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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania
Tel: 255 27 2504367-72 or 1 212 963 2850 — Fax: 255 27
2504000/2504373 or 1 212 963 2848

INTEROFFICE MEMORANDUM — MEMORANDUM INTERIEUR

To: Constant K. Hometowu
A: Coordinator, TC III

Date: 01 October 2004

From: Stephen Rapp
De: Senior Trial Attorney
Media / Akazu Team

Subject: **Filing of Amended Indictment in the matter of The Prosecutor v. Kabuga**
Objet:

1. Kindly find attached the Amended Indictment.
2. Please disclose the document to the Judges and the Defence.
3. Thank you for your attention in this matter.
4. Best regards.

**UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

Case No. ICTR-98-44B-I

**THE PROSECUTOR
AGAINST
FELICIEN KABUGA**

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AMENDED INDICTMENT

I. **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:**

Felicien KABUGA

With:

Count 1 - CONSPIRACY TO COMMIT GENOCIDE

Count 2 - GENOCIDE, or alternatively

Count 3 - COMPLICITY IN GENOCIDE

Count 4 - DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

Count 5 - EXTERMINATION as a CRIME AGAINST HUMANITY

II. **THE ACCUSED**

1. **Félicien KABUGA** was born in 1935, in Muniga *secteur*, Mukarange *commune*, Byumba *préfecture*, Rwanda and was at all times referred to in this indictment:
 - (a) a wealthy and influential businessman;
 - (b) President of the *Comité Provisoire* of the *Fonds de Défense Nationale*, or the National Defence Fund (the "FDN"); and
 - (c) President of the *Comité d'Initiative* of *Radio Television Libre des Milles Collines SA* ("RTLM").
2. Under President HABYARIMANA's rule, political and financial power in Rwanda was consolidated within a tight circle, the core of which was the extended family of the President. **Félicien KABUGA** was a prominent member of this group by reason of marriage of two of his daughters to two sons of President HABYARIMANA and First Lady Agathe KANZIGA. Because of this family tie he wielded great power and influence. As such, he had *de facto* control and authority, in the sense of having the material ability to prevent or to punish criminal conduct, over the actions of soldiers, gendarmes, the *Interahamwe* and administrative officials. **KABUGA** also had control of the employees of the business enterprises that he headed, such as Kabuga ETS.

III. **CHARGES and CONCISE STATEMENT OF FACTS**

3. At all times referred to in this indictment there existed in Rwanda a minority ethnic or racial group known as Tutsis, officially identified as such by the government. The majority of the population was comprised of an ethnic or racial group known as Hutus, also officially identified as such by the government.
4. 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 Tutsis on the basis that they were Tutsis, with the intent to kill or cause serious harm to them as such and to destroy the Tutsi population in Rwanda in whole or in part. Hundreds of thousands of civilian Tutsis were killed.

Count 1: CONSPIRACY TO COMMIT GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Félicien KABUGA** with **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute, in that on or between the dates of 1 January 1994 and 31 December 1994, **Félicien KABUGA** did conspire with others, including but not limited to other influential and powerful persons including Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Edouard KAREMERA, Mathieu NGIRUMPATSE and Anatole NSENGIYUMVA 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, as outlined in paragraphs 5 through 15.

CONCISE STATEMENT OF FACTS FOR COUNT 1

5. Between 1 January 1994 and 17 July 1994 **Félicien KABUGA**, with other influential and powerful persons, including Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Edouard KAREMERA, Mathieu NGIRUMPATESE and Anatole NSENGIYUMVA agreed 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, as described in paragraphs 6 through 15.

Individual Criminal Responsibility

6. Pursuant to Section 6(1) of the Statute, the accused, **Félicien KABUGA** is individually responsible for the crime of Conspiracy to Commit Genocide because he committed the act of agreeing with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Edouard KAREMERA, Mathieu NGIRUMPATESE and Anatole NSENGIYUMVA and others on a plan to destroy, in whole or in part, the Tutsi ethnic group as described in paragraphs 7 and 11. In furtherance of this plan he committed the specified acts that facilitated the destruction of the Tutsis, and ordered those over whom he had *de facto* control, as described in paragraph 2, and instigated those over whom he did not have *de facto* control, to commit acts that facilitated the destruction of the Tutsis. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 7 through 15.

