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UNITED NATIONS

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**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**Case No. ICTR-98-44B-I**

**THE PROSECUTOR**

**V.**

**FÉLICIEN KABUGA**

**AMENDED INDICTMENT**

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**Pursuant to confirmation decision dated 13 April 2011**

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:

**Félicien KABUGA**

**Pursuant to Article 2 of the Statute, with:**

- Count 1 - GENOCIDE,
- Count 2 - COMPLICITY IN GENOCIDE (charged in the alternative to Count 1),
- Count 3 - DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE
- Count 4 - ATTEMPT TO COMMIT GENOCIDE
- Count 5 - CONSPIRACY TO COMMIT GENOCIDE

**Pursuant to Article 3 of the Statute, with:**

- Count 6 - PERSECUTION as a CRIME AGAINST HUMANITY
- Count 7- EXTERMINATION as a CRIME AGAINST HUMANITY

**I. CHARGES**

1. On the basis of the allegations set out in this indictment Félicien KABUGA 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 16-40, 43-62, 65-78, 80;

Count 2, charged in the alternative to Count 1: Complicity in genocide pursuant to Articles 2(3)(e), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 16-29, 39 - 40; 44-54, 61-62; 66-72, 77-78;

Count 3: Direct and public incitement to commit genocide pursuant to Articles 2(3)(c), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 16- 38, 40, 43; 54, 81-85;

Count 4: Attempt to commit genocide pursuant to Articles 2(3)(d), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 16- 40, 43-54, 55-56; 66-74;

Count 5: Conspiracy to commit genocide pursuant to Articles 2(3)(b) and 6(1) of the Statute; charged on the basis of paragraphs 16-29, 41-42; 44-54, 63-64; 66-72, 79;

Count 6: Persecution pursuant to Articles 3 (h), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs 16- 40, 43; 81-85; and

Count 7: Extermination pursuant to Articles 3 (b), 6(1) and 6(3) of the Statute; charged on the basis of paragraphs; 16-40, 43-62, 65-78, 80;

2. Paragraphs 3-15 apply to all charges.

**II. DEFINITIONS AND GENERAL ALLEGATIONS**

3. In this indictment, the term “committed” refers to personal commission by a physical or principal perpetrator, the first and third category of joint criminal enterprise (“JCE I”, “JCE III”) or commission based on the fact that a person played an integral part in the commission of the crime.
4. The term “contribution,” when used without qualification, refers to a mere, a significant or a 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.

6. The terms “harming” or “harm” refer to the infliction of serious bodily or mental harm.
7. When carrying out the criminal conduct alleged in this indictment Félicien KABUGA had the intent to destroy in whole or in part persons identified as Tutsis and acted in order to discriminate against Tutsis on racial and political grounds.
8. The participants in the criminal conduct charged in this indictment possessed the intent to destroy, in whole or in part, persons identified as Tutsis, as such, and acted in order to discriminate against Tutsis on racial or political grounds.

### III. THE ACCUSED

9. 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 and member of the ruling MRND party;
  - 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 (“RTL”).
  - d. Under President HABYARIMANA’s rule, Félicien KABUGA was a member of a group of persons who formed an influential corps aligned to the interest of Northerners focused around the President and viewed by members of the military, the civilian administration, armed *interahamwe* militia and armed civilians as being the leader of those who held extremist anti-Tutsi views. Félicien KABUGA also exercised power, authority and influence amongst all soldiers, *interahamwe*, other militia, armed civilians and administrative officials.
10. As shown in the factual allegations set out in this indictment, Félicien KABUGA used his power, influence and position of authority to ensure that the crimes for which he is charged were committed.

### IV. CONTEXT OF THE CRIMES

11. Between 6 April 1994 and 17 July 1994, genocide against persons identified as Tutsis occurred in Rwanda. In the period 8 April to 17 July 1994, actions undertaken against Tutsis were mostly in the context of a joint criminal enterprise.

12. Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Hutu, Tutsi, and Twa, which were protected groups falling within the scope of the Genocide Convention of 1948.
13. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: There were throughout Rwanda widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons identified as Tutsis.
14. Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), having acceded to it on 16 April 1975.
15. The crimes alleged in this indictment formed part of the widespread or systematic attacks. Félicien KABUGA was aware of the attacks because he was in Rwanda during the period of these attacks, the attacks were public knowledge and because of his involvement in the planning of the attacks.

