

CONFIDENTIAL

ICTR-2005-86-I
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**UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

Case No. ICTR-2005-86-I

**THE PROSECUTOR
AGAINST
MICHEL BAGARAGAZA**

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ANNOTATED INDICTMENT

Filed 28 July 2005

- 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:**

Michel BAGARAGAZA

With:

Count I	Conspiracy to Commit Genocide
Count II	Genocide
Count III	Alternatively, Complicity in Genocide

II. **THE ACCUSED**

1. **Michel BAGARAGAZA** was born in 1945 in Giciye *Commune*, Gisenyi *Préfecture*, Republic of Rwanda.
2. **Michel BAGARAGAZA** as at all times referred to in this indictment:

(A) A senior public official who,

- (i) was the Director General of OCIR/Thé, the government office that controlled the Rwandan tea industry, including the tea factories, and thus had authority over the managers and employees of the tea factories at Rubaya and Nyabihu, in that he could order such managers and employees to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions;
- (ii) was a member of the Prefectoral committee of the MRND political party in Gisenyi *Préfecture*, that established and controlled the *Interahamwe* militia in Gisenyi *Préfecture*.
- (iii) was honorary president of the *Interahamwe* militia in Kabuga in Kigali-rural *Préfecture*; and as such had authority over of the *Interahamwe* of Kabuga.

Statement by AXH K0502795-99 p. 3 taken on 20/21-05-04
Statement by BDT K0501978-82 p. 5 taken on 02-04-04
Statement by BDV K0106957-77 p. 8 taken on 24-04-97
Statement by AZK K0500154-63 p. 4 & 5 taken on 04-02-03

III. CHARGES AND CONCISE STATEMENT OF FACTS

3. At all times referred to in this indictment there existed in Rwanda a minority racial or ethnic group known as Tutsi, officially identified as such by the government of Rwanda. The majority of the population of Rwanda was comprised of a racial or ethnic group known as the Hutus, also officially identified as such by the government of Rwanda.

“ICTR-97-20-I Prosecutor against Laurent Semanza, Decision on Prosecutor’s Motion for Judicial Notice and Presumption of Facts pursuant to Rule 94 and 54 dated 3 November 2000, in particular Annex A.”

“Legislative Act No. 01/81, dated 16 January 1981, concerning the Census, National Identification Card, residency and Rwandaise Home Address”.

“Ministerial Order No. 01/03, dated 19 January 1981, providing for the enforcement of the Legislative Act No. 01.81, dated 16 January 1981, concerning the Census, National Identification Card, Residency and Rwandaise Home Address.”, J.O. No. 2 *bis*, dated 20 January 1981.

4. Between 1 January 1994 and 17 July 1994, throughout Rwanda, *Interahamwe* militias, soldiers of the *Forces Armees Rwandaises* (“FAR”) and armed civilians targeted and attacked the civilian population based on ethnic or racial identification as Tutsi, or perceived sympathies to the Tutsi. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of these attacks, large numbers of ethnically or racially identified Tutsi were killed.

“ICTR-97-20-I Prosecutor against Laurent Semanza, Decision on Prosecutor’s Motion for Judicial Notice and Presumption of Facts pursuant to Rule 94 and 54 dated 3 November 2000, in particular Annex A.”

Count I: CONSPIRACY TO COMMIT GENOCIDE

The Prosecutor charges **Michel BAGARAGAZA** with **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Articles 2(3)(b) of the Statute, in that on or between the dates of 1 January and 17 July 1994, **Michel BAGARAGAZA** did conspire with Léon MUGESERA, Protais ZIGIRANYIRAZO, Mathias NYAGASAZA, Elie SAGATWA, Alcade SEBATWARE, Charles NZABAGERAGEZA, Bernard MUNYAGISHARI, Robert KAJUGA, Mathieu NGIRUMPATSE, Captain

SIMBIKANGWA, Captain HAGUMA, Doctor KABERA, Séraphin RWABUKUMBA, Laurent SEMANZA, Joseph SEBISOGO, Aloys NGIRABATWARE, Pierre Damien RUSAGIZA, Anastase NGAYABAREZI, Joseph NZIRORERA, Augustin NGIRABATWARE, Claver MVUYEKURE, Pasteur MUSABE, and others to kill or cause serious bodily or mental harm to members of the Tutsi racial or ethnic group with the intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 5 through 12.

CONCISE STATEMENT OF FACTS FOR COUNT I

Individual Criminal Responsibility

5. Pursuant to Section 6(1) of the Statute, the Accused Michel BAGARAGAZA, is responsible for the crime of Conspiracy to Commit Genocide because he committed the act of agreeing with Léon MUGESERA, Protais ZIGIRANYIRAZO, Mathias NYAGASAZA, Elie SAGATWA, Alcade SEBATWARE, Charles NZABAGERAGEZA, Bernard MUNYAGISHARI, Robert KAJUGA, Mathieu NGIRUMPATSE, Captain SIMBIKANGWA, Captain HAGUMA, Doctor KABERA, Séraphin RWABUKUMBA, Laurent SEMANZA, Joseph SEBISOGO, Aloys NGIRABATWARE, Pierre Damien RUSAGIZA, Anastase NGAYABAREZI, Joseph NZIRORERA, Augustin NGIRABATWARE, Claver MVUYEKURE, Pasteur MUSABE, and others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, the Tutsi ethnic group, and committed acts in furtherance of their agreement, such actions taking place between 22 November 1992 and 17 July 1994, as described in paragraphs 6 through 12.
6. On or about 22 November 1992, Léon MUGESERA, the Vice Chairman of Prefectoral committee of the MRND political party in Gisenyi *Préfecture*, of which committee Michel BAGARAGAZA was a member, gave a speech in town of Rubaya in Gisenyi *Préfecture*, calling on Hutus to send the Tutsis back to Ethiopia rapidly by the Nyaborongo River. Michel BAGARAGAZA attended the meeting together with other important persons in Bushiru area such as Protais ZIGIRANYIRAZO, Mathias NYAGASAZA, Elie SAGATWA, and Alcade SEBATWARE. Nyagasaza and BAGARAGAZA spoke at the gathering and agreed with MUGESERA on the message given in his speech. This message defined the enemy to include Tutsis living in Rwanda and urged the destruction of the Tutsi ethnic group in Rwanda.

Statement by AZA K0501902-07 p. 3 taken on 24/26-03-04
Speech of Leon Mugesera of 22 November 1992, RTL M 0050, K0169791

7. On unknown dates after the delivery of the Mugesera speech on 22 November 1992, in furtherance of the agreement described in paragraph 5,

Michel BAGARAGAZA furnished uniforms of kitenge cloth, in the colors red, green and yellow, to the members of the *Interahamwe*.

Statement by AZA K0501902-07 p. 3 taken on 24/26-03-2004

8. On an unknown date in 1993, in furtherance of the agreement described in paragraph 5, a meeting was held in GISENYI *Préfecture* at which **Michel BAGARAGAZA**, together with Juvénal UWILINGIYIMANA, Bernard MUNYAGISHARI and Robert KAJUGA established an *Interahamwe* group in Gisenyi *Préfecture*.

Statement by BDV K0106957-77 p. 8 taken on 24-04-97

9. In January 1993, **Michel BAGARAGAZA** agreed with Charles NZABAGERAGEZA, Captain SIMBIKANGWA, Captain HAGUMA, Doctor KABERA and Séraphin RWABUKUMBA, that the *Interahamwe* should receive paramilitary training so that it would be capable of attacking and killing their political enemies, particularly the members of the Tutsi racial or ethnic minority.

Statement by AXG K0245124-28 p. 3 taken on 12-19-02

10. In March 1993, a meeting was held at **Michel BAGARAGAZA's** residence in Kabuga in Kigali-rural *Préfecture* and attended by **Michel BAGARAGAZA**, Laurent SEMANZA, Joseph SEBISOGO, Aloys NGIRABATWARE, Pierre Damien RUSAGIZA, Anastase NGAYABAREZI and local members of *Interahamwe*. At the meeting **Michel BAGARAGAZA** was chosen as "President d'Honneur" of the local *Interahamwe* of Kabuga, and he agreed with the other participants that they would remain faithful to their goal of eliminating the Tutsi and of the Hutu who supported the Tutsi.

Statement by AZK K0500154-63 p. 4 & 5 taken on 04-02-03

Statement by AZK K0501771-86 p. 4 taken on 27/29-02-04; 6-03-04

11. On and unknown date in mid-1993, **Michel BAGARAGAZA** attended a meeting at the REBERO hotel together with Mathieu NGIRAMPATSE, Claver MVUYEKURE, Pasteur MUSABE, Séraphin RWABUKUMBA and Robert KAJUGA. At this meeting the participants agreed to raise funds to support the *Interahamwe* in Gisenyi *préfecture* in order prepare a force that would be capable of eliminating the Tutsi.

Statement by AZQ K0502585-794 p. 49 taken on 06-02-04/22-05-04

12. On or about 27 February 1994, **Michel BAGARAGAZA** attended a meeting of the *Interahamwe* in the REBERO Hotel in Kigali, with Joseph

NZIRORERA, Augustin NGIRABATWARE, Claver MVUYEKURE, Pasteur MUSABE, Séraphin RWABUKUMBA and Robert KAJUGA. At this meeting the participants agreed to raise funds to support the *Interahamwe* in order to prepare a force that would be capable of eliminating the Tutsi.

Statement by ALC K0236248-55 p. 5 & 6 taken on 24-05-02

Count II: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Michel BAGARAGAZA** with **GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute, in that from 1 January 1994 to 17 July 1994, throughout Rwanda, particularly in Gisenyi *Préfecture*, **Michel BAGARAGAZA** 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 13 through 22.

Alternatively,

Count III: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Michel BAGARAGAZA** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that from 1 January 1994 to 17 July 1994, throughout Rwanda, particularly in Gisenyi *Préfecture*, **Michel BAGARAGAZA** 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, or with knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his assistance would contribute to the crime of genocide, as outlined in paragraphs 13 through 22.

CONCISE STATEMENT OF FACTS FOR COUNTS II AND III

Individual Criminal Responsibility

13. Pursuant to Article 6(1) of the Statute, the accused, **Michel BAGARAGAZA**, 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, **Michel BAGARAGAZA** ordered those over whom he had authority as a result of his positions described in paragraph 2 above, and he instigated and aided and abetted those over whom he did not have authority. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of

genocide against the Tutsi racial or ethnic group and persons identified as Tutsi or presumed to support the Tutsi in Gisenyi *Préfecture* as well as throughout Rwanda. To fulfill this criminal purpose, the accused acted with Mathieu NGIRUMPATSE, Joseph NZIRORERA, Augustin NGIRABATWARE, Claver MVUYEKURE, Pasteur MUSABE, Séraphin RWABUKUMBA, Robert KAJUGA other participants, all such actions being taken either directly or through subordinates, for at least the period of 1 January 1994 through 17 July 1994. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 14 through 17.

14. On or about 27 February 1994, **Michel BAGARAGAZA** attended a meeting of the *Interahamwe* in the REBERO hotel together with, among others, Joseph NZIRORERA, Augustin NGIRABATWARE, Claver MVUYEKURE, Pasteur MUSABE, Séraphin RWABUKUMBA and Robert KAJUGA. At this meeting the participants agreed to raise funds to support the *Interahamwe* in order prepare a force that would be capable of eliminating the Tutsi. **Michel BAGARAGAZA** gave money for this purpose.

Statement by ALC K0236248-55 p. 5 & 6 taken on 24-05-02

15. On or about 7-9 April 1994, the *Interahamwe* and the Presidential Guard came to the Rubaya tea factory. **Michel BAGARAGAZA** ordered the employees of the tea of the tea factory, over whom he had authority as Director General of OCIR/Thé to provide them with fuel for their vehicles. These *Interahamwe* and the Presidential Guard then attacked and killed more hundreds of Tutsis on Kesho Hill. By providing the means, **Michel BAGARAGAZA** aided and abetted the killings of the Tutsi who sought refuge on Kesho Hill.

Statement by BDR K0501998-2004 p. 4 & 6 taken on 04-04-04

Statement by BDT K0501978-82 p. 5 taken on 02-04-04

Statement by AZW K0501987-92 p. 4 taken on 03-04-04

Statement by AZZ K0500725-29 p. 4 taken on 15-09-03

Statement by AXH K0502795-99 p. 3 taken on 20/21-05-2004

16. On or about 7-9 April 1994, **Michel BAGARAGAZA** ordered one of the drivers from the Nyabihu factory, Emmanuel MBARSHIMANA, to go to the cathedral of Nyundo in Gisenyi *Préfecture* with a truck filled with *Interahamwe* for the purpose of exterminating the Tutsi who had sought refuge at the Cathedral. By facilitating the transport of the *Interahamwe* to the Nyundo Cathedral **MICHEL BAGARAGAZA** aided and abetted the killing of the Tutsi that resulted.

Statement by BDS K0500709 p. 5 taken on 11-09-02

17. On or about 9 April 1994, **Michel BAGARAGAZA** ordered a driver over whom he had authority to transport a group of *Interahamwe* in a white Daihatsu to Rubaya where they killed Tutsis and looted their cattle. By ordering the transportation of the *Interahamwe* to Rubaya, **MICHEL BAGARAGAZA** aided and abetted the killings of the Tutsi in Rubaya.

Statement by AXH K0502795 p. 3-4 taken on 20/21-05-04

Criminal Responsibility as a Superior

18. Pursuant to Article 6(3) of the Statute, the accused, **Michel BAGARAGAZA**, 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 directors and other employees of the OCIR/Thé factories, including the director of the Rubaya tea factory, Anasthase DJARIBU, employees Emmanuel MBARSHIMANA and Arago SEBATASHYA, the chief of the tea plantation at the Nyabihu tea factory, and others. The particulars of the acts of these subordinates are set forth in paragraphs 19 through 22.
19. In the early months of 1994, a subordinate of **Michel BAGARAGAZA**, namely Anasthase DJARIBU, the director of the tea factory of Rubaya, in Gisenyi *Préfecture*, recruited military reservists for tea factory employment, provided military training for other tea factory workers in the nearby Gishwati forest, and furnished arms and ammunition that had been stored in the Rubaya tea factory to these reservists and other workers. Beginning on 7 April 1994, these individuals used these arms to kill Tutsis both inside and outside the factory as part of an extermination campaign against the Tutsi. **Michel BAGARAGAZA** knew or had reason to know that his subordinate was recruiting, training and arming personnel in preparation of a campaign to kill Tutsi, and failed to prevent or punish these acts.

Statement by AZZ K0500725-29 p. 4 taken on 15-09-03

Statement by AZK K0500154-63 p. 5 taken on 04-02-03

Statement by BAI K0500730-33 p. 4 taken on 15-09-03

20. On or about 8 April 1994, a subordinate of **Michel BAGARAGAZA**, the chief of the plantation at the tea factory of Nyabihu in Gisenyi *Préfecture* authorized vehicles to be filled with fuel at the tea factory for the purpose of enabling *Interahamwe* to be transported in the vehicles in a search for Tutsi to kill to avenge the death of the President. **Michel BAGARAGAZA** knew or had reason to know that his subordinate was providing fuel for vehicles to transport *Interahamwe* to kill Tutsi, and failed to prevent or punish the

provision of fuel for the vehicles by his subordinate, thus aiding and abetting the killings of Tutsi.

Statement by AXH K0502795-99 p. 3 taken on 20/21-05-2004

21. On or about 7-9 April 1994, a subordinate of **Michel BAGARAGAZA**, namely Anasthase DJARIBU, the director of the tea factory of Rubaya, in Gisenyi *Préfecture*, aided and abetted the *Interahamwe* by authorizing the provision of fuel for their vehicles, arms from the stockpile at the factory, and additional personnel from the factory to assist in the attack on hundreds of Tutsis who had sought refuge on the nearby Kesho Hill. Led by the chief of the *Interahamwe* of Karago Commune, Arago SEBATASHYA, who was also an employer of this tea factory and a subordinate of **Michel BAGARAGAZA**, they attacked and killed hundreds of Tutsi on Kesho Hill. **Michel BAGARAGAZA** knew or had reason to know that of his subordinates' actions and failed to prevent or punish their actions.

Statement by BDR K0501998-2004 p. 4 & 6 taken on 04-04-04

Statement by BDT K0501978-82 p. 5 taken on 02-04-04

Statement by AZW K0501987-92 p. 4 taken on 03-04-04

Statement by AZZ K0500725-29 p. 4 taken on 15-09-03

Statement by AXH K0502795-99 p. 3 taken on 20/21-05-2004

22. On or about 7-9 April 1994, a subordinate of **Michel BAGARAGAZA**, namely Emmanuel MBARSHIMANA, a driver employed at the tea factory of Nyabihu, transported a truckload of *Interahamwe* to Nyundo in Gisenyi *Préfecture*, to exterminate the Tutsi who had sought refuge at the Nyundo Cathedral. **Michel BAGARAGAZA** knew or had reason to know of his subordinate's actions and failed to prevent or punish his actions.

Statement by BDS K0500709 p. 5 taken on 11-09-02

The acts and omissions of **Michel BAGARAGAZA** detailed herein are punishable in pursuant to Articles 22 and 23 of the Statute.

Signed at KIGALI, Rwanda, this 28th day of July 2005.

/s/ HASSAN BUBACAR JALLOW

PROSECUTOR