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ICTR-95-1F-I
08-05-2012
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
(384-270)

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania

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INTEROFFICE MEMORANDUM — MEMORANDUM INTERIEUR

To: Mr. Constant Hometowu
A: Court Management Section

Date: 8 May 2012
Ref.: OTP/COP/RK/22/bt

From: Richard Karegyesa
De: Chief of Prosecutions

CONFIDENTIAL

cc: **Anees Ahmed**
Senior Legal Officer
Chambers

Subject: Re: *Ex parte* Filing of Second Amended Indictment in the *Prosecutor v Ndimbati*
Objet: *Case No. ICTR-95-1F-I*

In compliance with the Decision confirming the above indictment issued today 8 May 2012 we are filing under cover hereof the Second Amended Indictment in the above case.

Thanks and regards.

EX - PARTE

JUDICIAL RECORDS ARCHIVES
ICTR

2012 MAY -8 P 5:59

Declassified in accordance with order of
Chambers dated 04 June 2013.

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UNITED NATIONS

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

THE PROSECUTOR

v.

ALOYS NDIMBATI

CASE No. ICTR -95-1F-I

EX - PARTE

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SECOND AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda (“Tribunal”), pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (“Statute”), charges

ALOYS NDIMBATI

Pursuant to Article 2 of the Statute, with:

- Count 1 - GENOCIDE
- Count 2 - COMPLICITY IN GENOCIDE
- Count 3 - DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

Pursuant to Article 3 of the Statute, with:

- Count 4 - EXTERMINATION as a CRIME AGAINST HUMANITY
- Count 5 - MURDER as a CRIME AGAINST HUMANITY
- Count 6 - RAPE as a CRIME AGAINST HUMANITY
- Count 7 - PERSECUTION as a CRIME AGAINST HUMANITY

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I. CHARGES

1. On the basis of the allegations set out in this amended indictment, Aloys NDIMBATI is charged with:

- Count 1: Genocide pursuant to articles 2(3)(a), 6(1) and 6(3) of the Statute (paragraphs 21, 22, 24, 26-36, 38-49, 51-54);
- Count 2: Complicity in Genocide pursuant to Articles 2(3)(e) and 6(1) of the Statute (paragraphs 21, 22, 24, 26, 27, 29-36, 38, 50);
- Count 3: Direct and public incitement to commit genocide pursuant to Articles 2(3)(c), 6(1) of the Statute (paragraphs 21, 25, 38, 39);
- Count 4: Extermination as a crime against humanity pursuant to Articles 3(b), 6(1) and 6(3) of the Statute (paragraphs 21, 22, 24, 26-36, 38-49, 51-54);
- Count 5: Murder as a crime against humanity pursuant to Articles 3(a), 6(1) and 6(3) of the Statute (paragraphs 21, 22, 24, 26-36, 38-49, 51-54);
- Count 6: Rape as a crime against humanity pursuant to Articles 3(g), 6(1) and 6(3) of the Statute (paragraphs 21, 22, 31, 38-45, 47-49, 51-54);
- Count 7: Persecution as a crime against humanity pursuant to Articles 3(h), 6(1) and 6(3) of the Statute (paragraphs 21, 22, 24-36, 38-49, 51-54).

2. Paragraphs 1-20 apply to all charges in this amended indictment.

II. DEFINITIONS

3. In this indictment, unless otherwise specified, the term “committed,” refers to personal commission by a physical or principal perpetrator, commission based on the fact that a person played an integral part in the commission of the crime, and the first category of joint criminal enterprise (hereinafter: “JCE I”).
4. The term “contribution,” when used without qualification, refers to a mere, a significant, or a substantial contribution.
5. The terms “aware” or “awareness,” when used without qualification, include awareness of a certainty, awareness of a substantial likelihood, likelihood or probability, and awareness of a possibility.

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6. The terms “harming” or “harm,” when used without qualification, refer to the infliction of serious bodily and/or mental harm and other bodily and/or mental harm.
7. “Limited JCE” means a JCE in which JCE members are alleged to have used persons who did not belong to the JCE, as pleaded in paragraph 45(i).