**V. FÉLICIEN KABUGA'S CRIMINAL RESPONSIBILITY REGARDING RTLM BROADCASTS**

**Narrative**

16. The radio station RTLM was founded by Félicien KABUGA, Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Phocas HABIMANA, Joseph SERUGENDO, Ephreim NKEZABERA and others, on 8 April 1993. As of 1 January 1994 – or at the latest as of 7 April 1994 – an agreement and a common purpose existed between Félicien KABUGA, Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Phocas HABIMANA, Joseph SERUGENDO and Ephreim NKEZABERA and RTLM journalists, including Valerie BEMERIKI, Gaspard GAHIGI, Noel HITIMANA, George RUGGIU and Kantano HABIMANA, Ananie NKURUNZIZA, Philippe MBILIZI. As of 1 January 1994 - or at the latest as of 7 April 1994 - the agreement and the common purpose was to operate RTLM in a manner to further ethnic hatred between the Hutu and persons identified as Tutsis and to disseminate an anti-Tutsi message with the goal to commit genocide against Tutsis, to incite others to the commission of genocide and to violate the fundamental rights of Tutsis, including the rights to security, dignity, and the right to be not subjected to serious psychological abuse. As alleged below, the agreement was acted upon.
17. The contents of RTLM broadcasts in 1994, particularly after 6 April, directly and publicly incited the commission of genocide in that these broadcasts expressly

identified Tutsis as such, identified their locations, described them as the enemy, and called for their elimination.

18. Particularly after 6 April 1994, RTLM broadcasts prompted and encouraged persons to kill and harm persons identified as Tutsis and provided information that was intended to facilitate such killings and was used for that purpose. RTLM broadcasts contributed to the killing of hundreds of thousands of persons identified as Tutsi civilians throughout Rwanda and the harming of uncounted other Tutsis.
19. Between 6 April 1994 and 17 July 1994, RTLM journalists, including Valerie BEMERIKI, Gaspard GAHIGI, Noel HITIMANA, George RUGGIU and Kantano HABIMANA, in accordance with the agreement and common purpose to commit genocide, incitement to commit genocide, and persecution against persons identified as Tutsis, broadcast information identifying the location of Tutsis and urged *interahamwe* to find and exterminate them.
20. On 10 April 1994, RTLM broadcasts identified Tutsi civilians hiding in the Khadafi mosque in Nyamirambo and directed the *interahamwe* militia to kill them. Subsequently they were killed. The broadcasts contributed to these killings.
21. On 13 April 1994, broadcasts by RTLM journalists identified Tutsi civilians hiding in the Islamic Cultural Centre in Nyamirambo and directed *interahamwe* militia to kill them. Over 300 civilian men, women and children identified as Tutsis were attacked and killed by the *interahamwe*. The broadcasts contributed to these killings.
22. In June 1994, RTLM broadcasts again identified Tutsi civilians hiding in the Khadafi mosque in Nyamirambo and directed the *interahamwe* militia to kill them and they were killed. The broadcasts contributed to these killings.
23. On 20 May 1994, RTLM journalist Valerie BEMERIKI made a broadcast identifying certain Tutsis and denouncing them as enemies. Persons identified included several priests, including Father Ngoga, Father Muvaro, Father Ntagara and Father Modeste Mungwarareba. Father Ngoga, Father Muvaro and Father Ntagara were subsequently found and killed by *interahamwe* who was assisted by Valerie BEMERIKI.
24. The management committee of RTLM was known as the *Comité d'Initiative* and was presided over by Félicien KABUGA. Other members of the committee were Ferdinand NAHIMANA as Director in charge of programming, Jean-Bosco BARAYAGWIZA who would from time to time be delegated specific functions by Félicien KABUGA and Habimana PHOCAS as General Manager in charge of daily management of the Radio. The members of the committee would defer to Félicien KABUGA.

25. Félicien KABUGA served as President of RTLM and as such had *de facto* and *de jure* control of programming, operations, and finances of RTLM. His powers also included hiring and firing journalists, giving instructions to them, chairing meetings of RTLM's *Comité d' Initiative*, representing RTLM in meetings with the authorities and giving news conferences.
26. Habimana PHOCAS, the General Manager acted on matters agreed upon by the *Comité d'Initiative*. He would defer to and regularly consult with Félicien KABUGA on matters related to RTLM's operations, including broadcasts.
27. Through his powers, Félicien KABUGA controlled the content of RTLM's broadcasts and instructed, prompted, designed, encouraged, facilitated, and failed to take steps to prevent the RTLM broadcasts alleged in paragraphs 16-26 above. He had the ability to report them to the Rwandan criminal law authorities.
28. Félicien KABUGA defended RTLM against criticism by the Minister of Information that RTLM broadcasts were contrary to the terms of the convention which RTLM signed with the government, particularly as regards RTLM broadcasts that incited ethnic hatred and division.

### **Responsibility**

29. On the basis of the facts alleged in paragraphs 16-28 above, Félicien KABUGA is responsible for: genocide by killing and harming persons identified as Tutsis; alternatively, for complicity in genocide; for attempt to commit genocide by attempting to kill and harm Tutsis; for intentional incitement to commit genocide by directly and publicly inciting genocide against Tutsis; for conspiracy to commit genocide; for persecution by broadcasting statements that targeted persons identified as Tutsis on the basis of their ethnicity or perceived or real political affiliation thus violating their fundamental rights, including the rights to security, dignity and the right to be not subjected to serious psychological abuse and for extermination by characterizing Tutsis as the enemy and calling for their elimination as a group.