RTLTM Broadcasts

7. Between 8 April 1993 and July 1994, **Félicien KABUGA**, with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, and others, agreed to plan, fund, launch, and operate RTLTM as a radio station in a manner to further ethnic hatred between the Hutu and the Tutsi and to disseminate an anti-Tutsi message with the goal of destroying the Tutsi ethnic group.
8. From 8 April 1993 through 17 July 1994, in furtherance of the agreement described in paragraph 7, **Félicien KABUGA** served as President of RTLTM and as such had *de jure* control of programming, operations, and finances of RTLTM throughout this period. By his chairmanship of meetings of RTLTM's *Comité d' Initiative*, the management committee, he also exercised *de facto* control of RTLTM.

9. Between 6 April 1994 and 17 July 1994, in furtherance of the agreement described in paragraph 7, RTLM, as a major source of information to the population of Rwanda, broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi.
10. During April, May, June and the first few weeks of July, 1994, in furtherance of the agreement described in paragraph 7, RTLM broadcast messages that instigated the killing of hundreds of thousands of civilian Tutsis throughout Rwanda.

FDN – Funding of the *Interahamwe*

11. On or about 25 April 1994 in the *Méridien* hotel, Gisenyi, **Félicien KABUGA** chaired a meeting attended by Edouard KAREMERA, Mathieu NGIRUMPATESE and Anatole NSENGIYUMVA, amongst others, who together agreed to establish the FDN in order to raise funds to provide financial and logistical support for the *Interahamwe* to kill or cause serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.
12. Between about 25 April 1994 and 17 July 1994, in furtherance of the agreement described in paragraph 11, **Félicien KABUGA** raised and solicited funds to provide financial and logistical support and arms for the *Interahamwe* and the CDR in order to attack, 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.
13. On or about 25 April 1994, in furtherance of the agreement described in paragraph 11, **Félicien KABUGA** became President of the *Comité Provisoire* of the FDN and became a signatory on several bank accounts held in the name of FDN.
14. On diverse unknown dates in May and June 1994, in furtherance of the agreement described in paragraph 11, **Félicien KABUGA** again chaired meetings at the *Méridien* hotel in Gisenyi in order to collect funds to support the *Interahamwe* to attack the Tutsis. At least one of these meetings was attended by a large number of businessmen from Gisenyi and other major trading centres.
15. During the period from 25 April through 17 July 1994, in furtherance of the agreement described in paragraph 11, the *Interahamwe*, in particular those from Gisenyi, received support from the FDN that facilitated these *Interahamwe* in attacking, killing and injuring thousands of civilian Tutsis in Rwanda, in particular in the Bisesero Hills of Kibuye *prefecture* on diverse unknown dates in May and June 1994.

Count 2: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Félicien KABUGA** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, **Félicien KABUGA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, with intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 16 through 46.

Alternatively,

Count 3: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Félicien KABUGA** 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 17 July 1994 throughout Rwanda, **Félicien KABUGA** assisted others with killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, when those others had the intent to destroy, in whole or in part, a racial or ethnic group, as such, and **Félicien KABUGA** had 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, as outlined in paragraphs 16 through 46.

CONCISE STATEMENT OF FACTS FOR COUNTS 2 AND 3*Individual Criminal Responsibility*

16. Pursuant to Section 6(1) of the Statute, the accused, **Félicien KABUGA**, is individually responsible for the crimes of Genocide or Complicity in Genocide because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Félicien KABUGA** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the destruction of the Tutsi racial or ethnic group throughout Rwanda. To fulfill this criminal purpose, the accused acted with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA, Mathieu NGRUMPATSE and Edouard KAREMERA; military officers such as Anatole NSENGIYUMVA; prominent persons such as Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 8 April 1993 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 17 through 29.

RTLTM Broadcasts

17. Between 8 April 1993 and 17 July 1994 **Félicien KABUGA** with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA and Joseph NZIRORERA amongst others planned the establishment, funding and operation of RTLTM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi in order to cause death or serious bodily or mental harm to members of the Tutsi population with the goal of destroying the ethnic Tutsi group.
18. **Félicien KABUGA**, as President of RTLTM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLTM between 8 April 1993 and 17 July 1994. By his chairmanship and meetings of RTLTM *Comité d'Initiative*, the management committee, he also exercised *de facto* control of RTLTM. As such, he planned, ordered, instigated and aided and abetted the broadcasts by RTLTM employees during the period when it was on the air from 8 July 1993 to 17 July 1994.

19. Between 6 April 1994 and 17 July 1994, RTLM, as a major source of information to the population of Rwanda, broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi.
20. Over the course of April, May, June and the first few weeks of July of 1994 RTLM broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis throughout Rwanda.

FDN – Funding of the *Interahamwe*

21. On or about 25 April 1994 in the *Méridien* hotel, Gisenyi, **Félicien KABUGA** chaired a meeting attended by Edouard KAREMERA, Mathieu NGIRUMPATESE and Anatole NSENGIYUMVA, amongst others, who together planned the establishment of the FDN in order to raise funds to provide financial and logistical support for the *Interahamwe* to kill or cause serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.
22. From about 25 April to 17 July 1994 **Félicien KABUGA** was President of the *Comité Provisoire* of the FDN and a signatory on several bank accounts held in the name of FDN.
23. Between about 25 April 1994 and 17 July 1994, **Félicien KABUGA**, in his position as President of the *Comité Provisoire* of the FDN, raised and solicited funds to provide financial and logistical support and arms for the *Interahamwe* in order to attack, kill or cause serious bodily or mental harm to members of the Tutsi population.
24. During the period from 25 April through 17 July 1994, **Félicien KABUGA**, through the FDN that he headed, provided material support to the *Interahamwe* throughout Rwanda, particularly those from the Gisenyi *préfecture* aided and abetted the *Interahamwe*, in particular those from Gisenyi, and these *Interahamwe* attacked, killed and injured thousands of civilian Tutsis in Rwanda, in particular in the Bisesero Hills of Kibuye *préfecture* on diverse unknown dates in May and June 1994.

Logistical Support of the *Interahamwe*

25. Between April and July 1994, **Félicien KABUGA** provided vehicles to be used by the *Interahamwe*. These vehicles were used to transport arms and *Interahamwe* militia to meetings and to massacre and killing sites in Gisenyi and by providing these vehicles **KABUGA** aided and abetted the killing.
26. During April and May 1994 in the city of Gisenyi **Félicien KABUGA** aided and abetted the *Interahamwe* by providing them with vehicles that were used to transport Tutsis to a place called the "*Commune Rouge*" where they were killed.
27. On diverse unknown dates between 1 January 1994 and 17 July 1994 **Félicien KABUGA** ordered employees of a warehouse business that he headed in Gisenyi to distribute uniforms to be worn by the *Interahamwe*, thus increasing their solidarity and aiding and abetting their involvement in the killing of Tutsis.

28. Between 1 January 1994 and 17 July 1994 **Félicien KABUGA** aided and abetted the arming of the *Interahamwe* by placing his business and his home in Kigali-ville at the disposal of the *Interahamwe* for training in the use of arms.

Arming the *Interahamwe*

29. **Félicien KABUGA** ordered the employees of his company Kabuga ETS to import a record number of machetes into Rwanda in 1993. In April 1994 he ordered and instigated members of the *Interahamwe* over whom he had effective control to transport machetes and other weapons to Gisenyi and to distribute the machetes and other weapons to the *Interahamwe* in Gisenyi. The *Interahamwe* used machetes in Gisenyi between 7 April and 17 July 1994 to exterminate the ethnic Tutsi population and by ordering and instigating the importation and distribution of machetes to the *Interahamwe* **KABUGA** aided and abetted the killing carried out by these *Interahamwe*.

