

MADE PUBLIC PURSUANT TO SINGLE JUDGE'S ORDER OF 4 JUNE 2013
TO UNSEAL AND PUBLICLY FILE THE SECOND AMENDED INDICTMENT

CONFIDENTIAL

~~MICT-12-02~~
3-8-2012
(617-603)
UNITED NATIONS

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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

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McCaw Carter

Case No. MICT-12-02

THE PROSECUTOR

v.

PROTAIS MPIRANYA

MICT-12-02
04-06-2013
(650-636)

SECOND AMENDED INDICTMENT

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

Protais MPIRANYA

Pursuant to Article 2 of the Statute, with:

- Count 1 - GENOCIDE
- Count 2 - COMPLICITY IN GENOCIDE (charged in the alternative to Count 1)

Pursuant to Article 3 of the Statute, with:

- Count 3 - MURDER as a CRIME AGAINST HUMANITY
- Count 4 - EXTERMINATION as a CRIME AGAINST HUMANITY
- Count 5 - RAPE as a CRIME AGAINST HUMANITY
- Count 6 - PERSECUTION as a CRIME AGAINST HUMANITY
- Count 7 - OTHER INHUMANE ACTS as a CRIME AGAINST HUMANITY

Pursuant to Article 4 of the Statute, with:

- Count 8 - MURDER as a violation of COMMON ARTICLE 3 and PROTOCOL II

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I. CHARGES:

1. On the basis of the allegations set out in this indictment, **Protais MPIRANYA** is charged with:

- Count 1 - Genocide pursuant to Articles 2(3)(a), 6(1), and 6(3) of the Statute, charged on the basis of paragraphs 22 to 56,
- Count 2 - Complicity in genocide pursuant to Articles 2(3)(e), 6(1), and 6(3) of the Statute on the basis of paragraphs 22 to 56, as an alternative to Count 1.
- Count 3 - Murder as a crime against humanity pursuant to Articles 3(a), 6(1), and 6(3) of the Statute charged on the basis of paragraphs 24, 25, 33 to 46 and 57 to 69.
- Count 4 - Extermination as a crime against humanity pursuant to Articles 3(b), 6(1), and 6(3) of the Statute charged on the basis of paragraphs 24, 25, 33 to 46 and 57 to 69.
- Count 5 - Rape as a crime against humanity pursuant to Articles 3(g), 6(1), and 6(3) of the Statute – hereinafter “rape” – charged on the basis of paragraphs 47 to 56.
- Count 6 - Persecutions as a crime against humanity pursuant to Articles 3(h), 6(1) and 6(3) of the Statute charged on the basis of paragraphs 24, 25, 33 to 46 and 57 to 69.
- Count 7 - Other inhumane acts as a crime against humanity pursuant to Articles 3(i), 6(1), and 6(3) of the Statute charged on the basis of paragraphs 46 and 63.
- Count 8 - Murder as a violation of Article 3 Common to the Geneva Conventions of 1949 (Common Article 3) and Additional Protocol II of 8 June 1977 relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), hereinafter referred to as “murder as a war crime”, pursuant to Articles 4(a), 6(1), and 6(3) of the Statute charged on the basis of paragraphs 24, 25, 33 to 46 and 57 to 69.

2. Paragraphs 3 to 21 apply to all charges.

II. DEFINITIONS AND GENERAL ALLEGATIONS

- 3. In this indictment, the term “committed” means that the Accused committed the crime, by his direct or physical perpetration of the crimes: playing an integral part in the commission of the crimes, including by acting through other persons, or creating and contributing to conditions for the perpetration of the crimes by others, or through his participation in a joint criminal enterprise (“JCE”).
- 4. The term "contribution," when used without qualification, refers to a mere, significant or substantial contribution.
- 5. The terms "aware" or "awareness," when used without qualification, include awareness of a certainty, awareness of a substantial likelihood, likelihood or probability, and awareness of a possibility.

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6. The terms "harming" or "harm" when used without qualification refer to the infliction of serious bodily or mental harm.
7. When carrying out the criminal conduct alleged in this indictment Protais MPIRANYA had the intent to destroy in whole or in part the Tutsi ethnic group, and acted in order to discriminate against Tutsis, political opponents of the regime and persons affiliated with them, and peacekeepers on racial and political grounds.
8. The participants in the criminal conduct charged in this indictment possessed the intent to destroy the Tutsi ethnic group as such in whole or in part, and acted in order to discriminate against Tutsis, political opponents and persons affiliated with them, and peacekeepers on racial or political grounds. Protais MPIRANYA was aware of this.