#### **a) Responsibility under Article 6 (1) of the Statute**

30. Félicien KABUGA is responsible for committing the crimes of genocide, incitement to commit genocide, attempt to commit genocide, persecution and extermination, because his conduct was as much an integral part of these crimes as the carrying out of the *actus reus* of these crimes. He intended that the crimes should occur or was aware of their occurrence.
31. Félicien KABUGA is responsible under JCE I for the crimes of genocide, attempt to commit genocide, incitement to commit genocide, persecution and extermination against persons identified as Tutsis. He participated in a JCE I, the common purpose of which was to carry out genocide, incitement to commit

genocide, and persecution against Tutsis, and intended that these crimes should be carried out. The members of the JCE were Félicien KABUGA, Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, Phocas HABIMANA, Joseph SERUGENDO and Ephreim NKEZABERA as well as RTLM's journalists, including Valerie BEMERIKI, Gaspard GAHIGI, Noel HITIMANA, George RUGGIU, Kantano HABIMANA, Anannie NKURUNZIZA, and Philippe MBILIZI. By his acts and omissions Félicien KABUGA instructed, prompted, designed, encouraged, and assisted RTLM broadcasts targeting persons identified as Tutsis. Thus, at a minimum, he significantly contributed to genocide, attempt to commit genocide, incitement to commit genocide, and persecution through violations of fundamental rights of Tutsis.

32. JCE I members, including Félicien KABUGA and RTLM journalists, were the principal perpetrators of incitement to commit genocide, persecution and extermination because they personally carried out, or played an integral role in carrying out broadcasts that amounted to intentional direct and public incitement to commit genocide and that violated fundamental rights of Tutsis.
33. In addition, JCE I members, including Félicien KABUGA and RTLM journalists, are responsible for committing genocide and extermination because, by their conduct, they used the principal perpetrators. The principal perpetrators physically carried out genocide by killing and harming persons identified as Tutsis. The JCE members are responsible for attempt to commit genocide by attempting to use physical perpetrators to commit genocide against Tutsis.
34. Félicien KABUGA is responsible under JCE III for the crimes of genocide, extermination, incitement to commit genocide and attempt to commit genocide, which were carried out in the execution of the common purpose. As a member of a JCE I to commit persecution (see above paragraphs 31-32) he was aware of the possibility that other members of the persecution- JCE would commit incitement to commit genocide, either personally, or by using the principal perpetrators or by conduct that was an integral part of the incitement. In addition, he was aware of the possibility that other members of the persecution- JCE would commit genocide or attempt to commit genocide, either by using or attempting to use the principal perpetrators or by conduct that was an integral part of genocide or attempt to commit genocide. With this awareness he decided to participate in the JCE.
35. Félicien KABUGA is responsible under the mode of liability of ordering for the crimes of genocide, extermination, incitement to commit genocide, attempt to commit genocide and persecution. His powers in RTLM afforded him a position of authority that would compel RTLM journalists to follow his orders. He ordered RTLM journalists to make the broadcasts alleged in paragraphs 16-26 above as well as other broadcasts. He intended or was aware of the substantial likelihood

that in the course of the execution of these orders the crimes would be committed.

36. Félicien KABUGA is responsible under the mode of liability of instigating for the crimes of genocide, extermination, incitement to commit genocide, attempt to commit genocide, and persecution. By his acts and omissions he instigated RTLM journalists to make the broadcasts alleged in paragraphs 16-26 above, as well as other broadcasting activities at RTLM. His conduct represents a substantial contribution to the carrying out of the crimes. He intended or was aware of the substantial likelihood that in the course of the execution of this instigation the crimes would be committed.
37. Félicien KABUGA is responsible under the mode of liability of planning for the crimes of genocide, extermination, incitement to commit genocide, attempt to commit genocide, and persecution. By his acts and omissions he planned the broadcasts alleged in paragraphs 16-26 above and other broadcasting activities at RTLM. His conduct represents a substantial contribution to the carrying out of the crimes. He intended or was aware of the substantial likelihood that in the course of the execution of the plan the broadcasts alleged in paragraphs 16-26 above would be made.
38. Félicien KABUGA is responsible under the mode of liability of aiding and abetting for the crimes of genocide, extermination, incitement to commit genocide, attempt to commit genocide and persecution. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted and failed to take steps to prevent the broadcasts alleged in paragraphs 16-26 above. His conduct substantially contributed to the carrying out of the crimes. He was aware of the likelihood that the crimes would occur and that his conduct would assist in the commission of the crimes.
39. Félicien KABUGA is responsible for complicity in genocide. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted, and failed to take steps to prevent the broadcasts alleged in paragraphs 16-26 above. His conduct represents a contribution to the carrying out of genocide. He was aware that genocide would occur and that his conduct would assist in its commission.
40. Félicien KABUGA was under a legal duty to take steps to prevent the broadcasts because: first, the RTLM journalists were his subordinates; second, RTLM was a potentially dangerous organization that he had to control in order to seek to prevent the rights of third parties from being negatively affected; third, he had engaged in previous dangerous conduct by supporting hateful broadcasts of RTLM against persons identified as Tutsis by his work for RTLM and notably, in the November 1993 and February 1994 meetings with Minister of Information, Rucogoza in which he was ordered to stop broadcasts that incited the killing of Tutsis. He defended the broadcasts which continued until July 1994.

