

Civil Society and Political Organizations of Rwanda (CSPOs)

Hon. President of ICTR
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ICTR-01-75-AR115

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29 - 08 - 2011

Honorable,

(5210 - 5202)

The Civil Society and Political Organizations of Rwanda (CSPOs) are concerned by the ICTR decision dated June 28, 2011 to transfer Mr. Jean Uwinkindi's case to the Rwandan judiciary system.

Honorable Judge, CSPOs are deeply disturbed by that decision as the lack of fairness within the Rwandan judiciary system has been a subject of some release from different Rwandan experts and human rights organizations such as Human Rights Watch and Amnesty International just to name a few. We are further concerned by Mr. Jean Uwinkindi's safety once transferred to Rwanda.

CSPOs have carefully read the decision dated June 28, 2011 of the Trial Chamber II presided by Hon. Judge Florence Rita Arrey entitled Prosecution v. Uwinkindi and found out that the Trial Chamber II did not take in consideration relevant points raised by the defense. Therefore we would like to provide tangible information on the situation on ground in Rwanda with the aim to enlighten the court of appeal in its proceedings, so in the interest of justice the decision of the Trial Chamber II to send Uwinkindi to Rwanda judiciary would be reversed. Our intervention would be on the issues of Rwandan Transfer Law, fair trial including presumption of innocence, effective defense and independence of the judges; the conditions of the detention; and monitoring and revocation clauses.

1. The Rwanda Transfer of 2007 that "regulates the transfer cases and other related matters, from International Criminal Tribunal for Rwanda (ICTR) and other States" is itself immoral and contrary to the Constitution of Republic of Rwanda and other international measures that state that all persons are equal before the law. The Transfer Law in Rwanda promotes two standards among Rwanda citizens suspected to have been involved in 1994 genocide as those transferred from ICTR and other countries will not be tried and detained under the same conditions and regimes as those arrested inside the country. It is surprising that ICTR, supposed to guarantee fair justice for all, is part of this unethical scheme.

Presumption of innocence.

CSPOs of Rwanda believe that Pastor Jean Uwinkindi, once transferred to Rwanda judiciary will not be presumed innocent as supposed to be guaranteed by the Constitution of the Republic of Rwanda. In fact, as stated in the ICTR Trial Chamber II ruling, the defendant has been tried and convicted for genocide in 2009 by two Gacaca courts in Sectors Ntarama and Kayumba. And it's an offense in Rwanda to challenge the Gacaca decisions. The late journalist Leonard Rugambage, gunned down in June 2010 in Kigali, spent some times in prison to have expressed his views about the Gacaca procedures. It is said that the conviction have been vacated by the Gacaca Court of Appeal even though the Trial Chamber II acknowledges not to have the information on the vacating procedures, the same chamber concludes that it "has observed closely the chain of events related to the vacation" without elaborating. Vacating or not, it is now on record that the defendant has been convicted by

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two Gacaca courts and the vacating only happened to pave a way to have him handed to Rwanda authorities. So his trial in Rwanda judiciary would be just a formality to confirm previous Gacaca convictions. Civil Society and Political Organizations of Rwanda believe that ICTR has the capability to understand the Rwanda government issues on that issue. Overall, Jean Uwinkindi has been convicted by the Gacaca courts and none else in Rwanda judiciary has the will and the power to review the case with appropriate impartiality.

2. Inequality of arms between defense and prosecution

Most of the defense witnesses live outside of Rwanda as refugees and for that reason they are not only willing but also are not allowed to travel to Rwanda for any reason. The prosecution and the Trial Chamber II suggest that testimonies via video-links and before a sitting judge in a foreign country are accepted and commonly used measures if witnesses are prevented to travel to the court. If it is true in general, it is not applicable to Rwanda. In fact, the witnesses will fear to testify using any means as long as their identity and address of residence will be revealed. This is not a mere fact after the declaration of Mr. Tharcisse Karugarama, Minister of Justice of the Republic of Rwanda. In fact, in February 2007, when quizzed by the Rwanda Senate on the Transfer Law, Minister Karugarama, about the witnesses, stated that "We have nothing to lose [by granting immunity] if anything, we have everything to gain, by these people turning up, it will be a step toward their being captured. They will sign affidavits on which their current address will be shown and that would at any other time lead to their arrest". Mr. Karugarama never refuted his words nor did any other government official. Currently Minister Tharcisse Karugarama is still in office.

