

REPUBLIC OF RWANDA



MINISTRY OF DEFENCE
MILITARY PROSECUTION DEPARTMENT
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INDICTMENT

MILITARY PROSECUTOR GENERAL

VS

1. Brig. Gen. Wilson GUMISIRIZA
2. Maj. Wilson UKWISHAKA
3. Capt. Dieudonne RUKÉBA
4. Capt. John BUTERA

FILE N° : RAM 0212/KN/05/08.



The **Military Prosecutor General of the Republic of Rwanda**, pursuant to authority entrusted to him by the Constitution of the Republic of Rwanda in articles 163 and 164

Given Organic law number 03/2004 of 20th March 2004, determining the Organization Powers and Functioning of the Prosecution Service, particularly in its articles 1(3) and 37;

Given law N° 13/2004 of 17/05/2004 Relating to the Rwandan Code of Criminal Procedure, particularly article 52(1) entrusting the legal authority to issue a warrant of arrest, and article 13(3) of law number 20/2006 modifying and complimenting article 52 of law number 13/2004;

Given Law number 31/2007 relating to the abolition of death penalty; published in the Official Gazette Number Special of 25th July 2007;

Given Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Charges:

1. **Brig. Gen. Wilson GUMISIRIZA**
2. **Maj. Wilson UKWISHAKA**
3. **Capt. Dieudonne RUKÉBA**
4. **Capt. John BUTERA**



With the following charges:

1. **Count 1: Murder as a war crime**
2. **Count 2: Failure to prevent war crimes as Complicity in Murder**

Introduction

Between 1st October 1990 to 4th July 1994, there was a civil war between the Rwandan government forces and the rebel Rwanda Patriotic Front (RPF) to which the above named officers belonged;

On the 5th June 1994, thirteen (13) Clergymen were killed in Kabgayi Diocese, Gakurazo Parish by RPA soldiers. With them died also one seminarian and one ordinary person bringing to 15 the total number of victims. After the killing perpetrators who were four in number ran away but one of them was immediately killed by soldiers who were guarding the

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place. The investigation has been opened in order to pursue before the courts of law, the suspects culprits.

Concept of command responsibility/failure to prevent

Command responsibility is an omission mode of individual criminal liability: the superior is responsible for crimes committed by his subordinates and for failing to prevent (as opposed to crimes he ordered).

Brig Gen Wilson GUMISIRIZA as an Intelligence officer of 157 Mobile Force, and Maj. Wilson UKWISHAKA as Platoon Commander in-charge, unlawfully disregarded and failed to discharge their duty as commanders to control the acts of members of their command by, thereby permitting their subordinates to commit war crimes.

The parameters of command responsibility in this case, impose liability on commanders for the failure to prevent the commission of crimes by their subordinates. The requisite standard of *mens rea* on the side of the two officers is sufficient for them to know that a crime was about to be committed, or they had knowledge to believe that some members under their command originated from Gitarama, and whose family members had been killed in the Genocide, where a big number of their families and relatives were killed in the churches among others. This should have been sufficient for the commanders to understand or have knowledge that soldiers at this time of war, would probably be hostile to the members of the clergy, since dead bodies' scattered around the church compounds where the Bishops resided. It should have provided knowledge to the commanders that the soldiers would possibly revenge.

A lesser level of knowledge than actual knowledge may be sufficient to prove *mens rea* on the side of Gen. GUMISIRIZA and Major UKWISHAKA. The two officers, with knowledge thereof and with powers to intervene, abstained from preventing, or taking measures to prevent.

Additional Protocol I to the Geneva Conventions

The first international treaty to comprehensively codify the doctrine of command responsibility was the Additional Protocol I of 1977 to the Geneva Conventions of 1949. Article 86(2) states that:

the fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from ...responsibility ... if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.



Additional protocol 1 to the Geneva Conventions further states and provides for the duties of commanders in article 87 (1) as follows:

“The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.”

Therefore, the Military Prosecutor General charges the following Rwanda Defence Forces (RDF) officers as follows:

1. Brig Gen Wilson GUMISIRIZA

The Military Prosecutor charges **Brigadier General Wilson GUMISIRIZA** with complicity in murder, a crime stipulated in articles 91,3° and 311 of the Penal Code of Rwanda in that on 5th June 1994, in Gitarama Prefecture, during the April-July war between the Rwanda Patriotic Army (RPA) and FAR (Forces Armes Rwandaises) in the Republic of Rwanda, he failed to act within the limits of one’s possibility to prevent war crimes committed by his subordinates. This constitutes a mode of complicity by omission as provided for by article 91,3° of the Penal Code of Rwanda.

2. Major Wilson UKWISHAKA

The Military Prosecutor charges **Major Wilson UKWISHAKA** with complicity in murder, a crime stipulated in articles 91,3° and 311 of the Penal Code of Rwanda in that on 5th June 1994, in Gitarama Prefecture, during the April-July war between the RPA and FAR in the Republic of Rwanda, he failed to act within the limits of one’s possibility to prevent war crimes committed by his subordinates. This constitutes a mode of complicity by omission as provided for by article 91,3°, of the Penal Code of Rwanda.

3. Capt. Diedonne RUKÉBA

The Military Prosecutor charges **Capt Dieudonne RUKÉBA** with murder, a crime stipulated in articles 90 and 311 of the Penal Code of Rwanda in that on 5th June 1994, in Gitarama Prefecture, during the April-July war between the RPA and FAR in the Republic of Rwanda, he participated in the killings of civilians during times of war. This crime is further stipulated in articles, 8, 1°, and 16°, 17, 6°, and 18(3) of the law N° 33 bis/2003 of 6th September 2003 repressing the crime of genocide, crimes against humanity and war crimes.



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4. Capt John BUTERA

The Military Prosecutor charges **Capt John BUTERA** with murder, a crime stipulated in articles 90 and 311 of the Penal Code of Rwanda in that on 5th June 1994, in Gitarama Prefecture, during the April-July war between the RPA and FAR in the Republic of Rwanda, he participated in the killings of civilians during times of war. This crime is further stipulated in articles, 8, 1°, and 16°, 17, 6°, and 18(3) of the law N° 33 bis/2003 of 6th September 2003 repressing the crime of genocide, crimes against humanity and war crimes.

Summary of facts

- On the 2nd June 1994, 157th Mobile Force operating in Gitarama prefecture (Muhanga District area today) attacked and overrun the government forces defence in Kabgayi, former Gitarama Prefecture. They found so many people taking refuge there who were afterwards evacuated by RPA to Ruhango which was then more safe.
- Indeed at that time, Kabgayi was subject to a cross fire between RPA and the government forces attempting to recover the lost defence. That's why people were evacuated to Ruhango and clergymen at Kabgayi were evacuated with other people.
- On 5th June 1994, after three days in Ruhango, clergymen were transferred on their own request to Gakurazo Holy Brothers Hostel. It was on the proposal of Mgr NSENGIYUMVA Thadéo, Bishop of Kabgayi. There was a platoon deployed all around the area with its head quarters at Mukingi commune at less than 1 Km from Gakurazo.
- The Platoon Commander was the then 2LT Wilson UKWISHAKA who was given clear instructions to ensure the security of all the people who were in that area at that time.
- The RPA Soldiers in charge of the Security at Gakurazo thought it was necessary to awaken the sense of security precaution in those they had in charge and a meeting was convened in order to brief the clergymen on the issue.
- While the section commander of the guarding section named SGT TUGANIMANA Fred was briefing the clergymen, 4 soldiers stormed in the room and shot on people inside and immediately ran away; those were:

1. SGT RUKÉBA Dieudonne
2. SGT BUTERA John
3. SGT NYAGATARE Deo



4. PTE KABANDANA Eugene

- Fourteen clergymen died on the spot among them five (5) Bishops, seven(7) catholic priests, one(1) brother, one (1) seminarian and one(1) ordinary person.
- Some of the members of the guarding section tried to pursue the running killers and they managed to shoot dead one among the 4 culprits, named Pte KABANDANA Eugene
- During the investigation it was realized that one of the remaining three culprits (Sgt NYAGATARE Deo) died later .
- The above named criminal acts led to the death of the following:
 1. Bishop NSENGIYUMVA Vincent, Bishop of Kigali
 2. Bishop NSENGIYUMVA Thadeo, Bishop of Kabgayi
 3. Bishop RUZINDANA Joseph, Bishop of Byumba
 4. Bishop GASABWOYA Innocent
 5. Bishop RWABALINDA Jean Marie Vianney
 6. Fr. NTAMUGABUMWE Bernard
 7. Fr. KABANDA Alfred
 8. Fr. MUTABAZI Denis
 9. Fr. GAHONZIRE Fidele
 10. Fr. MULIGO Francois
 11. Fr. UWIMANA Emmanuel
 12. Fr. NDABERETSE Sylvestre
 13. Bro. NTSINGA Jean Baptiste
 14. TWAHIRWA Stanislas (Seminarian)
 15. SHEJA Richard



Contents of the articles related to the offences:

- Article 86(2) of Additional Protocol 1 to the Geneva Conventions:

“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from ... responsibility ... if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach”

- Article 87 (1) of additional Protocol 1:

“The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and,

where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.”

- Article 311 Rwandan Penal Code

«To put an end intentionnally to some one’s life is qualified murder; it involves the life imprisonment.»

- Article 91, 3° Rwanda Penal Code

« Is considered as an accomplice to a committed offence:

“.....3° Whoever has knowingly helped or assisted the perpetrator in the acts intending to prepare or to facilitate the offence perpetration.»

- Article 90 Rwandan Penal Code

“ The authors of a crime are considered those who committed the crime themselves or those who co-authored the crime”

- Article 8, 1°, 16° Law N° 33 bis/2003 of 06/09/2003.

“The war crime is one of the following acts committed during armed conflicts when they target persons or property protected by the Geneva Convention of August 12, 1949 and its additional protocols I and II.

1° wilful killing

(...)

16° killing or wounding a person knowing he or she is not involved in hostilities, or who laid down his or her weapons in case he or she was fighting, or no longer having means for self defence... »

- Article 17, 6° of law N° 33 bis/2003 of 6th September 2003

“Without prejudice to the provisions of the penal code relating to the attempt and criminal participation, the following acts shall be punished by penalties provided for this law:

1° (.....)



6° Failure to act, within the limits of one's possibility to act, on the part of those who had knowledge of orders given in order to execute such a crime or acts that prepare its execution, and could prevent its consummation or put an end to it"

- Article 18 (3) of law number 33 bis/2003 of September 6th 2003

"The fact that any of such crimes provided for by this law has been committed by a subordinate shall not exempt the authority which is his or her superior from his or her criminal liability if he or she knew or had reasons to know, that the subordinate was preparing to commit that act, or had committed it, and that the authority superior in hierarchy has not taken the necessary and reasonable measures to prevent the said act from being committed or to punish the perpetrators, and to inform the relevant authorities"

Application of law N° 33bis/2003 of September 6th 2003 Repressing the Crime of Genocide, Crimes against Humanity and war crimes

This legislation was promulgated on the 6th September 2003 and came into force on 1st November 2003. In the preamble of this legislation, it is acknowledged that:

"Considering that Rwanda has ratified the Geneva Convention without providing for penalties"

Given that Rwanda ratified the Geneva Convention on 21st March 1964, and the Additional Protocol 1 on the 19th November 1984 respectively. It is the only domestic legislation applicable to the war crimes committed in Rwanda.

The war crimes committed in the case mentioned herein were perpetrated at the time when Rwanda was already a signatory to the Geneva Conventions and additional protocol 1, and therefore, this gives Rwanda the competence to Prosecute the said suspects under this particular legislation, which came to force in order to provide for penalties to the offences committed in violation of Geneva Conventions and its additional Protocols. The legislation is therefore not retrospective in nature.



Penalties to these offences

The Rwandan Penal Code qualifies murder as a capital offence which can lead to life imprisonment. This is provided for in article 311 of the Penal Code. The accomplices to the crime of murder, can get a similar sentence as provided for by article 89(1), which states:

“ The accomplices to the authors of the crime are equally punished as authors themselves, unless the law provides otherwise”

Done at Kigali on 23rd May 2008

Capt. KAYIJUKA NGABO
Deputy Military Prosecutor General



ADDENDUM TO THE CHARGE SHEET

In this *Addendum*, we are going to list the names of the soldiers who are mentioned in this case, and who died later, as well as the circumstances surrounding their deaths.

Names	Date and Place of Death	Circumstances
SGT NYAGATARE Deo ¹	MUSHUBATI in GITARAMA, 17 th June 1994	Killed by Enemy fire while advancing towards Butare town.
SGT TUGANIMANA Fred ²	KARUBANDA, BUTARE, 3 rd July 1994	Killed by Enemy fire when RPA was fighting to capture BUTARE town
PTE KABANDANA Eugene	GAKURAZO, GITARAMA, 5 th June 1994	He was shot by the guarding section after the killings of Clergymen at GAKURAZO

Done at Kigali on 25th May 2008

Capt. KAYIJUKA NGABO
Deputy Military Prosecutor General

¹ SGT NYAGATARE Deo and PTE KABANDANA Eugene were among the four who stormed in the room where the Clergymen were killed

² SGT TUGANIMANA Fred is the one who was addressing the Clergymen at the time of the attack