



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OFFICE OF THE PROSECUTOR
BUREAU DU PROCUREUR

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INTEROFFICE MEMORANDUM — MEMORANDUM INTERIEUR

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To: Mr. Constant Hometownu- Co-ordinator Trial Date: 18th August 2010
A: Chamber III

Ref:

From: Holo Makwaia – Senior Trial Attorney *Holo Makwaia*
De:

Subject: **RE: RE-FILING OF THE AMENDED INDICTMENT AS DIRECTED BY**
Objet: **THE PRE-TRIAL CHAMBER IN ITS DECISION OF 30 APRIL 2010**

Dear Sir,

The Prosecutor is hereby re-filing the amended indictment in the case of the Prosecutor vs. Gregoire Ndahimana with the addition “**whose identities are unknown**”, at paragraphs 15, 17-26 and 29-32 as ordered by the Trial Chamber in its Rule 72 Decision of 30 April 2010. Please disclose to the Accused his Defence and the Judges.

Thanks for your co-operation

Regards

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ICTR-01-68-I
18th August, 2010
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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR

AGAINST

GRÉGOIRE NDAHIMANA

Case No. ICTR-2001-68-I

AMENDED INDICTMENT

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

Grégoire NDAHIMANA

With:

Count I	Genocide
Count II	Alternatively to Count I, Complicity in Genocide
Count III	Extermination as a Crime against Humanity

II. THE ACCUSED

1. **Grégoire NDAHIMANA** was born in 1952 in KIVUMU commune.
2. **Grégoire NDAHIMANA** was at all times referred to in this indictment the *bourgmestre* of KIVUMU commune, KIBUYE prefecture, Republic of Rwanda.
3. During the events which are the subject of this indictment, Nyange Parish was located in KIVUMU commune, KIBUYE prefecture, Republic of Rwanda. Nyange Church had a seating capacity of 1500 to 2000 persons.

III. CHARGES AND CONCISE STATEMENT OF FACTS

4. Between 1 January and 31 December 1994, citizens native to Rwanda were classified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.
5. Between 6 April and 17 July 1994, throughout Rwanda, there were widespread or systematic attacks against the civilian population based on Tutsi ethnic or racial identification, or perceived sympathies with the Tutsi. As a result of these attacks, large numbers of ethnically or racially identified Tutsis and moderate Hutus were killed.
6. Between 6 April and 17 July 1994, genocide against the Tutsi group occurred in Rwanda.
7. The general allegations contained in paragraphs 4 through 6 above are incorporated into each of the allegations set forth below.

Counts I and II: GENOCIDE, or alternatively, COMPLICITY IN GENOCIDE

8. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Grégoire NDAHIMANA** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994, in KIVUMU commune, KIBUYE prefecture, Republic of Rwanda, **Grégoire NDAHIMANA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 13 through 33.
9. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Grégoire NDAHIMANA** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in KIVUMU commune, KIBUYE prefecture, Republic of Rwanda, **Grégoire NDAHIMANA** 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, the Tutsi racial or ethnic group or with knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his subordinates would contribute to the crime of genocide, as outlined in paragraphs 13 through 33.

Individual Criminal Responsibility under 6(1)

10. Pursuant to Article 6(1) of the Statute, the accused **Grégoire NDAHIMANA** is individually responsible for the crime of genocide or alternatively complicity in genocide because he planned, instigated, ordered, committed or otherwise aided and abetted in the preparation or execution of these crimes. With respect to the commission of these crimes, **Grégoire NDAHIMANA** ordered those over whom he had authority as a result of his position described in paragraph 2 above, and he instigated and aided and abetted those over whom he did not have authority.

11. In addition, the accused **Grégoire NDAHIMANA** willfully and knowingly participated in a joint criminal enterprise whose common purpose was the commission of genocide against the Tutsi racial or ethnic group and persons identified as Tutsi or presumed to support the Tutsi in KIVUMU commune, KIBUYE prefecture. To fulfill the joint criminal purpose, the accused acted with others including Athanase SEROMBA, Parish Priest of Nyange, Gaspard KANYARUKIGA, an influential Hutu businessman, Fulgence KAYISHEMA, Judicial Police Inspector of KIVUMU commune, Judge Joseph HABIYAMBERE, President of the Canton Court, Gilbert Rugwizangoga KANANI, an Assistant *bourgmestre*, Védaste MURANGWABUGABO, also known as Védaste MUPENDE, an Assistant *bourgmestre*, Télesphore NDUNGUTSE, a Teacher, Anasthase RUSHEMA, a Teacher, Christophe MBAKILIREHE, Brigadier of KIVUMU commune, Théophile RUKARA, an army reservist, conseillers such as Jean Marie Vianney HABARUGIRA, conseiller of Nyange sector, Laurent SINDABYEMERA, conseiller of Sanga sector, Ferdinand MUNYARUKATO, conseiller of Ngobagoba secteur, other conseillers, gendarmes, the Interahamwe militia, communal policemen, and other Hutu civilians, all such actions being taken either directly or through subordinates, between the period of 6 April 1994 to 30 April 1994.

