

ICTR-2000-55A-I

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UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre

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INTEROFFICE MEMORANDUM — MEMORANDUM INTERIEUR

To:

A:

C. HOMETOWU

Court Management Section (Chamber III)

Date: Tuesday, December
23, 2003

Ref:

ICTR-2000-55-I

Through:

From:

De:

Ms Astou Mbow, Case Manager, OTP

Subject:

SEPARATE INDICTMENT AGAINST THARCISSE MUVUNYI.

Objet:

1. Please find enclosed Indictments and submit a copy to the above-mentioned Defendant, his counselor and the Chamber.
2. Thank you for your cooperation

2003 DEC 23 A 10:56
JUDICIAL SECTION
ICTR

ICTR-2000-SSA-I

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UNITED NATIONS

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NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

CASE NO: ICTR-2000-????(New Number)

THE PROSECUTOR

v

Tharcisse MUVUNYI

2003 DEC 23 A 10:56
JUDICIAL DEPARTMENT
ICTR

Indictment

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

Tharcisse MUVUNYI

with **GENOCIDE** or in the alternative **COMPLICITY IN GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE** and **CRIMES AGAINST HUMANITY** all offences stipulated in Articles 2 and 3 of the Statute of the Tribunal.

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM:	Nouhou M. DIALLA
SIGNATURE:	[Signature] DATE: 23-12-03

2. THE ACCUSED

THARCISSE MUVUNYI

2.1. **THARCISSE MUVUNYI** was born on the 19th of August 1953 in Mukarange Commune, Byumba *préfecture*.

2.2. Throughout the events referred to in this indictment until he left Rwanda, **THARCISSE MUVUNYI** held the office of Commander of the *Ecole Sous Officiers* (ESO). He was appointed to this position on the 7th of April 1994 after his superior officer, Colonel Marcel Gatsinzi, was appointed acting Chief of Staff of the Rwandan army.

2.3. In his capacity as Commander of the ESO, the accused had under his command the officers and soldiers of the school. He exercised authority and control over the gendarmerie, Ngoma Camp, as well as all the military operations in Butare *préfecture*.

3. CONCISE STATEMENT OF FACTS:

3.1. The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

3.2. During the events referred to in this indictment, Rwanda was divided into 11 *prefectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

3.3. During the events referred to in this indictment, Butare *préfecture* was divided into 20 *communes*: Nyakizu, Kigembe, Gishamvu, Ngoma, Runyinya, Maraba, Ruhashya, Mbazi, Shyanda, Muyaga, Mugusa, Nyaruhengeri, Ndora, Muganza, Kibayi, Rusatira, Nyabisindu, Ntyazo, Muyira and Huye.

3.4. During the events referred to in this indictment, Tutsi, Hutu and the Twa were identified as racial or ethnic groups.

3.5. During the events referred to in this indictment, there were throughout

Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

3.6. During the time of the events referred to in this indictment, there was an armed non-international conflict in the territory of Rwanda, between the Government of Rwanda and the Rwandan Patriotic Front (RPF). The victims mentioned in this indictment were Tutsi and Hutu moderate civilians, amongst others, in Butare *préfecture* and were protected persons, according to the meaning of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, and did not actively participate in the conflict.

The Government

3.7. According to the Constitution of 10 June 1991, executive power is exercised by the President of the Republic, assisted by the Government, composed of the Prime Minister and the ministers. The members of the Government are appointed by the President of the Republic upon the proposal of the Prime Minister. The Prime Minister directs the Government's program. The Government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and officials under the Prime Minister's authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the Government to resign.

3.7(i). The Ministers implement the Government's policy, as defined by the Prime Minister. They are answerable to the head of the government for doing so. In carrying out their duties, they have at their disposal the civil service and local administration corresponding to their functions.

The Local Public Administration

3.8. The *Préfet* represents executive power at prefectural level. The *Préfet* is appointed by the President of the Republic on the recommendation of the Minister of the Interior and carries out his duties under that Minister's hierarchical authority. The *Préfet's* authority covers the entire *préfecture*.

3.8(i). In his capacity as administrator of the *préfecture*, the *Préfet* is responsible for ensuring peace, public order and the safety of people and property. The *Prefet*, in the discharge of his policing duties of maintaining peace and public order, may request the intervention of the army and of the *Gendarmerie Nationale*. The *Préfet* has hierarchical authority over all civil servants and all

persons holding public office within the boundaries of the *préfecture*, including the *bourgmestres* and *conseillers de secteur*.

3.8(ii). Similar to the *Préfet*, the *Bourgmestre* represents executive power at the *commune* level. He is appointed by the President of the Republic on the recommendation of the Minister of the Interior. He is under the hierarchical authority of the *Préfet*. He has authority over the civil servants posted in his *commune*. Moreover, he has policing duties in regard to maintaining order and law enforcement.

The Forces Armées Rwandaises

3.9. The *Forces Armées Rwandaises* (FAR) were composed of the *Armée Rwandaise* (AR) and the *Gendarmerie Nationale* (GN). The *Forces Armées Rwandaises* did not have a unified command and came directly under the Minister of Defence. The Commander-in-Chief of the *Forces Armées Rwandaises* was the President of the Republic.

3.9(i). The General Staff of the Rwandan Army was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.9(ii). The territory of Rwanda was divided into various military operations sectors, each headed by a military sector commander. Also, there were elite units within the Rwandan Army, namely the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion. The troops were divided into companies within the sectors and the units.

3.9(iii). By virtue of their rank and their functions, the officers of the Rwandan Army had the duty to enforce the general rules of discipline for all soldiers under their authority, even those not belonging to their units.

3.9(iv). The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

3.9(v). The *Gendarmerie Nationale* was under the Minister of Defence but could carry out its duties of ensuring public order and peace at the request of the local government authority having jurisdiction, namely the *préfet*. In cases of emergency, this request could be made verbally, notably by telephone. Such requests had to be carried out immediately. In addition, the *Gendarmerie*

Nationale was obliged to transmit to the *Prefet* all information relating to public order. It had the duty to assist anyone in danger.

The Political Parties and The Militia

3.10. During the events referred to in this indictment, the main political parties in Rwanda were the MRND (*Mouvement Républicain National pour la Démocratie et le Développement*), the CDR (*Coalition pour la Défense de la République*), the MDR, (*Mouvement Démocratique Républicain*) PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (*Rwandan Patriotic Front*) was a politico-military opposition organization.

3.10(i). Most of the political parties had created a youth wing. The members of the MRND's youth wing members were known as the "Interahamwe" and those of the CDR were known as the "Impuzamugambi". Numerous MRND youth wing members subsequently received military training and were thus transformed from youth movements into militias.

3.10(ii). From late 1990 until July 1994, military personnel, members of the government, political leaders, civil servants and other personalities conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organized, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutus. **THARCISSE MUVUNYI**, elaborated, adhered to and executed this plan.

3.10(iii). After the Rwandan Patriotic Front (RPF) attack of October 1990, some groups within the then Rwandan Government and military structure, initiated the characterisation of the Tutsi as the enemy to be defeated.

3.10(iv). This characterisation defined the main enemy as the Tutsi from inside or outside the country, who wanted power, who did not recognize the achievements of the revolution of 1959 and who were seeking armed confrontation. The secondary enemy was defined as those who provided any kind of assistance to

or sympathized with the main enemy.

3.10(v). From April to July 1994, various prominent persons, including, members of the government and local authorities propagated incitement to hatred and violence. These included the then President, Theodore Sindikubwabo, the then Prime Minister, Jean Kambanda, the *Préfet* of Butare *préfecture* and his various Bourgmestres. Military authority figures such as **THARCISSE MUVUNYI** participated with the people to exterminate the Tutsi population and its "accomplices".

Training of the Militia Group

3.11. The creation of the youth wings satisfied two of the political parties' concerns: to mobilize young people and to sensitize them to politics. The MRND and CDR followed the example of the MDR and RPF, which had already institutionalized their youth movements. Political rivalries during the multi-party period exacerbated tensions. The "*Interahamwe*" and *Impuzamugambi* began to be drawn astray from the time they were used to oppose with violence the political demonstrations organized by parties of the opposition.

3.11 (i). In order to ensure that, when the time came, the extermination of the enemy and its "accomplices" would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to the Armed Forces. For the militia to be represented nationally, *Interahamwe* committees were created at *prefectural* level. This decision of the central committee of the MRND taken in June 1993 was carried out by political figures in their localities.

3.11 (ii). As of 1993, and even before that date, anxious to radicalize the *Interahamwe* movement, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide support, military training and weapons to those members most devoted to their extremist cause and to other idle youths.

3.12. On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvenal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda causing the death of the President and the Chief of Staff of the Rwandan Army, Colonel Deogratias Nsabimana amongst others.

3.12(i). Immediately after this incident, leaders of the MRND and military officers set up an Interim Government whose members were appointed at a meeting held on 8 April. They were almost all members of the MRND and of the "Power" wings of the other political parties. No one of Tutsi descent was included either in the talks or in the new Government.

3.13. As soon as the Interim Government was formed, numerous Cabinet members supported the plan of extermination in place and took the necessary steps to execute it. They incited the people to eliminate "the enemy and its accomplices", distributed weapons to them, dismissed local government authorities who were opposed to the massacres, replacing them with others who were devoted to the cause, and adopted directives intended to facilitate the massacre of the civilian Tutsi population and Hutu moderates.

3.14. Already, on 8 April, the new Government summoned all the *préfets* to a meeting in Kigali for the purpose of assessing the situation in the country at the time. The emergency meeting was held on 11 April 1994 and recorded the participation of all the Government ministers and all the *préfets*, except those of Butare (Jean Baptiste Habyalimana), Ruhengeri and Cyangugu. At this meeting, the situation as regards the massacres in each *prefecture* was analyzed.

3.15. The massacres of members of the Tutsi population and the murder of the moderate Hutu extended throughout the territory of Rwanda. In every *préfecture*, local civil and military authorities and militiamen espoused the plan of extermination and followed the directives and orders in order to execute it. They called on the civilian population to eliminate the enemy and its "accomplices". They distributed weapons to civilians and militiamen. They gave orders to commit, aided, abetted and participated in the massacres.

3.16. The country's civil and military leaders became aware of the exceptional situation in Butare; but rather than take immediate action to put an end to the massacres, on 17th April, the Interim Government dismissed several authorities, among them the *préfet* of Butare, Jean Baptiste Habyalimana, for their refusal to take part in the massacres. Thus, by removing *préfet* Habyalimana from office, the Interim Government incited the people to get involved in the massacres. Moreover, elements, of the Army and *Interahamwe* militiamen were sent to Butare as reinforcements to start the massacres.

3.17. As of 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time

by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives of some of these authorities, sometimes by means of pre-established lists. In Butare *prefecture*, apart from a few exceptions such as Nyakizu *commune*, the massacres did not start until 19 April 1994.

3.18. Three important factors delayed the start of the massacres in Butare *prefecture*. Historically, this prefecture had a large Tutsi population living in harmony with the Hutu majority. Since the inception of the multiparty system, the *Parti Social Démocrate* (PSD) dominated the political scene in Butare and the *Mouvement républicain national pour la démocratie et le développement* (MRND) played a lesser role in that area than elsewhere in the country. Hence, the *Interahamwe* organizational structure was less elaborate and its membership was smaller. Furthermore, the *Préfet* of Butare, Jean Baptiste Habyalimana (PSD), the only *préfet* of Tutsi descent in the country, had openly opposed the massacres in his *préfecture*, where he had succeeded in maintaining calm, with a few exceptions, notably Nyakizu *commune*. Thus, thousands of people, the majority of whom were Tutsi, came from other *préfectures* to seek refuge in Butare in the days which immediately followed the start of the massacres.

SPECIFIC ALLEGATIONS

3.19. On the 19th of April 1994, the swearing-in ceremony in Butare for the new *Préfet*, Sylvain Nsabimana, was the occasion of a large gathering. The meeting, which had been announced and organized by the Interim Government, was held at the MRND headquarters in Butare. On that occasion, President Theodore Sindikubwabo made an inflammatory speech, openly and explicitly calling on the people of Butare to follow the example of the other *préfectures* and begin the massacres. He violently denounced the "banyira ntibindeba", meaning those who did not feel concerned. He asked them to "get out of the way" and "let us work". Prime Minister Jean Kambanda, who subsequently took the floor, did not contradict the President of the Republic.

3.20. Lieutenant Colonel **THARCISSE MUVUNYI** attended in his capacity as Commander of Military Operations in Butare. Because he was present at the ceremony and did not dissociate himself from the statements made by the

President of the Republic, Lieutenant Colonel **THARCISSE MUVUNYI**, gave a clear signal to the people that the massacres were condoned by the Military.

3.21. In Butare *prefecture*, the Commandant of the ESO was the most senior military officer responsible for security operations in Butare and Gikongoro *prefectures*. He carries out the orders of the military high command as directed from the Army Chief of Staff. In instances where there was a breach of security, the *préfet* could summon the assistance of both the gendarmerie and the army to restore order.

3.22. In his capacity as the highest military authority in the *préfecture*, **THARCISSE MUVUNYI** was part of the military presence to ensure the security of the civilians in the *préfecture* and part of his duties entailed:

- Liasing with the Prefet on matters of security;*
- being part of the Security Council of the Prefet;*
- ensuring that the Prefet enjoys the enabling environment to carry out his functions as the most senior civilian government representative;*
- assisting the population in times of danger and carrying out all other functions necessary for the smooth running of the training school for soldiers.*

3.23. Subsequent to the visit of President Sindikubwabo and in exercising his *de jure* and *de facto* authority over the officers and men of the ESO, Lieutenant Colonel **THARCISSE MUVUNYI** called for a meeting of all the ESO commissioned and non - commissioned officer corps and informed them that the President's wishes should be considered as orders to be carried out.

3.24. During the events referred to in this indictment, Lieutenant Colonel **MUVUNYI**, in the company of the chairman of the civil *défense* program for Butare who later became the *Prefet* of Butare *préfecture*, and other local authority figures, went to various communes all over Butare *prefecture* purportedly to sensitize the local population to defend the country, but actually to incite them to perpetrate massacres against the Tutsis. These sensitization meetings took place in diverse locations throughout Butare *préfecture*, such as:

- in Mugusa commune sometime in late April 1994;*
- at the Gikore Center sometime in early May 1994;*
- in Muyaga bureau communal between the 3rd and 5th of June 1994;*
- in Nyabitare secteur, Muganza commune sometime in early June 1994.*

3.25. At the meetings referred to in paragraph 3.24 above, which were attended almost exclusively by Hutus, Lieutenant Colonel **MUVUNYI**, in

conjunction with these local authority figures, publicly expressed virulent anti-Tutsi sentiments, which they communicated to the local population and militiamen in traditional proverbs. The people understood these proverbs to mean exterminating the Tutsis and the meetings nearly always resulted in the massacre of Tutsis who were living in the commune or who had taken refuge in the commune.

3.26. During the events referred to in this indictment, Lieutenant Colonel **MUVUNYI** participated directly in the provision of weapons such as grenades to these militiamen to perpetrate attacks against the Tutsis.

3.27. On the 30th of April 1994, Lieutenant Colonel **MUVUNYI** in the exercise of his *de facto* and *de jure* authority, ordered the soldiers of the Ngoma Camp to go to the Beneberika Convent and kidnap the refugees at the Convent including women and children. A certain Lieutenant led this attack, and he kidnapped 25 people including the children of Professor Karenzi, who were never seen again.

3.28. On or about the 4th of May 1994, Lieutenant Colonel **MUVUNYI** requested that the Reverend Fathers at Gihindamuyaua monastery to be brought to him and he subsequently separated the 2 Tutsi Fathers in the monastery from the Hutus, and they were subsequently killed.

3.29. On or about the 15th of April, Lieutenant Colonel **MUVUNYI** in the company of a section of soldiers participated in the attack on wounded refugees at the University Hospital in Butare separating the Tutsis from the Hutus and killing the Tutsi refugees.

3.30. During the events referred to in this indictment, Lieutenant Colonel **MUVUNYI** had the duty of ensuring the security and safety of the civilian population in the *préfecture*, as well as ensuring the discipline of the men under his command but failed in this duty. On several occasions in April 1994, Lieutenant Colonel **MUVUNYI** failed or refused to assist those whose lives were in danger or who asked for his help, particularly in Groupe Scolaire and Ngoma Parish where Tutsi refugees were massacred.

3.31. Lieutenant Colonel **MUVUNYI** in most cases instigated, encouraged, facilitated, and or acquiesced to, among others, the *Interahamwe* and soldiers committing killings, kidnappings and the destruction of property.

3.32. During the events described in this indictment, problems relating to the safety

and security of the civilian population of the *prefecture* were discussed at Prefectural Security Committee Meetings. Members of this Committee included, representatives of the military and civil *défense* program such as Lieutenant Colonel **MUVUNYI**, Colonel **Alphonse NTEZIRYAYO**, retired Lieutenant Colonel **Aloys SIMBA**; representatives of the civil authorities such as the Director of Cabinet, Ministry of Interior **Callixte KALIMANZERA**, Bourgmestre of Ngoma Commune **Joseph KANYABASHI**, the President of the Court of First Instance, **Jean Baptiste RUZINDAZA**, and the Vice Rector of the University of Rwanda, Butare.

3.33. On 27th April 1994, the Interim Government ordered roadblocks to be set up, knowing that the roadblocks were being used to identify the Tutsi and their "accomplices" for the purpose of eliminating them. These orders were followed and had already been put in place in Butare.

3.34. These checkpoints were ostensibly to check for weapons and to prevent any infiltration by the enemy. The roadblocks were located at Rwasave, Rwabuye, the front of Hotel Faucon, in front of Ngoma Camp, in front of the Ibis Hotel, at the junction leading to the University hospital, beside Chez Bihira and in front of the ESO. These checkpoints served as points where searches were conducted on civilians for purposes of identity control and to check against the infiltration of the enemy.

3.34(i). Furthermore, during the events referred to in this indictment, soldiers from the ESO went to the University of Butare to kill the Tutsi lecturers and students as part of plans to exterminate the Tutsi intelligentsia. Lieutenant Colonel **MUVUNYI** by reason of his position of authority over the soldiers of the ESO and the widespread nature of these massacres, knew or had reason to know, that these acts were being committed and he failed to take measures to prevent, or to put an end to these acts, or punish the perpetrators.

3.35. During the events referred to in this indictment, the militiamen, i.e. the *Interahamwe*, with the help of the soldiers, participated in the massacres of the civilian Tutsi population in Butare *prefecture* and elsewhere.

3.36. During the events referred to in this indictment, officers and soldiers acting under the orders of Lieutenant Colonel **MUVUNYI** participated in the massacres of the civilian Tutsi population and of Hutu moderates in the opposition. Some of these civilian Tutsis were arrested and taken to either the Ngoma Camp or the ESO, and later killed.

3.37. In most instances, Lieutenant Colonel **MUVUNYI** gave direct orders to soldiers and other militiamen, to carry out the attacks and provided material backup such as transport and grenades.

3.38. Some of these instances include Lieutenant Colonel **MUVUNYI** providing the grenades with which the refugees at the market square, Kibilizi secteur, Mugusa commune were attacked and massacred;

3.39. During the same period, soldiers from Ngoma Camp on various occasions, publicly shot dead Tutsi civilians or persons suspected of being Tutsi, using their official firearms. Lieutenant Colonel **MUVUNYI** by reason of his position of authority and the widespread nature of these acts, knew or had reason to know, that these acts were being committed and he failed to take measures to prevent, or to put an end to these acts, or punish the perpetrators.

3.40. During the events referred to in this indictment, thousands of civilians, mostly Tutsi, in Butare *prefecture*, were massacred, including at the following locations:

- Ngoma parish, Ngoma Commune
- Matyazo Dispensary, Matyazo
- Kibeho parish, Mugusa Commune
- Beneberika Convent, Sovu, Huye Commune
- Groupe Scolaire, Ngoma
- Economat Generale, Ngoma Commune
- Nyumba parish, Gatare Commune
- Muslim Quarters, Ngoma commune

3.41. During the course of the acts referred to in Paragraphs 3.40 above, many women and girls were raped and sexually violated in these locations or were taken by force or coerced to other locations, where they were raped and subjected to acts of sexual violence by *Interahamwe* and soldiers from the Ngoma Camp. Lieutenant Colonel **MUVUNYI** by reason of his position of authority and the widespread nature of these acts, knew or had reason to know, that these acts were being committed and he failed to take measures to prevent, or to put an end to these acts, or punish the perpetrators.

3.41(i). In most cases the rapes were aggravated by circumstances of gang rape, multiple rape, rape of virgin girls, rape of daughters in front of their mothers or other family members, which involved violence and degrading treatment to the persons involved. Most of these acts of sexual violence were accompanied by

the killing of the victim.

3.42. During the events referred to in this indictment, Lieutenant Colonel **MUVUNYI** participated in the preparation of lists of people and or identified people, mostly Tutsi intellectuals and Tutsis in positions of authority, to eliminate. These lists were given to the soldiers and militiamen with orders to arrest and/or kill the persons whose names were given. The soldiers and the *Interahamwe* then carried out the orders.

3.43. This killing by the soldiers was one of the early signals of the commencement of massacres and other atrocities in Butare, but the full scale massacres only took place after the speech of the President on the 19th of April. Lieutenant Colonel **MUVUNYI** by reason of his position of authority and the widespread nature of these massacres, knew or had reason to know, that these acts were being committed and he failed to take measures to prevent, or to put an end to these acts, or punish the perpetrators.

3.44. On or about the 21st of April 1994, some survivors of the Matyazo attack, sought refuge at the Ngoma Parish. Amongst the refugees were 62 wounded children ranging from 16 months to 5 years who were taken to the Parish by the *Counseiller* of the secteur, because he was prevented by the soldiers at the roadblock in front of the ESO, from taking the children for medical attention at the University Hospital.

3.45. On or about the 30th of April 1994, the Ngoma Parish was attacked. The Parish Priest requested for help from the Ngoma Camp and an hour later 2nd Lieutenant Niyonteze, who was second in command, at the Ngoma camp arrived with 6 soldiers. Rather than take any action, 2nd Lieutenant Niyonteze demanded to know what right the Parish Priest had in keeping so many *Inyenzi* near a military camp. He proceeded to count the refugees and leave the Parish without taking any action to stop the attackers. Lieutenant Colonel **MUVUNYI** by reason of his position of authority and the widespread nature of these massacres, knew or had reason to know, that these acts were being committed and he failed to take measures to prevent, or to put an end to these acts, or punish the perpetrators.

3.46. On or about 5:00 pm of the same day, a certain Lieutenant arrived at the Parish with intent to arrest the Parish Priest who had escaped; but the refugees at the Parish including the women and children were all subsequently attacked by the soldiers and the *Interahamwe*. **MUVUNYI** as an authority figure failed to provide for the safety or security of the refugees but rather encouraged the attacks.

3.47. During the events referred to in this indictment, soldiers of the ESO and Ngoma Camp participated in the meting out of cruel treatment to Tutsi civilians by beating them with sticks, tree saplings and or rifle butts.

3.48. On or about the 24th of April, the refugees at the Groupe Scolaire comprising of orphans evacuated from the Red Cross Centre at Kacyiru and other orphanages, were attacked by soldiers from the Ngoma camp and the ESO. The soldiers from the Ngoma Camp were led by a certain Lieutenant while the soldiers from ESO were dispatched on the orders of a certain Captain and were led by 2nd Lieutenant Niyonteze. The Supervisor of the children called the ESO for assistance and spoke with Lieutenant Colonel **MUVUNYI**, who refused to send any assistance during the massacre.

3.49. **THARCISSE MUVUNYI** intended the attacks described in this indictment on these victims to be part of the non-international armed conflict because the Tutsi civilians were considered enemies of the Government and/or accomplices of the RPF.

3.50. **THARCISSE MUVUNYI** set out to destroy the Tutsi enemy as defined in paragraphs 3.10(ii) to 3.10(v) above, in furtherance of Government policy to defeat the RPF.

3.51. Lieutenant Colonel **MUVUNYI** intended the incitement and massacres, described in the indictment, to be part of the non-international armed conflict against the RPF. By their actions during the period referred to in this indictment, the accused sought to eliminate any base of support for the RPF that might exist in Butare prefecture. The accused persons equally intended the various acts of sexual violence and incitement to sexual violence described above in paragraphs 3.47 to 3.47 (i) as actions contributing to the non-international armed conflict against the RPF and the fulfilment of the aims of the Rwandan Government in defeating the enemy and its accomplices.

3.52. Lieutenant Colonel **MUVUNYI** in his position of authority acting in concert with others; participated in the planning, preparation or execution of a common scheme, strategy or plan to commit the atrocities set forth above. The crimes were committed by them personally, by persons he assisted or by his subordinates with his knowledge and consent.

CHARGES

The violations of international humanitarian law referred to in the following charges were committed between 1st January and 31st December 1994 in the territory of the Republic of Rwanda and refer to the events described in paragraphs 2.1 - 3.52 above.

For all of the acts described in the paragraphs specified in each of the counts the accused either planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation or execution of the said acts,

and,

the accused knew, or had reason to know, that his subordinates were preparing to commit or had committed one or more of the acts referred to in Articles 2 to 3 of the statute of the Tribunal and failed to take the necessary and reasonable measures to prevent the said acts from being committed or to punish those who were responsible.

Tharcisse MUVUNYI

COUNT 1: By the acts or omissions described specifically in the paragraphs to which reference is made herein below:

Tharcisse MUVUNYI

pursuant to Article 6 (1)
paragraphs 2.2, 2.3, 3.10(ii)-3.10(v), 3.15,
3.17, 3.19, 3.20, 3.23-3.30, 3.31, 3.32, 3.36 - 3.38,
3.40, 3.41-3.41(i), 3.43, 3.46, 3.48, 3.49, 3.50, 3.51,
3.52

pursuant to Article 6 (3)

paragraphs 2.2, 2.3, 3.10(ii)-3.10(v), 3.17, 3.19,
3.20, 3.23-3.30, 3.31, 3.32, 3.34, 3.34(i), 3.35-3.43,
3.45, 3.52

is responsible for killing and causing serious bodily and mental harm to

members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed GENOCIDE, stipulated in Article 2(3)(a) as a crime, for which he is individually responsible, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal

ALTERNATIVELY

COUNT 2: By the acts or omissions described specifically in the paragraphs to which reference is made herein below:

Tharcisse MUVUNYI

pursuant to Article 6(1)
paragraphs 2.2, 2.3, 3.10(ii)-3.10(v), 3.15, 3.17,
3.19, 3.20, 3.23-3.30, 3.31, 3.32, 3.36-3.38, 3.40,
3.41 - 3.41(i), 3.43, 3.46, 3.48-3.52.

pursuant to Article 6(3)
paragraphs 2.2, 2.3, 3.10(ii)-3.10(v), 3.17, 3.19,
3.20, 3.23-3.30, 3.31, 3.32, 3.33, 3.33(i), 3.34,
3.35, 3.36 - 3.38, 3.39, 3.40, 3.41 - 3.41(i), 3.42,
3.43.

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy in whole or in part, a racial or ethnic group, and thereby committed COMPLICITY IN GENOCIDE, as stipulated in Article 2(3)(e) as a crime, for which he is individually responsible, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 3: By his acts and omissions described specifically in the paragraphs to which reference is made herein below:

Tharcisse MUVUNYI

pursuant to Article 6 (1) paragraphs
3.23 to 3.25

3.23 to 3.25

is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population, with the intent to destroy, in whole or in part, an ethnic or racial group as such, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, stipulated in Article 2(3)(c) as a crime, for which he is individually responsible, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 4: By the acts and omissions described specifically in the paragraphs to which reference is made herein below:

Tharcisse MUVUNYI pursuant to Article 6(3)
paragraphs 3.41 and 3.41(i)

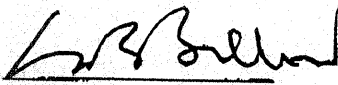
is responsible for rape as part of a widespread and systematic attack against a population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY** stipulated in Article 3(g) as a crime, for which he is individually responsible, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 5: By the acts and omissions described specifically in the paragraphs to which reference is made here in below:

Tharcisse MUVUNYI pursuant to Article 6(3)
paragraphs 3.44 and 3.49

is responsible for other inhumane acts against persons as part of a widespread and systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY** stipulated in Article 3(i) as a crime, for which he is individually responsible, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Dated at Arusha this 22 day of DECEMBER 2003


Prosecutor