Command Criminal Responsibility

30. Pursuant to Section 6(3) of the Statute, the accused, **Félicien KABUGA**, is responsible for the crimes of Genocide or Complicity in Genocide because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the *Interahamwe*, employees of RTLM, employees of the business enterprise that **KABUGA** headed and other unknown participants. In addition, these subordinates of the accused participated and contributed significantly in a joint criminal enterprise with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA, Mathieu NGIRUMPATSE and Edouard KAREMERA and all of their subordinates; military officers such as Anatole NSENGIYUMVA and all of his subordinates; prominent persons such as Ferdinand NAHIMANA and Jean-Bosco BARAYAGWIZA and all of their subordinates; and other unknown participants, whose object, purpose, or foreseeable outcome was the commission of genocide against the Tutsi racial or ethnic group throughout Rwanda, for at least the period from 8 April 1993 through 17 July 1994. The accused knew or had reason to know of the participation of his subordinates and the object, purpose, or foreseeable outcome of the joint criminal enterprise and the accused failed to take the necessary and reasonable measures to prevent his subordinates from participating in the joint criminal enterprise or to punish his subordinates for their participation in the joint criminal enterprise. The particulars of the participation of the accused and his subordinates in this joint criminal enterprise are set forth in paragraphs 31 through 46.

RTLM Broadcasts

31. **Félicien KABUGA**, as President of RTLM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLM between April 1993 and 17 July 1994 and was the superior of all of the employees of RTLM. By his chairmanship and meetings of RTLM *Comité d'Initiative*, the management committee,

he also exercised *de facto* control of RTLM and as such, had effective control over the employees of RTLM in the sense of having the power to prevent or punish their acts.

32. Between 8 April 1993 and 17 July 1994, employees of RTLM who were subordinate to **Félicien KABUGA**, operated RTLM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi in order to cause death or serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.
33. On or about 26 November 1993 and 10 February 1994, **Félicien KABUGA** headed a delegation from RTLM in a meeting with Rwandan Minister of Information Faustin RUCOGOZA where Minister RUCOGOZA complained that RTLM was broadcasting messages that assimilated the civilian Tutsi population with the RPF and that these messages were increasing ethnic hatred. A news report of the 10 February 1994 meeting was broadcast on Television Rwanda in which **KABUGA** defended RTLM broadcasts and showed his knowledge of the contents of the broadcasts and showed his unwillingness to prevent dissemination by RTLM of anti-Tutsi messages.
34. Between 6 April 1994 and 17 July 1994, employees of RTLM, who were subordinates of **Félicien KABUGA**, were a major source of information to the population of Rwanda and broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi.
35. Over the course of April, May, June and the first few weeks of July of 1994 employees of RTLM, who were the subordinates of **Félicien KABUGA**, broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis throughout Rwanda.

FDN – Funding of the *Interahamwe*

36. On or about 25 April 1994 in the *Méridien* hotel, Gisenyi, **Félicien KABUGA** chaired a meeting attended by Edouard KAREMERA, Mathieu NGIRUMPATESE and Anatole NSENGIYUMVA, amongst others, who together planned to use their leadership positions to facilitate the raising of funds by the FDN to provide financial and logistical support for the *Interahamwe* to kill or cause serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.
37. From about 25 April to 17 July 1994 **Félicien KABUGA** was President of the *Comité Provisoire* of the FDN and a signatory on several bank accounts held in the name of FDN.
38. Between about 25 April 1994 and 17 July 1994, subordinates of **Félicien KABUGA** in the FDN raised and solicited funds to provide financial and logistical support and arms for the *Interahamwe* in order to attack, kill or cause serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group and Hutu opponents of ethnic division.
39. During the period from 25 April through 17 July 1994, subordinates of **Félicien KABUGA** in the FDN provided material support to the *Interahamwe*, in particular those in Gisenyi *préfecture*. These *Interahamwe*, in particular those from Gisenyi,

attacked, killed and injured thousands of civilian Tutsis in Rwanda, in particular in the Bisesero Hills of Kibuye *préfecture* in diverse dates in May and June 1994.