Félicien KABUGA had the ability to take steps to comply with his duty, because he controlled RTLM and its employees.

41. Based on paragraphs 16-28 above, Félicien KABUGA is responsible for conspiracy to commit genocide because he agreed with Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Joseph NZIRORERA, HABIMANA Phocas, Joseph SERUGENDO and Ephreim NKEZABERA that genocide should be committed against Tutsis. As alleged above, in paragraph 8, the participants in the agreement possessed the intent to destroy in whole or in part persons identified as Tutsis.
42. On the basis of paragraphs 16-28 above, Félicien KABUGA is responsible for conspiracy to commit genocide because he was in agreement with RTLM journalists, including Valerie BEMERIKI, Gaspard GAHIGI, Noel HITIMANA, George RUGGIU Kantano HABIMANA, Ananie NKURUNZIZA, and Philippe MBILIZI that genocide should be committed against persons identified as Tutsis. As alleged above in paragraph 8, the participants in the agreement possessed the intent to destroy in whole or in part persons identified as Tutsis.

**b) Responsibility under Article 6 (3) of the Statute**

43. Félicien KABUGA incurred superior responsibility for the participation of his subordinate RTLM journalists in the crimes of genocide, extermination, incitement to commit genocide, attempt to commit genocide, and persecution through the broadcasts alleged in paragraphs 16-26 above. By virtue of his powers Félicien KABUGA had effective control over RTLM journalists because he was able to prevent or punish their conduct. Félicien KABUGA knew or had reason to know of his subordinate's criminal conduct because of his position in the hierarchy of RTLM and because he defended the broadcasts against criticism. He failed to use his powers to control the content of RTLM's broadcasts and his powers over his subordinate journalists. His powers included the power to edit, limit, present broadcasts, give instructions, hire and fire journalists, and the power to report them to the criminal law authorities as a means of preventing or punishing criminal conduct.

**VI. FÉLICIEN KABUGA'S CRIMINAL RESPONSIBILITY REGARDING SUPPORT TO GÉNOCIDAIRES AND HIS INVOLVEMENT IN FDN**

**Narrative**

44. In April 1994, Félicien KABUGA instructed and prompted members of the *interahamwe* which he controlled to transport machetes and other weapons to Gisenyi and to distribute them to the *interahamwe* in Gisenyi on 3 and 7 April 1994. The said *interahamwe* used these weapons and machetes in Gisenyi between 7 April and 17 July 1994 to exterminate and kill persons identified as Tutsis in *Commune Rouge* and other locations in Gisenyi Prefecture.

45. Between 1 January 1994 and 17 July 1994, Félicien KABUGA assisted in the arming of the *interahamwe* by placing his business and his home in Kigali-ville at the disposal of *interahamwe* for training in the use of arms. Members of the *interahamwe* who had been trained at these places later participated in killing and harming of persons identified as Tutsis in Kigali-ville, notably at Gitichinyoni roadblock and other locations within Kigali ville in the period from the 7 of April to the end of June 1994. The training facilitated the killing and harming.
46. On or about 25 April 1994 in the Méridien hotel, Gisenyi, Félicien KABUGA chaired a meeting attended by Edouard KAREMERA, Mathieu NGIRUMPATSE, and Anatole NSENGIYUMVA, among others, who together agreed to establish the FDN in order to raise funds to provide financial and logistical support for the *interahamwe*'s killing and harming of Tutsis. The participants in the meeting intended to destroy in whole or in part persons identified as Tutsis.
47. Persons who had authority to manage the FDN included Félicien KABUGA as President, Abijah KILINGIRA as Vice President and Stanislas HARELIMANA as Secretary. As alleged above, in paragraph 8, they intended to destroy in whole or in part persons identified as Tutsis.
48. From about 25 April 1994, 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. Accounts were opened in *Banque Commercial du Rwanda* (BCR) and in *Banque de Kigali* both in Gisenyi, in the name of FDN.
49. In his position of authority, Félicien KABUGA between April and June 1994 contributed to the *interahamwe*'s killing and harming of persons identified as Tutsis by organizing meetings attended by a large number of businessmen from Gisenyi including SINGAYE Andre, BENIMANA Jean Paul, MIRONKO, NYAGASAZA Mathias and political leaders including NGIRUMPATSE Matheu, NSENGIYUMVA Anatole and the Prefet ZILIMWABAGABO Charles in Meridien Hotel to raise funds to purchase arms. In addition, Félicien KABUGA gave 60,000 FRW to *interahamwe* at Gisenyi military camp to encourage and support them in the killing and harming of Tutsis. The arms distributed to the *interahamwe* at the Meridien Hotel and Gisenyi military camp in the presence of Félicien KABUGA were subsequently used by the *interahamwe* to kill and harm Tutsi civilians in Gisenyi, particularly in Nyamyumba, *Commune Rouge*, Nyundo and in Bisesero in Kibuye prefecture between April and July 1994. Prior to receiving the arms provided at the military camp, the *interahamwe* were reprimanded by Félicien KABUGA for not being as active as the *interahamwe* in other areas. As a result, the *interahamwe* who received the arms, having been instructed, prompted, and encouraged with monetary incentives by Félicien KABUGA proceeded to kill and harm persons identified as Tutsi civilians in Gisenyi and other locations in Rwanda.

