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

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P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 4207-11 4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

IN TRIAL CHAMBER II

Before: Judge Joseph Asoka De Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Adama Dieng

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ICTR-2001-70-T
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**THE PROSECUTION
V.
EMMANUEL RUKUNDO
Case No 2001-70-T**

**PROSECUTION'S RESPONSE TO DEFENSE MOTION FOR A JUDGMENT OF
ACQUITTAL OF EMMANUEL RUKUNDO PURSUANT TO RULE 98 bis OF
THE RULES**

Office of the Prosecution

William Egbe
Sulaiman Khan
Veronic Wright
Patrick Gabaake
Thembile Segoete
Amina Ibrahim

For the Accused

Aicha Conde
Laure Huntzbuchler

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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ACQUITTAL OF EMMANUEL RUKUNDO

A. Procedural Background

1. On 12 March 2007 the Prosecution closed its case against the accused after calling 18 witnesses during 25 trial days.
2. On 12 March 2007, during a Status Conference held at the close of the case for the prosecution, the defence requested extra days for filing a motion for judgment of acquittal, pursuant to Rule 98 *bis* of the Rules of Evidence and Procedure, (hereinafter "Rules"). The Chamber granted the request and ordered the defence to file the motion not later than 26 March 2007.
3. By Motion filed on 27 March 2007, the defence called upon the Trial Chamber to acquit the Accused person of the Count of murder as a Crime against Humanity and on specific paragraphs of the Indictment relating to the Genocide Count.
4. On the 3rd April 2007, the Prosecution filed the present response to the defence motion for acquittal, and opposes the said motion.

B. Notice of Allegations

5. In an amended indictment pursuant to decision of the Trial Chamber of 28th September 2006, the accused EMMANUEL RUKUNDO is charged with the following three offences:

Count 1: **GENOCIDE**

Count 2: **MURDER as a CRIME AGAINST HUMANITY**

Count 3: **EXTERMINATION as a CRIME AGAINST HUMANITY.**

6. The allegations against the Accused were further elaborated and explained in a Pre-Trial Brief filed on 16 October 2006. These documents supported by various

statements and other disclosures, put the accused person on adequate notice of the charges against him.

7. The Prosecution alleges that Emmanuel Rukundo committed Genocide against Tutsi civilians in that he ordered, instigated, or aided and abetted soldiers, armed civilians and interahamwe militia during the period 6th April and 17 July 1994, to hunt down and kill Tutsi refugees at various places in Kabgayi, Gitarama Prefecture; namely: Gitarama Parish; the Roadblock at the Kabgayi Printing Press; St Joseph College, Kabgayi; St. Leon Minor Seminary, Kabgayi; Kabgayi Major Seminary; Trafipro otherwise known as CND and the Bishop's house in Kabgayi.
8. In respect of the charge of Murder as a Crime against Humanity, the Prosecution placed responsibility on Emmanuel Rukundo for the death of one Madame Rudahunga and one Father Alphonse Mbuguje.
9. The Prosecution relied on most of the factual allegations under the genocide charge to also charge Emmanuel Rukundo for Extermination as a Crime against Humanity.
10. The Prosecution called a total of 18 factual witnesses and an investigator, to prove its case against Emmnuel Rukundo.

C. The Law relating to a motion for acquittal under Rule 98 bis

11. Rule 98 *bis* of the Rules (Motion for Judgment of Acquittal) provides as follows:

- i. If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused filed within seven days after the close of the Prosecution's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgment of acquittal in respect of those counts.

12. The Defence requests the acquittal of the accused person on the argument that the Prosecution has not provided evidence the can justify conviction beyond all reasonable doubt.
13. The Prosecution submits that this is not the applicable standard at this point in the proceedings. As has been ruled by trial chamber after trial chamber, on a consideration of a motion brought under Rule 98*bis* of the Rules, the question that the Trial Chamber must answer is whether the Prosecution had led evidence which if believed, a Trial Chamber could convict the accused person for the crimes charged.

14. In the *Semanza* case, Trial Chamber III noted as follows:

- i. "...Rule 98 *bis* of the Rules of this Tribunal means that a judgment of acquittal shall be ordered at the close of the case for the Prosecution if the Chamber finds that the evidence, if believed, is insufficient for a reasonable trier of fact to find that guilt has been proven beyond a reasonable doubt. In the instant case, the Defense has failed to show that the evidence, *if believed*, is insufficient for a conviction. At this stage of the proceedings all that is required of the Prosecution is to establish a *prima facie* case against the Accused."¹

15. The Appeals Chamber of the International Tribunal for the former Yugoslavia has had on an occasion to interpret a virtually identical provision of the rules of that Tribunal. In its recent judgment in the case of *Prosecution v. Jelusic*, the Appeals Chamber wrote:

- i. "The Appeals Chamber considers that the reference in Rule 98*bis* to a situation in which "the evidence is insufficient to sustain a conviction" means a case in which, in the opinion of the Trial Chamber, the prosecution evidence, if believed, is insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt."²
- ii. See also Appeal Chamber's explanation in *Prosecution v. Sikirica, et al.*, Case No. IT-95-8, Judgment on Defense Motions to Acquit, 3 September 2001.

16. The ICTY in construing a similar provision (Rule 98 *bis* of that Tribunal's Rules) has held as follows:

- i. In *Prosecution v. Tadic*, "the test to be applied in determining this motion is whether as a matter of law there is evidence, were it to be accepted by the Trial Chamber, as to each count charged in the indictment" which is a different matter than what ultimately has to be proved at the conclusion of the entire trial, i.e. that "as to each count and on the whole of the evidence relating to that count, the

¹ *Prosecution v. Semanza*, Decision on the Defense Motion for a Judgment of Acquittal, ICTR-97-20-T, T.C.III, 27 September 2001, at par. 15.

² *Prosecution v. Jelusic*, Case No. IT-95-10-A, Judgement, 5 July 2001, par. 37.

Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.”³

- ii. In *Prosecution v. Blaskic*, dismissal could only be granted where “the Prosecution has so clearly failed to satisfy its obligation as the prosecuting party, that, commencing with this stage of the proceedings, it is no longer even necessary to review the Defense evidence regarding the counts covered in the Motion.”⁴
- iii. In *Prosecution v. Kordic and Cerkez*⁵: The Chamber concludes that the true test to be applied on a motion for acquittal under Rule 98 *bis* is not whether there is evidence which satisfies the Trial Chamber beyond a reasonable doubt of the guilt of the accused, but rather, whether there is evidence on which a reasonable Trial Chamber could convict. This conclusion is supported by the distinction implicit in Rule 98 *bis*, and which is also plain to see in domestic jurisdictions with similar procedures. That distinction is between a determination made at the halfway stage in a trial after the close of the Prosecution’s case, as to whether there is a case to answer, and a determination made at the close of the case as to guilt or innocence. It is not necessary to define what is meant by evidence on which a reasonable Trial Chamber could convict; it is sufficient to say that that standard is not met by any evidence; there must be some evidence which could properly lead to a conviction.

17. Most recently, this Trial Chamber in the Prosecution and Augustin Ndinliyimana⁶ et al said the following:

i) Scope of the Chamber's Enquiry under Rule 98bis

The clearly established legal standard which the Prosecution must meet to withstand a motion for judgement of acquittal under Rule 98*bis* of the Rules is that there must be sufficient evidence upon which a reasonable trier of fact *could*, if the evidence is believed, find the Accused guilty of the crime charged.⁷ The test to be applied is whether “the evidence, assuming it is true, could not possibly

³ *Prosecution v. Tadic*, Case No. IT-94-1-T, Decision on Defense Motion to Dismiss Charges, 13 September 1996.

⁴ *Prosecution v. Blaskic*, Decision of Trial Chamber I on Defense Motion to Dismiss, 3 September 1998.

⁵ *Prosecution v. Kordic and Cerkez*, Case No. IT-95-14/2-T, Decision on Defense Motions for Judgment of Acquittal, 6 April 2000, at pars. 26 and 28.