Individual Criminal Responsibility under 6(3)

12. Pursuant to Article 6(3) of the Statute, the accused **Grégoire NDAHIMANA** is responsible for the crimes of genocide and complicity in genocide because specific criminal acts were committed by subordinates of the accused and the accused 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. **Grégoire NDAHIMANA** is responsible for the acts of his de jure and de facto subordinates in KIVUMU commune, including but not limited to Nyange Parish between the period of 6 April 1994 to 30 April 1994. The subordinates of **Grégoire NDAHIMANA** include but are not limited to: Gilbert Rugwizangoga KANANI, an Assistant *bourgmestre*, Védaste MURANGWABUGABO also known as Védaste MUPENDE, an Assistant *bourgmestre*, Fulgence KAYISHEMA, the Judicial Police Inspector, Christophe MBAKILIREHE, Brigadier of KIVUMU commune, conseillers such as Laurent SINDABYEMERA, conseiller of Sanga sector, Jean Marie Vianney HABARUGIRA, conseiller of Nyange sector, other conseillers, communal policemen, communal employees, gendarmes, interahamwe and other Hutu civilians.

CONCISE STATEMENT OF FACTS FOR COUNTS I AND II

13. Following the death of the Rwandan President on 6 April 1994, Télesphore NDUNGUTSE led attacks against Tutsi civilians in their homes in KIVUMU commune, killing Martin KAREKEZI, Thomas MWENDEZI and some members of the family of Grégoire NDAKUBANA in furtherance of the joint criminal enterprise referred to in paragraph 11 of the indictment.

14. Subsequent to the said attacks, **Grégoire NDAHIMANA** and other members of the joint criminal enterprise ordered that Tutsi civilians be directed to the Kivumu Communal Office and Nyange Parish in order to exterminate them.
15. From 8 April to 16 April 1994 Grégoire NDAHIMANA, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA, Védaste Murangwabugabo also known as Védaste MUPENDE, Laurent SINDABYEMERA, Jean Marie Vianney HABARUGIRA and others whose identities are unknown, attended several meetings at the Kivumu Communal Office, various locations in Nyange Parish such as the Presbytery, and the CODECOKI and areas near to it. The object of these meetings was to plan the extermination of the Tutsis in KIVUMU commune.
16. On or about 10 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and other members of the joint criminal enterprise attended a meeting at the Kivumu Communal Office in order to plan the extermination of the Tutsis and to request gendarmes from KIBUYE prefecture to join in the killings.
17. On or about 11 April 1994, **Grégoire NDAHIMANA**, Fulgence KAYISHEMA, Téléphore NDUNGUTSE, Védaste MURANGWABUGABO also known as Védaste MUPENDE, *conseillers* and others whose identities are unknown held a meeting at the Kivumu Communal Office at which it was decided to requisition a vehicle belonging to a Tutsi trader named Aloys RWAMASIRABO, which Fulgence KAYISHEMA and others used to transport assailants to Nyange Parish and to make announcements encouraging the population to attack Tutsis.
18. On or about 11-13 April 1994, **Grégoire NDAHIMANA**, Fulgence KAYISHEMA, Téléphore NDUNGUTSE, Védaste MURANGWABUGABO also known as Védaste MUPENDE and others whose identities are unknown decided to move all the Tutsis at the Kivumu Communal Office to Nyange Parish, and to send gendarmes to Nyange Parish to confine the Tutsis in furtherance of the joint criminal enterprise.
19. On or about 11-13 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown met at the Presbytery and the Kivumu Communal Office and decided that all Tutsi refugees at Nyange Parish should be moved into Nyange Church. In furtherance of the joint criminal enterprise to kill the Tutsis, Athanase SEROMBA ordered that the Tutsis be moved to Nyange Church where communal policemen, gendarmes, Interahamwe and Hutu civilians confined the refugees preventing them from leaving.
20. On or about 10-13 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA, Joseph HABİYAMBERE, Christophe MBAKILIREHE, Téléphore NDUNGUTSE, Gilbert Rugwizangoga KANANI and others whose identities are unknown held meetings at the Kivumu Communal Office and the Presbytery. Immediately following these meetings, Christophe MBAKILIREHE, Gilbert Rugwizangoga KANANI and other members of

the joint criminal enterprise disarmed the refugees in Nyange Church in furtherance of the plan to attack and kill the Tutsi refugees.

