

ICTR-2001-70-I

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER

OR: ENG

Before: Judge Pavel Dolenc

Registrar: Adama Dieng

Date: 12 July 2001

JUDICIAL RECORDS ARCHIVES
ICTR
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THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001- 70 -I

**REQUEST TO THE GOVERNMENT
OF SWITZERLAND FOR ARREST**

The Office of the Prosecutor:

Silvana Arbia

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (Tribunal),

SITTING as Judge Pavel Dolenc, designated by the President of the Tribunal pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence of the Tribunal (Rules);

BEING SEIZED of the Prosecutor's "Ex Parte Request for Search, Seizure, Arrest and Transfer" filed on 11 July 2001;

CONSIDERING the Indictment against Emmanuel Rukundo (the Accused) dated 22 June 2001, filed with the Registry on 25 June 2001 and confirmed by Judge Pavel Dolenc on 5 July 2001;

CONSIDERING the "Warrant of Arrest and Order for Transfer and Detention and For Search and Seizure", addressed to all Member States pursuant to Rule 55bis, dated 5 July 2001;

HAVING HEARD the Prosecutor during an *Ex parte* hearing on 12 July 2001;

CONSIDERING United Nations Security Council Resolutions 955, 978 and 1165 of 8 November 1994, 27 February 1995 and 30 April 1998, regarding, *inter alia*, the cooperation of States with the Tribunal;

CONSIDERING the Charter of the United Nations (Charter) and Articles 18(2), 19(2) and 28 of the Statute of the Tribunal (Statute), and Rules 47(H)(i), 54 to 58 and 64 of the Rules:

SUBMISSIONS OF THE PROSECUTOR:

1. In the Request, the Prosecutor asks the Tribunal to formally request the Government of Switzerland to search for, arrest and transfer the Accused to the custody of the Tribunal, to search and seize all physical evidence related to the Accused and transfer all seized materials to the Prosecutor, and to provisionally freeze any assets of the Accused that are found in Switzerland.
2. The Prosecutor submits that related resolutions of the Security Council, Statute and Rules of the Tribunal apply to Switzerland despite the fact that it is not a Member State of the United Nations, because these documents use the term "all states" and are not expressly limited to "member states". The Prosecutor further relies on the past practice of Switzerland, which cooperated with the Tribunal by arresting and transferring the Alfred Musema, in accordance with the Tribunal's "Decision of the Trial Chamber on the Application by the Prosecutor for a formal request for deferral to the Competence of the ICTR in the matter of Alfred Musema pursuant to Rules 9 and 10 of the Rules of Procedure and Evidence" ICTR-96-5-D (12 March 1996).

FINDINGS:

3. The Tribunal notes that on 5 July 2001 the reviewing judge confirmed the main part of the indictment against the Accused. At the request of the Prosecutor, the reviewing judge issued, pursuant to Rule 55bis, a *Warrant of Arrest and Order for Transfer of the Accused and for Search and Seizure of Physical Evidence* to all Member States of the United Nations. This Warrant of Arrest has not been executed because the Prosecutor subsequently learned that the Accused was residing in Switzerland.
4. Switzerland is not a member of United Nations pursuant to Article 3 or 4 of the Charter of the United Nations. As a matter of international law, the Tribunal is not empowered to order a non-member state to execute a warrant of arrest or any related orders.
5. Under Article 24(1) and (2) of the Charter, Member States confer primary responsibility for the maintenance of international peace and security on the Security Council, which organ acts on their behalf. In discharging these duties the Security Council acts in accordance with the purposes and principles as laid down, *inter alia*, in Chapter 7 of the Charter. Article 25 of the Charter obliges the Member States to accept and carry out the decisions of the Security Council. Pursuant to Article 49 of the Charter, the Member States shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council. Articles 2(2) and (5) of the Charter require that the Member States fulfil the obligations assumed by them in accordance with the Charter and give the United Nations every assistance in any action it takes in accordance with the present Charter.
6. These provisions of the Charter clearly demonstrate that the Resolutions that the Security Council renders under Chapter 7 of the Charter, regarding the cooperation of states with United Nations, and particularly regarding legal assistance, are only legally binding on the Member States. The Tribunal does not find any other source of international law that compels or obliges Non-Member States to cooperate with the United Nations in such matters. The Tribunal, as a subsidiary organ of the United Nations established by the Security Council under Article 29 of the Charter, is similarly limited in its ability to compel the compliance of Non-Member States. Consequently, the Tribunal cannot order any state that is not a member of the United Nations to execute its decisions.
7. Nevertheless, the Tribunal may still respectfully request the Federal Government of Switzerland to cooperate with the Tribunal on a voluntarily basis. The Tribunal is convinced that the spirit of the Charter of the United Nations and the policy of this organisation tends “to establish conditions under which justice arising from international law can be maintained”, as it is laid down in the Preamble of the Charter. For this objective, the cooperation with any peace-loving state is desirable regardless of membership in the United Nations.

8. The Swiss Government has already demonstrated its willingness to cooperate with the Tribunal and to give it judicial assistance. Such willingness is demonstrated by the 20 March 1995 decision of the *Conseil federal suisse* to implement Resolution 955 of the Security Council, and the 21 December 1995 decision to adopt a federal decree governing cooperation with the Tribunal (see *Prosecutor v. Musema*, ICTR-96-5-D Decision on the Application for Deferral of Competence (12 March 1996) at para. 14). In the *Musema* case, Switzerland willingly executed the formal request of the Tribunal for the deferral of jurisdiction.
9. In this case, the Prosecutor asks the Tribunal to request Switzerland to undertake the same activities as were addressed to the Members States of the United Nations in the Order of the reviewing judge of 5 July 2001. All requested measure are in accordance with the Statute and Rules of the Tribunal and their objective is "to establish conditions under which justice arising from international law can be maintained". The further request to search for and to provisionally freeze the assets of the Accused is aimed to put into effect Article 23(3) of the Statute of the Tribunal and particularly Rules 45, 105 and 106.
10. In the light of foregoing reasons, the Tribunal expects that the Federal Government of Switzerland will again willfully cooperate with the Tribunal and will provide the necessary judicial assistance in the present case.
11. The Tribunal, acting in accordance with the objectives laid down in the Preamble and Articles 2(6) and 29 of the Charter, **RESPECTFULLY REQUESTS THE GOVERNMENT OF SWITZERLAND:**

(a) **TO ARREST** the Accused:

Emmanuel RUKUNDO,

a Rwandan citizen, born in 1959 in Kabgayi, Gitarama prefecture, Rwanda, who was a military chaplain at Ruhengeri prefecture and was then transferred to Kigali, and who is currently believed to reside in the territory of Switzerland; and

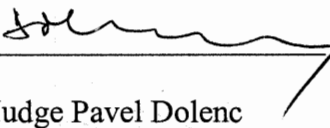
who is charged with the following crimes under the Tribunal's Statute committed in Rwanda between 1 January and 31 December 1994: genocide pursuant to Article 2(3)(a) and 2 crimes against humanity, murder pursuant to Article 3(a) and extermination pursuant to Article 3(b).

(b) **TO NOTIFY** the Registrar of the Tribunal of his arrest;

(c) **TO TRANSFER** the Accused to the detention facilities of the Tribunal in cooperation with the Registrar of the Tribunal;

- (d) **TO SEARCH** and seize any physical evidence such as documents, books and any other tangible objects related to the alleged crimes of the Accused and to create an itemised inventory of seized materials;
 - (e) **TO TRANSFER** all seized materials and the inventory to the Prosecutor of the ICTR;
 - (f) **TO SEARCH** and **TO PROVISIONALLY FREEZE**, if found in Switzerland, any assets belonging to the Accused.
12. The Tribunal further **ORDERS**, pursuant to Rule 64 that the Accused be detained in the Tribunal's detention unit upon his transfer to the seat of the Tribunal, until further decision of the Tribunal.
13. The Tribunal **DIRECTS** the Registrar of the Tribunal to cooperate with the Government of Switzerland and with the authorities of United Republic of Tanzania in the realization of this request.

Arusha, 12 July 2001.


Judge Pavel Dolenc


Seal of the Tribunal