50. Between approximately 25 April 1994 and 17 July 1994, Félicien KABUGA, provided additional support in the form of cash to *interahamwe* to encourage killings in Gisenyi, notably in Commune Rouge and Nyamyumba; he provided his vehicles for the transportation of weapons and the transportation of persons identified as Tutsis to *Commune Rouge* who were killed by the said *interahamwe* using the weapons they received at the Gisenyi military camp and at the Meridien Hotel in Gisenyi; provided uniforms, cash and food to his *interahamwe* who were killing persons identified as Tutsis in Kimironko in Kigali.
51. Other attacks occurred on unknown dates in May and June 1994 in the Bisesero Hills of Kibuye prefecture. Armed *interahamwe* in Gisenyi who were among those that received fire arms from Félicien KABUGA at the Gisenyi military camp and at the Meridien Hotel in Gisenyi in the presence of Félicien KABUGA, moved to Bisesero hills in Kibuye prefecture to serve as reinforcements against the Tutsis who were using local weapons to resist attacks. Despite their resistance, many were killed.
52. Félicien KABUGA's *interahamwe* in Kimironko, Kigali reported the killings and harming of Tutsis in Kimironko and other locations in Kigali Ville to Félicien KABUGA regularly from 7 of April through June 1994, making him aware of the crimes being committed by his *interahamwe*.
53. Félicien KABUGA planned, intended or was aware that the killings of persons identified as Tutsis by his *interahamwe* in Kimironko and the *interahamwe* under his authority and influence in Gisenyi were taking place between April to July 1994 in the locations specified in this indictment. He did not take any steps to prevent these killings although he was able to use his influence and financial means to do so.

### **Responsibility**

54. Based on the facts alleged in paragraphs 44-53 above, Félicien KABUGA is responsible for: genocide by killing and harming Tutsis; alternatively for complicity in genocide; for attempt to commit genocide by attempting to kill and harm Tutsis; for incitement to commit genocide by directly and publicly inciting the genocide against Tutsis; for conspiracy to commit genocide and for extermination by characterizing Tutsis as the enemy and calling for their elimination as a group.
  - a) **Responsibility under Article 6 (1) of the Statute**
55. Félicien KABUGA is responsible for committing the crimes of genocide, extermination and attempt to commit genocide because his conduct was as much an integral part of these crimes as the carrying out of the *actus reus* of these crimes. He intended that the crimes should occur or was aware of their occurrence.

56. Félicien KABUGA is responsible under JCE I for the crimes of genocide, extermination and attempt to commit genocide. He participated in a JCE I, the common purpose of which was that the *interahamwe* in Gisenyi and Kimironko carry out genocide and extermination against persons identified as Tutsis using the support received from Félicien KABUGA. Félicien KABUGA intended that genocide should be carried out. The members of the JCE were Félicien KABUGA and *interahamwe* in Gisenyi and Kimironko. By his acts, Félicien KABUGA instructed, ordered, prompted, designed, encouraged, and assisted the killing and harming of Tutsis carried out with his support. Thus, at a minimum, he significantly contributed to these crimes. The members of the *interahamwe* in Gisenyi and Kimironko had the intent to destroy in whole or in part persons identified as Tutsis and shared the common purpose of the JCE. They were principal perpetrators of the crimes of genocide and extermination. Alternatively, to the extent that they did not have that intent or did not share the common purpose, Félicien KABUGA and members of the *interahamwe* in Gisenyi and Kimironko who had that intent and shared that purpose used them or attempted to use them to commit genocide. Félicien KABUGA intended that the criminal conduct described above be carried out.
57. Félicien KABUGA is responsible under the mode of liability of ordering for the crimes of genocide and extermination. He was in a position of authority and ordered *interahamwe* of Kimironko and Gisenyi who would be compelled to follow his orders to transport machetes and other weapons to Gisenyi, and he ordered *interahamwe* in Gisenyi to kill and harm persons identified as Tutsis or to mistreat them. He intended or was aware of the substantial likelihood that in the course of the execution of these orders the crimes would be committed.
58. Félicien KABUGA is responsible under the mode of liability of instigating for the crimes of genocide and extermination. By his acts and omissions he instigated *interahamwe* in Gisenyi to transport machetes and other weapons to Gisenyi and instigated *interahamwe* of Kimironko and Gisenyi to kill, harm, or otherwise mistreat persons identified as Tutsis. His conduct represents a substantial contribution to the carrying out of the crimes. He intended, or was aware of the substantial likelihood that in the course of the execution of this instigation the crimes would be committed.
59. Félicien KABUGA is responsible under the mode of liability of planning for the crimes of genocide and extermination. By his acts and omissions, he planned the transport of machetes and other weapons to Gisenyi, as well as the killing, harming or other mistreatment of persons identified as Tutsis by *interahamwe* in Gisenyi and Kimironko which used his support. His conduct represents a substantial contribution to the carrying out of the crimes. He intended or was aware of the substantial likelihood that in the course of the execution of the plan the crimes would be committed.