In its 2009 Annual Report, Amnesty International (AI) states that ICTR has rejected the motion to transfer four accused to Rwanda based "on the reports that defense witnesses inside and outside Rwanda risk being rejected by their community, mistreated, arrested, detained, beaten, tortured and in some cases killed". Therefore "the accused will have limited ability to call witnesses for his defense" And in its 2010 report, AI states again that "Concerns remained about the willingness of witnesses to testify, given restrictions on freedom of expression through laws on genocide ideology and sectarianism". On the same chapter, the U.S. Department of State on human rights reports of 2009 states that "Defendants can 'present their witnesses and evidences on their behalf, ...' but the fear of reprisals against them in the form of accusations of complicity in the alleged crimes at the issue".

In September 2009, the Commonwealth Human Rights Initiative (CHRI) reported that in Rwanda, people accept to talk on sensitive issues only if they have the assurance that their names will not be revealed. So it will be hard to have anybody going forward to defend a genocide convict.

In addition, different reports show that government officials, specifically the members of the Directorate of Military Intelligence and government-sponsored organizations like IBUKA and AVEGA Agahozo, have set up networks of people charged to train and coordinate witnesses to forge false testimonies against innocent people.

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accused of genocide inside and outside the country including ICTR and some European Countries¹. As an example, on March 4th, 2008, the ICTR in Arusha (Tanzania) heard a witness from Rwanda denouncing his previous testimonies against the former Rwandan officials on trial at ICTR. A protected witness for the prosecution caused uproar when he switched his testimony for the defense. He told the court that under the current Rwandan officials' pressure, he had lied to the Court to secure his possible release from a Rwandan prison where he had been detained for several years. According to the witness, government officials had trained several witnesses including many prisoners to testify before the ICTR and to make false accusations against former Rwandan officials under ICTR custody. His testimony put into question the trials in which this witness had appeared on behalf of the prosecution².

Pursuant this non exhaustive list of examples above, it appears that Jean Uwinkindi will not have the same ability as the prosecution to bring in the witnesses on his behalf. This will result in a flagrant inequality of arms between the defense and the prosecution.

3. Interference of the executive branch on the judiciary

Several credible reports mention the evidences on how the executive branch of the government along with the RPF ruling party organs put an unacceptable pressure on the judiciary to influence the outcomes of a score of trials. During his monthly press conference in early March 2010, President Paul Kagame stated that his government can and will imprison anybody it wants at any time. He did not mention that judiciary procedures have to take place first before putting any citizen behind the bars.

In its annual report of 2009, the U.S. Department of State mentions that "There were reports that government officials unfairly influenced Gacaca judges during the course of hearings."

The interference of the government officials has been confirmed by the high ranking officials who fled the country in recent months. On February 26, 2010, Lt General Faustin Kayumba Nyamwasa, one of the most influential in the ruling party RPF, and while High Commissioner in India, fled Rwanda to seek asylum in South Africa. Speaking on BBC and the Voice of America radios, Lt. Gen. Nyamwasa, stated that among other things he could not stay in the country to face justice is that the judiciary system is not independent from the executive branch of the government. Lt. Gen. Kayumba has been in the inner circle of the regime in Kigali and knows very well how the regime really operates.