III. GENERAL ALLEGATIONS

8. When carrying out the criminal conduct alleged in this indictment NDIMBATI had the intent to destroy in whole or in part the Tutsi group as such and acted in order to discriminate against Tutsis and Hutus perceived to have assisted Tutsis, on racial and political grounds.
9. When carrying out the acts of direct and public incitement to commit genocide alleged in this indictment NDIMBATI had the intent to directly and publicly incite others to commit genocide.
10. The participants in the criminal conduct charged in this indictment possessed the intent to destroy in whole or in part the Tutsi group as such and acted in order to discriminate against Tutsis and Hutus perceived to have assisted Tutsis, on racial and political grounds. NDIMBATI was aware of this.
11. At the time of the crimes pleaded in this indictment NDIMBATI was the *bourgmestre* of Gisovu *commune*. NDIMBATI’s subordinates included: the communal police, the *Interahamwe* militia in his *commune* – including some *Interahamwe* known as “Twa” (because of their ethnicity), the Hutu employees of the *commune* offices and the Hutu civilians who were used by him to carry out and participate in the crimes charged.
12. NDIMBATI intended and was aware that his subordinates and others identified in the indictment participated in the crimes charged because: he participated in them; he controlled and instructed his subordinates; they reported to him; and their crimes were public knowledge. He knew and had reason to know that his subordinates participated in the crimes.
13. As the *bourgmestre* of Gisovu *commune* NDIMBATI had absolute authority, control and effective control over the persons referred to in paragraph 11. He could *inter alia*: (i) order these persons to act and prevent them from acting including participating in crimes; (ii) monitor the daily activities of his subordinates to make them comply with the law; (iii) protect the civilians in his *commune* and their property; and (iv) investigate and report any of his subordinates to the criminal law authorities as well as take, authorize, trigger and recommend disciplinary action of members of the communal police and his civilian employees.
14. Because of his powers, position, and influence as pleaded in paragraphs 11-13 above, NDIMBATI’s presence at the crime scenes and his approval of and acquiescence to the crimes encouraged and morally supported the perpetrators of the crimes charged in this indictment. They were also prompted, encouraged, and morally supported by

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NDIMBATI's calls for the elimination of Tutsis, which contributed to the subsequent crimes in Gisovu *commune*, including all crimes charged in this indictment, as pleaded in paragraph 21 below. NDIMBATI was aware that his conduct would have this effect.

IV. THE ACCUSED

15. NDIMBATI was born in early 1950s in Gitabura *Secteur*, Gisovu *commune*, Kibuye *préfecture* in Rwanda.
16. NDIMBATI was appointed as the *bourgmestre* of Gisovu *commune* in 1990. He remained in this position until the end of July 1994 when he fled the country.

V. CONTEXT OF THE CRIMES

17. Between 6 April and 17 July 1994, citizens of Rwanda were identified according to ethnic classifications as: Hutu, Tutsi and Twa. These were protected groups falling within the scope of the Genocide Convention of 1948.
18. The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: there were throughout Rwanda widespread and/or systematic attacks against a civilian population based on Tutsi ethnic identification and political grounds. During the attacks, some Rwandan citizens killed or caused harm to persons perceived to be Tutsi, and Hutus assisting Tutsis. As a result of the attacks, there was a large number of deaths.
19. Between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.
20. The crimes alleged in this indictment formed part of the widespread or systematic attacks directed against a civilian population. NDIMBATI was aware of the attacks and the fact that the crimes formed part of them because the attacks were public knowledge and NDIMBATI was involved in the planning and execution of crimes that formed part of these attacks. Moreover, the crimes in which NDIMBATI was directly involved and of which he therefore knew are, on their own, sufficient to constitute a widespread or systematic attack.

VI. NARRATIVE

GISOVU COMMUNE

21. On or about 10 or 11 April 1994 at around 10.00 a.m., NDIMBATI, the *bourgmestre* of Gisovu *commune*, using a megaphone, publicly called for the elimination of Tutsis. He did so from the Gisovu communal vehicle which he drove around the Gisovu *commune* while escorted by five of his communal policemen. He was followed by a crowd of people mainly *Interahamwe*, to whom, among others, his address was directed. NDIMBATI and his policemen were armed with guns, while the civilians

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accompanying them carried machetes, bludgeons, spears and other weapons. NDIMBATI's address prompted, encouraged, provided moral support to, and thus contributed to the subsequent crimes in Gisovu *commune*, including all crimes pleaded in this indictment.

GISOVU TEA FACTORY

22. On or about 14 April 1994 at the guest house of the Gisovu tea factory, NDIMBATI together with Alfred MUSEMA instructed and prompted *Interahamwe* commonly known as "Twa" who were among the Gisovu tea factory workers, to rape and kill a Tutsi woman by the name Annociata Mujawayezu and her son. As Annociata's son cried, they instructed the same *Interahamwe* to cut off Annociata's breast and give it to her son in order to make him stop crying. As instructed by NDIMBATI and Alfred MUSEMA, the *Interahamwe* cut off Annociata's breast and gave it to her son. Following the instructions, the *Interahamwe* raped Annociata and then killed her and her son. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and Alfred MUSEMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

BISESERO HILLS

23. After the death of the president, NDIMBATI acting together with others including Alfred MUSEMA, communal policemen, *Interahamwe* and other armed civilians started killing Tutsis in Gisovu *commune*. Tutsis who lived in the neighborhood of Bisesero (a hilly area covering part of the *communes* of Gisovu, Gishyita, and Gitesi) fled their homes and sought refuge at the Bisesero hills hoping to defend themselves from the attacks. Tutsis from Gisovu *commune* were among the refugees who sought refuge at different hills in Bisesero. As set out in paragraphs 24 to 36 herein, NDIMBATI reacted by relentlessly attacking these refugees over a period of several months, killing thousands.

BISESERO HILL

24. Between about 12 and 17 April 1994, NDIMBATI led an attack against Tutsis who had sought refuge at Bisesero hill. The group of attackers led by NDIMBATI included SEGATARAMA, the *Conseiller* of Gitabura *Secteur*, the *Conseiller* of Tumba *Secteur*, *Interahamwe* militia from Gisovu *commune*, about five members of Gisovu communal police, two civilian prison wardens and many other civilians including traders from Gisovu *commune*. These people acted in accordance with NDIMBATI's instructions, his prompting, and his plan. The group arrived at Bisesero hill on board of two Toyota Hilux pick-ups. All assailants, including NDIMBATI, were armed with guns, machetes, spears, bludgeons, sharpened bamboo sticks and other weapons. NDIMBATI's group worked together with a second group of attackers consisting of, among others, *Interahamwe* militia from Gishyita *commune* led by Charles SIKUBWABO, the *bourgmestre* of Gishyita *commune* together with

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Mika MUHIMANA, the *Conseiller* of Gishyita *Secteur*, and Obed RUZINDANA, a businessman from the area. The attack took place from about 8 a.m. up to 5 p.m. The attackers killed many Tutsis and harmed others including Gahizi who was shot and seriously wounded by NDIMBATI personally. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI, SEGATARAMA, Charles SIKUBWABO, Mika MUHIMANA, and Obed RUZINDANA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

25. During the attack pleaded in paragraph 24 above, NDIMBATI incited *Interahamwe* militia to kill all Tutsis as well as Hutus who were hiding Tutsis and demanded that no one was to be spared.

KIDASHYA HILL

26. Between 10 and 15 June 1994, NDIMBATI led an attack on Tutsis who had sought refuge at Kidashya hill in the Bisesero area. Approximately 15 Tutsis were hiding in a destroyed house belonging to a certain NGARAMBE which was located on Kidashya hill. NDIMBATI was together with SEGATARAMA, the *Conseiller* of Gitabura *Secteur*. The other attackers included ERNEST, a teacher at Gitwe primary school, ELAM, a soldier and native of Gitabura *Secteur* and many armed *Interahamwe* from Gisovu *commune*. All of them acted in accordance with NDIMBATI's instructions, his prompting and his plan. The attackers, including NDIMBATI, surrounded the house, and shot and threw grenades into the house, killing three Tutsi girls. NDIMBATI personally shot and killed Ngarambe and his son who were both Tutsis. Among the other victims was Gaetan Munyangabe, a Tutsi, who was harmed and seriously injured by an *Interahamwe* who hit him with a machete. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and SEGATARAMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

MUYIRA HILL

27. Between 8 and 11 April 1994, NDIMBATI led a group of attackers, who acted in accordance with his instructions, his prompting, and his plan, from Gisovu *commune* to Muyira hill in Bisesero area where Tutsis from Gisovu and Gishyita *communes* had sought refuge. The attackers included NDIMBATI, Alfred MUSEMA, the Director of Gisovu Tea Factory, and SEGATARAMA, the *Conseiller* of Gitabura *Secteur* as well as SEBAHIRE and RUKAZAMYAMBI, communal policemen, as well as NGIRABAHINYURA and *Interahamwe* militia from Gisovu *commune*. NDIMBATI and his fellow assailants were armed with guns, grenades, spears, clubs, machetes, and other weapons. They killed a large number of Tutsis and harmed others. NDIMBATI threw a grenade, killing 10 Tutsis from Mabanza *commune*. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI, Alfred MUSEMA, and SEGATARAMA.

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Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

28. On 9 or 10 April 1994, NDIMBATI transported armed *Interahamwe* militia in his Toyota Hilux to Muyira hill where Tutsis had sought refuge. Thereafter NDIMBATI together with communal policemen and armed *Interahamwe* who acted in accordance with his instructions, his prompting, and his plan, launched an attack against the Tutsis. NDIMBATI personally shot and killed two Tutsis, Appolinaire Ntambiye and Iyamuremye. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 46 below.
29. On or about 10 April 1994, *Interahamwe* from Gisovu *commune* together with members of the communal police from Gisovu *commune* led by NDIMBATI and acting according to his instructions, his prompting, and his plan, attacked Tutsi refugees who had sought refuge at the Muyira hill in the Bisesero area. All the assailants including NDIMBATI were armed with fire arms and traditional weapons. The attack started at around 10 a.m. NDIMBATI was the first to shoot at the refugees as a signal for the attack to begin. His first shots hit and killed a Tutsi woman and her child. After NDIMBATI had given this signal, the *Interahamwe* and members of the communal police followed, shooting continuously at Tutsi refugees. The attackers killed many Tutsis and harmed many others. All perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 46 below.
30. On or about 13 and 14 May 1994, NDIMBATI together with Charles SIKUBWABO, *Préfet* Clément KAYISHEMA, Elizaphan NTAKIRUTIMANA, Obed RUZINDANA, Yusuf MUNYAKAZI, Alfred MUSEMA, Eliezer NIYITEGEKA, and Gérard NTAKIRUTIMANA, led a large scale attack on Tutsi refugees. The Tutsis had sought refuge at Muyira and the surrounding hills in Bisesero areas, especially at a place called Kucyapa. Other attackers included Felicien KANANI, Felicien MAPIKI, RUHUMULIZA, SENGORORE, soldiers from the Presidential Guard, *Interahamwe* from Gisovu *commune*, *Interahamwe* from other places, and other persons. They acted in accordance with the instructions, the prompting, and plan of the persons identified in the penultimate sentence of this paragraph. The attack lasted for two days. *Interahamwe* and soldiers shot Tutsi refugees and threw grenades at them. The attackers pursued and chased Tutsis from their hiding places and massacred thousands of them. The leaders, including NDIMBATI, were supervising the massacres by providing leadership and planning, giving instructions, prompting, and facilitating the attack including by providing encouragement and approval as well as by transporting attackers from one massacre site to another. The attackers killed thousands of Tutsis and harmed many others. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI, Charles SIKUBWABO, *Préfet* Clément KAYISHEMA, Elizaphan NTAKIRUTIMANA, Obed RUZINDANA, Yusuf MUNYAKAZI, Alfred MUSEMA, Eliezer NIYITEGEKA, Gérard NTAKIRUTIMANA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

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31. On or about 20 May 1994, four Tutsis namely Gaudance Mukankundiye, Adele Nyiramayombo, Dancile Mukangemanyi and Azarias Munyampama, hid in a bush near the road going to the Bisesero hills. They were discovered by the *Interahamwe* known as "Twa" who were led by NDIMBATI and Alfred MUSEMA. The Twa *Interahamwe* informed NDIMBATI and Alfred MUSEMA about their discovery. NDIMBATI and Alfred MUSEMA instructed the Twa *Interahamwe* not to kill these Tutsis until they had seen them. When they got to the place, NDIMBATI took Adele Nyiramayombo aside and told her to undress. When Adele Nyiramayombo resisted, he slapped her and threatened to kill her. She finally gave up and undressed herself. NDIMBATI then raped her for about 15 minutes in the presence of the *Interahamwe* in an open place. Meanwhile Alfred MUSEMA raped Dancile Mukangemanyi not far from NDIMBATI. After raping the women they instructed and prompted the Twa *Interahamwe* to take Adele Nyiramayombo, Dancile Mukangemanyi and Azarias Munyampama away and kill them. They left with the third woman, Gaudance Mukankundiye, saying that they would rape her later. Adele Nyiramayombo and Dancile Mukangemanyi were then killed by the Twa *Interahamwe* as instructed and prompted by NDIMBATI and Alfred MUSEMA. Azarias Munyampama survived. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and Alfred MUSEMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

NYAKAVUMU CAVE IN BISESERO

32. At the end of May 1994, NDIMBATI together with Alfred MUSEMA and armed *Interahamwe* from Gisovu *commune*, launched an attack at Nyakavumu cave in Bisesero area where Tutsis had sought refuge. Since they were unable to enter the cave, *Interahamwe*, acting in accordance with NDIMBATI's and Alfred MUSEMA's instructions, prompting and plan, closed off the entrance to the cave with wood and leaves, which they set on fire. Almost all Tutsis who had sought refuge in the cave were killed, others were harmed. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and Alfred MUSEMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

GITWE HILL

33. On or about 15 April 1994, NDIMBATI together with Alfred MUSEMA, Mika MUHIMANA, Gérard NTAKIRUTIMANA, and Obed RUZINDANA, as well as RUREMESHU and armed *Interahamwe* from Gisovu *commune*, launched an attack against the Tutsis who had sought refuge at Gitwe hill. The attack lasted from around 8.00 a.m. to about 3.00 p.m. The Tutsis' attempts to defend themselves failed because the attackers were firing at them with guns. The attackers, acting in accordance with the instructions, the prompting and the plan of the members of the "limited JCE," killed thousands of Tutsis and harmed many others. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for

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this incident are NDIMBATI, Alfred MUSEMA, Mika MUHIMANA, Gerard NTAKIRUTIMANA, and Obed RUZINDANA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

RWIRAMBO HILL

34. Between 27 April and 3 May 1994, Tutsi refugees who had sought refuge at Rwirambo hill in Bisesero area were attacked by armed *Interahamwe* from Gisovu *commune* and other Hutu civilians mainly Gisovu Tea Factory workers, Gisovu *commune* office workers and members of Gisovu communal police. These attackers acted in accordance with the instructions, the prompting and the plans of their leaders who were NDIMBATI and Alfred MUSEMA, the director of the Gisovu Tea Factory, *Interahamwe* militia and Hutu civilians were transported to the massacre sites by vehicles belonging to Gisovu *commune* office and Gisovu Tea Factory. At first, the attackers were repelled by the Tutsi refugees who threw stones at them. NDIMBATI and Alfred MUSEMA then organized the attackers and re-launched a coordinated attack. The attackers killed many Tutsis and harmed others. During the attacks NDIMBATI and Alfred MUSEMA who were armed with guns, personally shot and killed many Tutsis. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and Alfred MUSEMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

BYINIRO HILL

35. On 31 May 1994, NDIMBATI together with Alfred MUSEMA, led a group of attackers which included *Interahamwe* from Gisovu *commune*, members of the Gisovu communal police, soldiers and other armed civilians from Gisovu *commune* against Tutsis who had sought refuge at Byiniro hill. The attackers acted in accordance with NDIMBATI's and Alfred MUSEMA's instructions, prompting and plans. When the attackers arrived at the hill NDIMBATI and Alfred MUSEMA who were armed with guns, shot first at the refugees to signal the beginning of the attack, after which communal policemen, armed *Interahamwe* and other armed Hutu civilians shot continuously at the Tutsi refugees killing many of them and harming many others. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI and Alfred MUSEMA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

KAZIRANDIMWE HILL

36. On or about 22 June 1994, NDIMBATI, Eliezer NIYITGEKA, Charles SIKUBWABO, Obed RUZINDANA and Mika MUHIMANA were at Kazirandimwe Hill. *Interahamwe* from Gisovu and Gishyita *communes* acting in accordance with the aforementioned persons instructions, prompting and plan, were also present. All

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participated in the arrest and killing of Assiel Kabanda, a prominent Gishyita *commune* Tutsi businessman. He was found in a pine forest near Bisesero where NDIMBATI and his fellow leaders were supervising *Interahamwe* and other Hutu militias in the search for Tutsis. They had been looking for Assiel Kabanda for several days because he was an influential trader and well-liked. Assiel Kabanda was killed immediately after he was captured. Mika MUHIMANA cut off Kabanda's head with a machete, and castrated him. NDIMBATI with other leaders were standing close by throughout this incident and were celebrating while these acts were being perpetrated. NDIMBATI, Mika MUHIMANA, Obed RUZINDANA, Charles SIKUBWABO and others left with Assiel Kabanda's skull which was pierced through the ears with a spike and carried away by two men. For the purpose of paragraph 45(i) below, the persons alleged to have been the members of the JCE for this incident are NDIMBATI, Eliezer NIYITGEKA, Charles SIKUBWABO, Obed RUZINDANA and Mika MUHIMANA. Alternatively, all perpetrators identified for this incident were members of the JCE, as pleaded in paragraph 45(ii) below.

VII. RESPONSIBILITY

37. Paragraphs 1-20 apply to all charges.

Crimes

38. NDIMBATI is charged – as further specified in paragraphs 39-54 below – with:

- a. Genocide for killing and harming – including by raping – persons identified as Tutsis (paragraphs 21, 22, 24, 26-36);
- b. Complicity in genocide (paragraphs 21, 22, 24, 26, 27, , 29-36, 38, 50);
- c. Direct and public incitement to commit genocide against Tutsis (paragraphs 21, 25);
- d. Extermination as a crime against humanity on the basis of several mass killings (paragraphs 21, 24, 27, 29, 30, 32-35) and the total number of victims of all the killings (paragraphs 21, 22, 26-36);
- e. Murder as a crime against humanity (paragraphs 21, 22, 24, 26-36);
- f. Rape as a crime against humanity (paragraphs 21, 22, 31); and
- g. Persecution as a crime against humanity for killing, harming and raping Tutsis (paragraphs 21, 22, 24, 26-36) as well as for violating the fundamental rights of Tutsis and Hutus including the rights to security, dignity and the right not to be subjected to serious psychological abuse (paragraphs 21, 25, 28, 31).

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Responsibility under Article 6(1) of the Statute

Personal and integral part commission

39. NDIMBATI personally committed the following crimes:

- a. genocide and persecution by harming Gahizi (paragraph 24);
- b. genocide, extermination, murder and persecution by killing Ngarambe and his son (paragraph 26), 10 Tutsis from Mabanza *commune* (paragraph 27), Appolinaire Ntambiye and Iyamuremye (paragraph 28), a Tutsi woman and her child (paragraph 29), and many Tutsis at Rwirambo hill (paragraph 34);
- c. direct and public incitement to commit genocide against Tutsis as well as persecution by calling for the killing of Tutsis and Hutus who were hiding Tutsis (paragraphs 21, 25);
- d. genocide, rape, and persecution by raping Adele Nyiramayombo (paragraph 31);
- e. persecution by ordering Azarias Munyampama's death and by threatening Adele Nyiramayombo with death and slapping her (paragraph 31);

40. NDIMBATI is responsible for committing the crimes charged in paragraphs 22, 24, 26-36 because his conduct was as much an integral part of these crimes as the carrying out of their *actus reus*. NDIMBATI intended that the crimes should occur and was aware of their occurrence.

JCE I

41. NDIMBATI is responsible under JCE I for the thirteen criminal incidents pleaded in paragraphs 22, 24, and 26-36. Each of these paragraphs charges a separate criminal incident.

42. For each of these incidents a separate JCE is pleaded.

Members of the JCEs

43. The JCE membership for eleven of these thirteen incidents is alleged in paragraph 45. For each of these eleven incidents a limited JCE and, alternatively, a JCE that includes all perpetrators involved, is pleaded.

44. The JCE membership for the remaining two incidents is alleged in paragraph 46. For these two incidents no limited JCE is pleaded; all perpetrators involved are alleged to have been JCE members.

Members of the JCEs for eleven of the thirteen incidents

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45. For each of the eleven incidents described in paragraphs 22, 24, 26, 27, 30, 31, and 32–36 respectively, NDIMBATI is charged with two alternative varieties of JCE I: (i) the principal allegation, that Ndimbati was a member of a limited JCE in which the JCE members used non-members to carry out criminal conduct; (ii) alternatively, that Ndimbati was a member of a JCE in which all perpetrators in the criminal conduct were JCE members.
- i. Under the principal allegation, for each of the eleven incidents referred to above, a separate limited JCE is alleged. The members of each of these limited JCEs are identified in the penultimate sentence of the paragraph describing the incident. The remaining perpetrators alleged for the incident were non-members who were used as principal/physical perpetrators by the JCE members.
 - ii. Under the alternative allegation, for each of the eleven incidents, all perpetrators identified in the paragraph describing the incident were JCE members, as pleaded in the respective paragraph's last sentence.

