

ICTR-05-82-I
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(1245-1236)

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UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2005-82-I

THE PROSECUTOR
AGAINST
DOMINIQUE NTAWUKULILYAYO

INDICTMENT

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[Signature]

- 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:

Dominique NTAWUKULILYAYO

With:

- Count I - GENOCIDE, pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute, or in the alternative,
 Count II - COMPLICITY IN GENOCIDE, pursuant to Articles 2(3)(e), 6(1) and 6(3) of the Statute;
 Count III - DIRECT AND PUBLIC INCITEMENT, pursuant to Articles 2(3)(c), 6(1) of the Statute;

II. THE ACCUSED

1. **Dominique NTAWUKULILYAYO** was born in 1942 in Mubuga *Commune*, Gikongoro *Préfecture*, Republic of Rwanda.
2. **Dominique NTAWUKULILYAYO** was at all times referred to in this indictment:

(A) A senior public official who,

- (i) was *Sous-Préfet* of Gisagara Sous Prefecture in Butare Prefecture;
- (ii) consequently had *de jure* and *de facto* control over *bourgmestres*, *conseillers de secteur*, *responsables de cellule*, *nyumbakumi* (ten-house leaders), administrative personnel, *gendarmes*, communal police, *Interahamwe*, militias, and armed civilians in the sous-prefecture in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.

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 Tutsis, 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.

4. Between 6 April 1994 and 17 July 1994, throughout Rwanda, and in Kigali in particular, *Interahamwe* militias, soldiers of the 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.

Count I: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Dominique NTAWUKULILYAYO** with **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute, in that between the dates of 6 April 1994 and 17 July 1994 throughout Rwanda, particularly in Butare *Préfecture*, **Dominique NTAWUKULILYAYO** 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 5 through 15.

Alternatively,

Count II: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Dominique NTAWUKULILYAYO** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that between the dates of 6 April 1994 and 17 July 1994 throughout Rwanda, particularly in Butare *Préfecture*, **Dominique NTAWUKULILYAYO** 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 5 through 15.

CONCISE STATEMENT OF FACTS FOR COUNTS I AND II

Individual Criminal Responsibility

5. Pursuant to Section 6(1) of the Statute, the accused, **Dominique NTAWUKULILYAYO**, is individually responsible for the crimes of genocide or complicity in genocide because he 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, **Dominique NTAWUKULILYAYO** ordered those over whom he had effective control as a result of his position and authority described in paragraph 2, and he instigated and aided and abetted those over whom he did not have effective control. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 6 through 22.

The massacre at Kabuye hill

6. Between 20 and 21 April 1994, several thousand Tutsi refugees had gathered at Gisagara market in Gisagara Town in Ndora Commune, Butare Prefecture. Many of these refugees attempted to leave to travel towards the Burundi border but were prevented from doing so by soldiers and communal policemen on the orders of **Dominique NTAWUKULILYAYO** and **Elie Ndayambaje**. These refugees returned to Gisagara, and were subsequently sent to Kabuye hill where they were killed. By preventing the Tutsi refugees from leaving to Burundi, **Dominique NTAWUKULILYAYO** aided and abetted in the subsequent killing of the Tutsi.
7. On or about 23 April 1994, in the afternoon, **Dominique NTAWUKULILYAYO** ordered Tutsi who were gathered at Gisagara market place that they were to move to Kabuye hill where they would be protected and fed. Those that were unwilling to go were chased to Kabuye hill. Upon arrival in the late afternoon or early evening, **Dominique NTAWUKULILYAYO** arrived with Callixte Kalimanzira at Kabuye hill in vehicles full of gendarmes. **Dominique NTAWUKULILYAYO** told the refugees that they would be protected by armed soldiers. By ordering the Tutsi to go to Kabuye hill, **Dominique NTAWUKULILYAYO** aided and abetted in the killing of those Tutsi.
8. Within a short time of their arrival at Kabuye hill, on or about 23 April 1994, gendarmes and communal policemen had surrounded the hill and started shooting at the refugees. Many Tutsi were killed. By bringing the gendarmes to Kabuye hill, who, along with others took part in the killing of those Tutsi, **Dominique NTAWUKULILYAYO** committed and aided and abetted in the killing of those Tutsi.
9. Between about 21 and 25 April 1994, **Dominique NTAWUKULILYAYO** ordered civilians to search the houses of Tutsis so that they could be assembled at Kabuye hill. He told the civilians to wait for the arrival of soldiers who he would bring before the killings commenced. Tutsis were sent to Kabuye hill where they were killed. By ordering civilians to search houses for Tutsis to be sent to Kabuye hill where they were killed, **Dominique NTAWUKULILYAYO** instigated and aided and abetted in the killing of the Tutsi.
10. Between about 21 and 25 April 1994, **Dominique NTAWUKULILYAYO** collected soldiers and gendarmes from Butare and transported them to Kabuye hill to kill the Tutsi who were there. During that same period he also collected ammunition from Butare which was used by attackers to kill the Tutsi at Kabuye hill. The killings at Kabuye hill during that period were carried out by soldiers, gendarmes, communal police and civilians. By transporting ammunition to Kabuye hill that was used by attackers to kill Tutsi, **Dominique**