On April 23, 2010, Mr. Jean Bosco Gasasira, the editor of the newspaper UMUVUGIZI that has been shut down a week earlier along with the weekly UMUSESO, told BBC radio while in exile that he fled the country

¹ MANIPULATION AND FALSIFICATION OF ICTR EVIDENCE: THE ROLE OF THE RWANDAN GOVERNMENT. Filip Reyntjens. Professor, University of Antwerp. President, Institute of Development Policy and Management.
http://www.heritagepirdefense.org/papers/Filip_Reyntjens_Manipulation_and_falsification_of_ICTR_Evidence.pdf

KWANDA: The new times, R.1K genocide witness claims duress, switches to defense, by James Muniyilwa, a naturalized citizen, Rwanda et al.
<http://allafrica.com/stories/200602061163.html>

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mainly because he could not have fair justice in a country where the outcomes of the trials are dictated by the ruling party RPF and high ranking government officials. He stated that judges sometimes take government and ruling party instructions even over the phones.

4. Conditions of detention

The conditions of detention in Rwanda are generally harsh. It was after the government realized that no country will dare to extradite any genocide suspect to Rwanda that came the idea to build, with the support of the donors, a new prison that meets international standards in Mpanga, in Southern Province. The problem is that the welfare of a prisoner is not determined by a good facility and nice buildings but instead by the way the inmates are being treated inside the detention centers. Despite that new facility, the conditions in Rwandan prisons are very harsh as stated in U.S. Department of State report of 2010. Another concern is that how to ensure that the inmates are treated humanely and not transferred to other prisons such as to one in Gitarama labeled in 2010 by the International Center for Prison Studies (ICPS) as the Second Most Horrible Prison on Earth behind Kwa-Si-Lo No 22 also known as Camp 22 in North Korea? The same center reports that the prison in Gitarama hosts more than 6000 inmates for a facility designated for 500 only. Due to big number of inmates, ICPS states that "The jail is so congested that inmates have no option but to stand all day and all night and many suffer from itching feet."

In 2007, the death sentence has been scrapped from the Rwanda penal code. However, it is important to note that during the hearing in parliament, Mr. Tharcisse Karugarama, Minister of Justice told the lawmakers that they don't have to worry about the abolishment of the capital punishment as the subsequent sentences would be so harsh that the inmates would beg to be hung. In addition, in Rwanda people are not executed following a death sentence, people are instead being killed by government security operatives under the supervision of the infamous Directorate of Military Intelligence (DMI) through tortures and extra judiciary executions and other forms of mistreatment inside of known and unknown detention facilities.

5. Monitoring and revocation

CSPOs believe that Monitoring and Revocation in these proceedings are meaningless and will not happen at all. Indeed, the government of Rwanda has, at many occasions, and with a rare arrogance, demonstrated that it does not care about the requests from external partners related to its continuing and deplorable violations of human rights inside or outside of its national territory CSPOs list few examples below:

1. On April 22, 1994, using heavy weaponry, the Army of the government of Rwanda attacked and dismantled the internal displaced people (IDP) camp in Kibeho while the UN peacekeepers from Australia and Zambia stood by. That day it is estimated that more than 8000 people, mainly children, women and elderly have been killed. None has been prosecuted for these crimes.
2. In November 1996, Rwandan army attacked and destroyed the UN refugee's camp hosting millions of Rwanda Hutu refugees in South and North Kivu territories of former Zaire, currently Democratic Republic of Congo. It is estimated that more than 200,000 Hutu refugees have been massacred. A recent report of UN Human Rights Commission made public on October 1, 2010 confirmed the facts.

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3. The government of Rwanda has at numerous occasions challenged the decisions of the ICTR and in 1999, the ICTR Chief Prosecutor, Mrs. Carla Del Ponte was refused an entry visa to Rwanda until the UN Appeal Court reversed its decision to release the then genocide suspect Jean Bosco Barayagwiza.
4. On November 26, 2006, Rwanda expelled Ambassador of France in Rwanda and broke off diplomatic relations after French anti terrorist Judge Jean Louis Bruguiere indicted 9 close aides to General Kagame accusing them to have shot down Habyarimana's airplane on April 6, 1994, igniting the Rwandan genocide.
5. In November 2008, the government of Rwanda expelled German Ambassador to protest the arrest at Frankfurt Airport of Col Rose Kabuye, Rwanda Chief of general staff and one of the others indicted by Judge Bruguiere.