III. THE ACCUSED

9. Protais MPIRANYA was born in Giciye *commune*, Gisenyi *préfecture*, Rwanda.
10. During the times covered by this Indictment, the Accused maintained residence in Kimihurura *secteur* in Kigali-ville *préfecture*.
11. From January to July 1994, Protais MPIRANYA held the rank of Major and was the Commander of the Presidential Guard Battalion of the Rwandan Armed Forces ("FAR"). The Presidential Guard Battalion was responsible for ensuring the security of the President of the Republic of Rwanda. Protais MPIRANYA was also the Commander of the Presidential Guard Camp otherwise known as "Camp *Kimihurura*" situated in Kimihurura *secteur*, Kacyiru *commune*, Kigali-ville *préfecture*.
12. Between 6 April and 17 July 1994, Protais MPIRANYA had effective control over his subordinates, including all units of the Presidential Guard Battalion comprising the 1st Company, the 2nd Company, Headquarters and the Logistics or Services Company which was composed of specialists, the *Groupe de Sécurité et d'Intervention de la Garde Présidentielle* otherwise known as "GSIGP", as well as the members of the Parachute Commando Battalion under his command in 1994.
13. Protais MPIRANYA also had effective control over the members of the FAR not under his direct authority but junior to him because all FAR military officers had the power and duty to enforce general rules of discipline in respect of all soldiers under their authority, including those who were not members of their units¹.
14. Protais MPIRANYA also had effective control over members of the *Interahamwe* and members of the civilian population in Kimihurura and Nyarugenge *secteurs* by virtue of his rank, position of authority and role in providing military training and weapons to them. Members of the *Interahamwe* and the civilian population were used in FAR operations and/or were trained and armed by Protais MPIRANYA or on his behalf.
15. Protais MPIRANYA could: (i) order all persons under his effective control to act and prevent them from acting, including participating in crimes; (ii) take, authorize, trigger and recommend disciplinary action and criminal prosecutions with regard to criminal conduct; and (iii) control distribution of arms and ammunition allocated to the Presidential Guard Battalion to soldiers and other perpetrators.
16. Protais MPIRANYA intended and was aware that his subordinates and others identified in the indictment participated in the crimes pleaded in the indictment because he

¹ Amended Presidential Decree no. 413/02 of 13 December 1978, establishing the Rules of Discipline the Rwandan Armed Forces)

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participated in them. Further, the crimes were widespread and committed openly and on a large scale; the crime scenes were close to Camp *Kimihurura*, which was under his command; he was present in Rwanda during the perpetration of the crimes; and he was the superior of the perpetrators. Protais MPIRANYA knew or had reason to know that his subordinates participated in the crimes.

IV. CONTEXT OF THE CRIMES

17. Between 6 April through 17 July 1994, Rwandan citizens were 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.
18. Between 6 April and 17 July 1994 there were widespread and/or systematic attacks throughout Rwanda against the civilian population based on Tutsi ethnic identification and political grounds. During the attacks, some Rwandan citizens killed or caused harm to persons perceived to be Tutsi, political opponents and their affiliates, and peacekeepers. As a result of the attacks, there were a large number of deaths.²
19. Between 6 April and 17 July 1994, there was genocide in Rwanda against the Tutsi ethnic group.³
20. The crimes alleged in this Indictment formed part of the widespread or systematic attacks. Protais MPIRANYA was aware of the attacks and the fact that the crimes formed part of them because: (i) he participated in the crimes by his acts and omissions; (ii) he held the position described in paragraph 14 above; (iii) the crimes were public knowledge; (vi) *Interahamwe* including André NZABANTURERA, Noel KAVUNDERI, Vincent NGENDAHIMANA, *alias* "Gaparata", and Vedaste MUSASIRA, *alias* "Biniga", were allowed frequent, unrestricted access to Camp *Kimihurura* to receive weapons and ammunition and report to Protais MPIRANYA on their activities; and (iv) Protais MPIRANYA was present in Kigali/Rwanda at all times material to the crimes.
21. Between 6 April and 17 July 1994, there was a non-international armed conflict in Rwanda.⁴ Protais MPIRANYA was aware of this and acted in furtherance or under the guise of this armed conflict. The existence of the armed conflict, at a minimum, played a substantial part in Protais MPIRANYA's ability to commit the war crimes, his decision to commit them, the manner in which they were committed, and the purpose for which they were committed. The victims of the war crimes were persons taking no active part in the hostilities.

V. CONCISE STATEMENT OF FACTS

22. In December 1993, Protais MPIRANYA issued instructions to members of the Presidential Guard Battalion to arrest and kill Tutsis who visited the Rwandan Patriotic Front ("RPF") at the CND building. Following this order, many Tutsis were killed

² See *Prosecutor v Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006.

³ See *Prosecutor v Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006.

⁴ Rwanda acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and acceded to the Protocols additional thereto of 1977 on 14 November 1984; Rwanda acceded to the Genocide Convention on 16 April 1975 with reservation on Article IX.

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before and after 7 April 1994 by elements of the Presidential Guard Battalion and *Interahamwe* led by André NZABANTERURA.