60. Félicien KABUGA is responsible under the mode of liability of aiding and abetting, for the crimes of genocide and extermination. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted and failed to take steps to prevent genocide against persons identified as Tutsis by *interahamwe* in Gisenyi and Kimironko. His conduct substantially contributed to the carrying out of the crimes. He was aware of the likelihood that the crimes would occur and that his conduct would assist in its commission.
  61. Félicien KABUGA is responsible for complicity in genocide. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted, and failed to take steps to prevent genocide against persons identified as Tutsis by *interahamwe* in Gisenyi and Kimironko. His conduct represents a contribution to the carrying out of genocide. He was aware that genocide would occur and that his conduct would assist in its commission.
  62. Félicien KABUGA was under a legal duty to take steps to prevent crimes by the *interahamwe* in Gisenyi and those in Kimironko who were his *interahamwe*, because: first, they were his subordinates; second, he controlled *interahamwe* in Gisenyi and those in Kimironko, a dangerous organization and was under a duty to prevent the rights of third parties from being negatively affected by them; and third, he had engaged in previous dangerous conduct by supporting them. Félicien KABUGA also had the ability to take steps to comply with this duty because he had power, authority, and influence over the *interahamwe* in Gisenyi and Kimironko.
  63. On the basis of paragraphs 44-53 above, Félicien KABUGA is responsible for conspiracy to commit genocide because he agreed with the *interahamwe* in Gisenyi and Kimironko that genocide should be committed against persons identified as Tutsis. As alleged above in paragraph 8, the participants in the agreement possessed the intent to destroy in whole or in part persons identified as Tutsis.
  64. Based on paragraphs 44-53 above, Félicien KABUGA is responsible for conspiracy to commit genocide because he agreed with Edouard KAREMERA, Matheu NGIRUMPATSE, Anatole NSENGIYUMVA, Abijah KILINGIRA, and Stanislas HARELIMANA that genocide should be committed against persons identified as Tutsis. As alleged above in paragraph 8, the participants in the agreement possessed the intent to destroy in whole or in part persons identified as Tutsis.
- b) Responsibility under Article 6 (3) of the Statute**
65. Félicien KABUGA incurred superior responsibility for the crime of genocide and extermination because his subordinate *interahamwe* in Gisenyi and Kimironko participated in genocide. He had effective control over the *interahamwe* in Gisenyi and Kimironko to the extent that he could prevent or punish their

conduct. He controlled them. They would follow his orders and needed his support consisting in the provision of cash, food, transportation, weapons, and encouragements such as alcohol. Félicien KABUGA knew or had reason to know of his subordinates' criminal conduct because he supported them and because he received reports about their killing and harming activities. He failed to use his powers to prevent the said *interahamwe* from carrying out the criminal conduct. He failed to report them to the criminal law authorities or otherwise punish them. His failure to prevent and punish included his failure to withhold all financial and logistical support to the *interahamwe* in Gisenyi and Kimironko, to disband them, or to order them to stop the killings.

## VII. FÉLICIEN KABUGA'S RESPONSIBILITY REGARDING KABUGA'S *INTERAHAMWE*

### Narrative

66. Between 1 January 1994 and July 1994, Félicien KABUGA, together with Gratien MURENZI, Faustin MUNYAKAZI, Edmund MUHUTU, Gerard SEHENE, HAJABAKIGA, Ildephonse MUGABO and others yet unknown, agreed to plan, create, and fund a militant group known as Kabuga's *interahamwe* in Kimironko sector, Kigali. The purpose was to further ethnic hatred between the Hutus and Tutsis in Kimironko sector with the goal of committing genocide against persons identified as Tutsis.
67. Between 6 April and mid-May 1994, Kabuga's *interahamwe* including Gratien MURENZI, Faustin MUNYAKAZI, Edmund MUHUTU, Gerard SEHENE, HAJABAKIGA and Ildephonse MUGABO shared a common purpose with Félicien KABUGA to commit genocide against Tutsis. They accomplished that purpose by killing and harming persons identified as Tutsis in Kimironko sector. The locations where Tutsis were killed and harmed included Karama school around 10 to 11 April 1994, the roadblock in front of Félicien KABUGA'S residence around 7 to 14 of April 1994, the home of a Tutsi woman named MUKANDAHIRO around 7 to 25 of April 1994, a place known as "*Chez Conseiller*" around 7 to 25 of April 1994, and the Mushimire family home around 14 to 15 of April 1994.
68. Félicien KABUGA contributed to the criminal actions of these *interahamwe* by: (1) providing meeting facilities for them at his compound in Kimironko; (2) by providing uniforms for them, (3) by encouraging them through cash gifts and provision of transport to and from rallies; and (4) by failing to take steps to prevent their crimes. Some of the *interahamwe* lived in his compound and provided guard services to him during the genocide.
69. Kabuga's *interahamwe* continued to report their killing activities to Félicien KABUGA. He intended that the killing and harming of Tutsis be committed with his support or was aware of this.

70. Félicien KABUGA received reports from two leaders of his *interahamwe* in Kimironko namely SEHENE Gerard and HAJABAKIGA about the killing and harming of Tutsis on a date in May 1994 when they came to Gisenyi to brief Félicien KABUGA on the killing and harming of persons identified as Tutsis in Kimironko.
71. Félicien KABUGA had *de facto* authority over the *interahamwe* in Kimironko, Kigali who committed killings. They would follow his orders and needed his support. These *interahamwe* lived in and guarded his residence with his permission. Some were his employees performing such duties as house help, security guards, and drivers, while others lived within the neighborhood and participated in rehearsals and other *interahamwe* activities in Félicien KABUGA'S compound. He had the ability to disband the group.

### **Responsibility**

72. Based on the facts alleged in paragraphs 66-71 above, Félicien KABUGA was responsible for genocide by killing and harming persons identified as Tutsis; alternatively, for complicity in genocide; for attempt to commit genocide by attempting to kill and harm Tutsis; for conspiracy to commit genocide and for extermination by characterizing Tutsis as the enemy and instigating their killing.

#### **a) Responsibility under Article 6 (1) of the Statute**

73. Félicien KABUGA was responsible for committing the crimes of genocide, attempt to commit genocide, incitement to commit genocide and extermination, because his conduct was as much an integral part of these crimes as the carrying out of the *actus reus* of these crimes. He intended that the crimes should occur or was aware of their occurrence.
74. Félicien KABUGA is responsible under JCE I for the crimes of genocide, complicity in genocide, attempt to commit genocide and extermination. He participated in a JCE I, the common purpose of which was to carry out genocide and extermination against persons identified as Tutsis and intended that these crimes should be carried out. The members of the JCE were Félicien KABUGA and the members of Kabuga's *interahamwe* including Gratien MURENZI, Faustin MUNYAKAZI, Edmund MUHUTU, Gerard SEHENE, HAJABAKIGA and Ildephonse MUGABO. Kabuga's *interahamwe* killed and harmed persons identified as Tutsis. By his acts and omissions Félicien KABUGA prompted, encouraged and assisted the killing and harming of Tutsis, and thus at a minimum significantly contributed to genocide, extermination and attempt to commit genocide. The members of Kabuga's *interahamwe* had the intent to exterminate and destroy in whole or in part persons identified as Tutsis and shared the common purpose of the JCE. They were principal perpetrators of the crimes. Alternatively, to the extent that they did not have that intent or did not share the

common purpose, they were used by Félicien KABUGA and members of Kabuga's *interahamwe* who had that purpose and intent.

75. Félicien KABUGA is responsible under the mode of liability of instigating for the crime of genocide alternatively complicity in genocide and extermination. By his acts and omissions he instigated his *interahamwe* to kill, harm, or otherwise mistreat persons identified as Tutsis. His conduct represents a substantial contribution to the commission of the crimes. He intended or was aware of the substantial likelihood that in the course of the execution of this instigation the crimes would be committed.
76. Félicien KABUGA is responsible under the mode of liability of aiding and abetting for the crime of genocide and extermination. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted, and failed to take steps to prevent genocide and extermination against Tutsis by Kabuga's *interahamwe*. His conduct represents a substantial contribution to the carrying out of the crimes. He was aware of the likelihood that the crimes would occur and that his conduct would assist in their commission.
77. Félicien KABUGA is responsible for complicity in genocide. By his acts and omissions, he instructed, prompted, designed, encouraged, assisted, and failed to take steps to prevent genocide against persons identified as Tutsis by his *interahamwe*. His conduct represents a contribution to the carrying out of genocide. He was aware that genocide would occur and that his conduct would assist in its commission.
78. Félicien KABUGA was under a legal duty to take steps to prevent the genocide and extermination by his *interahamwe* because: first, they were his subordinates; second, he controlled them, a dangerous organization, and had to seek to prevent the rights of third parties from being negatively affected by it; third, he had engaged in previous dangerous conduct by supporting them. Félicien KABUGA also had the ability to act because he had authority over his *interahamwe*, having created the group, being able to disband it, and having continued to provide them with financial and logistical support, and receiving regular reports of their activities notably the killing and harming of persons identified as Tutsis.
79. Based on paragraphs 66-71 above, Félicien KABUGA is responsible for conspiracy to commit genocide because he was in agreement with his *interahamwe* including Gratien MURENZI, Faustin MUNYAKAZI, Edmund MUHUTU, Gerard SEHENE, HAJABAKIGA, and Ildephonse MUGABO that genocide should be committed against Tutsis. As alleged above in paragraph 8, the participants in the agreement possessed the intent to destroy in whole or in part persons identified as Tutsis.