Logistical Support of the *Interahamwe*

40. Between April and July 1994, *Interahamwe* under the effective control of **Félicien KABUGA** used vehicles provided by **KABUGA** to transport arms and *Interahamwe* militia to meetings and to massacre and killing sites in Gisenyi.
41. During April and May 1994 in the city of Gisenyi *Interahamwe* under the effective control of **Félicien KABUGA** used vehicles provided by **KABUGA** to transport Tutsis to a place called the "*Commune Rouge*" where they were killed.
42. Between 1 January 1994 and 17 July 1994 employees of a warehouse business under the control of **Félicien KABUGA** in Gisenyi, distributed uniforms to be worn by the *Interahamwe*, thus increasing their solidarity and aiding and abetting their killing of Tutsis.
43. Between 1 January 1994 and 17 July 1994 subordinates of **Félicien KABUGA** made **KABUGA**'s business premises and home in Kigali-ville available to the *Interahamwe* for training in the use of arms, and by so doing aided and abetted the involvement of the *Interahamwe* in the killing of Tutsis.
44. Between 7 April 1994 and 17 July 1994 **Félicien KABUGA** had direct control of *Interahamwe* who provided him with personal protection and access to information of the involvement of the *Interahamwe* in the killing of Tutsis.
45. At a meeting with a local administrative official in Gisenyi on an unknown date in early June 1994, **Félicien KABUGA** justified the mass killing of Tutsi civilians and showed knowledge of this killing by his subordinates and his unwillingness to prevent or punish this killing.

Arming the *Interahamwe*

46. On or about 3 April 1994 the *Interahamwe* in Gisenyi under the effective control of **Félicien KABUGA** received arms and machetes purchased and provided by **KABUGA** from his company Kabuga ETS. The *Interahamwe* used machetes in Gisenyi between 7 April and 17 July 1994 to exterminate the ethnic Tutsi population.

Count 4: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Félicien KABUGA** with **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, **Félicien KABUGA** was responsible for the direct and public incitement of persons 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, as set forth in paragraphs 47 through 61.

CONCISE STATEMENT OF FACTS FOR COUNT 4

Individual Criminal Responsibility

47. Pursuant to Section 6(1) of the Statute, the accused, **Félicien KABUGA**, is individually responsible for the crime of Direct and Public Incitement to Commit Genocide because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of this crime. With respect to the commission of those crimes, **Félicien KABUGA** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the direct and public incitement to commit genocide against the Tutsi racial or ethnic group throughout Rwanda. To fulfill this criminal purpose, the accused acted with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA; prominent persons such as Ferdinand NAHIMANA and Jean-Bosco BARAYAGWIZA; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 8 April 1993 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 48 through 54.

RTLM Broadcasts

48. Between 8 April 1993 and 17 July 1994 **Félicien KABUGA** with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA and Joseph NZIRORERA amongst others planned the establishment, funding and operation of RTLM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi in order to cause death or serious bodily or mental harm to members of the Tutsi population with the goal of destroying the ethnic Tutsi group.
49. **Félicien KABUGA**, as President of RTLM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLM between 8 April 1993 and 17 July 1994. By his chairmanship and meetings of RTLM *Comité d'Initiative*, the management committee, he also exercised *de facto* control of RTLM. As such, he planned, ordered, instigated and aided and abetted the broadcasts by RTLM employees during the period when it was on the air from 8 July 1993 to 17 July 1994.
50. Between 6 April 1994 and 17 July 1994, RTLM, as a major source of information to the population of Rwanda, broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi.
51. Over the course of April, May, June and the first few weeks of July of 1994 RTLM broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis throughout Rwanda.

Public Meetings

52. On an unknown date in May 1994 **Félicien KABUGA** held a meeting at the *Méridien* hotel in Gisenyi where he publicly instigated all present to exterminate the Tutsi.

53. On an unknown date in May 1994 **Félicien KABUGA** held a meeting at the prefecture hall in Gisenyi where he instigated those present to continue the killing of the Tutsi.
54. On an unknown date in May 1994 **Félicien KABUGA** spoke at a meeting at Gisenyi Stadium. He publicly addressed the audience and instigated all present to kill the enemy wherever found. It was commonly known in Rwanda at this time that "the enemy" referred to all members of the Tutsi population.

Command Criminal Responsibility

55. Pursuant to Section 6(3) of the Statute, the accused, **Félicien KABUGA**, is responsible for the crime of Direct and Public Incitement to Commit Genocide because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included employees of RTLM, leaders and members of the *Interahamwe* and other unknown participants. In addition, these subordinates of the accused participated and contributed significantly in a joint criminal enterprise with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA and all of his subordinates; prominent persons such as Ferdinand NAHIMANA and Jean-Bosco BARAYAGWIZA and all of their subordinates; and other unknown participants, whose object, purpose, or foreseeable outcome was the direct and public incitement to commit genocide against the Tutsi racial or ethnic group and the killing of Hutu opponents of ethnic division throughout Rwanda, for at least the period from 7 April 1994 through 17 July 1994. The accused knew or had reason to know of the participation of his subordinates and the object, purpose, or foreseeable outcome of the joint criminal enterprise and the accused failed to take the necessary and reasonable measures to prevent his subordinates from participating in the joint criminal enterprise or to punish his subordinates for their participation in the joint criminal enterprise. The particulars of the participation of the accused and his subordinates in this joint criminal enterprise are set forth in paragraphs 56 through 61.
56. **Félicien KABUGA**, as President of RTLM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLM between April 1993 and 17 July 1994 and was the superior of all of the employees of RTLM. By his chairmanship and meetings of RTLM *Comité d'Initiative*, the management committee, he also exercised *de facto* control of RTLM and as such, had effective control over the employees of RTLM in the sense of having the power to prevent or punish their acts.
57. Between 8 April 1993 and 17 July 1994, employees of RTLM who were subordinate to **Félicien KABUGA**, operated RTLM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi in order to cause death or serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group.
58. On or about 26 November 1993 and 10 February 1994, **Félicien KABUGA** headed a delegation from RTLM in a meeting with Rwandan Minister of Information Faustin RUCOGOZA where Minister RUCOGOZA complained that RTLM was broadcasting messages that assimilated the civilian Tutsi population with the RPF and that these

messages were increasing ethnic hatred. A news report of the 10 February 1994 meeting was broadcast on Television Rwanda in which **KABUGA** defended RTLM broadcasts and showed his knowledge of the contents of the broadcasts and showed his unwillingness to prevent dissemination by RTLM of anti-Tutsi messages.

- 59. Between 6 April 1994 and 17 July 1994, employees of RTLM, who were subordinates of **Félicien KABUGA**, were a major source of information to the population of Rwanda and broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi.
- 60. Over the course of April, May, June and the first few weeks of July of 1994 employees of RTLM, who were the subordinates of **Félicien KABUGA**, broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis throughout Rwanda.
- 61. At a meeting with a local administrative official in Gisenyi on an unknown date in early June 1994, **Félicien KABUGA** justified the mass killing of Tutsi civilians and showed knowledge of this killing by his subordinates and his unwillingness to prevent or punish this killing.