23. On 5 January 1994, Protais MPIRANYA instigated elements of the Presidential Guard Battalion and *Interahamwe* from Kigali to frustrate the swearing-in ceremony of the ministers and the President of the Republic. Protais MPIRANYA stood at the entrance to the CND building at which the swearing-in ceremony was to take place and, in the presence of members of his Presidential Guard and the *Interahamwe*, he shoved UNAMIR officers and denied access to some opposition politicians, including Landouald NDASINGWA. As a result, only the President was sworn in, thereby negating the purpose of the ceremony, which was the installation of the broad-based transitional government envisioned under the Arusha Accords.
24. Furthermore, towards the end of January 1994, Protais MPIRANYA briefed Presidential Guard soldiers on a plan to kill influential, high-ranking politicians who supported power-sharing with the RPF, in the event of President Habyarimana's assassination. Protais MPIRANYA ordered the soldiers to locate the houses of Desiré MURENZI, Landouald NDASINGWA, Frédéric NZAMABURAHU, Théoneste GAFARANGA, Thomas KABEJA, Agathe UWILINGIYIMANA, Faustin TWAGIRAMUNGU, and Joseph KAVARUGANDA, among others, and to kill them in the event of the President's death. Protais MPIRANYA then ordered the soldiers to protect supporters of the Habyarimana regime, including Matthieu NGIRUMPATSE, Édouard KAREMERA, and Ferdinand KABAGEMA if the President were assassinated.
25. This had the effect of prompting the Presidential Guard soldiers to kill the individuals on Protais MPIRANYA's list. In this regard, Protais MPIRANYA is liable for instigating the death of these persons. Protais MPIRANYA is also liable for instigating the death of the families, domestic servants, and close employees of the persons on the list because he was aware of the substantial likelihood that they would be killed during the attacks against the persons on the list.

Military Training:

26. On dates unknown between early 1993 and April 1994, Protais MPIRANYA, in concert with co-perpetrators in the JCE, notably: Aloys NTABAKUZE, Commander of the Parachute Commando Battalion, Joseph NZIRORERA, National Secretary of the *Mouvement Revolutionnaire National pour le Development* ("MRND"), Matthieu NGIRUMPATSE, National President of the MRND, and Anatole NSENGIYUMVA, Commander of Gisenyi Army Operations, organized, facilitated and provided military training to *Interahamwe* at different locations in the country, and more particularly, at Gabiro, Gako, Mutara, Ruhengeri and Camp Kimihurura. The purpose of this training was to prepare and equip the *Interahamwe* with the necessary tools for the elimination of those identified as members of the Tutsi ethnic group. The *Interahamwe* leaders and militia trained by Protais MPIRANYA, in concert with the Presidential Guard Battalion, upon the orders of Protais MPIRANYA, committed and facilitated the commission of genocide in Kimihurura between 6 April and 17 July 1994.
27. On dates unknown between March and April 1994, Protais MPIRANYA provided and supervised military training at Camp Kimihurura of *Interahamwe* and members of the civilian population residing in Kimihurura *secteur*, as reinforcements for the FAR in the

non-international armed conflict. Protais MPIRANYA also armed these trainees with various weapons such as firearms and grenades. Although killings of innocent Tutsi civilians were widespread in Kimihurura *secteur* as of 6 April 1994, Protais MPIRANYA did not inform the trainees that they should not kill innocent Tutsi civilians.

28. Thus, the training and arming operation at Camp Kimihurura prompted the *Interahamwe* and members of the civilian population residing in Kimihurura to kill Tutsis because it provided them with the means implicit authorization to conduct the killings. Between 6 April and 17 July 1994, following Protais MPIRANYA'S instructions, the armed *Interahamwe* and members of the civilian population killed or harmed Tutsi civilians residing in Kimihurura *secteur* in collaboration with the soldiers of the FAR who were acting under the Accused's command. In this regard, Protais MPIRANYA instigated the *Interahamwe* from Kimihurura to kill Tutsis.

Distribution of Weapons:

29. Between 6 and 14 April 1994, Protais MPIRANYA distributed various weapons such as firearms and grenades along with ammunition to the *Interahamwe* from Kimihururura. During this period, *Interahamwe* including André NZABANTURERA, Noel KAVUNDERI, "Gaparata", and Vedaste MUSASIRA were allowed frequent unrestricted access to Camp *Kimihurura* to receive weapons, ammunition, food, military uniforms, and medicine, and report to Protais MPIRANYA on their activities.
30. The distribution of weapons and supplies continuously provided the *Interahamwe* from Kimihurura and members of the civilian population with the means to carry out the killings, therefore prompting them to continue committing crimes and substantially contributing to the killings. In this regard, Protais MPIRANYA instigated the *Interahamwe* to continue killing Tutsis.

Roadblocks:

31. On the night of 6 April, 1994, Protais MPIRANYA ordered soldiers of the Presidential Guard and Parachute Commando Battalion to reinforce and erect roadblocks situated at strategic locations in Kigali so that Tutsis could be identified and killed. Tutsis were killed at these roadblocks.
32. On 10 April 1994, soldiers of the Presidential Guard Battalion ordered *Interahamwe* and members of the civilian population in Rugarama *cellule* to erect and man roadblocks at strategic locations in the cellule. As a result, a roadblock was erected near the house of a certain GAHIGI and, on an unknown date, the *Interahamwe* and soldiers of the Presidential Guard Battalion manning the roadblock killed a Tutsi man named EMMANUEL.