Members of the JCEs for the two remaining incidents

46. For the two incidents which are described in paragraphs 28 and 29, the respective JCE consisted of NDIMBATI and all other perpetrators identified in the paragraph describing the incident as pleaded in the respective paragraph's last sentence.

Common purpose, contribution, mens rea, and time period for each JCE

47. For each incident for which a JCE is pleaded in paragraph 41:
- i. the JCE members' common purpose was the commission of the crimes committed during that incident;
 - ii. the contributions for each JCE were NDIMBATI's and the other JCE members' conduct during that incident as pleaded in the paragraph describing the incident (these contributions were at least significant and amounted to: (a) personal commission of crimes, (b) conduct that was an integral part of the crime, (c) use of JCE non-members to carry out criminal conduct; and/or (d) other significant contributions);
 - iii. the *mens rea* of NDIMBATI and all other members of each JCE was the intent that the crimes committed during the incident be carried out; and

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- iv. the JCE existed at the during the time period over which the incident is alleged to have taken place, as pleaded in the paragraph describing the incident.

Ordering, instigating, planning and aiding and abetting

48. NDIMBATI is responsible under the modes of liability of ordering, instigating and planning for the crimes charged in paragraphs 24, 26-30, 32-36; for ordering and instigating the crimes charged in paragraph 22 and 31; and for instigating on the basis of his incitement in paragraph 21. NDIMBATI instructed and prompted the perpetrators to carry out conduct in the course of which they carried out and participated in the crimes. He had a position of authority compelling the perpetrators to follow his instructions. He also designed the conduct in the course of which the crimes were carried out. His orders, instigation, and planning had a direct and substantial effect on and constituted a substantial contribution to the commission of the crimes. NDIMBATI intended or was aware of the substantial likelihood that in the course of the execution of his orders, instigations and plans the crimes would be committed.
49. NDIMBATI is responsible under the mode of liability of aiding and abetting, because, by his conduct, he assisted, furthered, encouraged and lent moral support to the crimes (paragraphs 21, 22, 24, 26-36; see also paragraph 14). His conduct at least substantially contributed to the commission of the crimes. He was at least aware of the likelihood that the crimes would occur and that his conduct would assist the crimes.

Complicity in genocide

50. NDIMBATI is responsible for complicity in genocide as charged in paragraphs 21, 22, 24, 26, 27, 29-36, 38, 50 above; see also paragraph 14. He assisted, furthered, encouraged and lent moral support to genocide. His conduct represents a contribution to these crimes. He was aware that these crimes would occur and that his conduct would assist in their commission.

Responsibility under Article 6(3) of the Statute

51. NDIMBATI incurred superior responsibility for the crimes charged in paragraphs 22, 24, 26-36 that were carried out by his subordinates, charged in paragraph 11 above.
52. Because of his power and position as pleaded in paragraphs 11 and 13, NDIMBATI had effective control over his subordinates in the sense that he had a material ability to prevent or punish their criminal conduct.
53. NDIMBATI knew and had reason to know of his subordinates' criminal conduct as pleaded in paragraph 12.

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54. NDIMBATI failed to use his powers as set out in paragraph 13 above to prevent or punish his subordinates' commission of or participation in the crimes.

VIII. AGGRAVATING CIRCUMSTANCES

55. All facts stated in this indictment are also alleged as aggravating circumstances.

56. Other aggravating circumstances against NDIMBATI include: i) his abuse of his position and the trust placed into him; ii) his pre-meditation; iii) the cruel and humiliating treatment of his victims; iv) the duration of the offences; v) his satisfaction at the commission of massacres and murders; vi) the persistence with which he kept committing crime after crime; vii) the vulnerability of the victims and the effect of the crimes on them, including their suffering; (viii) the civilian status of the victims; (ix) the sadism of his crimes; and (x) his protracted evasion of arrest and prosecution for the crimes he is accused of.

The acts and omissions of **Aloys NDIMBATI** alleged herein are punishable pursuant to Articles 22 and 23 of the Statute.

Dated at Arusha this 8th day of May 2012.


For Hassan Bubacar JALLOW
Prosecutor

BC MAJOLA, DEPUTY PROSECUTOR