⁶ Case No ICTR-00-56-T, Decision on Defence Motion Pursuant to Rule 98Bis, of 20 March 2007

⁷ *The Prosecution v. Zigiranyirazo*, “Decision on the Defence Motion pursuant to Rule 98*bis*”, 21 February 2007 (*Zigi 98bis Decision*); *The Prosecution v. Rwamakuba*, “Decision on Defence Motion for Judgement of Acquittal”, 28 October 2005 (*Rwamakuba 98bis Decision*); *The Prosecution v. Mpambara*, “Decision on the Defence’s Motion for Judgement of Acquittal”, 21 October 2005 (*Mpambara 98bis Decision*); *The Prosecution v. Muvunyi*, “Decision on Tharcisse Muvunyi’s Motion for Judgement of Acquittal pursuant to Rule 98*bis*”, 13 October 2005 (*Muvunyi 98bis Decision*); *The Prosecution v. Bagosora et al*, “Decision on Motions for Judgement of Acquittal”, 2 February 2005 (*Bagosora 98bis Decision*); *The Prosecution v. Nyiramasuhuko et al*, “Decision on Defence Motions for Acquittal under Rule 98*bis*”, 16 December 2004 (*Butare 98bis Decision*).

sustain a finding of guilt beyond reasonable doubt. That will only be the case where there is no evidence whatsoever which is probative of one or more of the required elements of a crime charged, or where the only such evidence is incapable of belief.”⁸ In effect, when considering a motion for acquittal, the relevant question is not whether the Trial Chamber *would* in fact enter a conviction beyond reasonable doubt on the basis of the Prosecution evidence, but whether it *could*. A finding that sufficient evidence has been led to deny a Rule 98bis motion in respect of a particular count in the Indictment, does not preclude the Chamber at the end of the case from entering a judgement of acquittal on the same count, where it comes to the conclusion that the Prosecution has failed to make out the count beyond all reasonable doubt.⁹

18. The Prosecution submits that it has led evidence which if believed, could sustain a conviction for the crimes charged in the Indictment. At this point in the proceedings the Trial Chamber cannot be called upon to evaluate the credibility or reliability of the evidence led by the prosecution. On Paragraph 7 of the Ndinliyimana et al Ruling, the Trial Chamber stated:

“It follows that a decision pursuant to Rule 98bis does not require the Chamber to evaluate the credibility and reliability of the Prosecution evidence; that comes at the end of the trial taking into account the evidence as a whole. However, where the Prosecution’s case has completely broken down either on its own presentation, or as a result of defence cross-examination, with the effect that the Prosecution is left without a case, the Chamber may consider that the evidence obviously lacks credibility and reliability, and therefore enter a judgement of acquittal”.¹⁰

19. The Prosecution submits that the exception does not obtain in the present case as the defence has not shown that the prosecution’s case had completely broken down on its own presentation, nor, that it had been destroyed by cross-examination.
20. The defence submits that the Prosecution has to lead evidence to prove all the elements of the crimes charged and also prove all factual elements particularly mentioned in the Indictment. It also argues that an accused person can be acquitted on the basis of certain isolated paragraphs where the Trial Chamber finds that the Prosecution had not led evidence to prove them. The Prosecution humbly submits that Rule 98 does not allow for any such procedure. In the

⁸ *Bagosora* 98bis Decision, paras. 6-8.

⁹ *The Prosecution v. Jelusic* Judgement (AC), 5 July 2001, para. 37 (*Jelusic* Judgement (AC)).

¹⁰ *Muvunyi* 98bis Decision, para 37; *Rwamakuba* 98bis Decision, para. 7; *Butare* 98bis Decision, para. 71; *The Prosecution v. Kamuhanda*, “Decision on Kamuhanda’s Motion for Partial Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence” (TC), 20 August 2002, para. 19 (*Kamuhanda* 98bis Decision); *The Prosecution v. Kordic and Cerkez*, “Decision on Defence Motions for Judgement of Acquittal (TC), 6 April 2000”, para. 28.

Zigiranyirazo Case, the Trial Chamber categorically refused to consider the Indictment paragraph by paragraph in order to enquire whether the Prosecution had established a case for the accused to answer.¹¹

“... The Chamber stresses that Rule 98 bis requires it to consider counts, the Chamber need not engage in a paragraph by paragraph analysis of the indictment”.

21. The Prosecution humbly submits that, where it has not led any evidence on an allegation contained in a particular paragraph the most that could happen is that the defence would not be required to call evidence to rebut that allegation. The Prosecution has been known to acknowledge that it has not called evidence on certain paragraphs and withdrawn the allegations. In such cases, the Trial Chamber has ruled that the defence need not call evidence to disprove those allegations in the withdrawn paragraphs.

“The Chamber therefore considers it appropriate to examine the evidence in relation to counts, without having to test the sufficiency of the evidence in respect of particular paragraphs of the Indictment.¹² The Chamber will only depart from this principle where the Prosecution announces its intention to withdraw particular paragraphs of the Indictment due to lack of evidence. Where that is the case, the Chamber finds that the Defence is not required to answer to the allegations in the relevant paragraphs”.¹³

D. Murder as a crime against Humanity

22. The defence invites the Trial Chamber to find that the murder count contains faulty elements relative to the crime charged or that the elements are insufficient to found a verdict of culpability. The Prosecution submits that this argument amounts to a submission on the defects of the Indictment. This, it is submitted cannot be raised at this point in the proceedings. The Trial Chamber in *Ndindiliyimana et al* Ruling had this to say:

“The Chamber will also not consider whether the Defence has had sufficient notice of charges to sustain a conviction, or whether there are other legal defects in the Indictment which could lead to acquittal.”¹⁴

23. The Prosecution submits that the defence’s alternative prayer for the Trial Chamber to find that the Prosecution has not led sufficient evidence to justify conviction beyond all reasonable doubt, is premised on an argument that is based on a standard of proof that is not applicable at this stage of the proceedings.

¹¹ Prosecution v. *Zigiranyirazo*, Decision on the defence motion pursuant to Rule 98bis, 17 October 2006

¹² See *Muvunyi 98bis* Decision, para. 39; *Bagosora 98bis* Decision, para. 8.

¹³ Prosecution v. *Ndindiliyimana et al.* 98 bis decision, 20 March 2007

¹⁴ *Bagosora 98bis* Decision, para. 7, citing *Butare 98bis* Decision, paras. 73-75; *The Prosecution v. Semanza*, Decision on the Defence Motion for a Judgement of Acquittal (TC), 27 September 2001, para. 18; *The Prosecution v. Kunarac et al.*, Decision on Motion for Acquittal (TC), 3 July 2000, para. 27.

24. On a charge of Murder as a Crime against Humanity under the Statute of the Tribunal, the essential elements are as follows:

- i) The victim is dead; by a *premeditated* act or omission;
- ii) The death resulted from an unlawful act or omission of the accused or a subordinate;
- iii) At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues or not¹⁵.
- iv) Murder must be committed as part of a widespread or systematic attack against a civilian population. The victim must be a member of this civilian population.
- v) The victim must have been murdered because he was discriminated against on national, ethnic, racial, political or religious grounds.¹⁶
- vi) [A *premeditated* murder that forms part of a widespread or systematic attack, against civilians, on discriminatory grounds will be a crime against humanity. Also included will be extrajudicial killings, that is "unlawful and deliberate killings carried out with the order of a Government or with its complicity or acquiescence."¹⁷
- vii) The standard of *mens rea* required is intentional and premeditated killing. The result is premeditated when the actor formulated his intent to kill after a cool moment of reflection. The result is intended when it is the actor's purpose, or the actor is aware that it will occur in the ordinary course of events.

25. The Prosecution submits that in the charge against the accused in relation to Murder as stated in the Indictment and further elaborated in the Pre-Trial Brief, Emmanuel RUKUNDO is accused of being responsible for the deaths of Madame Rudahunga and Alphonse Mbuguje. The Prosecution places responsibility on the accused for these two murders because the accused ordered, instigated, aided and abetted or otherwise encouraged soldiers to kill the said persons.

26. To prove these allegations, the Prosecution led the following evidence:

¹⁵ The *Prosecution v. Clément Kayishema and Obed Ruzindana case No. ICTR-95-1-T* dated 21 May 1999 par 140, *The Prosecution v. Jean-Paul Akayesu Case No. Ictr-96-4-T* dated 2 September 1998 par 589, *Prosecution v. Georges Anderson Nderubumwe Rutaganda*, decision dated 6 December 1999 par 80; *Prosecution v. Alfred Musema Case No. Ictr-96-13-I* dated 27 January 2000 par 215 .

¹⁶ *The Prosecution v. Jean-Paul Akayesu Case No. Ictr-96-4-T* dated 2 September 1998 par 590, *The Prosecution V. Alfred , Case No. Ictr-96-13-I* dated 27 January 2000 par 214-216 .

¹⁷ *The Prosecution v. Clément Kayishema and Obed Ruzindana, case No. ICTR-95-1-T* dated 21 May 19 par 140.

- in respect of the death of Madame Rudahunga:

27. Mrs Rudahunga was the wife of one Louis Rudahunga, who had been accused of being an Inkontanyi accomplice. He had been arrested and imprisoned in 1990 for a considerable number of months. With the outbreak of genocide, he and his family went into hiding. Mrs Rudahunga and her children hid at the St Joseph's college.
28. Mrs Rudahunga was singled out by soldiers in Emmanuel Rukundo's company. She was taken to her house and shot in the head. Her children were also taken to her house and seriously assaulted and left for dead. Emmanuel Rukundo then boasted of their killing. This evidence was produced as follows:

Witness BLJ

29. In the early morning of the 27th of April 1994, her mother was taken away by at least 4 soldiers. About twenty minutes later, those same soldiers returned to their place of refuge at St Joseph's college in Kabgayi and took her and her brother and others to their home. She saw that her mother had been shot in the head and she was lying dead in the house. The soldiers then hit her and the others repeatedly. They were seriously injured and bleeding furiously. They were left for dead. She was taken to the hospital by one Fr. Kayibanda who asked her to hide in the car because Fr. Emmanuel's car was around, pointing to the same pick-up vehicle in which they had been transported to her home. The vehicle was parked nearby. She later saw two of the same soldiers in the company of Emmanuel Rukundo at the hospital.¹⁸
30. Her father had previously been accused of being an Inkotanyi accomplice and been imprisoned prior to the genocide. One of the accusations against him was that he made false ID cards for Inkotanyi infiltrators. Their house had been searched before.¹⁹
31. On the fateful day when her mother was killed, she saw that their house had been ransacked and damaged.²⁰

Witness BLP

32. The witness saw Emmanuel Rukundo outside of St Joseph's College with soldiers. The soldiers were consulting him, as they went in and out of the college, showing him things they had taken from the college. The witness saw them bring out Rudahunga's wife and put her in a vehicle. They then drove away with her and Emmanuel Rukundo followed them. About 20 minutes later, soldiers returned. Witness was able to see one of the vehicles which had earlier been used to take Mrs Rudahunga away. Witness later learnt that they had taken

¹⁸ TT 9/03/07, p12 line 28 – p17, line 12

¹⁹ TT 9/03/07, p9 lines 18-28

²⁰ TT9/03/07, p13 lines 15-16

Rudahunga's children and others away. One of the victims later returned to the college with injuries to her head. Witness later saw another victim also with injuries to his head.²¹

Witness BLC

33. This witness saw the accused and a group of soldiers at the St. Leon minor seminary. He heard the accused say to a fellow priest: "*We entered Rudahunga Inyenzi's house, we killed the wife and children, but the idiot managed to get away from us*"²²

34. Witness knew Rudahunga's eldest son, Bernard, with whom he attended St Leon minor seminary prior to the events of 1994. He knew that Rudahunga had been accused of being an inyenzi and arrested.²³

Witness CCH

35. Emmanuel RUKUNDO told this witness that documents had been found in Rudahunga's house including a list of people who made contributions to the Inkotanyi in which Alphonse Mbuguje's name was included.²⁴

36. The Prosecution submits that it has led sufficient evidence which if believed could lead to the only conclusion possible, that the accused person ordered, instigated or aided and abetted the killing of Mrs Rudahunga.

37. If believed, the prosecution evidence could convince a reasonable trier of fact that the accused was responsible for the death of Mrs Rudahunga as part of the widespread killing of Tutsi of which ethnic group she belonged. She was killed because her husband was accused by Emmanuel Rukundo among others, of being an Inkotanyi accomplice.

38. In paragraph 39 of the Motion, the defence argues that the none of the prosecution witnesses had proved the Emmanuel Rukundo had premeditated the murder of Madame Rudahunga, that none of them assisted in the murder, and none were eye witnesses to the murder.

39. The Prosecution respectfully submits that these are all matters that go to the evaluation of the witness testimonies and their reliability. The Prosecution argues that as stated in its opening brief at the commencement of Trial, this case is highly circumstantial. Therefore the evidence presented must be evaluated in its entirety in order for the proper legal deductions to be made.

40. In any event, the issue of premeditation is evident from the accused actions. Emmanuel Rukundo was with the soldiers who took Mrs Rudahunga away, he

²¹ TT 15/11/06, p14 line18 – p17 line 16

²² TT 4/12/06, p21 lines 27-33

²³ TT 4/12/06, p23, lines 1-37

²⁴ TT 13/02/07 p58, lines 26-36

went with them, she was found dead in her home, the soldiers came back and took the children and seriously assaulted them leaving them for dead, Emmanuel Rukundo through his own utterances boasted of the killing. The Prosecution need not lead direct evidence saying categorically that Emmanuel Rukundo premeditated the death of Mrs Rudahunga. The factual allegations describing his actions speak for themselves.

• *In respect of the death of Alphonse Mbuguje:*

41. Alphonse Mbuguje was a Tutsi priest who attended the major seminary of Nyakibanda and was ordained, at the time as Emmanuel Rukundo. After the RPF attack, Emmanuel Rukundo labeled Mbuguje as well as other Tutsi seminarians as inkontanyi. Such denouncement also found its way to some newspapers and radio stations. At the outbreak of the genocide, Mbuguje was in Cyangugu. Emmanuel Rukundo made statements to the effect that Mbuguje was an inkotanyi and was being sought. Mbuguje was subsequently arrested on the basis of an arrest warrant issued by the Gitarama Prosecutor. He was killed about 3-4 days thereafter. This evidence is brought out through the following witnesses:

Witness CCH

42. Emmanuel Rukundo told her that Alphonse Mbuguje, her uncle, was an inyenzi. He said for that reason her whole family had to die. He told her that Mbuguje's name had been seen on documents found in Louis Rudahunga's house.²⁵

Witness CCN

43. This witness said Emmanuel Rukundo hated Tutsi and in particular denounced Alphonse Mbuguje. He also denounced the witness, Joseph Boneza and other Tutsi priests. Mbuguje and Boneza were killed during the genocide. Mbuguje was killed in Cyangugu.²⁶

44. This witness was told that Rukundo boasted that they had been killed and that only one inyenzi was remaining, and that was Alphonse Mbuguje. Emmanuel Rukundo said that he knew that Mbuguje was in Cyangugu and they 'had sent somebody to accomplish that mission there'. Mbuguje was taken from the Bishopric in Cyangugu and killed.²⁷

Witness CCL

45. This witness stated that he knows Rukundo because they went to the same school for five years.²⁸
46. At Nyakibanda major seminary, Emmanuel Rukundo belonged to a group known as the committee of salvation. The group was exclusively Hutu and had an anti Tutsi philosophy. This group drew up a list with names of persons whom they

²⁵ TT 13/02/07 p58, lines 26-36

²⁶ TT (F) Huit Clos 23/02/07, p23, lines 14-19

²⁷ TT 23/02/07, p18 lines 27-37

²⁸ TT 27/11/06, p4 lines 1-2

accused of collaborating with the Inkotanyi, and persons whose names appeared in this list were to be arrested and imprisoned. The objective of this group was to point out Tutsi who were to be imprisoned on allegations that they were collaborating with the RPF. The witness believes that Mbuguje's name was on the list that was compiled by this particular group simply because he was a Tutsi.²⁹

47. Father Mbuguje was the subject matter of articles in newspapers. He was accused of being an Inkotanyi accomplice. His name was also broadcast over radio RTLM and in Kangura. He was the only Tutsi priest arrested from Cyangugu and killed.³⁰

Witness BLR

48. This witness said that the relationship between Emmanuel Rukundo and Alphonse Mbuguje were strained after the RPF attack of 1990. They no longer visited each other and hardly talked to each other.³¹

49. Mbuguje had gone to Mibilizi in Cyangugu prefecture to visit witness and others, when the genocide broke out. Mbuguje went to the Bishopric in Cyangugu. The witness fled to Congo leaving Mbuguje behind. The witness was told by one Modest that some soldiers went to the Bishop's House to take Mbuguje purporting to interrogate him. He was later killed. The warrant under which Mbuguje was arrested was issued by the Gitarama Prosecution.³²

Witness CCJ

50. He was told by a seminarian called Aldalbert that Mbuguje, the witness and Callixte Munosera were sought to be killed.³³ His sister, a nun at the Bernadine sister's convent also told him that Rukundo told her that he had been killed.³⁴

Witness BPA

51. This witness said that Mbuguje, like most Tutsi, had been labeled an inkotanyi or inyenzi. Emmanuel Rukundo and Mbuguje's relationship deteriorated after the RPF attack because Rukundo blamed the Tutsi for the attack. The witness learned that Mbuguje had been killed in Cyangugu.³⁵

Witness CCG

52. This witness confirms Mbuguje's death. He was given a death certificate by the Bishop of Cyangugu. Prior to that he had been told by his sister who was a nun at

²⁹ TT 27/11/06, p7 line 1 – p14 line 37

³⁰ TT 28/11/06 p2 line 33 – p4 line 12

³¹ TT 8/03/07, p5 lines 7-14

³² TT 8/03/07, p5 lines 20-32

³³ TT 14/02/07, p31 lines 17-32

³⁴ TT 14/02/07, p35 lines 2-35

³⁵ TT 7/03/07, p17 lines 12-17

the Carmelite Order in Cyangugu that Mbuguje had been killed. This was confirmed by one Ndolimana who was the Vicar of the Cyangugu parish.³⁶

53. The witness was told by CCH that Emmanuel Rukundo said that Mbuguje was an inyenzi. The witness was very worried because such utterance had come from a fellow priest.³⁷
54. Witness was also told that Daniel Nahimana had visited Cyangugu soon before Mbuguje's arrest and subsequent murder³⁸.

Witness BLE

55. The witness explained the circumstances surrounding Mbuguje's arrest and subsequent death. On the 27th May, the chief of intelligence accompanied by soldiers arrived at the Bishop's house. He said he had been asked to arrest a person known as Alphonse Mbuguje. The Bishop asked for a warrant of arrest and he said he was going to get one. He returned later with a document which he handed over to the Bishop. It was a telegramme stipulating that Alphonse Mbuguje should be interrogated. Mbuguje was taken away. Witness and others took him food for the following two days. Witness saw in the Gendarmerie Register that Mbuguje was accused of being a collaborator of the RPF. On 30th May witness learned that Mbuguje had been taken away to an unknown destination, by the Chief of intelligence, claiming that he was taking Mbuguje to Gitarama where he had committed his offence. The witness and others were later informed that Mbuguje's corpse had been found among other dead bodies. Mbuguje was never seen again.³⁹

56. the witness recalled that Daniel Nahimana had visited the Bishop's house shortly before Mbuguje's arrest. Nahimana asked to see Mbuguje and actually spoke to Mbuguje. At that time they found it strange that under the prevailing circumstances, Nahimana should be moving around with so much ease and had traveled all the way to Cyangugu from Gitarama.⁴⁰

57. Following the conversation that Nahimana had with Mbuguje, it was decided that Mbuguje should be smuggled out of the country. Unfortunately Mbuguje was arrested the very next day, before he could leave.⁴¹

Witness BLC

58. Father Daniel Nahimana was Emmanuel Rukundo's special friend. Emmanuel Rukundo used to visit him in his quarters in St. Leon and spend considerable amount of time there.⁴²

³⁶ TT 15/02/07, p22 line 34- p23 line 6

³⁷ TT 15/02/07, p22 lines 5-28

³⁸ TT 15/02/07, p26 lines 2-6

³⁹ TT 20/02/07, p4 line 12 – p6 line 1

⁴⁰ TT 20/02/07, p6 line 23 – p7 line 35

⁴¹ TT 20/02/07, p7, lines 17-22

⁴² TT 4/12/06, p17 lines 8-20 & TT 7/12/06, p9 lines 11-28

59. The Prosecution submits that the evidence enumerated above sufficiently establishes a prima facie case for Emmanuel Rukundo to answer, in relation to the death of Alphonse Mbuguje, and urges the Trial Chamber to invite him to enter his defence.
60. The Prosecution reiterates that the case against the accused is mostly circumstantial and not direct. However, when put together, it can only point to the conclusion that the accused was involved in, through ordering, instigation or aiding and abetting, the death of Alphonse Mbuguje.
61. The accused was a priest and a soldier. He was part of the military establishment and was politically active. He had denounced Mbuguje as Inkotanyi prior to the genocide. Their relationship was not good. He denounced him as inkotanyi during the genocide. Emmanuel Rukundo was particularly friendly with Daniel Nahimana. Nahimana went to Cyangugu for no apparent reason and asked to see Mbuguje. He actually spoke to Mbuguje pretending to warn him. Mbuguje was immediately arrested after the visit. The warrant of arrest of Mbuguje came from Gitarama where Emmanuel Rukundo was particularly active and seeking Tutsi accused of being Inkotanyi. All these circumstances point to the fact that Emmanuel Rukundo was responsible, (alone), but certainly in collaboration with others, for the death of Alphonse Mbuguje. Emmanuel Rukundo consistently acted with soldiers in seeking out Tutsi to kill. Mbuguje was arrested by the Chief of intelligence in the company of soldiers. Mbuguje was not known in Cyangugu and had been there in relative safety for sometime before he was arrested and killed.
62. The evidence led by the Prosecution on this part of the Count of Murder supports the allegation that Emmanuel Rukundo instigated, or aided and abetted the killing of Alphonse Mbuguje.

D. Genocide

• Paragraph 15

63. The Defence Motion challenges paragraph 15 of the Indictment and argues that the Prosecution did not lead evidence to prove the allegation contained therein. The Prosecution submits that it led direct evidence on this allegation through the victim herself.

Witness CCH:

64. She testified on 13/2/07 and said in summary:
65. In April 1994, after the death of President Hayarimana Tutsi were being hunted down and killed. She sought refuge at the St Leon Minor Seminary with other refugees.

66. The witness saw Emmanuel Rukundo at the seminary armed and dressed in military attire and accompanied by a soldier.
67. In closed session, the witness said that she spoke to Rukundo and begged for assistance and protection. Emmanuel Rukundo stated to the witness that all relatives of Father Alphonse Mbuguje would have to die because Mbuguje was an inkotanyi and his name had been found on documents at Rudahunga's house showing names of persons who gave financial contributions to the Inkotanyi.
68. Emmanuel Rukundo went into a room with the witness, locked the door, unzipped his trousers and forcibly laid on top of her without her consent. Emmanuel Rukundo forcefully attempted to rape the witness but she resisted, until he failed to achieve the attempted act of rape due to a premature ejaculation. The witness said she never gave Emmanuel Rukundo the impression of consent during the sexual assault.
69. The witness said that she only acceded to the demands by Emmanuel Rukundo to assist him to carry the goods into the room because she harboured the hopes that he would assist or protect her as it was evident to her that he was a figure of power and authority.
70. The Prosecution submits that the defence arguments are unfounded and urges Chamber to call upon the accused to defend the allegation.

• Other paragraphs under the Genocide Count

71. The defence motion further challenges the evidence led on other paragraphs of the indictment which support the genocide count and urges the Trial Chamber to acquit the accused of those allegations.
72. The Prosecution reiterates its argument above and submits that it is inappropriate at this stage to consider the evidence on the basis of the paragraphs of the indictment.
73. The Prosecution however acknowledges that it has not led any evidence to support paragraphs 10(i), 16 and 25(i) relating to the accused person's activities at the Gitarama Parish and seeks the permission of the Trial Chamber to withdraw those allegations.
74. As regards the rest of the paragraphs of the Indictment, the Prosecution submits that it has led evidence which if believed could support the count of Genocide as charged.
75. The Prosecution attaches to this Response a summary of the evidence which it has led to prove the various allegations contained in the Genocide Count. (See Annex A)

76. The Prosecution submits that the defence is wrong to call upon that Trial Chamber to acquit the accused person on those allegations. The Trial Chamber has held that, the fact that not all prosecution witnesses testified on all counts of the indictment as indicated in the witness list is not an issue that the Chamber would consider under Rule 98bis, nor would this be a sufficient ground for acquittal⁴³.
77. Besides, the defence wrongly calls upon the Trial Chamber to assess the evidence of the Prosecution paragraph by paragraph which is clearly not required under Rule 98bis. The defence argues that the Indictment is structured in a manner that can allow for the Trial Chamber to acquit the accused on the basis of allegations contained in the paragraphs rather than on the counts in the Indictment. It argues that these allegations are stand-alone allegations and can therefore be treated differently. The Prosecution argues that although the paragraphs allege different acts of the accused, they are not isolated occurrences. They are all acts committed by the accused with the persons with whom he acted, in a continuum and constitute genocidal acts against the Tutsi and which formed part of the genocide of the Tutsi that was ongoing. They all add up to show a pattern of behaviour of the accused in the commission of genocide for which he is accused. It will be inappropriate therefore to request the Trial Chamber at this point to evaluate the evidence adduced on a paragraph by paragraph basis to see if they had been proved.
78. The Prosecution further submits that a submission under Rule 98bis does not call for the level of enquiry of the Prosecution evidence that the defence motion calls for.
79. What is important at his point is a consideration whether the Prosecution led evidence which if believed could support the charge of Genocide leveled against the accused person in the Indictment.

F. Conclusion

80. The defence has not demonstrated that the Prosecution's case has completely broken down. They have not shown that the Prosecution's case, if believed, is insufficient to ground a conviction. Having failed to do so, the Chamber should not enter a judgment of acquittal in respect of the charges against the accused person.

G. Relief Sought

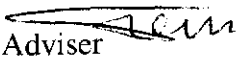
81. In the light of the evidence that has been placed before the Trial Chamber, the Prosecution respectfully urges the Trial Chamber to reject the defence motion and call upon the accused person to enter into his defence.


⁴³ Prosecutor v. Simeon Nchamihigo, Case no ICTR-2001-63-T, Decision on Motion for acquittal under Rule 98bis of 8 March 2007


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Signed:

William Egbe, Senior Trial Attorney

Sulaiman Khan, Legal Adviser 

Veronic Wright, Trial Attorney 

Patrick Gabaake, Trial Attorney 

for Thmbile Segoete, Legal Adviser 

Dated in Arusha this 3rd Day of April 2007

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Annex A

THE PROSECUTOR v. EMMANUEL RUKUNDO
Case No. ICTR-2001-70-T

**SUMMARY OF THE EVIDENCE LED BY THE PROSECUTION TO PROVE
GENOCIDE**

a) St Leon Minor Seminary

1. Witness CSG

20 November 2006

- 1) Witness CSG first heard of Emmanuel Rukundo in April 1994 during the Genocide when she sought refuge at the Kabgayi St. Leon Seminary. She had sought refuge there because she and other refugees genuinely believed that a religious institution like the St. Leon Seminary would provide a safe haven for them.
- 2) Life at the St. Leon seminary was harsh and unsafe for the refugees. They were under constant attack from Interahamwe who were led by Emmanuel Rukundo.
- 3) The witness said that she came to know of Emmanuel Rukundo because every time he came to the St Leon Seminary refugees would shout "You have to flee because Rukundo is coming". He always had a list which he would consult as he went through the crowd of refugees and then the Interahamwe would come immediately behind to abduct and kill refugees.
- 4) Witness CSG stated that each time Rukundo came to the St. Leon seminary he wore military uniform and was accompanied by a soldier who was his escort. He had a list and would move amongst the refugees. All the refugees he came close to or spoke to were abducted the same day.
- 5) Emmanuel Rukundo went to St. Leon seminary about twice daily escorted by soldiers, every time subsequent to his visits the Interahamwe would move in to kill refugees.
- 6) Every time refugees saw Rukundo they fled because they knew that his mere presence signaled the subsequent arrival of Interahamwe who would abduct and kill refugees.
- 7) The witness said that she believed that all refugees who were abducted were killed because none of them ever returned alive.

- 8) The modus operandi of Rukundo was to get close to Refugees, consult his list, go back to the entrance and the Interahamwe would subsequently move in to attack the refugees.
- 9) Emmanuel Rukundo's behavior was not consistent with that of a priest, but rather a soldier. He never offered any form of spiritual assistance to the refugees who were being persecuted and killed.
- 10) Witness CSG said that she believed that Rukundo acted in collusion with the Interahamwe because every time he arrived and looked at his list, someone would always be abducted subsequently or thereafter.
- 11) Under cross examination, the witness stated that each time Rukundo came to the St Leon Seminary the refugees would scream and call on each other to hide. She further explained that Rukundo moved ahead of the attackers who targeted the refugees. He would be dressed in military attire on each visit. People would scream "run Rukundo is coming" and scatter when they saw him.
- 12) Each time Rukundo talked to a refugee, that person would be subsequently taken away after about three to five minutes. She explained further that Rukundo went to St Leon seminary with a list which he would consult, after coming close to a person and talking to them. The Interahamwe would come with the same list and abduct person whom Rukundo had spoken to. All refugees who recognized Rukundo ran in fear on his arrival.

2 Witness BLC

29 Nov. 2006

- 13) Witness was a student at St Leon Minor seminary in Kabgayi in 1994. When the genocide was unleashed he was on holiday in his village. He sought refuge with his family at St Leon. There were a number of Tutsi refugees and others including Hutu refugees from Nyacyonga. The number of refugees increased as time went by. At the beginning people lived in the dormitories, but later refugees just settled wherever they could all over the seminary.
- 14) The witness knew Emmanuel Rukundo as a seminarian would know a priest, but got to know him more closely during 1994.
- 15) Emmanuel Rukundo used to go to the St Leon Minor seminary quite frequently. Emmanuel Rukundo wore military uniform, had a weapon and had soldiers accompanying him. Emmanuel Rukundo was accompanied by two, sometimes three or four soldiers, except for one occasion when he came with about 10 to 15 soldiers.

- 16) Emmanuel Rukundo would either go to St Leon with soldiers who would later come and take people away or he would go there to see other priests and give them updates on what was happening in respect of military operations. Sometimes he could be seen off-loading bottles of wine and take them to a store room.
- 17) Emmanuel Rukundo had a special friend, Fr. Nahimana, Daniel. The witness observed this relationship from the way they behaved. Emmanuel Rukundo would go to Nahimana's house and stay there for a long time. He did not do that with the other priests.
- 18) Emmanuel Rukundo would come with soldiers during the day. Then the soldiers would come take people away at night. Witness once saw the same soldiers who had been with Emmanuel Rukundo in the day come take people in the night. Every day Emmanuel Rukundo went to St Leon, the refugees knew that people would die later. It was as simple as that. Parents who were known; teachers, inspectors, who would have been identified, would simply say: 'well, he has come'. He did not come personally to get the refugees in the evening, others did that. One night all the people in one room were taken away and killed and only one person, the witness's father survived.
- 19) When Emmanuel Rukundo came with the soldiers during the day, they would melt into the crowd, but the refugees were afraid to be identified because they knew that come night time, something would happen.

7 Dec. 2006

- 20) As far as witness was concerned, the same people who identified the location during the day were the same who came at night. It had become something of a routine. And people will say, here they come again.

3. Witness CSF

13 February 2007

- 21) This witness said that he left his home on 11 April to seek refuge at the Saint Leon Minor Seminary in Kabgayi. Many other refugees were there.
- 22) He did not know Emanuel Rukundo prior to the genocide, but those who knew him identified Emmanuel Rukundo to him. These were people who were present during his ordination. He was dressed in a military uniform and holding a piece of paper. Emmanuel Rukundo gave the piece of paper to one of the soldiers with him and then left.
- 23) Emmanuel Rukundo came a second time. This was after 4 days since the first time. He was still in the company of soldiers and interahamwe. He still had a list, which he gave to a soldier and refugees were called out from it. A number of them were taken away.

- 24) On each occasion, Emmanuel Rukundo left as soon as he gave the list to a soldier.
- 25) The refugees had realized, after the first occasion they were going to be killed and tried to protest. They were however taken away, put on board the vehicles and did not come back.
- 26) Four days later Emmanuel Rukundo returned for the third time, still in the company of soldiers and interahamwe. He still had a list that he gave to the soldiers and they in turn looked for people that had to be taken away. The witness said that even on the third occasion, Emmanuel Rukundo gave the list to a soldier to read the names and he left. The refugees were again taken into the vehicles.
- 27) The witness saw Emmanuel Rukundo again a 4th time. This was the last time he saw Emmanuel Rukundo at the minor seminary. This time there were buses and the list was long, many people were taken away.
- 28) The refugees who were taken away never returned. The witness does not know where they were taken to but they were killed. The interahamwe and soldiers killed them. The interahamwe came back singing songs and boasting that they had killed refugees.
- 29) Emmanuel Rukundo appeared to be the leader of the soldiers and interahamwe. They were being led by him and seemed to only be implementing or executing orders issued by him. He was their leader
- 30) The soldiers accompanying Emmanuel Rukundo were about 6 in number, together with the interahamwe
- 31) All of them were armed with different weapons. Emmanuel Rukundo had a small firearm

4. Witness CCH

13 February 2007

- 32) In April 1994, following the death of President Habyarimana, Tutsi were being hunted down and killed. CCH sought refuge at the ST Leone minor seminary with other refugees.
- 33) She saw Emmanuel Rukundo at the Seminary armed and dressed in military attire and accompanied by a soldier. Since she knew Emmanuel Rukundo, the witness approached him.
- 34) In closed session, the witness explained that she spoke to Rukundo and begged for assistance and protection. Emmanuel Rukundo stated to the

witness that all relatives of Father Alphonse Mbuguje would have to die because Mbuguje's name had been found on documents taken from Rudahunga's house showing names of persons who gave financial contributions to the Inkotanyi.

- 35) Emmanuel Rukundo then went into a room with the witness CCH, locked the door, unzipped his trousers and forcibly laid on top of her without her consent. He forcefully attempted to rape witness CCH but she resisted, until he failed to achieve the attempted act of rape due to a premature ejaculation. Witness CCH said that she never gave Rukundo the impression of consent during the attempted rape.
- 36) Witness CCH acceded to the demands by Rukundo to assist him to carry the goods into the room because she harbored the hopes that he would assist to protect her as it was evident to her that he was a figure of power and authority.

5. Witness CCG

15 February 2007

- 37) The witness knew Emmanuel Rukundo from the time that he studied with Alphonse Mbugue (deceased). Emmanuel Rukundo was also his customer in his tailoring workshop.
- 38) The witness arrived at St Leon towards end of May, probably 25th or 26th to join the rest of his family.
- 39) He met his daughter CCH who told him she met Emmanuel Rukundo at the camp. CCH told him ER had said their whole family were wanted because her uncle Mbuguge was an Inyenzi. CCH also told him Emmanuel Rukundo said Mbuguge's name was found on a list of people who had made contributions to the Inkotanyi.

b) St Joseph's College (The murder of Mrs Rudahunga)

6. Witness BLP

15th and 16th November 2006

- 40) This witness saw Emmanuel Rukundo again sometime between the 12th and 15th of April at the St Joseph's college in Kabgayi. The witness was going to work as usual in the morning at around 8am. He found Emmanuel Rukundo outside the college. He was with some soldiers. The witness could not give the exact number of soldiers. There were three vehicles, one was a taxi Hiace of blue colour, a Kaki Toyota pick-up, Hilux, and the third was a Suzuki Samurai with military number plates, the same that witness had earlier seen Emmanuel Rukundo in. The vehicles very close to the main entrance of the college.

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- 41) The soldiers stopped the witness at the gate and he showed his ID card. The soldiers ordered him to remain outside and not move. Witness saw soldiers coming out of the college with things they had found in the college. The witness explained further that:
- 42) "These were mainly documents, and they were carrying riffles. They showed the papers and other objects that they had found in Saint Joseph to Father Rukundo. Around 10:00H. They came out with the wife of a certain man called Louis, who lived in Ruharuho, and they asked the woman to take them to her house and show them the weapons she had hidden in her house. They got the woman to climb aboard their vehicle and took her with them. I was afraid, because I thought there were soldiers everywhere, and I did not move from where I was. Twenty minutes later they came back and took with them this woman's children – two of her children and another girl ..."
- 43) The woman's husband was called Louis RUDAHUNGA. The woman was subsequently killed in her house in Gahogo. She was taken away by several soldiers from the refugee camp in Saint Joseph college. They joined the soldiers who were at the roadblock with Emmanuel Rukundo and they took her away. "father RUKUNDO followed them in his own vehicle", the Suzuki Samurai.
- 44) The same soldiers came back 20 minutes later and took the children and Jeanine and Justin. Witness was already inside the college and could not see whether the soldiers came back with all the vehicles. From where he was however, he could see the Hiace minibus and the soldiers through the window.
- 45) Jeanine subsequently returned to the college and narrated to people that they had been taken to Rudahunga's house. They saw that Rudahunga's wife had been killed. The others had been wounded, but the children and Justin were still alive. Jeanine herself was seriously wounded and was bleeding a lot. Witness subsequently saw Justin after he had been discharged from hospital at a refugee camp at CND.

7. Witness BLC

4th, 7th & 8th December 2006

- 46) The witness once saw Emmanuel Rukundo at the minor seminary. He presumed that Emmanuel Rukundo had come from Rudahunga's house because he said so himself. The witness heard Emmanuel Rukundo say: "*We entered Rudahunga Inyenzi's house, we killed the wife and children, but the idiot managed to get away from us*"
- 47) On the day the witness heard Emmanuel Rukundo utter those words, Emmanuel Rukundo came with a pick-up full of soldiers. It had been raining

and they were in overalls to protect themselves from the rain. The Rector, Emmanuel Uwimana, was coming out of the Refectory, Emmanuel Rukundo came out of the pickup and said those words. On that day, Emmanuel Rukundo was with many soldiers, about 10 to 15.

- 48) The witness did not know Rudahunga, but knew his son, Bernard with whom he studied at St Leon. The witness later learned that indeed Rudahung's wife had been killed, with other members of his family

8. Witness BLJ

9th & 12th March 2007

- 49) In the early morning of the 27th of April 1994, her mother was taken away by at least 4 soldiers. About twenty minutes later, those same soldiers returned to their place of refuge at St Joseph's college in Kabgayi and took her and her brother and others to their home. She saw that her mother had been shot in the head and she was lying dead in the house. The soldiers then hit her and the others. They were seriously injured and bleeding furiously. They were left for dead. She was taken to the hospital by one Fr. Kayibanda who asked her to hide in the car because Fr. Emmanuel's car was around, pointing to the same pick-up vehicle in which they had been transported to her home. The vehicle was parked nearby. She later saw two of the same soldiers in the company of Emmanuel Rukundo at the hospital.
- 50) Her father had previously been accused of being an Inkotanyi accomplice and been imprisoned prior to the genocide. One of the accusations against him was that he made false ID cards for Inkotanyi infiltrators. Their house had been searched before.
- 51) On the fateful day when her mother was killed, she saw that their house had been ransacked and damaged.

c) Trafipro/CND

8. Witness CSE

17 November 2006

- 52) The witness knew Emmanuel Rukundo since March 1993 when Emmanuel Rukundo was identified as the military chaplain during the period the Inkotanyi attacked Ruhengeri town.
- 53) During the killings of Tutsi in April 1994 the witness's family was killed and he took refuge in Kabgayi next to the Bishops residence.
- 54) The witness saw Emmanuel Rukundo in Kabgayi between the church and the Printing press store in St. Andre Centre. At that time there were soldiers

beating a person in the presence of Emmanuel Rukundo. Emmanuel Rukundo was about 5 to 6 meters from the incident.

- 55) The witness had sought refuge with many others at CND building in Kabgayi which was formerly known as TRAFIFRO. At that point in time the building belonged to the Kabgayi diocese, which was the same Diocese that Emmanuel Rukundo was belonged to.
- 56) The witness saw Emmanuel Rukundo visiting the CND refugee center on more than one occasion accompanied by officials and dressed in military uniform.
- 57) Emmanuel Rukundo came to the refugee center on many occasion and every time he left soldiers would come in and abduct refugees.
- 58) The Bishop and authorities (including Emmanuel Rukundo) were aware of the abduction of refugees as sometimes the refugees were shot and killed within the premises, by soldiers who were stationed adjacent to the refugee center.
- 59) Emmanuel Rukundo and the authorities at the Diocese did not render any assistance to the refugees.
- 60) Emmanuel Rukundo and the Authorities were aware of the Refugees that were being abducted and killed as there were dead bodies around during their visits.
- 61) The refugees who were abducted from the CND were killed because none of them ever came back
- 62) Under cross-examination the witness repeated that Emmanuel Rukundo came to the CND soldiers would subsequently come to abduct refugees. The soldiers knew who to identify when they came to abduct victims. The soldiers would pick victims from places that had been visited by Emmanuel Rukundo. The soldiers knew whom they were looking for and went to abduct from places which had been visited by ER and the Authorities.

9. Witness AMA

| 27 February 2007

- 63) From 14 April 1994 to 2 June 1994 Witness AMA remained in Kabayi. He sought refuge at the CND building, formerly known as TRAFIFRO, and also at Kagwa.
- 64) The witness estimates that there were about 17000 refugees located at the CND building.
- 65) Between the 25th and the 30th of May 1994 a man who the witness believes to be Father Emmanuel Rukundo arrived at the CND building in the company of

- six soldiers. The identity of Father Emmanuel Rukundo was confirmed to Witness AMA by other refugees at the CND building, who originated from Mukingi, the same birthplace as Emmanuel Rukundo.
- 66) The witness confirms that Father Emmanuel Rukundo was wearing military attire; a camouflage uniform with a cross on the epaulette. The witness states that Emmanuel Rukundo wore a military uniform because he was a Military Chaplain.
- 67) Father Emmanuel Rukundo came with a list and he stated that those whose names were read out from the list should come out. People, who were close by, went out and those who were not at that location were called to come by those who knew them. A total of about fifteen people were taken out.
- 68) Those people whose names were read out, went out, and stood by Father Emmanuel Rukundo. When all fifteen of them were outside, he asked them, "Where are the others?" He was told only those fifteen people had been found.
- 69) The fifteen people were made to get into a minibus. There was a young man whose name was Floraine, who came with his brother.
- 70) The ethnicity of those fifteen people who went out after Father Emmanuel Rukundo had called their names from the list, were Tutsi. The witness knew some of them who had fled with him.
- 71) The people in the minibus were driven away. Father Emmanuel Rukundo left the CND building in a truck with the soldiers who had been in his company. They took the same direction in which the minibus had taken the fifteen Tutsi refugees.
- 72) The witness states that the fifteen people who were taken away never returned to the CND building.

d) Kabgayi Major Seminary

10. Witness BLP

15th and 16th November 2006

- 73) This witness said he knew Emmanuel Rukundo. He first got to know him following his ordination when the Bishop introduced him to the congregation in Kabgayi. He had also seen him at celebrations of mass in Kabgayi. The witness knew him as other people knew priests. Witness was an altar boy and used to serve at mass, though he had never served in a mass officiated by Emmanuel Rukundo.
- 74) Witness saw Emmanuel Rukundo during the war in 1994, following the crash of the President's plane wearing military uniform.
- 75) Witness saw Emmanuel Rukundo for a third time, at St Joseph College. He was in the company of soldiers who were looking for a priest called Fidele, but they could not find him. Brother Fidel was hiding at the Philosophicum, the Kabgayi Major Seminary. The soldiers asked the witness if he knew where Fidel was and he said yes. Witness boarded their vehicle and went with the

Fidel was and he said yes. Witness boarded their vehicle and went with the soldiers to look for Fidele. Emmanuel Rukundo was not in the same vehicle with the witness, but they arrived at the Major Seminary at the same time.

- 76) Asked to describe what happened when they got to the major Seminary, the witness had this to say:

"A. We left and the vehicle which was in front was a minibus. The minibus entered the major seminary compound and alighted with one soldier, and I was told to sit down in the playground which was not far from the major seminary. The soldiers proceeded and entered into the major seminary.

Where was Rukundo when the soldiers entered the major seminary?

There was a parking lot which was not far from the major seminary, so he remained standing near his vehicle. Some soldiers went down into the buildings and started searching the buildings; other soldiers remained at the entrance of the major seminary. Rukundo was with one Antoine Nsagwa who was a *sous-préfet* who had come there with him, so they remained together; whereas the soldiers went down in order to search the buildings which were on the lower side of that place.

Now, when you say the buildings, was there any particular building for the soldiers to go into?

I saw them search almost all of the buildings of the major seminary, and at the end they stopped in front of the door of the chapel of the major seminary. They made everyone who was inside the chapel get out and every individual pass in front of those soldiers.

Now, when they passed in front of those soldiers, did you observe anything happen to them?

They were asked to show their identity cards and the soldiers looked at them and they allowed some people to leave, they allowed them to return to the major seminary, whereas they asked others to go to the place where *sous-préfet* Nsagwa and Father Rukundo were, and they looked at the list of names which they had. Some people were standing near the vehicle which was in the parking lot, whereas others returned to the major seminary.

Now, you said they had a list of names. When you say they had a list of names, who had the list?

Among the soldiers, it seemed that one of them was their leader and he had a piece of paper. The *sub-préfet* also had a piece of paper, and Father Rukundo also had some papers, but not many papers. He had a few sheets of paper."

- 77) The witness did not see the names on the list, but knew some of those taken away on that day. He recalled Brother Fidele who was being sought, a nun from Kigali called Bénigne, Viatur Kalinda a journalist with Radio Rwanda and a priest whose name he did not remember. There were also Josephite Brothers from St Joseph college and two members of the Marist Order. They boarded the vehicle and left heading for Butare-Kigali road towards Butare. Later the news spread that these people had been killed in Byimana. Emmanuel Rukundo left with them. "I saw him leave but I do not know

whether he got to their destination with them." Witness saw Emmanuel Rukundo leave with them.

11) Witness CSH

23 Nov. 2006

- 78) This witness was on holiday with his family when the president's plane crashed. Attacks started against Tutsis. He sought refuge at the major seminary in Kabgayi
- 79) At the seminary, there were many refugees, Hutu and Tutsi. They included Bro Martin Munyanshore, Josephite Brothers Superior, Bro Fidel Murakezi, then headmaster of St Joseph's college, Bro Rusezirangabo, Gaspard GAtai, a Mariste Brother, Bro CANisius Nyirinkindi, Celestin Niwenshuti, Vedaste Nyibakwe, Fr. Callixte Musonera, Fr. Thasiste GAKuba, Fr Pierre Clavier Nkusi, Sr Benigne. Many nuns and priests. Viateur Kalinda, a journalist for Radio Rwanda. Many seminarians and aspirants
- 80) The witness saw Emmanuel Rukundo at the major seminary once in the company of soldiers. Emmanuel Rukundo said: "*The Inyenzi must be exterminated. And for those who remain, those inyenzi who are left over, we are going to set up a committee, a security committee which is going to seek them out*". Security committee meant gang of killers policing each village, checking papers. Killers like the Interahamwe. The witness was shocked to hear Emmanuel Rukundo talk like this because even though he knew Emmanuel Rukundo's extremist background, it was it was unheard of to say so in public. They left Emmanuel Rukundo.
- 81) 24th May was D-day. The end. While in the chapel for noon prayers, soldiers & interahamwe came. Aldelbert, a seminarian, stood and said that they should not be afraid for only four people were being sought. He called out the names. Bro Martin was called by one of the armed men and he stood and went outside. Then the rest of them were asked to stand in line and show their IDs. Hutus went down towards the dormitories and Tutsi went up towards the stairs and made to sit. Witness did not have his ID and was sent to go get it. He went into hiding.
- 82) Witness later learnt that the Tutsi had been taken to Byimana and killed, 8km away from the major seminary
- 83) Under cross examination, the witness explained that Emmanuel Rukundo went to the major seminary some time in middle of May: 14, 15, or 16, around 14hrs. He was on foot. Witness was walking around the compound when he saw Emmanuel Rukundo. There were others, but he could not recall them. Emmanuel Rukundo was with one soldier. Witness did not know that soldier.

It was glaring that the soldier was Emmanuel Rukundo's escort: a relationship of chief and servant.

- 84) Witness and others spontaneously gathered round Emmanuel Rukundo, because he was a priest and a chaplain. They wanted him to comfort and reassure them. Despite the fact that Emmanuel Rukundo was already known as extremist, in the face of death they were desperate. They knew he would not hurt them in the seminary, a holy place. That Emmanuel Rukundo was wicked in the seminary was not to the level of killing anybody because they all ate together even then. Witness knew it was Emmanuel Rukundo because he knew him. There were some people who gathered around Emmanuel Rukundo who did not know him.

e) **Nyabikenke Commune Office**

12) **Witness CCJ**

14 February 2007

- 85) Witness was told by a fellow priest, named Andre Lerusse that Emmanuel Rukundo went to the communal office in Nyabikenke. He talked to the policemen who were guarding the refugees. After that the policemen shot at the refugees. Some of the refugees ran away and sought refuge at Kabgayi. The witness said that Lerusse said this was what he had been told. {pges 39 – 40}

13) **Witness BUW**

19 February 2007

- 86) April 1994 after the death of President Habyairmana. Tutsi were being sought after and killed by Hutus in the Nyabikenke commune of Gitarama where the witness lived.
- 87) The witness sought refuge with other Tutsi families at the government communal office in Nyabikenge thinking it was safe because there were administrative officials and police present there. The refugees were however attacked in the presence of the Police who even sometimes assisted in the attack against refugees.
- 88) The witness knew Emmanuel Rukundo well because Rukundo celebrated mass at the Church where the witness attended mass. The witness saw Emmanuel Rukundo arrive there and sought assistance from Rukundo because it was evident that he was a person of authority and he was also accompanied by soldiers. His authority was also evidenced by the fact that his mere presence was sufficient to stop the assailants from attacking persons who had sought refuge at the Nyabikenke communal office. However, Emmanuel

Rukundo was dismissive when the witness asked for assistance and protection from him.

- 89) Rukundo saw the dead and injured refugees at Nybikenke communal office but was unmoved.
- 90) The witness stated that instead Emmanuel Rukundo went to speak to the assailants who resumed and intensified the attack against the refugees immediately he left.

f. Kabgayi Bishop's House

13) Witness CCJ

14 February 2007

- 91) This witness is a priest and was the Parish priest in the same parish as Emmanuel Rukundo prior to his appointment as military chaplain.
- 92) In April 1994, he went to the Bishop's house in Kabgayi in Gitarama where he stayed for about five days.
- 93) On the Thursday or Friday following his arrival there, he saw Emmanuel Rukundo. Rukundo was in military uniform and bearing a firearm. There were two soldiers behind him. As he entered the building, he was shouting and saying: "*are there any Inkontanyi here?*" Someone said to the witness: *Rukundo is mad, hide yourself.* The witness hid behind the door. After Emmanuel Rukundo departed, the witness went to his room, where he hid until lunch time. He had lunch and then escaped to Burundi. {pges 28}

14) Witness CCN

23 February 2007

- 94) This witness stated that as he was fleeing during the Genocide he met Rukundo at the Kabgayi Bishopric and they talked.
- 95) The witness stated that when he met Rukundo at the Bishopric he was he was dressed in military uniform and armed with a weapon. The witness further stated that during this meeting Rukundo had an aggressive demeanor and threatened him.
- 96) The witness said that he feared for his life when Rukundo threatened him because he remembered that Rukundo had previously threatened him with extermination sometime in 1992 or 1993, when they met at a Garage in Gitarama.

14) Witness BPA

7 March 2007

- 97) This witness stated that during the genocide in 1994 he saw Emmanuel Rukundo walking on the corridor at the Bishops house in Kabgayi. Witness BPA was waiting to enter into the Bishops office. Emmanuel Rukundo was saying in a loud voice that the time had come for the Inyenzi to be killed.
- 98) Witness BPA, stated that when Emmanuel Rukundo made the threat to kill Inyenzi he understood him to be referring to Tutsi in general. He further stated that although Tutsi were not immediately killed at the time Rukundo made such utterances eventually people of Tutsi ethnicity were killed.
- 99) The witness states that when Rukundo made the threats to the effect that the time had come to kill Inyenzi it was clear that the threats uttered by Rukundo were generally directed against persons of Tutsi Ethnicity

g) Kabgayi Printing Press Roadblock

15) Witness BLP

15 November 2006

- 100) This witness said he knew Emmanuel Rukundo. He first got to know him following his ordination when the Bishop introduced him to the congregation in Kabgayi. He had also seen him at celebrations of mass in Kabgayi. The witness knew him as other people knew priests. The witness was an altar boy and used to serve at mass, though he had never served in a mass officiated by Emmanuel Rukundo.
- 101) During the genocide in 1994, the witness first saw Emmanuel Rukundo at a roadblock that was mounted in front of the Kabgayi Printing Press. The witness was stopped at the roadblock by soldiers who asked him to show his identity card. He was on his way to the St Joseph's college. Emmanuel Rukundo came in a Suzuki Samurai vehicle, white in colour with military number plate. Emmanuel Rukundo stopped at the road block and greeted the soldiers. The witness saw Emmanuel Rukundo speaking to the soldiers.
- 102) There were some people seated at the roadblock. At the roadblock, people's ID cards were being checked and some were detained there while others were left to pass. Those detained at the roadblock were Tutsis who were being sought and others without ID cards. Very often the Tutsi were killed.
- 103) The witness observed that Emmanuel Rukundo and the soldiers knew each other. They were laughing together.

- 104) Emmanuel Rukundo was wearing a black beret, the type worn by Rwanda soldiers, a camouflage shirt with a cross on his epaulette. He was carrying a pistol on his belt and camouflage pair of trousers. Emmanuel Rukundo had a driver who was sitting in the vehicle. The driver also wore a military shirt and black beret from what the witness could see.
- 105) The witness left the roadblock after his ID card was checked. He was later told by a man who was also at the roadblock that the people who had been arrested at the roadblock were taken to a wood downhill from the roadblock and killed. The wood was about 40 metres away from the roadblock.

16) Witness CSE

17 November 2006

- 106) Witness knew Emmanuel Rukundo since March 1993 when Emmanuel Rukundo was identified as the military chaplain during the period the Inkotanyi attacked Ruhengeri town.
- 107) During the killings of Tutsi in April 1994 the witness's family was killed and he took refuge in Kabgayi next to the Bishops residence.
- 108) The witness saw Emmanuel Rukundo in Kabgayi between the church and the Printing press store in St. Andre Centre. At that time there were Soldiers beating a person in the presence of Emmanuel Rukundo. Emmanuel Rukundo was about 5 to 6 meters from the incident.

h) Emmanuel's Rukundo's anti-Tutsi tendencies

- 109) The Prosecution witnesses testified as to the evolution of Emmanuel Rukundo from a student seminarian who initially had cordial relationships with his fellow students to one who gradually changed when the war with the RPF broke out in 1990. He became a radical and a **known extremist** who openly exhibited anti Tutsi sentiments and racist behavior. He was consistently persecuting other Tutsi students at the seminary. The anti-Tutsi racist behaviour of Emmanuel Rukundo ultimately culminated, in his involvement in the commission of acts which led to the offences with which he has being charged.
- 110) A summary of some of the evidence that the Prosecution relies on to support the aforementioned allegations is stipulated as follows:

17) Witness CCL:

27 November 2006

- 111) From October 1986 right up to the end of June 1991 Witness CCL was in school with Emmanuel Rukundo. Initially they had a cordial relationship as from 1986. However, from October 1990, when the Inkotanyi attacked at the beginning of the war, Emmanuel Rukundo's attitude changed
- 112) During the period when Emmanuel Rukundo was a seminarian he belonged to an extremist group called committee of salvation and that committee, had drawn up a list of people whom they referred to as *Inkotanyi* collaborators. That list was transmitted or sent to the gendarmerie.
- 113) This group that Emmanuel Rukundo belonged to drew up a list of persons they accused of collaborating with the Inkotanyi and persons whose names appeared in this list were to be arrested and imprisoned
- 114) Members of this group were exclusively Hutu.
- 115) The objective of this group was to point out Tutsi who were to be imprisoned on allegations that they were collaborating with Tutsi.
- 116) Members of this group went to the rooms of the seminarians to ask for contributions to support the Rwandese army to this fund for the army, but avoided the Tusti seminarians.
- 117) During re-examination the witness said the group Emmanuel Rukundo belonged to as a seminarian had adopted the name of *comité de salut* which existed in 1973 for the purpose of undermining the Tutsis in schools at that time. The objective of the group was to incite the opinion against Tutsis who were in the major seminary at the time.

16) Witness BLR:

7 July 2007

- 118) The witness had a cordial relationship with Emmanuel Rukundo, However Emmanuel Rukundo later changed his attitude. He openly proclaimed himself as someone supporting the Rwandan army. He asked people to make contributions in support of the army
- 119) Rukundo's attitude changed towards seminarians of Tutsi ethnicity and he considered all Tutsi to be the same as RPF Inkotanyi
- 120) Rukundo's attitude toward persons of Tutsi ethnicity was illustrated at the time he made disparaging remarks about the Tutsi. He uttered a Kinyarwanda proverb to witness BLR, which stated that "*If dogs were struck down because they stood on their feet, then they would be exterminated*" This in effect meant that Tutsis were the same and they all had to be exterminated.

- 121) Emmanuel Rukundo was the leader of an extremist Hutu group at the Seminary

17) Witness BLR.

8 March 2007

- 122) The extremist group that Emmanuel Rukundo led at the Seminary, advocated a policy that generally divided the Rwandan people. They supported the racial sentiment that was being broadcast in the newspapers and radio, which was to the effect that the RPF / Inkotanyi were all Tutsi and thus Tutsi were a threat to the Hutu ethnic group.
- 123) The threats and utterance that Emmanuel Rukundo, expressed to the witness in saying that all Tutsi were the same is exactly what took place during the Genocide because Tutsi were killed without distinction.

18) Witness BPA

7 March 2007

- 124) The witness knew Emmanuel Rukundo well because since 1989, they were both seminarians at the Nyakibanda major seminary. The witness was also a student at Kabgayi diocese, and Rukundo also comes from the Kabgayi diocese.
- 125) Before the war, Emmanuel Rukundo had cordial relationships with other students. However this changed as he exhibited ethnic discrimination, and referred to some students as accomplices of the Inyenzi,
- 126) Rukundo was amongst persons who persecuted fellow Tutsi students at the seminary and targeted one particular student named Rutaremera whom he accused of being an accomplice of the Inkotanyi.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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Case Name:	The Prosecutor vs. RUKUNDO			Case Number: ICTR-2001-70-T
Dates:	Transmitted: 04 Apr. 07		Document's date: 03 Apr. 07	
No. of Pages:	35	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	PROSECUTION'S RESPONSE TO DEFENSE MOTION FOR A JUDGMENT OF ACQUITTAL OF EMMANUEL RUKUNDO PURSUANT TO RULE 98 bis OF THE RULES			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
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**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION - ARUSHA**

Date:	04 April 2007	Case Name / affaire:	Emmanuel RUKUNDO v. PROSECUTOR		
		Case No / no. de l'affaire:	ICTR-01-70-T		
To: A:	<input type="checkbox"/> TC1	Received by / reçu par:	ALO:	Received by / reçu par	
	<input type="checkbox"/> Judge Erik Møse, President	<input type="checkbox"/>	
	<input type="checkbox"/> Judge J. R. Reddy	<input type="checkbox"/>	
	<input type="checkbox"/> Judge S. A. Egorov	<input type="checkbox"/>	
	<input type="checkbox"/> Judge K. R. Khan (Temporary assigned to TC1)	<input type="checkbox"/>	
	<input type="checkbox"/> Judge S. B. Bossa (ad litem)	<input type="checkbox"/>	
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	<input type="checkbox"/> TC2	Received by / reçu par:	ALO:	Received by / reçu par	
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<input type="checkbox"/> C. Eboe-Osuji, SLO	<input type="checkbox"/>		
<input type="checkbox"/> A. Leroy, Co-ordinator	<input type="checkbox"/>		
<input type="checkbox"/> TC3	Received by / reçu par:	ALO:	Received by / reçu par		
<input checked="" type="checkbox"/> Judge De SILVA	<input type="checkbox"/>		
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<input checked="" type="checkbox"/> Judge S. Ki Park	<input type="checkbox"/>		
<input type="checkbox"/> Judge D.C. M. Byron	<input type="checkbox"/>		
<input type="checkbox"/> Judge L. G. Muthoga (Muhimana)	<input type="checkbox"/>		
<input type="checkbox"/> Judge E. F. Short (Muhimana)	<input type="checkbox"/>		
<input type="checkbox"/> Judge K. Hokborg (Seromba)	<input type="checkbox"/>		
<input type="checkbox"/> Judge G. G. Kam (Seromba)	<input type="checkbox"/>		
<input type="checkbox"/> A. Leroy,	<input type="checkbox"/>		
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Documents name / titre du document				Date Filed / Date enregistré	Pages
PROSECUTION RESPONSE TO DEFENSE MOTION FOR A JUDGEMENT OF ACQUITTAL OF EMMANUEL RUKUNDO PURSUANT TO RULE 98 BIS OF THE RULES				04 04 2007	(3133-3000)