Killings in Kimihurura Secteur:

(i) Rugando Cellule:

33. On the night of 6 April 1994, Protais MPIRANYA ordered soldiers of the Presidential Guard Battalion led by Sergeant RURIKUJISHO and accompanied by Corporals BUREGEYA and NTARE to Rugando *cellule* to distribute weapons to the *Interahamwe*

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led by André NZABANTERURA. The soldiers delivered the weapons to André NZABANTERURA at his residence. Immediately thereafter, the *Interahamwe* used these weapons to join the soldiers in attacking and killing hundreds of Tutsi civilians residing in Rugando *cellule*. Among the Tutsis killed were Desiré MUNYANGEYO and his family, and MUNYERAGWE and his two sisters.

34. On or about 8 April 1994, soldiers of the Presidential Guard Battalion killed a woman they perceived to be Tutsi in Rugando *cellule*, on the side of the *cellule* where she used to live, as she left Camp Kimihurura after receiving medical treatment for an injury resulting from a gunshot.

(ii) **Rugarama Cellule:**

35. Around 6.30 a.m. on 7 April 1994, a group of the Presidential Guard and Parachute Commando Battalion including Warrant Officers KINYAKURA, RULINDA, and URUBONYE, Sergeants RURIKUJISHO and HABIMANA, and Corporals HABYARIMANA and "Tindo" attacked the residence of Landouald NDASINGWA who was a Tutsi, Vice Chairman of the *Parti Libéral* ("PL") and Minister of Labour and Community Affairs. They killed him and members of his family including his wife, children, and mother. The soldiers looted his property together with *Interahamwe* and burned his house.
36. Between 7:00 a.m. and 9:00 a.m. on 7 April 1994, soldiers of the Presidential Guard Battalion and a group of armed *Interahamwe* including "Bandit", Jean KAVUNDERI and GASTON, led by Noël KAVUNDERI, searched the residences of Tutsis in Rugarama *cellule* and killed several Tutsi civilians. Among the Tutsi civilians killed were:
- a. VIANNEY and his friend, LAURENT, Bosco SIMBA and the brother of a Tutsi woman called MUTONI;
 - b. an old man named KAGAME, an employee of the French named DAVID and his family, MUKAGASANA, the wife of a Tutsi trader called MUNYABAGISHA; and
 - c. a Tutsi trader, Boniface NTAWUHIGANAYO.
37. The attackers also killed the following persons because they were perceived to be Tutsi: AMINA and her baby boy, the wife of ALPHONSE, a woman named "Mama Muteteri", and a boy called NJENJE.
38. On or about 8 April 1994, Warrant Officer RULINDA of the Presidential Guard Battalion in concert with a group of *Interahamwe* led by Noel KAVUNDERI, including Vedaste MUSASIRA, attacked the residence of Jerome MUREGO, a Tutsi businessman, and abducted members of his family before killing them at a small forest located at Camp Kimihurura. Between 6 April and 17 July 1994, the Presidential Guard soldiers and *Interahamwe* used the forest as a dumping ground for the bodies of some of their victims.

39. On or about 10 April 1994, Protais MPIRANYA issued a firearm to Innocent MBARUSHIMANA, a known *Interahamwe*, and told him that he should use the weapon to kill Tutsis and all those who opposed the regime. In this manner, Protais MPIRANYA instigated Innocent MBARUSHIMANA to kill Tutsis and political opponents of the regime.
40. On or about 10 April 1994, Presidential Guard soldiers including Warrant Officers KINYAKURA, RULINDA, USHIZIMPUMU and URUBONYE, Sergeants RURIKUJISHO and HABIMANA, and Corporal HABYARIMANA together with armed *Interahamwe* such as: Jean KAVUNDERI, Appolinaire MBONYENGIYE, Vedaste MUSASIRA, Wenceslas SERINDA, Jean UGIRASHEBUGA, *alias* "Birahaha", and Innocent MBARUSHIMANA, led by Noël KAVUNDERI, abducted, extorted money from, and killed the wife of Jean MURENZI, a Tutsi, and five other family members at the small forest at Camp *Kimihurura*.
41. On or about 10 April 1994, soldiers of the Presidential Guard Battalion in collaboration with an *Interahamwe* attacked the residence of Jerome MUREGO in Rugarama *cellule* and killed him.
42. On 10 April 1994, soldiers of the Presidential Guard Battalion ordered *Interahamwe* and members of the civilian population in Rugarama *cellule* to erect and man roadblocks within the *cellule* and a roadblock was erected near the house of GAHIGI in Rugarama *cellule*. Between 10 April and 17 July 1994, the *Interahamwe* and soldiers of the Presidential Guard Battalion manning the roadblock killed a Tutsi man named EMMANUEL.
43. Between 7 and 30 April 1994, a soldier of the Presidential Guard Battalion together with an *Interahamwe* named MATABARO targeted and killed a Tutsi man, Callixte KAYIRANGA, in the forest in Camp Kimihurura. KAYIRANGA'S brother, Francois RUSEZERA, was killed on the road near the residence of Valens KAJEGUHAKA in Kimihurura.