NTAWUKULILYAYO committed and aided and abetted in the killing of the Tutsi.

11. On or about Sunday 24th April 1994, in the afternoon **Dominique NTAWUKULILYAYO** arrived at Kabuye hill with Callixte Kalimanzira and several soldiers. This group took part in the attack on the Tutsis gathered at Kabuye hill. By transporting soldiers and Callixte Kalimanzira, to Kabuye hill, **Dominique NTAWUKULILYAYO** committed and aided and abetted in the killing of the Tutsi.
12. By reason of the large numbers of refugees present at Kabuye hill, it took several days from on or about 21 April to 25 April 1994 to kill those Tutsi who had taken refuge there. On or about 25 April 1994, **Dominique NTAWUKULILYAYO**, Callixte Kalimanzira, Bernadette Mukarurangwa met with Fidele Uwizeye at Uwizeye's house in Gisagara town where they discussed the fact that the attackers had failed to kill all the refugees at Kabuye hill due to their large numbers. They decided to go to Kabuye hill to check on the progress of the killings.
13. As a result of his actions, **Dominique NTAWUKULILYAYO** was responsible for the death of as many as 25000 Tutsi refugees who were killed at Kabuye hill during the period of 21 to 25 April 1994.

Other acts

14. On or about 20th April 1994, the Accused **Dominique NTAWUKULILYAYO** participated in a meeting with the new Prefet of Butare, Sylvain Nsabimana, and the bourgmestres of Butare, at the multipurpose hall in Butare. The Accused **Dominique NTAWUKULILYAYO** was informed at that meeting of killings that had started taking place in the Muganza commune which formed part of the Gisagara sous prefecture by the bourgmestre of Muganza, Chrysologue Bimenyimana. The Bourgmestre asked **Dominique NTAWUKULILYAYO** for permission to return to Muganza to assist stop the killings and to assist two Tutsi named Fidele Kalisa and Jacqueline Utamuliza. **Dominique NTAWUKULILYAYO** refused to allow the bourgmestre of Muganza to leave the meeting to try and stop the killings. By refusing to allow the bourgmestre to return to try and stop the killing of Fidele Kalisa and Jacqueline Utamuliza, **Dominique NTAWUKULILYAYO** aided and abetted in the killing of Tutsi in Muganza commune.

Roadblocks

15. Within a few days of the death of President Habyarimana on 6 April 1994, several roadblocks were established in the Gisagara sous prefecture including including the “Jaguar” roadblock which was near to the Catholic Church in Gisagara, one established near to **Dominique NTAWUKULILYAYO**’s residence, and one near the trading centre on the road towards Musha. The roadblocks were run by subordinates of the accused referred to in paragraph 5 of the indictment, including Lucien Simbayobwebe. During the period 6 April 1994 and 17 July 1994, the roadblocks were used to prevent Tutsi from escaping from the area, and so that people could be identified as Tutsi and be killed. Many Tutsi were killed at the roadblocks including Jean Munyagihugu.

16. **Dominique NTAWUKULILYAYO** was aware and acquiesced to the establishment of roadblocks in various areas within Gisagara secteur and in some instances, whilst passing through the said roadblocks, congratulated and encouraged the killers to continue with their work.

In his capacity as sous-prefet of Gisagara sous-préfecture, **Dominique NTAWUKULILYAYO**’s mere knowledge of the establishment of and possible presence at any of these roadblocks in around the 5 communes that comprise the said sous prefecture would have had an encouraging effect on the attackers mentioned herein, and conveyed the impression, that the attacks and/or killing of Tutsi civilians at those locations was endorsed by the him, thereby committing and/or aiding and abetting in the killing of the Tutsi at the roadblocks in Gisagara sous-prefecture.

