

ICTR-99-50-A
22-5-2012
(1023/A - 1009/A)

1023/A

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IN THE APPEALS CHAMBER:**

NO. ICTR-99-50-A

5025

Judges: The Hon. Patrick Robinson, Presiding
The Hon. Liu Daqun
The Hon. Andresia Vaz
The Hon. Theodor Meron
The Hon. Carmel Argius

Registrar: Adama Dieng

Date Filed:

**JUSTIN MUGENZI
PROSPER MUGIRANEZA**

VS.

THE PROSECUTOR

JUDICIAL RECORDS SECTION
MINISTER
MAY 22 10:03
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**PROSPER MUGIRANEZA'S RESPONSE TO PROSECUTOR'S MOTION
REQUESTING EXPUNGING FROM THE RECORD OF ANNEXURES
TO MUGIRANEZA'S REPLY BRIEF**

FOR THE OFFICE OF THE PROSECUTOR:

Hassan Bubacar Jallow
James J. Arguin
George W. Mugwanya
Evelyn Kamau
Memory Maposa
Ndeye Marie Ka
Lansana Dumbuya

FOR THE DEFENCE:

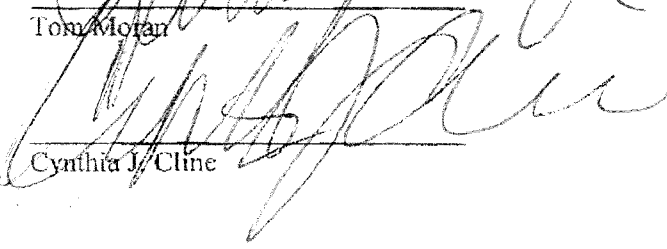
Ms. Kate Gibson and Christopher Gosnell, for Justin Mugenzi
Mr. Tom Moran and Ms. Cynthia J. Cline, for Prosper Mugiraneza

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1. The Prosecutor complains that two of the annexes to Mugiraneza's reply brief contain argument and therefore are not proper annexes. Mugiraneza believes that his annexes comply with the Practice Directive and that the Prosecutor's motion should be overruled.
2. However, in the interests of avoid unnecessary squabbling unrelated to the merits of the case, Mugiraneza has recast the two annexes in question, Annex D directing the Appeals Chamber to evidence of duress and Annex E directing the Chamber to unconsidered punishment evidence. The recast annexes simply provide a synopsis of what Mugiraneza believes is in the record and locations in the record where that evidence may be found. They are provided for the Court's convenience in finding evidence on a given subject without the need to spend unnecessary time searching the record.
3. If the Chamber believes the original annexes do not comply with the directive, Mugiraneza moves the Chamber to substitute the recast annexes which are attached to this response.



Tom Motan



Cynthia J. Cline

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Annex D
Chart of Evidence Raising Duress

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Duress defense

Facts presented by Mugiraneza's Defense	References, testimony/evidence on record
<p>1. Mugiraneza was criticized for of assisting Tutsis and was suspected of being a Tutsi, a Tutsi sympathizer, an RPF accomplice.</p>	<p>Exhibit 4D9. Translation and comments: Tr. (15 September 2004), pgs. 5-7; Tr. (01 May 2008), pgs. 39-43; Tr. (20 May 2008), pg. 28-30.</p>
	<p>Witness Des Forges: Tr. (15 June 2005) 9-10</p>
	<p>Witness Karamage: Tr. (15 April 2008), pg. 60-61</p>
	<p>Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25</p>
	<p>Witness Mugiraneza: Tr. (20 May 2008), pgs. 31; Tr. (26 May 2008), pgs. 15 -19</p>
	<p>Exhibit 4D140 (92 bis statement of witness RRB)</p>
	<p>Mugiraneza's Corrected Closing Brief, para. 592-600; 647. V; 755</p>
	<p>Appellate Brief para 162-164; 192-203; 227-229; 261-262; 265</p>
<p>2. Mugiraneza was a moderate and democrat. He did not discriminate on basis of ethnic or political group.</p>	<p>Witness Nkuliyingoma: Tr. (07 July 2004), pg. 76-78; Tr. (14 September 2004), pg. 27; Tr. (15 September 2004), pgs. 4</p>
	<p>Exhibit 4D26 (K 0125172)</p>
	<p>Exhibit 4D140 (92 bis statement of witness RRB)</p>

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	Exhibit 4D141 (92 bis statement of witness RRK)
	Exhibit 4D142 (92 bis statement of witness RDQ)
	Exhibit 4D143 (92 bis statement of witness FCB)
	Exhibit 4D144 (92 bis statement of witness FCC)
	Witness GJY: Tr. (19 February 2004, pgs 8-10, 32-33)
	Witness RDU: Tr. (18 February 2008), pg. 16-17
	Witness RDN: Tr. (18 February 2008), pgs. Pgs.79-81(ICS), pgs. 85-86
	Witness RDW: Tr. (19 February 2008), pgs. 26-27 (ICS), pgs. 28-29, 35
	Witness RDI: Tr. (25 February 2008), pgs. 20-22
	Witness RWC: Tr. (28 February 2008), pgs. 51-52
	RWD: Tr. (12 March 2008), pgs. 2-8, 36-52
	Witness: RRI: Tr. (19 May 2008), pgs. 24-27
	Mugiraneza's corrected Closing Brief, para. 598; 647. Iv;752. A. and b.
	Appellate Brief para 192; 258; 263
3. Mugiraneza was against the killings and tried to save lives: he opposed the civil defense program suspecting it might be used as	Nkuliyingoma: Tr. (07 July 2004), pgs. 76-78

a means to kill Tutsis. He asked the President and the Prime minister to send out messages regarding restoration of peace and requested the military to stop the killings. He asked to carry out investigations into the killings perpetrated and into RTLM hate broadcasts.	Exhibit 4D26 (K 0125171)
	Witness Karamage: Tr. (15 April 2008), pgs. 66-68
	Witness Des Forges: Tr. (15 June 2005), pgs. 5-9
	Witness Mugiraneza: Tr. (22 May 2008), pgs. 37, 42-45; Tr. (26 May 2008), pgs. 15-24, 26-27, 51-54; Tr. (27 May 2008), pg. 20
	Mugiraneza's corrected Closing Brief, para. 575-580; 590; 599, 721
	Appellate Brief para 192, 195; 258
	Judgment, para. 1690, 1696
4. Hutu suspected of being Tutsi, Tutsi sympathizers, RPF accomplices; moderate Hutu and people against killings were being killed in Rwanda in 1990-1994.	Witness Mbonyinkebe: Tr. (03 May 2005), 59-60
	Mugiraneza's corrected Closing Brief, para. 598; 647. iv; 752. A. and b.
	Appellate Brief para 195; 211; 263
	Judgment para 184
5. Hutu suspected of being Tutsi, Tutsi sympathizers, RPF accomplices; moderate Hutu and people against killings who tried to cross the border and leave the country were either arrested and returned to Rwanda or killed	Witness Mugiraneza: Tr. (26 May 2008), pg. 27
6. As a Hutu suspected of being Tutsi, a Tutsi sympathizers, an RPF accomplice; a moderate Hutu against killings, Mugiraneza feared to be killed.	Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25
	Witness Mugiraneza: Tr. (26 May 2008), pgs. 19, 26-27
	Mugiraneza's corrected Closing Brief, para. 598-600; 647. iv; 752.

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	a. and b. Appellate Brief para 195; 211; 263
7. Mugiraneza did not have money to leave the country. He was not given a way out and his attempts to leave the country failed.	Witness Mugiraneza: Tr. (26 May 2008), pg. 26-27, 51-52
	Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25; 29-30; 32-33
	Witness Karamage: Tr. (15 April 2008), pgs.53, 60-65
	Mugiraneza's corrected Closing Brief, para. 598-600
8. As someone opposing killings, also as a moderate, a person who was suspected of being a Tutsi, a Tutsi sympathizer and RPF accomplice" at the time these were being killed, Mugiraneza could not refuse to accompany the President when required to do so by the chief of protocol. He could not refuse to participate in a cabinet meeting when present. He had to be very careful and whenever he had to take a decision, he had to consider if it may not compromise his life and the lives of members of his family	Tr. (26 May 2008), pgs. 44-45
	Appellate brief para 195, 211
9. Mugiraneza reasonably felt threatened. His house was attacked in 1992 when he was the minister of labour. It was again attacked in April 1994 and attackers searched for his Tutsi nephews, ill-treated Mugiraneza's brother, broke open the doors of Mugiraneza's house, tore the curtains and destroyed the ceiling. Mugiraneza and members of his family were afraid and frightened when they become aware of the President's death on April 6, 1994.	Witness Des Forges, Tr. (15 June 2005), pg. 9
	Witness RDY, Tr. (17 March 2008), pgs.43-46
	Witness Mugiraneza, Tr. 22 May 2008, pgs. 21-23

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Annex E
Unconsidered Punishment Evidence

Sentencing issues

Seven sentencing issues were on record. Only two of them (remorse and family) were considered and given some weight. One of them (duress) was found unfounded. Two others (moderate, saving lives) were found to have been unsubstantiated. The remaining two (character and testimony of 18 Tutsis for the Defense) were not considered at all.

Sentencing issue	Facts presented by Mugiraneza's Defense	References, testimony/evidence on record
<p>1. Duress</p>	<p>1.1. Mugiraneza was criticized for of assisting Tutsis and was suspected of being a Tutsi, a Tutsi sympathizer, an RPF accomplice.</p>	<p>Exhibit 4D9. Translation and comments: Tr. (15 September 2004), pgs. 5-7; Tr. (01 May 2008), pgs. 39-43; Tr. (20 May 2008), pg. 28-30.</p>
		<p>Witness Des Forges: Tr. (15 June 2005) 9-10</p>
		<p>Witness Karamage: Tr. (15 April 2008), pg. 60-61</p>
		<p>Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25</p>
		<p>Witness Mugiraneza: Tr. (20 May 2008), pgs. 31; Tr. (26 May 2008), pgs. 15 -19</p>
		<p>Exhibit 4D140 (92 bis statement of witness RRB)</p>
		<p>Mugiraneza's corrected Closing Brief, para. 592-600; 647. V; 755</p>

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		Appellate Brief para 162-164; 192-203; 227-229; 261-262; 265
<p>1.2. Hutu suspected of being Tutsi, Tutsi sympathizers, RPF accomplices; moderate Hutu and people against killings were being killed.</p>		Witness Mbonyinkebe: Tr. (03 May 2005), 59-60
		Mugiraneza's corrected Closing Brief, para. 598; 647. iv; 752. a. and b.
		Appellate Brief para 195; 211; 263
		Judgment para 184
		See below issue 2 (Mugiraneza as a moderate) and issue 3 (Mugiraneza against the killings).
<p>1.3. Hutu suspected of being Tutsi, Tutsi sympathizers, RPF accomplices; moderate Hutu and people against killings who tried to cross the border and leave the country were either arrested and returned to Rwanda or killed</p>		Witness Mugiraneza: Tr. (26 May 2008), pg. 27
<p>1.4. As a Hutu suspected of being Tutsi, a Tutsi sympathizers, an RPF accomplice; a moderate Hutu against killings, Mugiraneza feared to be killed.</p>		Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25
		Witness Mugiraneza: Tr. (26 May 2008), pgs. 19, 26-27
		Mugiraneza's corrected Closing Brief, para. 598-600; 647. iv; 752. a. and b.
		Appellate Brief para 195; 211; 263

	<p>1.5. Mugiraneza did not have money to leave the country. He was not given a way out and his attempts to leave the country failed.</p>	<p>Witness Mugiraneza: Tr. (26 May 2008), pg. 26-27, 51-52</p>
		<p>Witness Mukandagijimana: Tr. (01 May 2008), pgs. 24-25; 29-30; 32-33</p>
		<p>Witness Karamage: Tr. (15 April 2008), pgs.53, 60-65</p>
	<p>Mugiraneza's corrected Closing Brief, para. 598-600</p>	
	<p>1.6. As someone opposing killings, also as a moderate, a person who was suspected of being a Tutsi, a Tutsi sympathizer and RPF accomplice" at the time these were being killed, Mugiraneza could not refuse to accompany the President when required to do so by the chief of protocol. He could not refuse to participate in a cabinet meeting when present. He had to be very careful and whenever he had to take a decision, he had to consider if it may not compromise his life and the lives of members of his family</p>	<p>Tr. (26 May 2008), pgs. 44-45</p>
		<p>Appellate brief para 195, 211</p>
	<p>1.7. Mugiraneza reasonably felt threatened. His house was attacked in 1992 when he was the minister of labour. It was again attacked in April 1994 and attackers searched for his Tutsi nephews, ill-treated Mugiraneza's brother, broke open the</p>	<p>Witness Des Forges, Tr. (15 June 2005), pg. 9</p>
		<p>Witness RDY, Tr. (17 March 2008), pgs.43-46</p>

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	<p>doors of Mugiraneza's house, tore the curtains and destroyed the ceiling. Mugiraneza and members of his family were afraid and frightened when they become aware of the President's death on April 6, 1994.</p>	<p>Witness Mugiraneza, Tr. 22 May 2008, pgs. 21-23</p>
<p>2. Mugirane: moderate</p>	<p>Mugiraneza was a moderate and democrat. He did not discriminate on basis of ethnic or political group.</p>	<p>Tr. (07 July 2004), pg. 76-78; Tr. (14 September 2004), pg. 27; Tr. (15 September 2004), pgs. 4</p> <p>Exhibit 4D26 (K 0125172)</p> <p>Exhibit 4D140 (92 bis statement of witness RRB)</p> <p>Exhibit 4D141 (92 bis statement of witness RRK)</p> <p>Exhibit 4D142 (92 bis statement of witness RDQ)</p> <p>Exhibit 4D143 (92 bis statement of witness FCB)</p> <p>Exhibit 4D144 (92 bis statement of witness FCC)</p> <p>Witness GJY: Tr. (19 February 2004, pgs 8-10, 32-33</p> <p>Witness RDU: Tr. (18 February 2008), pg. 16-17</p>

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		Witness RDN: Tr. (18 February 2008), pgs. pgs.79-81(ICS), pgs. 85-86
		Witness RDW: Tr. (19 February 2008), pgs. 26-27 (ICS), pgs. 28-29, 35.
		Witness RDI: Tr. (25 February 2008), pgs. 20-22
		Witness RWC: Tr. (28 February 2008), pgs. 51-52
		RWD: Tr. (12 March 2008), pgs. 2-8, 36-52
		Witness: RRI: Tr. (19 May 2008), pgs. 24-27
		Mugiraneza's corrected Closing Brief, para. 598; 647. iv;752. a. and b.
		Appellate Brief para 192; 258; 263
3. Mugiraneza was against the killings	Mugiraneza was against the killings and tried to save lives: he opposed the civil defense program suspecting it might be used as a means to kill Tutsis. He asked the President and the Prime minister to send out messages regarding restoration of peace and requested the military to stop the killings. He asked to carry out investigations into the killings perpetrated	Nkuliyingoma: Tr. (07 July 2004), pg. 76-78
		Exhibit 4D26 (K 0125171)
		Witness Karamage: Tr. (15 April 2008), pgs. 66-68
		Witness Des Forges: Tr. (15 June 2005), pgs. 5-9
		Witness Mugiraneza: Tr. (22 May 2008), pgs.

	and into RTLM hate broadcasts.	<p>37, 42-45; Tr. (26 May 2008), pgs. 15-24, 26-27, 51-54; Tr. (27 May 2008), pg. 20</p> <p>Mugiraneza's corrected Closing Brief, para. 575-580; 590; 599, 721</p> <p>Appellate Brief para 192, 195; 258</p> <p>Judgment, para. 1690, 1696</p>
4. Character	Mugiraneza was a good and very kind man, a correct person, a good prosecutor, a good Secretary General at the ministry of justice and a good minister, a calm and wise man who previously had had any wrong character that was known and a man who was willing to help out his neighbors.	<p>Witness GKP: (Tr. (08 December 2003), pg. 12</p> <p>Witness Rubaduka: Tr. (24 March 2005), pg. 4</p> <p>Witness Uwizeye: Tr. (08 April 2005), pg. 49</p> <p>Witness RDU: Tr. (18 February 2008), pg. 47</p> <p>Witness RDX: Tr. (18 February 2008), pgs. 69-70 (ICS)</p> <p>Witness RWF: Tr. (25 February 2008 ICS), pgs. 53-54</p> <p>Witness RDA: Tr. (26 February 2008), pg. 67</p> <p>Witness RWW: Tr. (13 March 2008 ICS), pg. 55</p> <p>Exhibit 4D140 (92 bis statement of witness RRB</p>

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		10. Witness RWD (Testified on March 12, 2008)
		11. Witness RDW (Testified on February 19, 2008)
		12. Witness RDM (Testified March 19, 2008)
		13. Witness RRG (Testified 28 April 2008)
		14. Witness RWU (Testified on June 5, 2008)
		15. Witness FCI (testified by 92bis statement: 4D148)
		16. Witness FCJ (testified by 92bis statement: 4D149)
		17. Witness RRF (testified by 92bis statement: 4D147)
		18. Witness BGL (testified by 92bis statement: 4D155)
		Mugiraneza's corrected Closing Brief, para 753-754
6. Remorse		Judgment, para 2017
7. Family		Judgment, para 2017

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