And to make things worse, the Trial Chamber II in its decision of June 28, 2011, stated that "The Referral Chamber will only consider the revocation mechanism as a remedy of last resort. Thus, as it does constitute a safeguard, it is not a panacea". In fact, as everybody knows, Amnesty International, in its 2010 report, recalls about the RPF massacres of clergy members near Gitarama in June 1994 for that "ICTR did not recall the RPF file that was transferred to the government of Rwanda, resulting in the prosecution of two junior commanders. This was despite concerns that the trial, whose the verdict was pronounced in October 2008, fell short of international fair trial standards and that those who directed the killings were not prosecuted". There are tangible examples that neither ICTR will honor the revocation clause nor the government of Rwanda will comply.

The case of Jean Uwinkindi is similar to those of Hissene Habré, the former president of Chad in exile in Senegal. On July 8, 2011, the government of Senegal decided to extradite him to Chad but the international community including the UN Secretary General, Ms. Pillay, the UN High Commissioner for Human Rights and former ICTR President, and other major human rights organizations stood up to urge the government of Senegal to review its decision on the ground that "there were substantial grounds for believing that he would be in danger of being subjected to torture". Finally, the government of Senegal was convinced and did not send Hissen Habre to Chad.

CSPOs would remind that the conflict in Rwanda that started on October 1, 1990 and culminated on the genocide of April 1994 opposed the then rebels of Rwanda Patriotic Front (RPF) currently in power in Rwanda to the government headed by the assassinated President Juvenal Habyarimana. Following this, the Security Council at its 3453rd meeting of 8 November 1994 adopted its resolution 955 creating the ICTR³ to prosecute the crimes and serious violations of international humanitarian law committed in the territory of Rwanda and in the territory of neighboring States, between January 1st 1994 and 31 December 31st 1994, and the United

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and the then Government forces, have been involved in genocide and other crimes against humanity and should respond before the created tribunal. Therefore RPF led government has no moral authority to judge anybody for the crimes it is being accused itself. In fact RPF considers any person who was on the defeated government side as its enemy and none should expect a fair justice in these conditions. In addition, the fact that after 17 years, only one side to the conflict, namely the government forces, has been prosecuted, while the RPF, the winner is still enjoying the ICTR's immunity, has backfired, putting ICTR and the UN system in a difficult situation. In fact...

...captain that all genocide suspects who have been acquitted by ICTR can't go back to Rwanda? One of them, the former Minister of Transports, Mr. Andre Ntangenura is still in custody at the ICTR five years after his acquittal. CSPOs are convinced that a well balanced prosecution of the perpetrators of the Rwanda tragedy from both sides of the conflict should have been a major contribution to the healing and reconciliation processes in Rwanda; and these recurrent issues of transfer should not even exist today. 5205

By examining closely the decision of the Chamber, CSPOs realize that the court acknowledges the merit of the points put forward by the defense of Jean Uwinkindi, such as law of genocide ideology, witnessed fearing to testify for the defense, the violation of the presumption of innocence, etc... but to our dismay the Chamber ruled in favor of the transfer on the sole basis that the Rwanda Law on transfer is expected to provide assurance for a fair trial. CSPOs would remind the court that the Rwanda Law on transfer has been voted with the aim to please the ICTR and other foreign countries and not to render justice; the government of Rwanda has a record of disregarding the outside requests on human rights abuse and there is no guarantee that this unwanted law will be followed.

CSPOs have learned that Jean Uwinkindi and his defense team have appealed the ruling. Therefore, we urge the Appeal Chamber to review the relevant points raised by the defense, to consider the additional information we have provided in this letter, and as it has done in the past reverse the ruling of the Trial Chamber II of June 28, 2011 by deciding that the conditions of transfer to Rwanda of Jean Uwinkindi and of other accused person have not been met yet. By doing so, the spirit of the UN resolution 955 will be preserved and the belief that a fair international justice is still possible will still alive among all the victims of the Rwanda genocide and of all tragedies around the world.

Sincerely,

For the Rwandan Community
Pascal Kalinganire



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