Criminal Responsibility as a Superior

17. Pursuant to Section 6(3) of the Statute, the accused, **Dominique NTAWUKULILYAYO**, 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 the *Interahamwe*; the “Civil Defense Forces”; communal police including Vincent Twiringiyimana; civilian militias; local administrative officials; other soldiers and militiamen including Lucien Simbayobwebe; other known participants, such as Chrysologue Bimenyimana, Elie Ndayambaje, Celestin Rwankubito and Fidele Uwizeye; and other unknown participants.

The massacre at Kabuye hill

18. Between 20 and 21 April 1994, several thousand Tutsi refugees had gathered at Gisagara market in Gisagara Town in Ndora Commune, Butare Prefecture. Many of these refugees attempted to leave to travel towards the Burundi border but were prevented from doing so by subordinates of **Dominique NTAWUKULILYAYO** on the orders of **Dominique NTAWUKULILYAYO** and Elie Ndayambaje. These subordinates are principally, the bourgemestres of the five communes under his immediate supervision. There were: the bourgemestres of Ndora, Muyaga, Kibayi, Muganza and Nyaruhengeri communes. These refugees returned to Gisagara, and were subsequently sent to Kabuye hill where they were killed.
19. On or about 23 April 1994, in the afternoon, **Dominique NTAWUKULILYAYO** ordered Tutsi who were gathered at Gisagara market place that they were to move to Kabuye hill where they would be protected and fed. Those that were unwilling to go were chased to Kabuye hill. Upon arrival in the late afternoon or early evening, **Dominique NTAWUKULILYAYO** arrived with Callixte Kalimanzira at Kabuye hill in vehicles full of gendarmes, **Dominique NTAWUKULILYAYO** told the refugees that they would be protected by armed soldiers. Within a short time of their arrival at Kabuye hill, gendarmes and communal policemen, who were subordinates of the Accused, surrounded the hill and started shooting at the refugees. **Dominique NTAWUKULILYAYO** knew or had reason to know of the killing and failed or refused to take the necessary or reasonable steps to prevent the killing or to punish the perpetrators thereof.
20. Between about 21 and 25 April 1994, **Dominique NTAWUKULILYAYO** collected soldiers and gendarmes, who were his subordinates, from Butare and transported them to Kabuye hill to carry out the killings. During that same period the Accused also collected ammunition from Butare which was used to kill the refugees at Kabuye hill. The killings at Kabuye hill during that period were carried out by soldiers, gendarmes, communal police and armed civilians who were subordinate to the Accused. **Dominique NTAWUKULILYAYO** knew or had reason to know of the killings and failed or refused to take the necessary or reasonable measures to prevent the killings or to punish the perpetrators thereof.
21. On or about Sunday 24th April 1994, in the afternoon, **Dominique NTAWUKULILYAYO** arrived at Kabuye hill with Callixte Kalimanzira and several soldiers who were his subordinates. This group took part in the attack on the Tutsis gathered at Kabuye hill. **Dominique NTAWUKULILYAYO** knew or had reason to know of the killings and failed or refused to take the necessary or reasonable measures to prevent the killings or to punish the perpetrators thereof.
22. As a result of the actions of **Dominique NTAWUKULILYAYO** and those of his subordinates, as many as 25,000 Tutsi refugees were killed at Kabuye hill during the period of 21 to 25 April 1994.

Roadblocks

23. Within a few days of the death of President Habyarimana on 6 April 1994, several roadblocks were established in the Gisagara sous-prefecture, including the "Jaguar" roadblock which was near to the Catholic church in Gisagara, one established near to **Dominique NTAWUKULILYAYO's** residence, and one near the trading centre on the road towards Musha. The roadblocks were established and run by armed civilians and other subordinates of the Accused including Lucien Simbayobwebe. During the period 6 April 1994 and 17 July 1994, the roadblocks were used to prevent Tutsi from escaping from the area, and so that could be identified as Tutsi and be killed. Many Tutsi were killed by the subordinates of the accused at the roadblocks, including Jean Munyagihugu, who was killed at the roadblock near to the house of **Dominique NTAWUKULILYAYO**. **Dominique NTAWUKULILYAYO** knew or had reason to know of the killings and failed or refused to take the necessary or reasonable measures to prevent the killings or to punish the perpetrators thereof.

Count III: DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Dominique NTAWUKULILYAYO** with **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute, in that between the dates of 6 April 1994 and 17 July 1994 throughout Rwanda, particularly in Butare *Préfecture*, **Dominique NTAWUKULILYAYO** was responsible for directly and publicly inciting people to kill or cause 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.

