Bourgmestre and *Interahamwe* Chairman in Nyamyumba commune, and who were engaged in a joint criminal enterprise with **Augustin NGIRABATWARE** to exterminate the civilian Tutsi population, raped BONISHANCE, a Tutsi woman, as part of a widespread and systematic attack against the Tutsi population on ethnic grounds.
62. Around April 1994, in Nyamyumba Commune, Gisenyi Prefecture, members of the *Interahamwe*, acting in concert with Faustin BAGANGO, the Bourgmestre and *Interahamwe* Chairman in Nyamyumba commune, who were engaged in a joint criminal enterprise with **Augustin NGIRABATWARE** to exterminate the civilian Tutsi population, raped Denise NYIRABUNORI, a Tutsi woman who was hiding in the house of **Augustin NGIRABATWARE**'s brother, Alphonse BANANYIE, as part of a widespread and systematic attack against the Tutsi population on ethnic grounds.
63. Around April 1994, in Nyamyumba Commune, Gisenyi Prefecture, members of the *Interahamwe*, including JUMA and MAKUZE acting in concert with Faustin BAGANGO, the Bourgmestre and *Interahamwe* Chairman in Nyamyumba commune, and who were engaged in a joint criminal enterprise with **Augustin NGIRABATWARE** to exterminate the civilian Tutsi population, repeatedly raped Chantal MURAZEMARIYA, a Tutsi woman, as part of a widespread and systematic attack against the Tutsi population on ethnic grounds.

The acts and omissions of **Augustin NGIRABATWARE** detailed herein are punishable pursuant to Articles 22 and 23 of the Statute.

Signed at Arusha, TANZANIA, this 04 day of February 2009.


Hassan Bubacar Jallow
PROSECUTOR

