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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2001-64 -

THE PROSECUTOR
AGAINST
SYLVESTRE GACUMBITSI

2001 JUN 20 12:16
ICTR

INDICTMENT

- I. The Prosecutor of the 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 of the Tribunal") charges:

SYLVESTRE GACUMBITSI

with GENOCIDE; or in the alternative COMPLICITY IN GENOCIDE; and EXTERMINATION, MURDER and RAPE as CRIMES AGAINST HUMANITY; offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below:

II THE ACCUSED:

Sylvestre GACUMBITSI was born in 1947 in Rusumo *commune*, Kibungo *préfecture*, Rwanda. During the period covered by this indictment, **Sylvestre GACUMBITSI** was *bourgmestre* of Rusumo *commune* in Kibungo *préfecture*.

III. CHARGES and CONCISE STATEMENT OF FACTS:

Count 1: GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with *GENOCIDE*, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or 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;

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged; *and*

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts and omissions of soldiers, gendarmes, communal police, *Interahamwe*, civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged;

or alternatively,

Count 2: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or 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, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged, in that:

Concise Statement of Facts for Counts 1 & 2:

Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.

2. Between 1 January 1994 and 17 July 1994 there was a state of non-international armed conflict in Rwanda
3. Following the death of Rwandan President Juvénal Habyarimana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ihyitso*, or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily its Hutu peasantry, were enlisted in a nationwide campaign of looting, pillaging, murder, rape, torture, and extermination of the Tutsi.
4. **Sylvestre GACUMBITSI** organized the campaign against Tutsi civilians in Rusumo *commune*, Kibungo *préfecture*. The campaign consisted in public

incitement of Hutu civilians to separate themselves from their Tutsi neighbors and to kill them and resulted in thousands of deaths. **Sylvestre GACUMBITSI** killed persons by his own hand, ordered killings by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.

- 5 Notably, on or about 9 April 1994 **Sylvestre GACUMBITSI** convened a meeting of all the *conseillers de secteur, responsables de cellule* and party chiefs of MRND and CDR in Rusumo *commune*. The meeting was held at the *bureau communal*. During that meeting *bourgmestre* **Sylvestre GACUMBITSI** announced that weapons would be distributed for purposes of the extermination of the Tutsi population.
- 6 On or about 10 April 1994 **Sylvestre GACUMBITSI** participated in a meeting at the FAR military camp in Kibungo. Present at the meeting was Col. Pierre Célestin RWAGAFIRITA and all of the *bourgmestres* of Kibungo *préfecture*. Col. RWAGAFIRITA and a number of other soldiers distributed cases of grenades, machetes and bladed weapons to each *bourgmestre*. **Sylvestre GACUMBITSI** received over 100 boxes of weapons, some of which he subsequently delivered to various locations in the *préfecture*.

On or about 12 April 1994, after conferring with Major NDEKEZI, **Sylvestre GACUMBITSI** ordered soldiers and boatmen along the lakes in Gisenyi *secteur* to stop refugees in flight from escaping across the border into Tanzania.
- 8 As *bourgmestre*, **Sylvestre GACUMBITSI** exercised authority over his subordinates, among whom can be counted: administrative personnel at the level of the *commune*, including *conseillers de secteur, responsables de cellule* and *nyumbakumi*; and the communal police. As consequences of his public office as *bourgmestre* of Rusumo *commune* and his membership in the MRND political party, **Sylvestre GACUMBITSI** also exercised authority over *gendarmes* and civilian militias in Rusumo *commune*.
9. **Sylvestre GACUMBITSI** ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsis. These communal officials in turn re-distributed the weapons that they received from **Sylvestre GACUMBITSI** and participated in the campaign of extermination by ordering their constituents to kill civilian Tutsi throughout the *commune*.
10. In ordering *conseillers de secteur* and *responsables de cellule* to exterminate the Tutsi, **Sylvestre GACUMBITSI** directed that the killing should begin with parents whose children had joined the *inkotanyi*, a specific reference to the RPF. **Sylvestre GACUMBITSI** specifically ordered that attacks be directed against the *snakes*, a reference to the Tutsi.

During the week of 11 April 1994 Sylvestre GACUMBITSI circulated about Rusumo aboard a vehicle belonging to the *commune*. He was often accompanied by communal police and *Interahamwe*, and the vehicle was often loaded with a quantity of machetes. For example, on or about 15 April 1994 Sylvestre GACUMBITSI, accompanied by MUNYABUGINGO, transported weapons, including machetes, in a vehicle heading toward Nyarubuye.

12. On or about 14 April 1994 Sylvestre GACUMBITSI arrived in Nyabitare *secteur* and summoned all the Hutu *nyumbakumi* and distributed machetes to them. He instructed the communal police and the *nyumbakumi* that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings. The communal police and *nyumbakumi* did as Sylvestre GACUMBITSI instructed, and many civilian Tutsi were killed, among them: KAGUMYA Léonard; GAHONDOGO and her children, RUNUYA and her children, including MANIRIHO, KAGUMYA (2 weeks old), GASHUMBA, MUTEMPUNDU, MUKABERA, NYAMVURA, MUKADUSABE, BIMENYMANA, among others.
3. In addition to exhorting crowds to massacre the Tutsi civilians, Sylvestre GACUMBITSI also traveled to the various *cellules* to monitor the course of the massacres.
4. On or about 15 April 1994, Sylvestre GACUMBITSI also circulated in Rusumo *commune* aboard a vehicle and announced over a loud speaker that Tutsi women and children could safely return to their homes, but that Tutsi men would be killed. His announcements were a ruse to facilitate attacks upon women and children that would come out of hiding, and an inciting call to exterminate the Tutsi men.
5. Between the 15th and 17th April 1994, Sylvestre GACUMBITSI led an attack on the *paroisse* of Nyarubuye, where numerous Tutsi and Hutu refugees had gathered. Sylvestre GACUMBITSI approached the church in a caravan of several vehicles of communal police and *Interahamwe*. Many of the attackers wore berets and *kitenge* uniforms bearing MRND *Interahamwe* insignia. A quantity of machetes was unloaded from the vehicles and placed before the church. Sylvestre GACUMBITSI addressed the crowd with a megaphone and ordered Hutu refugees to separate from Tutsi. Once the groups were separated the attacks began.
16. The communal police and *Interahamwe* surrounded the church compound. Sylvestre GACUMBITSI ordered the Hutu to attack the Tutsi, incorporating former Hutu refugees in attacks against the Tutsi led by communal police and *Interahamwe* under his direction.
7. Communal police and *Interahamwe* attacked the Tutsi refugees with grenades and firearms and traditional weapons. Other attackers used the machetes previously supplied by Sylvestre GACUMBITSI.

18. On the following day, **Sylvestre GACUMBITSI**, accompanied by RUBANGUKA, the President of the Rusumo Court, and a group of attackers returned to the devastated church compound at Nyarubuye armed with spears, machetes, and bows and arrows. Led by RUBANGUKA, the attackers finished off the survivors lying among the corpses. Afterwards the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing.
19. Almost all of the Tutsi refugees, comprising several thousands, at Nyarubuye *paroisse* were killed.
20. Sexual violence against Tutsi women was systematically incorporated in the generalized attacks against the Tutsi. In leading, ordering and encouraging the campaign of extermination in Rusumo *commune*, **Sylvestre GACUMBITSI** knew, or should have known, that sexual violence against civilian Tutsi was, or would be, widespread or systematic, and that the perpetrators would include his subordinates or those that committed such acts in response to his generalized orders and instructions to exterminate the Tutsi.
21. Furthermore, **Sylvestre GACUMBITSI** circulated about Rusumo commune in a vehicle announcing by megaphone that Tutsi women should be raped and sexually degraded. For example, on or about 17 April 1994 **Sylvestre GACUMBITSI** exhorted the population along the Nyarubuye road to "*rape Tutsi girls that had always refused to sleep with Hutu ...*" and to "*search in the bushes, do not save a single snake ...*". Attacks and rapes of Tutsi women immediately followed.
22. From those first days of April 1994 through 30 April 1994, **Sylvestre GACUMBITSI** ordered, directed or acted in concert with local administrative official in Kibungo *préfecture*, including *bourgmestres* and *conseillers de secteur*, to deny protection to civilian Tutsi refugees and to facilitate attacks upon them by communal police, *Interahamwe*, civilian militias and local residents.
23. At all times material to this indictment **Sylvestre GACUMBITSI** failed to maintain public order, or deliberately undermined the public order, in districts over which he exercised administrative authority, in agreement with or in furtherance of the policies of the MRND or the Interim Government, knowing that those policies intended the destruction, in whole or in part, of the Tutsi.
24. By virtue of his positions of leadership of the MRND and the *Interahamwe*, particularly as derived from his status as *bourgmestre* of Rusumo, **Sylvestre GACUMBITSI** ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute, rape and kill or facilitate the killing of civilian Tutsi. By virtue of that same authority **Sylvestre GACUMBITSI** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

25. **Sylvestre GACUMBITSI**, in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent.

Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with *EXTERMINATION as a CRIME AGAINST HUMANITY*, as stipulated in Article 3(b) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfectures*, Rwanda, **Sylvestre GACUMBITSI** did kill persons, or cause persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *and*

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

26. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.
27. Approximately between 15 and 18 April 1994, **Sylvestre GACUMBITSI** commanded, facilitated or participated in attacks upon civilian Tutsi refugees that had gathered at Nyarabuye *paroisse*. **Sylvestre GACUMBITSI** transported, or facilitated the transportation of, communal police or *Interahamwe* or weapons to Nyarabuye *paroisse* and led attacks against civilian Tutsi by his own example or by ordering and directing the attackers to kill the refugees.
28. As direct consequences of orders or instructions from **Sylvestre GACUMBITSI** at Nyarabuye *paroisse*, there were numerous killings of family members and entire families, including UWIRAGIYE, MUGIRANEZA and TUYIRINGIRE, three children. The identity of each victim and the proximate number of fatalities and the exact circumstances of each death cannot be detailed exhaustively due to the overwhelming devastation of the massacres.
29. **Sylvestre GACUMBITSI's** affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi refugees at Nyarabuye *paroisse* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.

30. Furthermore, **Sylvestre GACUMBITSI**'s generalized campaign of extermination in *Rusumo commune*, *Kibungo préfecture*, during April 1994, particularly following his distributions of weapons and organizational meetings with military and administrative officials from 7 to 15 April 1994, claimed the lives of hundreds of civilian Tutsi and moderate Hutus. **Sylvestre GACUMBITSI**'s affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi in *Rusumo commune* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.

Count 4: MURDER as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with *MURDER as a CRIME AGAINST HUMANITY*, as stipulated in Article 3(a) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in *Kibungo préfecture*, Rwanda, **Sylvestre GACUMBITSI** did kill persons, or cause persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *and*

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahumwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

- 3 In addition to personally ordering and leading attacks against groups of civilian Tutsi refugees, **Sylvestre GACUMBITSI** also targeted specific Tutsi civilians in *Kibungo préfecture* for murder.
32. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** approached a pregnant Tutsi woman and her mother-in-law along a roadside. The woman appeared to be in discomfort and asked for assistance. Instead of helping the women, **Sylvestre GACUMBITSI** took a knife and slit her abdomen, causing the two fetuses that the woman was carrying to fall from her body. **Sylvestre GACUMBITSI**, assisted by another, repeatedly stabbed the woman, her mother-in-law and the two babies, causing their deaths.
33. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** killed a Tutsi woman and her three children in his own home. **Sylvestre GACUMBITSI** was god-father to one of the children, and the woman sought refuge at the home of her former friend. Instead of protecting the woman and her children, **Sylvestre GACUMBITSI** personally arranged their murder.

34. On or about 14 April 1994, **Sylvestre GACUMBITSI** personally shot and killed two civilian Tutsi near the Catholic center in Nyabitare. The two persons pleaded with **Sylvestre GACUMBITSI**, going so far as to offer him money so that they would be killed with bullets and not by machetes. **Sylvestre GACUMBITSI** took the money, shot them, and removed the rest of their money.
35. Sometime between 17 and 18 April 1994, **Sylvestre GACUMBITSI** also caused the death of several Tutsi children. Upon specific instruction from **Sylvestre GACUMBITSI**, infant survivors of the attack on Nyarubuye *paroisse* were lured to a location with an offer of food. Once they were assembled, **Sylvestre GACUMBITSI** ordered all exits blocked and the children were killed with grenades.
36. On a date uncertain during April - June 1994, **Sylvestre GACUMBITSI** personally ordered the tenants in one of his homes to vacate the premises. After announcing that his home was not CND, a reference to the cantonment of RPF soldiers in Kigali, **Sylvestre GACUMBITSI** ordered the killing of his former tenants.

Count 5: RAPE as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre Gacumbitsi** with *RAPE as a CRIME AGAINST HUMANITY*, as stipulated in Article 3(g) of the Statute, in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture*, Rwanda, **Sylvestre Gacumbitsi** did cause women to be raped as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; *and*

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

37. During April, May and June of 1994, there were widespread or systematic rapes and sexual violence of Tutsi women. The sexual assaults were often a prelude to murder, and was sometimes the cause of death of a number of civilian Tutsi.
38. On one particular occasion, on or about 17 April 1994, **Sylvestre GACUMBITSI** lured Tutsi women to a certain location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to **Sylvestre GACUMBITSI**'s exhortations, they were surrounded by several attackers, raped, and then killed. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals.

39. On or about 17 April 1994, **Sylvestre GACUMBITSI** traveled along the Nyarubuye road in a caravan of vehicles, announcing with a megaphone "*Search in the bushes, do not save a single snake Hutu that save Tutsi should be killed ... Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals...*" After **Sylvestre GACUMBITSI** drove by, a group of men attacked Tutsi women that were hiding nearby and raped several of the women. One of the women was killed and a stick was thrust in her genitals.
40. The sexual violence was so widespread, and conducted so openly, and was so integrally incorporated in generalized attacks against civilian Tutsi, that **Sylvestre GACUMBITSI** must have known, or should have known, that it was occurring, and that the perpetrators were his subordinates, subject to his authority and control, and acting under his orders. This is especially so since the perpetrators of sexual violence were often the same individuals that organized and led or participated in the generalized attacks against the Tutsi that **Sylvestre GACUMBITSI** had ordered.

The acts and omissions of Sylvestre GACUMBITSI detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated this 20 day of June 2001:


Carla Del Ponte
Prosecutor