CONCISE STATEMENT OF FACTS FOR COUNT III

Individual Criminal Responsibility

24. Pursuant to Section 6(1) of the Statute, the accused, **Dominique NTAWUKULILYAYO**, is individually responsible for the crimes of direct and public incitement to commit genocide because he committed or otherwise aided and abetted in the planning, preparation or execution of this crime. With respect to the commission of this crime, **Dominique NTAWUKULILYAYO** ordered those over whom he had effective control as a result of his position and authority described in paragraph 2, and he instigated and aided and abetted those over whom he did not have effective control. The particulars that give rise to his individual criminal responsibility are set forth in paragraphs 24 through 31.
25. Between 6 April 1994 and 31 July 1994, the Accused **Dominique NTAWUKULILYAYO** organized, attended and/or participated in various meetings throughout Butare Prefecture and in particular the Gisagara Sous

Prefecture where various speakers at these meetings called on members of the public and officials to take part in killing Tutsis. The particulars of these meetings that give rise to his individual criminal responsibility are set forth in paragraphs 25 through 31.

26. On or about 19th April 1994, the Accused **Dominique NTAWUKULILYAYO** participated in a meeting for the swearing in of the new Prefet for Butare Sylvain NSABIMANA at the MRND Palace in Butare. During that meeting, the Interim President Theodore SINDIKUBWABO, addressed the officials present and the object of that speech was to instigate the genocide throughout the Butare Prefecture. The Accused agreed with the speech of President SINDIKUBWABO. By doing so, **Dominique NTAWUKULILYAYO** committed and aided and abetted in the direct and public incitement of the killing of Tutsi.
27. On or about 25 May 1994, **Dominique NTAWUKULILYAYO** attended a meeting at Kirarambogo, Nyirkanywero Cellule, Nyabitare secteur together with Alphonse Nteziryayo, Colonel Tharcisse Muvunyi, Judge Ruzindaza and others. At this meeting, clear instructions were given by Nteziryayo and Ruzindaza to flush out and kill all remaining Tutsi who were in hiding. The attendance of **Dominique NTAWUKULILYAYO** at this meeting, and his subsequent silence at the meeting, was intended as being seen by the population of his agreement with the content of those speeches and in so doing **Dominique NTAWUKULILYAYO** committed and aided and abetted in the direct and public incitement of the killing of the Tutsi.
28. On or about 24 April 1994, the Accused **Dominique NTAWUKULILYAYO** addressed the local population in Gikoro, Mudabori, Nyaruhengeri Secteur and promised to reward those persons who would kill the greatest numbers of Tutsis with houses, land and money. By doing so, **Dominique NTAWUKULILYAYO** committed direct and public incitement to kill Tutsi.
29. Towards the end of May 1994, in Muyaga Commune, the Accused **Dominique NTAWUKULILYAYO** addressed the local population in front of the deputy bourgmestre's house and urged them to search for and kill all the Tutsi's before the Rwandan Patriotic Front reached Muyaga. By doing so, **Dominique NTAWUKULILYAYO** committed direct and public incitement to kill Tutsis.
30. Between 1 May and 17 July 1994 at a meeting at the Gisagara centre, which was attended by **Dominique NTAWUKULILYAYO**, Callixte Kalimanzira, Celestin Rwankubito, Fidele Uwizeye as well as other ordinary members of the population, people were ordered to kill any young Tutsi women who were still alive. The attendance of **Dominique NTAWUKULILYAYO** at this meeting, and his subsequent silence at the meeting, was intended as being seen by the population of his agreement with the content of those speeches. In so doing

Dominique NTAWUKULILYAYO committed and aided and abetted in direct and public incitement to kill Tutsi.

31. On or about 21 June 1994, **Dominique NTAWUKULILYAYO** attended a meeting for the swearing in of the new bourgmestre of Ndora Commune, Fidele Uwiyeze at the Gisagara market place. This meeting was attended by officials such as Alphonse Nteziryayo, Callixte Kalimanzira, Bernadette Mukarurangwa and others. During the swearing in ceremony, several of these officials made speeches to instigate the local population to search for and kill any remaining Tutsi in the commune. The attendance of **Dominique NTAWUKULILYAYO** at this meeting, and his silence thereafter was intended as being seen by the population of his agreement with the content of those speeches. In doing so, **Dominique NTAWUKULILYAYO** committed and aided and abetted in the direct and public incitement to kill Tutsi.

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

Signed at ARUSHA, Tanzania, this 18th day of May 2009.



Hassan Bubacar Jallow
Prosecutor UN-ICTR





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)

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Dates:	Transmitted: 19 May 2009		Document's date: 18 May 2009	
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