Count 5: PERSECUTION a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Félicien KABUGA** with **PERSECUTION as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of the Statute, in that on and between 1 January and 17 July 1994 throughout Rwanda, **Félicien KABUGA**, was responsible for acts or omissions constituting a violation of basic or fundamental human rights, against the Tutsi population and against Hutu opponents of ethnic division, on racial and political grounds as part of a widespread or systematic attack against that civilian population on racial, ethnic and political grounds, as outlined in paragraphs 62 through 78.

CONCISE STATEMENT OF FACTS FOR COUNT 5

Individual Criminal Responsibility

- 62. Pursuant to Section 6(1) of the Statute, the accused, **Félicien KABUGA**, is individually responsible for the crime of Persecution as a Crime Against Humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of this crime. With respect to the commission of those crimes, **Félicien KABUGA** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the persecution on racial or political grounds of the Tutsis and Hutu opponents of ethnic division by subjecting them to killing, to other violent acts and to discrimination and hatred throughout Rwanda as part of a widespread and systematic attack against that civilian population on racial, ethnic and political grounds. To fulfill this criminal purpose, the accused acted with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA; prominent persons such as Ferdinand

NAHIMANA and Jean-Bosco BARAYAGWIZA; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of 8 April 1993 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 63 through 70.

RTLTM Broadcasts

63. Between 8 April 1993 and 17 July 1994 **Félicien KABUGA** with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA and Joseph NZIRORERA amongst others planned the establishment, funding and operation of RTLTM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi, and cause killing, other acts of violence, discrimination and hatred of the Tutsi ethnic group and Hutu opponents of ethnic division.
64. **Félicien KABUGA**, as President of RTLTM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLTM between 8 April 1993 and 17 July 1994. By his chairmanship and meetings of RTLTM *Comité d'Initiative*, the management committee, he also exercised *de facto* control of RTLTM. As such, he planned, ordered, instigated and aided and abetted the broadcasts by RTLTM employees during the period when it was on the air from 8 July 1993 to 17 July 1994.
65. During the period from 30 September 1993 through 17 July 1994, RTLTM consistently broadcast messages that instigated killings, other acts of violence and discrimination and hatred against Tutsis and Hutu opponents of ethnic division.
66. Between 6 April 1994 and 17 July 1994, RTLTM, as a major source of information to the population of Rwanda, broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsi and to find and kill Hutu opponents of ethnic division.
67. Over the course of April, May, June and the first few weeks of July of 1994 RTLTM broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis and Hutu opponents of ethnic division throughout Rwanda.

Public Meetings

68. On an unknown date in May 1994 **Félicien KABUGA** held a meeting at the *Méridien* hotel in Gisenyi where he publicly instigated all present to exterminate the Tutsi.
69. On an unknown date in May 1994 **Félicien KABUGA** held a meeting at the prefecture hall in Gisenyi where he instigated those present to continue the killing of the Tutsi.
70. On an unknown date in May 1994 **Félicien KABUGA** spoke at a meeting at Gisenyi Stadium. He publicly addressed the audience and instigated all present to kill the enemy wherever found. It was commonly known in Rwanda at this time that "the enemy" referred to all members of the Tutsi population.