**b) Responsibility under Article 6 (3) of the Statute**

80. Félicien KABUGA incurred superior responsibility for the crime of genocide and extermination because his subordinate *interahamwe* in Kimironko participated in enocide and extermination. He had effective control over the *interahamwe* in Gisenyi and Kimironko to the extent that he could prevent or punish their conduct. He controlled them. They would follow his orders and needed his support consisting in the provision of cash, food, transportation, weapons, and encouragements such as alcohol. Félicien KABUGA knew or had reason to know of his subordinates' criminal conduct because he supported it and because he received reports about their activities. He failed to use his powers to prevent the said *interahamwe* from carrying out their criminal conduct. He failed to report them to the criminal law authorities or otherwise punish them. His failure to prevent and punish included his failure to withhold all financial and logistical support to the *interahamwe* in Kimironko, and to disband them or to order them to stop the killings.

**VIII. FÉLICIEN KABUGA'S RESPONSIBILITY FOR MEETINGS AT WHICH HE INSTIGATED CRIMES OR INCITED GENOCIDE OR MADE PERSECUTORY STATEMENTS**

**Narrative**

81. On a date in February or March 1994, at a political rally in Musave primary school in Kigali Prefecture, Félicien KABUGA addressed the crowd and stated that Tutsis were the enemy. He addressed the crowd in order to violate fundamental rights of Tutsis, including the rights to security, dignity and the right not to be subjected to serious psychological abuse. Immediately after the rally, *interahamwe* who were present pursued, attacked, and beat up persons identified as Tutsis in Musave and looted their property. On several other occasions, notably, during the meetings of November 1993 and 10 February 1994 with the Minister of Information, Félicien KABUGA referred to the Tutsis as the enemy. This demonstrates that before 6 April 1994, Félicien KABUGA had a hostile and genocidal disposition towards Tutsis and that he had the power and position to cause others to carry out attacks against persons identified as Tutsis.
82. On 7 April 1994 in the radio communiqué announcing the death of President Habyarimana, broadcast by RTLM journalists on the instructions of Félicien KABUGA, and also during the meetings organized by Félicien KABUGA at the Meridien Hotel to raise funds in April to June 1994, Félicien KABUGA referred to Tutsis as the enemy.
83. On an unknown date in May 1994, Félicien KABUGA held a meeting at the Prefecture hall in Gisenyi where he directly and publicly incited those present to continue the killing of Tutsis. His speech intentionally violated fundamental rights of Tutsis, including the rights to security, dignity and the right not to be subjected to serious psychological abuse.

84. On an unknown date in April or May 1994, Félicien KABUGA spoke at a meeting at Ruhengeri Stadium. He publicly addressed the audience and instigated all present to kill the enemy wherever they were found. Most members of the audience were *interahamwe* from various sectors of Ruhengeri Prefecture who had just finished training in preparation for the killing of persons identified as Tutsi civilians. It was commonly known in Rwanda and to Félicien KABUGA at this time that “the enemy” referred to all members of the Tutsi population. His speech intentionally violated fundamental rights of Tutsis including the rights to security and dignity and the right to be not subjected to serious psychological abuse.

**2. Responsibility under Article 6 (1) of the Statute**

85. Félicien KABUGA is responsible for committing the crime of incitement to commit genocide by the conduct alleged in paragraphs 81-84 above, intentionally, directly, and publicly inciting genocide against Tutsis, and for committing the crime of persecution by delivering speeches that targeted persons identified as Tutsis for violations of their fundamental rights, including the rights to security, dignity and the right to be not subjected to serious psychological abuse.

**IX. AGGRAVATING CIRCUMSTANCES**

86. Elements of charged modes of liability or crimes for which the Trial Chamber will not convict are alleged as aggravating circumstances.

87. Other aggravating circumstances against Félicien KABUGA include: (1) his position and his breach of trust; (2) his pre-meditation; (3) the violent and humiliating nature of his acts and the vulnerability of the victims; and (4) the duration of the offences and suffering of his victims.

88. No evidence of mitigating circumstances exists in the case of Félicien KABUGA.

The acts and omissions of **Félicien KABUGA** detailed herein are punishable under Articles 22 and 23 of the Statute.

Signed at ARUSHA, this 17<sup>th</sup> day of March, 2011



**Hassan B. JALLOW**  
The Prosecutor