(iii) **Kimicanga Cellule:**

44. On or about 7 April 1994, soldiers of the Presidential Guard Battalion including Sergeant RUYCYAMA together with *Interahamwe* led by "Gaparata" attacked and killed a Tutsi businessman, Revocate SEBISHYUNDU, and his wife at their residence in Kimicanga *cellule*.
45. Around 6:00 a.m. on the morning of 7 April 1994, approximately ten Presidential Guard soldiers led by Sergeant RUCYABA arrived at the home of Thomas KARANGWA, a Tutsi. The soldiers forced their way into KARANGWA'S compound and threw grenades through the windows of his home, killing him along with his pregnant wife and son.

(iv) **IFAK Compound:**

46. On or about 13 April 1994, soldiers of the Presidential Guard Battalion and *Interahamwe* attacked the Tutsi Refugees at the IFAK Compound, otherwise known as "Salesian Brothers", and killed many Tutsi men, women and children while injuring others. During

the course of the attack, an *Interahamwe* militiaman used a machete to hack off the right hand of Godefroid MUTABAZI, a Tutsi.

Rapes in Kimihurura Secteur

47. Between 7 April and 17 July 1994 soldiers of the Presidential Guard Battalion and members of the *Interahamwe* raped Tutsi women and children, as follows:
48. Between 7 and 8 April 1994, during the course of an attack by soldiers of the Presidential Guard Battalion and *Interahamwe*, members of the family of Jerome MUREGO, a Tutsi, were raped at Vedaste MUSASIRA's residence by *Interahamwe* including Vedaste MUSASIRA, Noel KAVUNDERI, Jean KAVUNDERI, Saleh HABIMANA, and BUROKO. After being raped, the attackers killed the family members on 8 April 1994.
49. Between 7 April and 17 July 1994, TWAGIRAYEZU, a soldier of the Presidential Guard Battalion, held a woman called MUKAYIRANGA, also known as Macipoto, hostage at her parents' residence in Kimicanga *cellule* and repeatedly raped her. MUKAYIRANGA's father was Hutu and her mother was Tutsi but she was considered Tutsi based on her appearance;
50. Between 14 April and 17 July 1994, Wenceslas SERINDA, a known *Interahamwe*, raped Vestine UMWARI, a Tutsi woman, on two occasions at his residence in Rugarama *cellule*;
51. Between 14 April and 17 July 1994, Gervais RWAMANYWA raped Vestine UMWARI at his residence in Rugarama *cellule*;
52. Between 15 April and 17 July 1994, NZOVU, a soldier of the Presidential Guard Battalion, raped Vestine UMWARI at Wenceslas SERINDA's residence;
53. Between 7 April and 17 July 1994, NZOVU took Chantal MUKAGASANA, a Tutsi woman, from Wenceslas SERINDA's residence to a place near the Presidential Guard Camp where he held her hostage and repeatedly raped her;
54. On a date unknown in April 1994 a sergeant of the Presidential Guard Battalion raped Mediatrice MUKASAFARI, a Tutsi woman, at her residence in Rugarama *cellule*;
55. After raping MUKASAFARI, the Presidential Guard sergeant went to the nearby residence of MUTONI, a Tutsi woman, where he raped her;
56. On 7 April 1994 soldiers of the Presidential Guard Battalion and Parachute Commando Battalion attacked the residence of Félicien NGANGO. During the course of the attack one of the soldiers raped a woman behind the residence before killing her.

Killing of Political Dignitaries and 10 Belgian UNAMIR Peacekeepers

57. In the early hours of the morning of 7 April 1994, soldiers of the Presidential Guard Battalion, Parachute Commando Battalion, Reconnaissance Battalion, and other units of

the Rwandan army and members of *Interahamwe* abducted and murdered political dignitaries and other important personalities in Kigali-ville *préfecture*, identified more particularly in paragraphs 59 to 69, in order to create a political vacuum and frustrate the implementation of the Arusha Accords.

58. During this period, elements of the Presidential Guard escorted and protected Party dignitaries of the MRND in Camp Kimihurura, such as Casimir BIZIMUNGU, Minister of Health, and Ferdinand NDAHIMANA, Director General of *l'Office rwandaise d'information* (ORINFOR).

(i) **Murder of Agathe UWILINGIYIMANA, the Prime Minister of the Transitional Government and Desecration of her Corpse**

59. On the night of 6 April 1994, following the death of President Habyarimana, Théoneste BAGOSORA, Director of Cabinet of the Minister of Defence, chaired a meeting of a crisis committee of senior military officers of the army and *gendarmerie nationale* at the army headquarters in Camp Kigali. The meeting was attended by General Dallaire, the UNAMIR Commander.

60. During the meeting, General Dallaire proposed that the Prime Minister and political authority at the time, Agathe UWILINGIYIMANA, should address the nation on Radio Rwanda on the early morning of 7 April 1994, so as to calm fears and reassure the population that a political leadership structure remained in place.

61. Théoneste BAGOSORA refused to recognize Agathe UWILINGIYIMANA'S authority and never consulted her as proposed. Accordingly, all attempts by UNAMIR to arrange for the Prime Minister to address the nation on Radio Rwanda were frustrated by soldiers of the Rwandan Army over whom Théoneste BAGOSORA had authority.

62. On the morning of 7 April 1994, Protais MPIRANYA acting in concert with Francois-Xavier NZUWONEMEYE, Commander of the Reconnaissance Battalion, and Innocent SAGAHUTU, Commander of Squadron A of the Reconnaissance Battalion, ordered and deployed their subordinates comprising soldiers of the Presidential Guard Battalion and Reconnaissance Battalion to hunt down and kill Prime Minister Agathe UWILINGIYIMANA.

63. The soldiers disarmed and arrested 10 Belgian and about 5 Ghanaian UNAMIR peacekeepers who were guarding the residence of Agathe UWILINGIYIMANA and took them to Camp Kigali. Thereafter, the soldiers murdered Agathe UWILINGIYIMANA, and desecrated her corpse by thrusting a bottle of soda into her vagina and leaving her naked body on display. The soldiers also murdered UWILINGIYIMANA'S husband, her private secretary, Ignace MAGORANE and a domestic staff. Captain Gaspard HATEGEKIMANA of the Presidential Guard Battalion supervised this attack

(ii) **Murder of Ten Belgian Peacekeepers**

64. During the course of the same day, the 10 Belgian peacekeepers disarmed and arrested at the UWILINGIYIMANA'S residence were killed by FAR soldiers at Camp Kigali.

(iii) **Murder of Joseph Kavaruganda, President of the Constitutional Court**

65. Around 6.30 a.m. on 7 April 1994, a group of approximately 10 members of the Presidential Guard and Parachute Commando Battalion led by Captain KABERA attacked the residence of Joseph KAVARUGANDA, arrested and escorted him to Camp *Kimihurura*, and killed him.

(iv) **Murder of Frédéric NZAMURAMBAHO, the Chairman of PSD and Minister of Agriculture**

66. Around 7:00 a.m. on 7 April 1994, soldiers of the Presidential Guard Battalion attacked the residence of Frédéric NZAMURAMBAHO, Chairman of the *Parti Social Démocrate* ("PSD") and killed him and about 8 members of his family.

(v) **Murder of Faustin RUCOGOZA, MDR Official and Minister of Information**

67. Around 10:00 a.m. 7 April 1994, elements of the Presidential Guard Battalion escorted Faustin RUCOGOZA, a member of the *Mouvement Démocratique Républicain* ("MDR"), and 4 members of his family including his wife and young children, to Camp *Kimihurura*. Warrant Officer RULINDA of the Presidential Guard Battalion informed the Accused of RUCOGOZA's presence in the camp. In accordance with MPIRANYA's instigation and order, MURWANASHYAKA of the Parachute Commando Battalion shot and killed RUCOGOZA along with members of his family. Their bodies were dumped in a trench located at Camp *Kimihurura*.

(vi) **Murder of Felicien NGANGO, Vice President of the PSD and Potential Candidate for the Presidency of the Transitional Assembly under the Arusha Accords**

68. On 7 April 1994, soldiers of the Presidential Guard and Parachute Commando Battalion attacked the residence of Felicien NGANGO, Vice President of the PSD, and killed members of his family including his wife and children.

69. Between 10 and 20 April 1994, *Interahamwe*, including André NZABANTURERA, took Felicien NGANGO to Camp *Kimihurura* where MPIRANYA questioned him and ordered his subordinates to kill him. Second Lieutenant HAKIZIMANA of the Parachute Commando Battalion, together with members of the Presidential Guard, took Felicien NGANGO away, killed him, and dumped his body in the forest at Camp *Kimihurura*.

VI. RESPONSIBILITY:

70. On the basis of the facts alleged in paragraphs:

- (a) 22 to 56 of this indictment, Protais MPIRANYA is responsible for genocide or alternatively, complicity in genocide, as set out in paragraph 1.

- (b) 33 to 69 of this indictment, Protais MPIRANYA is responsible for murder, extermination, rape, persecution, and other inhumane acts as crimes against humanity, and murder as a war crime, as set out in paragraph 1.

Responsibility under Article 6(1) of the Statute

71. Protais MPIRANYA is responsible under JCE in the basic form (“JCE I”) for the crimes charged in paragraph 1. The purpose of the JCE was to destroy the Tutsi ethnic group in Rwanda and kill and cause harm to politicians who supported power-sharing with the Tutsi-led RPF and persons who were otherwise considered to be sympathetic to the interests of Tutsis or the RPF. Protais MPIRANYA intended that the crimes should occur, and was aware of their occurrence. The JCE was conceived and designed before 6 April 1994 and existed as of 6 April through 17 July 1994.
72. The JCE included the following military commanders: Protais MPIRANYA, Théoneste BAGOSORA, Director of Cabinet of the Minister of Defence, Francois-Xavier NZUWONEMEYE, Commander of the Reconnaissance Battalion, Innocent SAGAHUTU, Commander of Squadron A of the Reconnaissance Battalion, Aloys NTABAKUZE, Commander of the Parachute Commando Battalion, and Anatole NSENGIYUMVA, Commander of Gisenyi Army Operations.
73. The JCE also included the following Presidential Guard soldiers and officers: Captain KABERA; Sergeants RURIKUJISHO, HABIMANA, RUYCYAMA, and RUCYABA; Warrant Officers KINYAKURA, RULINDA, and UROBONYE, Corporals HABYARIMANA and “Tindo”; and Privates TWAGIRAYEZU and NZOVU. It also included Parachute Commando Battalion soldier MURWANASHYAKA in addition to other unknown members of the Presidential Guard Battalion, Parachute Commando Battalion, and Reconnaissance Battalion.
74. The JCE also included *Interahamwe* leaders André NZABANTERURA, President of the *Interahamwe* for Rugando *cellule*, and Noël KAVUNDERI, Vice-Chairman of the *Interahamwe* in Kimihurura *secteur*; *Interahamwe* militiamen “Gaparata”, Wenceslas SERINDA, Jean UGIRASHEBUGA *alias* “Birahaha”, Appolinaire MBONYENGE, Jean KAVUNDERI, Vedaste MUSASIRA, GASTON, Saleh HABIMANA, BUROKO, “Bandit”, and Innocent MBARUSHIMANA; and Isaac NKUBITO, Chairman of the MRND in Kacyiru *commune* in addition to other unknown persons.
75. The above individuals acted together with the Accused to plan and execute the common purpose of the enterprise, all actions being taken either directly or through subordinates. Alternatively, to the extent that they did not have that intent or did not share the common purpose, Protais MPIRANYA and the members of the JCE who had that intent and shared the common purpose used the remaining individuals to commit the crimes charged in paragraph 1.
76. By his acts and omissions Protais MPIRANYA instructed, supervised, prompted, encouraged, and assisted the crimes carried out by members of the Presidential Guard Battalion, Parachute Commando Battalion, *Interahamwe*, and other perpetrators. Thus, at a minimum, Protais MPIRANYA significantly contributed to the crimes. The other

members of the JCE made substantial contributions to the execution of the common purpose of the JCE as alleged in paragraphs 22 through 69.

77. Regarding the crimes charged in Counts 5 and 7, Protais MPIRANYA is alternatively responsible for them on the basis of JCE liability in the extended form (JCE III) because those crimes were a natural and foreseeable consequence of the execution of the common purpose of the JCE. The crimes charged in Counts 5 and 7 were carried out in the execution of the common purpose by members of the JCE or by persons used by them. Protais MPIRANYA was aware that these crimes were a possible consequence of the implementation of the common purpose of the JCE, and he willingly took the risk that they would be committed. Protais MPIRANYA's willingness to take this risk is demonstrated by his continued participation in the JCE despite the awareness that these crimes were a possible consequence of the implementation of that enterprise.

78. Regarding the crimes charged in Counts 3, 4, 6, and 8 in relation to the facts alleged in paragraph 64, Protais MPIRANYA is alternatively responsible for them on the basis of JCE III because those crimes were a natural and foreseeable consequence of the execution of the common purpose of the JCE. The crimes charged in Counts 3, 4, 6, and 8 in relation to the facts alleged in paragraph 64 were carried out in the execution of the common purpose by members of the JCE or by persons used by them. Protais MPIRANYA was aware that these crimes were a possible consequence of the implementation of the common purpose of the JCE, and he willingly took the risk that they would be committed. Protais MPIRANYA's willingness to take this risk is demonstrated by his continued participation in the JCE despite the awareness that these crimes were a possible consequence of the implementation of that enterprise.

79. Protais MPIRANYA is responsible under the mode of liability of ordering on the basis of paragraphs 24, 35, 57 to 63, and 65, 66, 68, and 69. Protais MPIRANYA had the power to order and control soldiers of the Presidential Guard Battalion, the Parachute Commando Battalion under his command as well as *Interahamwe* and other perpetrators as set out in paragraphs 11 to 15. Protais MPIRANYA's orders had a direct and substantial effect on the commission of the crimes. Protais MPIRANYA intended or was aware of the substantial likelihood that in the course of the execution of his orders the crimes would be committed.

80. Protais MPIRANYA is responsible under the mode of liability of instigating on the basis of paragraphs 24, 29, 35, 39, 57 through 63, and 65 through 69. By his acts and or omissions Protais MPIRANYA instigated members of the Presidential Guard Battalion, Parachute Commando Battalion *Interahamwe*, and other perpetrators to carry out these crimes. Protais MPIRANYA's conduct represents a substantial contribution to the execution of the crimes. Protais MPIRANYA intended or was aware of the substantial likelihood that in the course of the execution of this instigation the crimes would be committed.