Command Criminal Responsibility

- 71. Pursuant to Section 6(3) of the Statute, the accused, **Félicien KABUGA**, is responsible for the crime of Persecution as a Crime Against Humanity because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included employees of RTLM and leaders and members of the *Interahamwe* and other unknown participants. In addition, these subordinates of the accused participated and contributed significantly in a joint criminal enterprise with leaders and members of the *Interahamwe*; political leaders such as Joseph NZIRORERA and all of his subordinates; prominent persons such as Ferdinand NAHIMANA and Jean-Bosco BARAYAGWIZA and all of their subordinates; and other unknown participants, whose object, purpose, or foreseeable outcome was the persecution of the Tutsis and Hutu opponents of ethnic division by subjecting them to killing, to other violent acts and to discrimination and hatred throughout Rwanda as part of a widespread and systematic attack against that civilian population on racial, ethnic and political grounds, for at least the period from 8 April 1993 through 17 July 1994. The accused knew or had reason to know of the participation of his subordinates and the object, purpose, or foreseeable outcome of the joint criminal enterprise and the accused failed to take the necessary and reasonable measures to prevent his subordinates from participating in the joint criminal enterprise or to punish his subordinates for their participation in the joint criminal enterprise. The particulars of the participation of the accused and his subordinates in this joint criminal enterprise are set forth in paragraphs 72 through 78.
- 72. **Félicien KABUGA**, as President of RTLM from 8 April 1993 through 17 July 1994, had *de jure* control of programming, operations, and finances of RTLM between April 1993 and 17 July 1994 and was the superior of all of the employees of RTLM. By his chairmanship and meetings of RTLM *Comité d'Initiative*, the management committee, he also exercised *de facto* control of RTLM and as such, had effective control over the employees of RTLM in the sense of having the power to prevent or punish their acts.
- 73. Between 8 April 1993 and 17 July 1994, employees of RTLM who were subordinate to **Félicien KABUGA**, operated RTLM as a radio station to disseminate an anti-Tutsi message and to further ethnic hatred between Hutu and Tutsi in order to cause death or serious bodily or mental harm to members of the Tutsi population with the goal of destroying the Tutsi ethnic group and Hutu opponents of ethnic division.
- 74. During the period from 30 September to 17 July 1994, employees of RTLM who were subordinates of **Félicien KABUGA** broadcast messages that instigated killings, other acts of violence, discrimination and hatred against Tutsis and Hutu opponents of ethnic division.
- 75. On or about 26 November 1993 and 10 February 1994, **Félicien KABUGA** headed a delegation from RTLM in a meeting with Rwandan Minister of Information Faustin RUCOGOZA where Minister RUCOGOZA complained that RTLM was broadcasting messages that assimilated the civilian Tutsi population with the RPF and that these messages were increasing ethnic hatred. A news report of the 10 February 1994 meeting was broadcast on Television Rwanda in which **KABUGA** defended RTLM

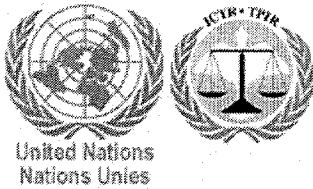
broadcasts and showed his knowledge of the contents of the broadcasts and showed his unwillingness to prevent dissemination by RTLM of anti-Tutsi messages.

76. Between 6 April 1994 and 17 July 1994, employees of RTLM, who were subordinates of **Félicien KABUGA**, were a major source of information to the population of Rwanda and broadcast information identifying the location of Tutsi and urged members of the Rwandan population to find and kill all Tutsis and to find and kill Hutu opponents of ethnic division.
77. Over the course of April, May, June and the first few weeks of July of 1994 employees of RTLM, who were the subordinates of **Félicien KABUGA**, broadcast messages that instigated the killing and injuring of hundreds of thousands of civilian Tutsis and Hutu opponents of ethnic division throughout Rwanda.
78. At a meeting with a local administrative official in Gisenyi on an unknown date in early June 1994, **Félicien KABUGA** justified the mass killing of Tutsi civilians and showed knowledge of this killing by his subordinates and his unwillingness to prevent or punish this killing.

Signed at ARUSHA, this 1st day of OCTOBER 2004.



HASSAN BUBACAR JALLOW
PROSECUTOR



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office Stephen Rapp (name)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Kabuga			Case Number: ICTR-98-44B-I
Dates:	Transmitted: 01.10.2004		Document's date:	
No. of Pages:	15	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Filing of Amended Indictment			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input checked="" type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

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<input checked="" type="checkbox"/> The OTP is over-seeing translation. The document is submitted for translation to: <ul style="list-style-type: none"> <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: <ul style="list-style-type: none"> Name of contact person: Name of service: Address: E-mail / Tel. / Fax: 	<input type="checkbox"/> DEFENCE is over-seeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DODMS): <ul style="list-style-type: none"> Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:

