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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

1) MADAME HABYARIMANA;  
in her own capacity and on behalf of the estate of the  
deceased President of Rwanda,  
JUVÉNAL HABYARIMANA;

2) MADAME NTARYAMIRA;  
in her own capacity and on behalf of the estate, of the  
deceased President of Burundi,  
CYPRIEN NTARYAMIRA;

Plaintiffs,

VS.

1) GENERAL PAUL KAGAME;  
2) JAMES KABAREBE;  
3) FAUSTIN NYAMWASA KAYUMBA;  
4) CHARLES KAYONGA;  
5) JACKSON NKURUNZIA, a.k.a Jack Nziza;  
6) SAMUEL KANYEMERA, a.k.a. Sam Kaka;  
7) ROSE KABUYE  
8) JACOB TUMWINE  
9) FRANCK NZIZA  
10) ERIC HAKIZIMANA

Defendants.

Case No. CIV-10-437-W

COMPLAINT WITH JURY DEMAND

(WRONGFUL DEATH AND MURDER; CRIMES AGAINST HUMANITY;  
VIOLATION OF THE RIGHTS OF LIFE, LIBERTY, AND SECURITY; ASSAULT AND  
BATTERY; INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;  
VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT  
ORGANIZATIONS ACT; TORTURE; AND CONTINUING CONSPIRACY IN  
FURTHERANCE THEREOF)

**JURISDICTION**

1. The Alien Tort Claims Act, 28 U.S.C. § 1350, provides federal jurisdiction for "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." This Court also has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal question jurisdiction); 18 U.S.C. SEC 1332 and 18 U.S.C. § 1964(c) (Racketeer Influenced and Corrupt Organizations Act).
2. Further, the U.S. Federal Extraterritorial Torture Statute, 18 U.S.C.A. § 2340A, provides federal jurisdiction over "whoever outside the United States commits or attempts to commit torture" or conspires to commit torture, if said person is a national of the United States or is present in the United States, irrespective of the nationality of the victim or alleged offender.
3. In addition, Plaintiffs invoke the supplemental jurisdiction of this Court, 28 U.S.C. § 1367, over claims based upon laws of the State of Oklahoma arising from ongoing, substantial contacts between Oklahoma and Defendant Kagame and the Government of Rwanda, voluntarily initiated or engaged in by Defendant Kagame, including, but not limited to: (a) the Rwandan Presidential Scholars Program at Oklahoma Christian University, personally established by Defendant Kagame in Oklahoma in 2006; (b) the continuing operation of said Rwandan Scholars program which now totals more than 60 Rwandan students; (c) the Rwandan Outreach & Community Foundation, staffed by Oklahoma Christian employees; (d) Rwandans4Water, an initiative of the Rwandan Presidential Scholars Program; (e) Peace Through Business-Rwanda, a partnership with the Oklahoma City-based Institute for the Empowerment of Women; and, (f) the physical

presence of Defendant Kagame in the State of Oklahoma on April 30, 2010 to be honored by Oklahoma Christian University, and on numerous other occasions .

PRELIMINARY STATEMENT AND INTRODUCTION

4. On April 6, 1994 at 8:25 p.m., the Falcon 50 jet of the President of the Republic of Rwanda, registration number "9XR-NN", on its return from a summit meeting in DAR-ES-SALAAM (Tanzania) as it was on approach to Kanombe International Airport in KIGALI, Rwanda, was shot down by two surface-to-air missiles; and
5. All passengers perished in the explosion of the aircraft, including:
  - a. Juvénal HABYARIMANA, Chief of State of Rwanda,
  - b. Cyprien NTARYAMIRA, Chief of State of Burundi,
  - c. Déogratias NSABIMANA, Chief of Staff of Rwandan Armed Forces (R.A.F.),
  - d. Elie SAGATWA, Colonel and Chief of the Military Cabinet of the Rwandan president,
  - e. Thaddée BAGARAGAZA, Major and executive officer in the 'maison militaire' of the Rwandan president,
  - f. Juvénal RENZAHO, foreign affairs adviser to the Rwandan president,
  - g. Emmanuel AKINGENEYE, personal physician to the Rwandan president,
  - h. Bernard CLZA, Minister of Planning in the government of Burundi,
  - i. Cyriaque SIMBIZI, Communications Minister of Burundi,