21. On or about 13-16 April 1994, **Grégoire NDAHIMANA** made several vehicles available to his subordinates such as Fulgence KAYISHEMA and Téléphore NDUNGUTSE to transport assailants to Nyange Parish. These assailants joined other killers who included interahamwe, communal policemen, gendarmes and others whose identities are unknown in killing Tutsi refugees at Nyange Parish. **Grégoire NDAHIMANA** as *bourgmestre* of KIVUMU commune knew or had reason to know of the acts of his subordinates but he failed to prevent or punish their actions.
22. On or about 13 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown held a meeting at the Presbytery to plan the extermination of the Tutsis. On that same day, the assailants launched an attack against the Tutsi refugees at the instigation of Gaspard KANYARUKIGA.
23. On or about 14 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA, Joseph HABİYAMBERE, Christophe MBAKILIREHE and others whose identities are unknown met at the Presbytery. After this meeting, some Tutsi refugees told **Grégoire NDAHIMANA** of the attacks that had been launched against them. **Grégoire NDAHIMANA** stated that the Tutsis were *inyenzi* who had killed the President and he refused to assist them. Thereafter, the subordinates of **Grégoire NDAHIMANA** such as the communal policemen, gendarmes, Interahamwe and other assailants surrounding the parish launched an attack against the Tutsi refugees in the church. **Grégoire NDAHIMANA** as *bourgmestre* of KIVUMU commune knew or had reason to know of the acts of his subordinates but he failed to prevent or punish their actions.
24. On or about 14 April 1994, **Grégoire NDAHIMANA** presided over a public meeting held at the Nyange market square that was attended by Gilbert Rugwizangoga KANANI, Christophe MBAKILIREHE, Joseph HABİYAMBERE, Fulgence KAYISHEMA and others whose identities are unknown. At that meeting, Gaspard KANYARUKIGA instigated the crowd to kill the Tutsis at Nyange Church.
25. On or about 15 April 1994, **Grégoire NDAHIMANA** and his subordinates, Fulgence KAYISHEMA, Christophe MBAKILIREHE, Téléphore NDUNGUTSE, Védaste MURANGWABUGABO also known as Védaste MUPENDE and others whose identities are unknown held meetings at the Presbytery, the CODECOKI and in front of Gaspard KANYARUKIGA's pharmacy. Following these meetings, **Grégoire NDAHIMANA** ordered the communal policemen, gendarmes, interahamwe, an army reservist named Théophile RUKARA and other assailants whose identities are unknown, to 'start working'. The assailants launched an attack against the Tutsis seriously injuring and killing many of them. Jean Marie Vianney HABARUGIRA led one of the groups that attacked the Tutsis. **Grégoire NDAHIMANA** knew or had reason to know of the acts of his subordinates and failed to prevent or punish these actions.

26. During the attack on 15 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown were present, ordering, instigating and supervising the assailants, and aided and abetted the assailants by providing them with weapons and fuel in an attempt to burn the Tutsi refugees in the church. However, the attempt was not successful, leading **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown to hold a meeting at the Presbytery to plan further attacks on the Tutsis.
27. On or about 15 April 1994, **Grégoire NDAHIMANA** told the assailants that they should cover themselves in banana leaves to be easily distinguishable from the refugees they were about to attack in furtherance of the plan to kill the Tutsi refugees.
28. On or about 15 April 1994, members of the joint criminal enterprise ordered that the bodies of the Tutsi victims killed during the attacks be buried in mass graves at Nyange Parish and surrounding areas.
29. On or about 16 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown met at the Presbytery. After this meeting, **Grégoire NDAHIMANA** started shooting at the refugees thereby signaling the assailants to launch a large scale attack on the Tutsi refugees.
30. On or about 16 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA, Joseph HABİYAMBERE, Télesphore NDUNGUTSE, Anasthase RUSHEMA, Gilbert Rugwizangoga KANANI, Védaste MURANGWABUGABO also known as Védaste MUPENDE, Jean Marie Vianney HABARUGIRA and others whose identities are unknown met, planned and mutually agreed to kill all of the Tutsi refugees in Nyange Church by destroying it.
31. On 16 April 1994, **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown ordered the assailants to destroy Nyange Church using a bulldozer, killing about 2000 Tutsi refugees inside. **Grégoire NDAHIMANA** was present during the demolition of the church and was instigating the assailants to kill the Tutsi refugees and supervising the attacks.
32. After the destruction of the Church, the authorities, including **Grégoire NDAHIMANA**, Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others whose identities are unknown went to the Presbytery to celebrate by sharing drinks.
33. On or about 16 April 1994, after the destruction of the Church, the bodies of the Tutsis killed at Nyange Parish were buried in mass graves at Nyange Parish and surrounding areas.