81. Protais MPIRANYA is responsible under the mode of liability of aiding and abetting on the basis of paragraphs 24, 27, 29, 31 through 33, 57 through 63, and 65 through 69. By

his acts and or omissions, he instructed, supervised, prompted, encouraged, lent moral support, tacitly approved, and assisted in the crimes committed or facilitated by soldiers of the Presidential Guard Battalion, Parachute Commando Battalion, *Interahamwe*, and other perpetrators. Protais MPIRANYA's conduct substantially contributed to the commission of the crimes. He was, at least, aware of the likelihood that the crimes would occur and that his conduct would assist the crimes.

82. Protais MPIRANYA is responsible for complicity in genocide on the basis of paragraphs 22 to 56. By his acts and or omissions Protais MPIRANYA instructed, prompted, encouraged, and assisted the crimes committed or facilitated by soldiers of the Presidential Guard Battalion, Parachute Commando Battalion, *Interahamwe* and other perpetrators. Protais MPIRANYA's conduct represents a contribution to the killings. He was aware that the killings would occur and that his conduct would assist in their commission.
83. Protais MPIRANYA was under a legal duty to act regarding the crimes charged in paragraph 70 because: (i) pursuant to the Rwandan Penal Code Protais MPIRANYA had a criminally sanctioned legal duty to provide assistance to persons in danger where it would not cause risk to himself;⁵ (ii) Protais MPIRANYA had a legal duty pursuant to the Rules of Discipline for the Rwandan Armed Forces to prevent and/or punish his subordinates for committing illegal acts; (iii) he was the superior of the perpetrators of the crimes; (iv) the Presidential Guard and the Parachute Commando Battalion under his command and *Interahamwe* used in the FAR operations were dangerous organizations and Protais MPIRANYA had to control them in order to protect the rights of third parties from being negatively affected; and (v) by concealing, mischaracterizing, condoning and failing to oppose the crimes, when as a superior he could have intervened, Protais MPIRANYA created the risk of enticing perpetrators to engage in the crimes alleged in paragraph 70 above. Protais MPIRANYA had the ability to take steps to comply with his duty, because of his powers.

Responsibility under Article 6(3) of the Statute

84. Protais MPIRANYA incurred superior responsibility for his subordinates' commission of, and participation in the crimes charged in paragraph 1.
85. Protais MPIRANYA had effective control over his subordinates who committed and participated in the crimes because he had the material ability to prevent or punish their conduct. Protais MPIRANYA's subordinates included the Presidential Guard Battalion, Parachute Commando Battalion under his command, *Interahamwe*, and other perpetrators residing in Kimihurura and Nyarugenge *secteurs* who committed the crimes charged in paragraph 1 above.
86. Protais MPIRANYA knew or had reason to know of his subordinates' criminal conduct because of his position as a superior and the widespread nature of the killings and events.

⁵ Articles 256 and 258 of the Rwandan Penal Code, 18 Aout 1977, Decret loi no.21/77

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87. Protais MPIRANYA failed to use his powers, pleaded in paragraphs 11 to 15 to prevent his subordinates from committing or participating in the crimes or to investigate or punish the subordinates who had committed or participated in these crimes.

VII. AGGRAVATING CIRCUMSTANCES:

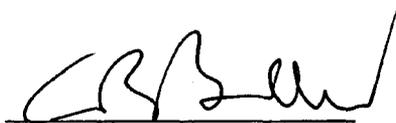
88. All facts stated in this Indictment are also alleged as aggravating circumstances.

Other aggravating circumstances against MPIRANYA include:

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

89. The acts and or omissions of **Protais MPIRANYA** detailed herein are punishable under Articles 22 and 23 of the Statute.

Dated and signed at Arusha this 3rd day of August 2012



Hassan Bubacar JALLOW

Prosecutor



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Case Name/ Affaire:	The Prosecutor v. Protais MPIRANYA		Case Number/ Affaire No: MICT-12-02
Date Created/ Daté du:	03/08/2012	Date transmitted/ Transmis le:	03/08/2012
No. of Pages/ No de pages:	15	Original Language / Langue de l'original:	<input checked="" type="checkbox"/> English/ Anglais <input type="checkbox"/> French/ Français <input type="checkbox"/> Kinyarwanda
Title of Document/ Titre du document:	SECOND AMENDED INDICTMENT		
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Date Created/ Daté du:	03/08/2012		Date transmitted/ Transmis le:	04/06/2013	
No. of Pages/ No de pages:	15	Original Language / Langue de l'original:	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
Title of Document/ Titre du document:	Second Amended Indictment				
Classification Level/ Catégories de classement:	<input checked="" type="checkbox"/> Unclassified/ Non classé	<input type="checkbox"/> Strictly Confidential/ Strictement confidentiel		<input type="checkbox"/> Confidential/ Confidentiel	
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