And the members of the French flight crew:

- j. Jacky HERAUD, pilot,
- k. Jean-Pierre MINABERRY, co-pilot,

1. Jean-Michel PERRINE, flight engineer

- (12)
6. The final order to shoot down the President's plane was given by Paul KAGAME, himself, during a meeting held in Mulindi, Rwanda on or about March 31, 1994, with the planning and the operational phase being entrusted to Col. James KABAREBE, who was specifically charged with the formation of a team specialized in the use of surface-to-air missiles furnished by Uganda in a conspiracy with members of the non-governmental Rwandan Patriotic Army (herein after RPA).
  7. The material preparation, the organization and the intelligence necessary for the execution of this plot were brought together with the direct assistance of officers in the RPA non-governmental conspiracy:
    - a. Charles KAYONGA, RPA Battalion Commander,
    - b. Jackson NKURUNZIA, a.k.a. Jack NZIZA, Major,
    - c. Col. Samuel KANYEMERA, a.k.a. Sam KAKA,
    - d. Rose KABUYE, Major,
    - e. Jacob TUMWINE, Major, assistant to Lt.-Col. Charles KAYONGA; and
  8. Second Lt. Franck NZIZA and Corporal Eric HAKIZAMANA, members of the missile section, fired their SAM-16-type surface-to-air missiles at the President's plane and destroyed it in flight; and
  9. General Paul KAGAME deliberately chose a *modus operandi* that, in the context of the particular tension pervading both in Rwanda and Burundi between the Hutu and Tutsi communities, could only bring about bloody reprisals against the Tutsi community, and which offered him a veneer of legitimacy for his renewal of hostilities and his seizing of State power in Rwanda by criminally violent means.

THE PLAINTIFFS

10. Madame HABYARIMANA brings this action individually, and as administrator of the estate of her husband, Juvénal HABYARIMANA, now deceased, who was a subject, citizen, and resident of Rwanda. Madame HABYARIMANA presently resides outside of the United States and is not a citizen of the United States.
11. Madame NTARYAMIRA brings this action individually, and as administrator of the estate of her husband, Cyprien NTARYAMIRA, Chief of State of Burundi, now deceased. Madame NTARYAMIRA presently resides outside of the United States and is not a citizen of the United States.

THE DEFENDANTS

12. Defendant General Paul KAGAME, Commander-in-Chief of the non-governmental RPA and the current President of the Republic of Rwanda.
13. Defendant Lt.-Col. James KABAREBE, assistant to General Paul KAGAME and Chief of Staff for the 'Rwandan Patriotic Army' (RPA), now known as the 'Rwandan Defense Forces' (RDF).
14. Defendant Officer Faustin NYAMWASA KAYUMBA, currently a Major General.
15. Defendant Officer Charles KAYONGA, the RPA Battalion Commander based in Kigali and currently Brigadier General and advisor to the President for National Defense Affairs.
16. Defendant Jackson NKURUNZIA, a.k.a. Jack NZIZA, Major.
17. Defendant Col. Samuel KANYEMERA, a.k.a. Sam KAKA.

18. Defendant Rose KABUYE, Major, assigned to the RPA battalion that quartered the commandos in the RPA headquarters (known as C.N.D.) in Kigali before the attack.
19. Defendant Jacob TUMWINE, Major, assistant to Lt.-Col. Charles KAYONGA, who received the missiles to be used in the attack at his quarters in the C.N.D. and took part with other officers around Paul KAGAME in the last meeting where the order to shoot down the plane was given.
20. Defendant Second Lt. Franck NZIZA, member of the missile section that fired his SAM-16-type surface-to-air missile at the President's plane and destroyed it in flight.
21. Defendant Corporal Eric HAKIZAMANA, another member of the missile section that fired his SAM-16-type surface-to-air missile at the President's plane and destroyed it in flight.
22. Whenever and wherever reference is made in this Complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly and severally.
23. Whenever and wherever reference is made to individuals who are not named as Defendants in this Complaint, but were employees/agents of Defendants, such individuals at all relevant times acted on behalf of the Defendants named in this Complaint within the scope of their respective employments.

STATEMENT OF FACTS<sup>1</sup>Planned Assassinations

24. While there may be some dispute regarding the particulars of the long history of conflict for political power in Rwanda and Burundi, between groups known as "Hutu" and "Tutsi", there can be *no doubt* that the invasion of Rwandan territory by Tutsi ex-patriot elements of the Ugandan army in October 1990 (a.k.a. the non-governmental RPA), led by Defendant Paul Kagame, is the first cause of events that led to massacres that occurred between April and July 1994<sup>2</sup>, and has resulted in more than seven million deaths in Central Africa since that time.

25. After an initial conventional assault on October 1, 1990, the Kagame-led RPA engaged in a planned strategy of "guerilla" warfare with the purpose of: (a) destabilizing the Habyarimana government; (b) making use of the U.N. sponsored Arusha negotiations and association with opposition political parties as a "cover" for RPA war preparations; and (c), having achieved military superiority as early as February 1993, seizing power by military force in a final assault initiated by the assassination of President Habyarimana.<sup>3</sup>

It is *this* plan that touched off the long-predicted civilian killings known as the "Rwandan Genocide."

26. The months of late 1993 and early 1994 include many examples of acts of sabotage, assassinations and disorder carried out by the Kagame Army (RPA) for the purpose of destabilizing, and discrediting the Habyarimana government. These acts included the killing of opposition political leaders and Tutsi civilians and to demonstrate that the

<sup>1</sup> Footnote references are to documents and/or testimony in the record in the Military-1 Trial at the International Criminal Tribunal for Rwanda.

<sup>2</sup> See testimony of witnesses, DH-90 and DH-91, who witnessed the invasion in the Parish in which one of them served; Experts Desouter, Strizek, Lugan.

<sup>3</sup> See testimony of Ruzibiza, Serge Desouter, Lugan Strizek, Colonel Luc Marchal and Witness ALL-42

current Rwandan government could no longer ensure security of the population and to create propaganda to discredit the Habyarimana government in the eyes of the international community.<sup>4</sup> This strategy went hand-in-hand with the military build-up for the "final assault", which was the *only* "plan" or "conspiracy" that included the killing of civilians. It was at this time, late November 1993, that U.S. ambassador Flaten specifically warned Gen. Kagame and President Habyarimana that the party that resumed hostilities would be responsible for the predicted civilian casualties on the order of the recent massacres in Burundi.<sup>5</sup> In direct violation of this warning, General Kagame resumed hostilities by shooting down the plane carrying the two Hutu presidents.

27. While elements of the Kagame RPA were committing acts of "terrorism" to destabilize and discredit the Habyarimana government in early 1994, its negotiators were actively engaged in blocking the implementation of the U.N. sponsored peace agreement (Arusha Accords) and Kagame was already threatening war.<sup>6</sup> By April 1, 1994, not only had the representatives of all interested governments agreed that the issues preventing implementation of the Arusha Accords had been resolved, but U.S. Ambassador David Rawson confirmed that it was intransigence of the Kagame-led RPA that was preventing the implementation of the Arusha Accords.<sup>7</sup>

<sup>4</sup> Testimony of Abdul Ruzibiza, 9 March 2006

<sup>5</sup> Testimony of Flaten, 30 June, 1 July 2005

<sup>6</sup> Exhibits DNT30, DNT103, DNT105, DNT174, DNT243, DNT253, DNT254, DNT256, and DNT262

<sup>7</sup> Exhibits DNT31, DNT32, DNT104, DNT121, DNT179. See CHRONOLOGICAL LISTING OF DOCUMENTARY EXHIBITS/TESTIMONY DESCRIBING THE EXPLANATION OF EVENTS DURING THE 1990-94 RWANDA WAR.



Gen. Kagame Triggers the Predicted Civilian Massacres  
by Assassinating Two Presidents<sup>8</sup>

28. The final plans to assassinate President Habyarimana were converted into specific orders from Paul Kagame on March 31, 1994, which were put into action on April 6, 1994. An assassination team of Kagame's RPA called "the network" launched Uganda-supplied Soviet missiles from Masaka hill at about 8:30 p.m. on April 6, 1994.<sup>9</sup> Not only was this revealed before the ICTR Trial Chamber, but French Terrorist Judge Bruguiere arrived at this conclusion based on the testimony that he heard in hearings leading to the indictment issued in November 2006.<sup>10</sup> Similar findings were reached by Spanish investigating Judge Merelles.<sup>11</sup> Further, all RPA commanders had been brought to Mulindi, on April 4, 1994, in apparent preparation for the assault to seize power that Gen. Kagame ordered on the night of April 6, 1994, shortly after he had received news of the successful assassination attack.<sup>12</sup>
29. The assassination certainly was an act of war, as well as a terrorist act, as well as a violation of the cease-fire. The timing of the orders for the Kagame-led troops to mount the final assault on the night of April 6, 1994 – and *not* the afternoon on April 7, belies the assertion that the Kagame's resumption of war was launched in response to the killing of his supporters.<sup>13</sup>

<sup>8</sup> See CHRONOLOGICAL LISTING OF DOCUMENTARY EXHIBITS/TESTIMONY DESCRIBING THE EXPLANATION OF EVENTS DURING THE 1990-94 RWANDA WAR. Jan-April 6 Sections, *et seq.* Former U.S. Ambassador Flaten testified that he personally warned Kagame that, if HE started the war again, HE would be responsible for killings like those that had recently occurred in Burundi. Once Kagame resumed the war, the predicted killings followed apace. What was lacking was the military capability to stop them by current Rwandan Army (the FAR), and the lack of will to do so, on the part of Kagame's RPA because they were winning the War.

<sup>9</sup> *Id.*

<sup>10</sup> See Bruguiere Indictment of RPF Attached

<sup>11</sup> See Merelles Indictment of Paul Kagame and RPA attached.

<sup>12</sup> *Id.*...also BRA-1 (T. 05/04/06, p. 64-67)

<sup>13</sup> Testimony of Colonel Marchal (T. 30/11/06, p. 27-28); Lugan (T. 15/11/06, p. 9); Ruzibiza (T. 09/03/06, p. 26-28, 38-39). ALL42 (T. 09/11/06, p. 21)

30. In fact, Gen. Kagame and the RPA resumed the war, *without* any provocation, with the assassinations of Presidents Habyarimana and Ntaryamira. From the standpoint of fixing central responsibility for the massacres that the assassinations of Presidents Habyarimana and Ntaryamira touched off, these acts were undertaken with *full knowledge on the part of Gen. Kagame that resumption of the war would cause massive civilian casualties*, as U.S. Ambassador Flaten had warned some five months earlier and as predicted by the U.S. State Department.<sup>14</sup>

Continuing and Deepening the Predicted Bloodbath

31. The responsibility of Gen. Kagame and the RPA for the massacres that the RPA assassination of Pres. Habyarimana touched off does not end with the inception of those killings. Gen. Kagame admitted to U.N. Gen. Dallaire on April 22, 1994, the predicted civilian massacres were an integral part of his war plan. In response to Dallaire's complaint that the RPA was not using its troops to save the predicted Tutsi victims of the renewed combat, Gen. Kagame said that, "There will be many sacrifices in this war. If the refugees have to be killed for the cause, they will be considered as having been part of the 'sacrifice' for his war plan."<sup>15</sup>

32. French Judge Bruguiere and Spanish Judge Merelles noted that on numerous occasions, beginning on the night of April 6, 1994, the RPA and Gen. Kagame rejected cease-fire offers by the Rwandan General Army (RGF).<sup>16</sup> Gen. Dallaire also noted in contemporary

<sup>14</sup> See footnote 5.

<sup>15</sup> Testimony of Dallaire (T. 27/01/04, P. 87-88) and book (Exhibit DNT33) on page 358 (English) or 451 (French); Testimony of Reyntjens (T. 21/09/04, p. 49-50). When commenting on the Kagame statement, Reyntjens confirmed that other RPF leaders made the same statement (T. 21/09/04, p. 49-50). During his testimony, Ruzibiza corroborated Reyntjens (T. 09/03/06, p. 62)

<sup>16</sup> Bruguiere Report; Testimony of witness Colonel Luc Marchal (T. 30/11/06, p. 25-26)

code cables that the RPA would not agree to a cease-fire while it was winning.<sup>17</sup> The ICTR testimony of former RPA officer Joshua Ruzibiza, and a confidential witness, (BRA-1), recount specific examples of Gen. Kagame ordering his troops *not* to intervene to save civilians and removing officers from their command for attempting to do so.<sup>18</sup> Judges Bruguiere and Merelles found, and other witnesses testified that the RPA affirmatively blocked the intervention of an international peace-keeping force intended to save Tutsi lives.<sup>19</sup>

33. In addition to the *direct* responsibility of Gen. Kagame and the RPA for bringing the Rwanda civilian massacres about by assassinating Pres. Habyarimana and Ntaryamira and resuming the war, and for blocking the possibility of military intervention to stop the massacres once they began, Gen. Kagame and the RPA are also directly responsible for massacres committed in areas occupied by their forces, or where combat was occurring. As early as the night of April 6-7, 1994, squads were leaving RPA headquarters to kill persons, particularly in Remera area, near the RPA headquarters. According to witnesses Prof. Reyntjens and U.N. Colonel Luc Marchal,<sup>20</sup> these were "political killings" of elites and leaders.

34. Kagame's RPA massacred thousands in the stadium in the northern city of Byumba shortly after seizing control of the city on April 7, 1994.<sup>21</sup> And, as the main force of

<sup>17</sup> Exhibits DNS106, DNT111, DNT112, DNT113, DNT118, DNT188 and DNT189

<sup>18</sup> Testimony of Ruzibiza (T. 09/03/06, p. 45) and witness BRA-1 (T. 06/04/06, p. 68)

<sup>19</sup> Bruguiere, p. 46; Testimony of witnesses Colonel Dewez (T. 24/06/05, p. 49); Desouter (T. 04/04/06, p. 19) and Colonel Luc Marchal (T. 30/11/06, p. 25-26).

<sup>20</sup> Reyntjens Testimony (T. 22/09/04, p. 30) his book Rwanda. Trois jours qui ont fait basculer l'histoire, p. 62 and Testimony of witness Colonel Luc Marchal (T. 01/12/06, p. 1).

<sup>21</sup> Testimony of witness BRA-1 on (T. 06/04/06, p. 64-65); witness ALL-42 (T. 08/11/06, p. 41-43)

Kagame's RPA swept southward from Byumba/Mutara, it reached the area around Kubungo/Rusomo in the southeast of Rwanda in the two weeks after April 6.<sup>22</sup>

35. As early as May 17, 1994, United Nations High Commissioner (UNHCR) for Refugees reports show that thousands of civilians were systematically being massacred by Kagame's RPA troops in areas around Rusomo and in the eastern third of the country that had been controlled by the RPA since the third week in April.<sup>23</sup> The RPA massacres in the eastern part of the country were documented by Robert Gersony, U.S. State Department Human Rights investigator, who reported that in a few weeks he had concluded that no fewer than 40,000 civilians had been killed by Kagame's RPA troops in a manner that could only have occurred as military operations in a small part of Rwanda.<sup>24</sup>
36. Although it cannot be denied that many Rwandans, both Hutu and Tutsi were killed by opponents of the RPA, these killings were *not* as a result of a "pre-planned government led genocide" or "conspiracy".<sup>25</sup> Rather, like killings had occurred in Burundi in October 1993, as result of violence following the assassination of the first Hutu President, Mechiow Ndayaye. The killings in Rwanda began as a reaction to the assassination of the second and third Hutu presidents killed in the last six months. The Kagame RPA war of

<sup>22</sup> For a summary of some of the crimes committed by Defendant Kagame and co-conspirators in the furtherance of the conspiracy, see summary prepared by Paul Rusesabagina, the main figure depicted in the award winning film, *Hotel Rwanda*, attached.

<sup>23</sup> May 17 Code Cable. See CHRONOLOGICAL LISTING OF PROSECUTION AND OF DOCUMENTARY EXHIBITS/TESTIMONY DESCRIBING THE EXPLANATION OF EVENTS DURING THE 1990-94 RWANDA WAR. May Section.

<sup>24</sup> Gersony Report (Exhibit DK-112) and related testimony by witness Jean Marie Vianney Ndagijimana former RPF Foreign Minister. (T. 16/1/06, p. 50-58). See CHRONOLOGICAL LISTING OF PROSECUTION AND OF DOCUMENTARY EXHIBITS/TESTIMONY DESCRIBING THE EXPLANATION OF EVENTS DURING THE 1990-94 RWANDA WAR September-October 1994 Sections, *et seq.*

<sup>25</sup> See ICTR, Military-1 Judgment of February 8, 2009, acquitting top military officers who opposed Kagame's RPF of conspiracy on planning to commit genocide.

invasion, as predicted by U.S. Ambassador Flaten and many others, triggered massive civilian on civilian violence.<sup>26</sup>

37. The *predicted* tragedy reached *unpredictable* proportions because the RPA military objectives required that the country descend into chaos, as part of its war plan, and that massacres of the population were considered merely *collateral damage* by Gen. Kagame.<sup>27</sup> Both he and the RPA bear responsibility for their scope and extent, and the conspiracy to avoid responsibility for their own crimes that continue today. / 5

#### GENERAL ALLEGATIONS

38. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered and will continue to suffer harm including pain and suffering, and extreme and severe mental anguish and emotional distress. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.
39. Plaintiffs' causes of action arise under the following laws, agreements, conventions, resolutions and treaties:
- a. Alien Tort Claims Act, 28 U.S.C. § 1350;
  - b. Torture, 18 U.S.C. § 2340A
  - c. Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968;
  - d. Customary international law;
  - e. United Nations Charter, 59 Stat. 1031, #3 Bevans 1153 (1945);

<sup>26</sup> The CIA had predicted in January 1994 that in case of resumption of hostilities as many as half a million persons might die. This information is found in the book of Des Forges "Leave none to tell the story" on page 18.

<sup>27</sup> Cross examination testimony of Gen. Dallaire related to Code Cable of April 23, 1994, reporting his conversation with Kagame in Mulindi and report of the same in his book, from which the "collateral damage" language is drawn.

- f. Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
  - g. International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
  - h. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 1100, U.N. Doc. A/39/51 (1984);
  - i. Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
  - j. Common law of the United States of America;
  - k. Statutes and common law of the State of Oklahoma, including but not limited to wrongful death, assault and battery, intentional infliction of emotional distress, and the
  - l. Laws of Rwanda.
40. There is no independent functioning judiciary in Rwanda and any suit against Defendants there would have been and would still be futile and would result in serious reprisals.

COUNT 1

(Wrongful Death - Murder)

41. On their own behalf and on behalf of their deceased relatives, Juvénal Habyarimana and Cyprien Ntaryamira, Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 40 as is fully set forth herein.
42. As a direct result of the Defendants' acts and omissions and as a result of the death of their respective husband, Plaintiffs have sustained pecuniary loss resulting from the loss of society, comfort, attention, services, and support of each decedent.
43. Paul Kagame, *et al* are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the wrongful deaths of Juvénal Habyarimana, Cyprien Ntaryamira, Déogratias Nsabimana, Elie Sagatwa, Thaddée Bagaragaza, Juvénal Renzaho, Emmanuel Akingeneye, Bernard Ciza, Cyriaque Simbizi, Jacky Heraud, Jean-Pierre Minaberry, and Jean-Marc Perrine.
44. The acts described herein constitute wrongful death, actionable under the laws of Oklahoma, the United States, and Rwanda.

COUNT 2

(Crimes Against Humanity)

45. The allegations set forth in paragraphs 1 through 44 of this Complaint are realleged and incorporated by reference as if fully set forth herein.
46. The acts described herein against Plaintiffs constitute crimes against humanity, in violation of customary international law which prohibits inhumane acts of a very serious nature such as willful killing, torture and other inhumane acts committed as part of a widespread or systematic attack against any civilian population. Leaders, organizers, instigators and accomplices participating in the formulation of these acts are responsible for all acts performed by any person in execution of such plan.
47. The acts described herein constitute crimes against humanity in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of Oklahoma, the laws of Rwanda, and the international treaties, agreements, conventions and resolutions described in paragraph 39 herein.
48. Defendants Paul Kagame, *et al* are liable to Plaintiffs for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the crimes against humanity committed against Plaintiffs.



COUNT 3

(Violation of the Rights of Life,  
Liberty and Security of Person)

49. The allegations set forth in paragraphs 1 through 48 of this Complaint are realleged and incorporated by reference as if fully set forth herein.
50. The shooting down of President Habyarimana's plane constitutes violations of the right to life, liberty and security of person of all those on the plane.
51. The shooting down and killing of occupants of the plane constitutes violations of the rights to life, liberty and security of person, for which Defendants Kagame, *et al* are liable.
52. The acts described herein constitute violations of Plaintiffs' rights to life, liberty and security of person in violation of the Alien Tort Claims Act, customary international law, the common law of the United States, the statutes and common law of Oklahoma, the laws of Rwanda, and the international treaties, agreements, conventions and resolutions described in paragraph 39 herein.
53. Defendants Paul Kagame, *et al* are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the illegal violations of the rights to life, liberty and security of person.

COUNT 4

(Assault and Battery)

54. The allegations set forth in paragraphs 1 through 53 of this Complaint are realleged and incorporated by reference as if fully set forth herein
55. As a result of these acts, Plaintiffs were placed in great fear for their lives and suffered severe physical and psychological abuse and agony.
56. Defendants' acts were willful, intentional, wanton, malicious and oppressive.
57. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the assault and battery of the occupants of the plane and tens of thousands of Rwandans.
58. The acts described herein constitute assault and battery, actionable under the laws of Oklahoma, the United States and Rwanda.

COUNT 5

(Intentional Infliction of Emotional Distress)

59. The allegations set forth in paragraphs 1 through 58 of this Complaint are realleged and incorporated by reference as if fully set forth herein.
60. The acts described herein constitute outrageous conduct in violation of all normal standards of decency and were without privilege or justification.
61. These outrageous acts were intentional and malicious and done for the purposes of causing Plaintiffs to suffer humiliation, mental anguish and extreme emotional and physical distress.

62. As a result of Defendants' acts, Plaintiffs were placed in great fear for their lives and were forced to suffer severe physical and psychological abuse and agony.
63. Defendants are liable for said conduct in that Defendants directed, ordered, confirmed, ratified, and/or conspired with the military regime in bringing about the intentional infliction of emotional distress of the occupants of the plane, the relatives of the occupants and tens of thousands of Rwandans.
64. Defendants' outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of Oklahoma, the United States and Rwanda.

COUNT 6

(Violations of the Racketeer Influenced and  
Corrupt Organization Act)

65. The allegations set forth in paragraphs 1 through 64 of this Complaint are realleged and incorporated by reference as if fully set forth herein.
66. From not later than 1990 to the present, Defendants Kagame, *et al*, and their agents and co-conspirators formed a RICO "enterprise" within the meaning of 18 U.S.C. § 1961(4) engaged in foreign and interstate commerce.
67. Alternatively, Defendants and their agents and co-conspirators constituted an association in fact for a common purpose with a continuous existence separate and apart from the pattern of racketeering activity in which they engaged. This association in fact constituted an enterprise within the meaning of 18 U.S.C. § 1961(4).
68. Each Defendant is an "individual or entity capable of holding a legal or beneficial interest in property" and, as such, each constitutes a "person" within the meaning of 18 U.S.C. § 1961 (3).

69. The Defendants are engaged in interstate acts of commerce and the acts alleged herein have a potential effect on commerce.
70. Over a period of years and continuing to the present, Defendants with their co-conspirators or agents, in violation of 18 U.S.C § 1962(b) through a pattern of racketeering activity, have acquired and maintained an interest in resources in the eastern Congo to their own benefit.<sup>24</sup>
71. At all times relevant to this Complaint, the Defendants, and their agents and co-conspirators conducted, or participated directly or indirectly in the conduct of the affairs of the enterprise through a pattern of racketeering activity, within the meaning of 18 U.S.C. § 1961 (1)(5), in violation of 18 U.S.C. § 1962 (c).
72. At all times relevant to this Complaint, the Defendants Kagame, *et al*, in violation of 18 U.S.C. § 1962(d) combined and conspired together and with their agents and co-conspirators to commit conduct the affairs of the enterprise through a pattern of racketeering activity.
73. In furtherance of the conspiracy, and to effect the objects thereof, the Defendants committed overt acts as set forth more fully in paragraphs 1 through 65 and in the attached indictments and ICTR Complaint.
74. During 1990 through 2010, in violation of 18 U.S.C §§ 1962(c) and (d), Defendants, with their agents and co-conspirators, conspired to and did conduct the affairs of the enterprise through a pattern of racketeering activity.
75. The pattern of racketeering activity alleged in paragraphs 1 through 64 above included the following specific acts, all of which constituted and are defined as racketeering

<sup>24</sup> See Expert Reports of 2001, 2002, 2003, 2008 commissioned by U.N. Security Council detailing ongoing theft of billions of dollars of natural resources from the eastern Congo by Defendants.

activity by 18 U.S.C. § 1961(1) and all of which are set forth in the specific numbered paragraphs herein which are realleged and incorporated here by reference as if fully set forth, as follows:

- a. arson;
- b. murder;
- c. torture;
- d. extortion;

76. Defendants' acts alleged herein have substantial effect within the United States.

77. As a direct and proximate result of the Defendants' violations of 18 U.S.C. §§ 1962 (b), (c) and (d) Plaintiffs have suffered injury to business, property, reputation and livelihood.

78. The injuries suffered by each Plaintiff were reasonably foreseeable or anticipated by the Defendants as the natural consequence of Defendants' acts.

COUNT 7

(Torture)

79. Under 18 U.S. C. 2340A (a), Whoever outside the United States commits or attempts to commit torture is subject to criminal penalty of not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. Such provision makes out a comparable claim for damages, arising from the tort associated with the aforesaid criminal act.
80. In the moments immediately prior to their deaths, the decedents experienced psychological and physical discomfort amounting to torture, arising from their impending deaths and intentional and murderous acts of defendants Kagame *et al.*
81. The federal courts of the United States have explicit criminal jurisdiction over the activity prohibited in subsection (a) if-- the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.
82. Defendant Kagame has been present in the United States on numerous occasions and was present on April 30, 2010 within the forum State of Oklahoma.
83. The injuries suffered by each Plaintiff were reasonably foreseeable or anticipated by the Defendants as the natural consequence of Defendants' acts.

**COUNT 8**

(Conspiracy to Torture)

84. Under 18 U.S.C. 2340 (c) --A person who conspires to commit torture, or attempts to commit torture, shall be subject to the same criminal penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy, thus establishing a similar cause of action in tort.
85. Up to and including the moment the plane crashed, thus extinguishing the lives of decedents, defendants Kagame, *et al*, were engaged in the conspiracy to murder, and torture, the occupants of the plane for which they had meticulously prepared.
86. The injuries suffered by each Plaintiff were reasonably foreseeable or anticipated by the Defendants as the natural consequence of Defendants' acts.
87. Since the deaths occurred, defendants have been engaged in a conspiracy to "cover-up" and deny their culpability, along with un-named countries and co-conspirators.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

88. That this Court assume jurisdiction of this cause to determine this controversy and set this case for hearing on the merits;
89. The award of compensatory damages to Plaintiffs in the amount of \$250,000,000.00.
90. The award of punitive damages against the Defendants, jointly and severally, in the amount of \$100,000,000.00.
91. That this Court allow the Plaintiff costs, expenses and attorneys' fees, and also grant such alternative relief as may seem to the Court, just, proper, and equitable.

**JURY TRIAL DEMAND**

Plaintiffs demand a jury trial, pursuant to the Seventh Amendment to the Constitution of the United States, as to all claims for damages.

**PLACE OF TRIAL**

Plaintiffs designate Oklahoma City, Oklahoma as the place of trial.

Dated:

Respectfully submitted,

*s/ John P. Zelbst*

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<sup>29</sup> Mr. Zelbst is a member of the Bar of this Court. Mr. Erlinder is a member of the Bar of the State of Illinois and Indiana. Mr. Kerns is a member of the Bar of the State of Kansas. Mr. Erlinder and Mr. Kerns are not admitted in this Court at this time.