Count III: EXTERMINATION AS A CRIME AGAINST HUMANITY

34. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Grégoire NDAHIMANA** with **EXTERMINATION as a CRIME AGAINST HUMANITY**, as stipulated in Article 3(b) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994, in KIVUMU commune, KIBUYE prefecture, Rwanda, **Grégoire NDAHIMANA** with intent to participate in the killing of an number of individuals and knowing that his action was part of a vast murderous enterprise, was responsible for planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of the killing of the civilian population as part of a widespread or systematic attack against that civilian population on political ethnic or racial grounds, as follows.

Individual Criminal Responsibility under 6(1)

35. Pursuant to Article 6(1) of the Statute, the accused **Grégoire NDAHIMANA** is individually responsible for the crime of extermination as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the preparation or execution of these crimes. With respect to the commission of these crimes, **Grégoire NDAHIMANA** ordered those over whom he had authority as a result of his position described in paragraph 2 above, and he instigated and aided and abetted those over whom he did not have authority.
36. In addition, the accused Grégoire NDAHIMANA willfully and knowingly participated in a joint criminal enterprise whose common purpose was the commission of extermination as a crime against humanity against the Tutsi racial or ethnic group and persons identified as Tutsi or presumed to support the Tutsi in KIVUMU commune, KIBUYE prefecture. To fulfill the joint criminal purpose, the accused acted with authorities of KIVUMU commune such as Athanase SEROMBA, Parish Priest of Nyange, Gaspard KANYARUKIGA, an influential Hutu businessman, Fulgence KAYISHEMA, Judicial Police Inspector of KIVUMU commune, Judge Joseph HABIYAMBERE, President of the Canton Court, Gilbert Rugwizangoga KANANI, an Assistant bourgmestre, Védaste Murangwabugabo also known as Védaste MUPENDE, an Assistant bourgmestre, Téléphone NDUNGUTSE, a Teacher, Anasthase RUSHEMA, a Teacher, Christophe MBAKILIREHE, Brigadier of KIVUMU commune, Théophile RUKARA, an army reservist, conseillers such as Jean Marie Vianney HABARUGIRA, conseiller of Nyange sector, Laurent SINDABYEMERA, conseiller of Sanga sector, Ferdinand MUNYARUKATO, conseiller of Ngobagoba sector, other conseillers, gendarmes, the Interahamwe militia, communal policemen, and other Hutu civilians all such actions being taken either directly or through subordinates, between the period of 6 April 1994 to 30 April 1994.

Individual Criminal Responsibility under 6(3)

37. Pursuant to Article 6(3) of the Statute, the accused Grégoire NDAHIMANA is responsible for the crime of extermination as a crime against humanity because specific criminal acts were committed by subordinates of the accused and the accused

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. Grégoire NDAHIMANA is responsible for the acts of his de jure and de facto subordinates in KIVUMU commune, including but not limited to Nyange Parish between the periods of 6 April 1994 to 30 April 1994. The subordinates of Grégoire NDAHIMANA include but are not limited to: Gilbert Rugwizangoga KANANI, an Assistant bourgmestre, Védaste Murangwabugabo, also known as Védaste MUPENDE, an Assistant bourgmestre, Fulgence KAYISHEMA, the Judicial Police Inspector, Christophe MBAKILIREHE, Brigadier of KIVUMU commune, conseillers such as Laurent SINDABYEMERA, conseiller of Sanga sector, Jean Marie Vianney HABARUGIRA, conseiller of Nyange sector, other conseillers, communal policemen, communal employees, gendarmes, Interahamwe and other Hutu civilians.

38. The Prosecutor relies upon the allegations in paragraphs 13 through 33 in support of the charge of extermination as a crime against humanity.

The acts and omissions of Grégoire NDAHIMANA detailed herein are punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Dated in Arusha this 18th day of August 2010


Hassan Bubac
The 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:	☒ Trial Chamber I N. M. Diallo	☐ Trial Chamber II R. N. Kouambo	☒ Trial Chamber III C. K. Hometowu	☐ Appeals Chamber / Arusha F. A. Talon
	☐ Chief, CMS J.-P. Fomété	☐ Deputy Chief, CMS M. Diop	☐ Chief, JPU, CMS M. Diop	☐ Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	☐ Chamber (names)	☐ Defence (names)	☒ Prosecutor's Office HOLO MAKWAIA (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. Gregoire Ndahimana			Case Number: ICTR-2001-68-I
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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	☐ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ 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

KINDLY FILL IN THE BOXES BELOW

☐ The OTP is overseeing translation. The document is submitted for translation to: ☐ The Language Services Section of the ICTR / Arusha. ☐ The Language Services Section of the ICTR / The Hague. ☐ An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	☐ DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

☐ Top priority	COMMENTS	☐ Required date:
☐ Urgent		☐ Hearing date:
☐ Normal		☐ Other deadlines: