

ICTR-05-88-A
10-06-2010
(724/A - 689/A)

724/A
A

TRIBUNAL PÉNAL INTERNATIONAL POUR LE RWANDA
Chambre d'Appel

Monsieur le Juge Theodor MERON, Président
Monsieur le Juge Mehmet GÜNEY
Monsieur le Juge Fausto POCAR
Madame le Juge Andrésia VAZ
Monsieur le Juge Carmel AGIUS

Monsieur le Greffier Adama DIENG

Date de dépôt : le 10 juin 2010

Le Procureur
c/
Callixte KALIMANZIRA

(ICTR-05-88-A)

10-06-2010
14:25
AGIUS

**REQUÊTE RÉITERÉE EN AJOURNEMENT DE L'AUDIENCE D'APPEL
SUITE À L'ARRESTATION AU RWANDA DE Me PETER ERLINDER**

POUR : Monsieur Callixte KALIMANZIRA

Ayant pour Avocats :

Me Arthur VERCKEN - Conseil Principal
Me Anta GUISSÉ - Co-conseil

CONTRE : Le Bureau du Procureur

Hassan Bubacar JALLOW
Alex OBOTE-ODORA
Dior FALL

PLAISE A LA CHAMBRE D'APPEL

1. Le 1^{er} juin 2010, la Défense de Monsieur Callixte KALIMANZIRA a déposé une "Requête en ajournement d'appel suite à l'arrestation au Rwanda de Me Peter ERLINDER".
2. Par décision du 2 juin 2010¹, Monsieur Theodor MERON, juge de la mise en état pour la Chambre d'appel dans l'affaire KALIMANZIRA contre Le Procureur (ICTR-05-88-A) a rejeté cette requête au motif que :

"Considering that the Motion is manifestly without merit and that Mr KALIMANZIRA has failed to demonstrate how Mr ERLINDER's arrest in Rwanda impedes the ability of his counsel to fulfill their obligation to represent him and to comply with orders of the Tribunal related to the scheduling of proceedings in Arusha, Tanzania"

3. Parce qu'elle a récupéré des éléments nouveaux qui confirment très clairement les craintes qu'elle avait exprimées dans sa requête datée du 1er juin 2010, la Défense dépose une nouvelle requête aux mêmes fins.
4. Dans un premier temps, il convient de rappeler que plusieurs conseils de la Défense dans différents procès tenus devant le TPIR ont récemment déposé et soutenu des requêtes sollicitant également le renvoi de leurs procès dans l'attente d'une prise de position ferme du TPIR à l'égard du Rwanda et d'une libération de Monsieur ERLINDER².
5. Ainsi, à l'audience du 7 juin 2010 devant la Chambre III de première instance du TPIR présidée par le Juge BYRON qui assume également les fonctions de Président du TPIR, la Chambre III a rejeté trois requêtes de la Défense sollicitant la suspension du

¹ "Decision on Kalimanzira's request to postpone the appeal hearing", 2 juin 2010

² Le Procureur c. RUKUNDO, Affaire No. ICTR-01-70-A ; Le Procureur c. BAGOSORA et al., Affaire No. ICTR-98-41-A ; Le Procureur c. KAREMERA et al., Affaire No. ICTR-98-44-T ; Le Procureur c. NIZEYIMANA, Affaire No. ICTR-2000-55

procès KAREMERA³ jusqu'à la libération de l'avocat Peter ERLINDER. Ce rejet était motivé par le fait que l'arrestation de Monsieur ERLINDER au Rwanda n'était pas liée avec sa mission de conseil principal devant le TPIR.

6. Répondant par une décision orale aux écritures et plaidoiries de la Défense au soutien de leurs requêtes en suspension, Monsieur le Président BYRON a assuré avoir saisi officiellement le procureur du Rwanda Monsieur Martin NGOGA qui lui aurait donné toutes assurances que l'arrestation de Peter ERLINDER n'était pas liée à ses fonctions de conseil principal de la défense devant le TPIR :

"La Chambre prend note du fait que lorsque le problème s'est posé, le Tribunal a pris immédiatement les mesures nécessaires pour savoir s'il y a quelque lien entre l'arrestation de Maître ERLINDER et le fonctionnement du Tribunal. Et je voudrais à cet effet, montrer la correspondance émanant du greffier et la réponse du procureur général du Rwanda qui traite de la question - et qui feront partie de nos dossiers officiels.

La brève réponse émanant du procureur général du Rwanda, c'était le refus de reconnaître que l'arrestation de Maître ERLINDER avait un quelconque lien avec son, travail au TPIR, et l'affirmation de l'adhésion du Rwanda au mémorandum d'entente qui accorde, à la vérité, l'immunité aux avocats ainsi que tout officiel du tribunal qui se trouverait en mission au Rwanda.

Pour l'instant, la Chambre n'a rien reçu comme information qui lui permettrait de dire que cette question a quelque lien direct avec le Tribunal."

7. Les conseils de la Défense de Monsieur KALIMANZIRA ont donc pris contact avec les conseils de la défense de Monsieur Peter ERLINDER et leur ont demandé de détailler les faits et les charges retenus par le procureur rwandais contre leur client.

³ Le Procureur c. KAREMERA et al., Affaire No. ICTR-98-44-T

8. Par email du 8 juin 2010⁴, Monsieur Kennedy OGETTO a ainsi répondu aux questions qui lui étaient posées sur les charges pesant sur Peter ERLINDER :

"The proposed charges are spreading malicious rumours detrimental to national security, genocide ideology and negation/minimization of genocide. He has not been formally charged and hence no indictment yet. Prosecutor sought and obtained order for preventive detention for further 30 days to "complete investigations."

9. Monsieur ERLINDER est donc détenu dans le cadre d'une procédure préliminaire sans que des charges lui aient été officiellement notifiées. Une telle situation juridique est impossible dans un Etat de droit.
10. En complément de ces informations, la Défense de Monsieur KALIMANZIRA a pu récupérer⁵ le texte original de la décision de la Haute cour rwandaise de Gasabo qui, ce même lundi 7 juin 2010, examinait une demande du procureur rwandais de prolonger la détention provisoire de Monsieur Peter ERLINDER durant 30 jours.
11. A la lecture de cette décision de justice rwandaise⁶, on constate que tandis qu'à Arusha en Tanzanie, Monsieur le Président BYRON s'appuyait sur les déclarations du procureur général Martin NGOGA pour rejeter les requêtes de la Défense, à Kabuga au Rwanda, le procureur Richard MUZUHUMA déclarait :

"7. Even though the genocide was planned by the Interahamwe during the MRND regime by putting up a list of Tutsis and Hutus to be killed, during the Military I Trial at the ICTR, Carl Peter Erlinder denied and downplayed genocide. He managed to prove that the genocide has not been planned nor executed by the military officials he was representing and showed that his clients were mostly preoccupied by the country's sovereignty. "

⁴ Voir annexe 1 (emails de Kennedy Ogetto)

⁵ Voir annexe 1 (emails de Kennedy Ogetto)

⁶ Voir annexe 2 (original en Kinyarwanda) et annexe 3 (traduction informelle en anglais réalisée par les conseils rwandais de Monsieur ERLINDER)

"During the Military I trial at the ICTR he wrote that the killings of Tutsis that took place in Rwanda in 1994 are not genocide and that this is a tool Rwandan officials use to silence people who would like to challenge Kagame in presidential elections of 2010."

12. La Défense constate donc qu'il existe un véritable double langage du procureur rwandais : celui qu'il tient à l'intention du TPIR pour le prier de ne pas se mêler de ses affaires intérieures et celui que son substitut MUZUHUMA utilise au Rwanda pour fonder des poursuites contre Monsieur Peter ERLINDER et obtenir son maintien en détention sur le fondement de sa mission d'avocat de la défense devant le TPIR et pour des propos qu'il aurait tenus durant un procès du TPIR.
13. Au vu de cet élément nouveau, il apparaît donc à la Défense de Monsieur KALIMANZIRA que la requête en suspension du procès doit être examinée de nouveau par l'Honorable Chambre d'appel et acceptée.
14. En effet, puisque le procureur du Rwanda poursuit et sollicite l'emprisonnement d'un avocat du TPIR pour des propos tenus en Tanzanie lors d'audiences devant le TPIR, cela signifie que tout avocat du TPIR prenant la parole à Arusha encourt le risque de se faire arrêter lors d'une mission au Rwanda.
15. Ainsi, tout avocat du TPIR tenant des propos qui ne conviendraient pas aux autorités rwandaises encourt le risque de voir ce même procureur rwandais émettre un mandat d'arrêt international qui pourrait être mis à exécution par les pays dont sont ressortissants les conseils de la Défense, mais également par des pays qu'ils traverseraient au cours de voyages et qui décideraient de mettre à exécution lesdits mandats d'arrêt internationaux rwandais.
16. Dans ces conditions, et en l'état de la procédure rwandaise, la Défense de Monsieur KALIMANZIRA est particulièrement bien fondée à considérer que l'arrestation de Monsieur Peter ERLINDER au Rwanda met en péril sa liberté de parole à l'audience et donc sa mission de conseil libre et indépendant.

17. De plus, même si nul ne peut préjuger de la décision que rendra la Chambre d'appel sur le recours formé par Monsieur KALIMANZIRA contre le jugement l'ayant condamné à 30 ans d'emprisonnement, il n'en reste pas moins qu'en cas de confirmation, les conseils de la Défense pourraient être amenés à reprendre leurs enquêtes aux fins de soumettre une demande de réouverture du procès. Le précédent ERLINDER leur interdirait toute reprise d'enquête sur le sol rwandais.
18. Ainsi, en considération des éléments précités, il apparaît très clairement que les conditions d'un renvoi du procès d'appel sont réunies.
19. C'est la mesure sollicitée.
20. A titre subsidiaire, les rédacteurs de la présente requête sollicitent qu'au regard des éléments fournis ce jour, la Chambre d'appel demande au Greffe qu'il fasse immédiatement savoir au Rwanda qu'au vu des éléments en sa possession, il estime que les poursuites contre Monsieur ERLINDER sont couvertes par l'immunité attachée aux activités du TPIR et exige son immédiate remise en liberté.
21. Les conseils de la Défense de Monsieur KALIMANZIRA se permettent de rappeler qu'en l'absence d'un Ordre International des Avocats obligatoire, indépendant et pouvant s'exprimer à égalité avec les autres instances du TPIR, ils dépendent du Greffe. Ce dernier doit donc veiller à leur protection et à l'application des droits qui leur sont garantis par les « *Basic Principles on the Role of Lawyers* », adoptés lors du Huitième Congrès des Nations Unies pour la Prévention du Crime et le Traitement des Délinquants à la Havane, Cuba, du 27 Août au 7 Septembre 1990 :

“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

22. De très nombreux Ordres d'avocats nationaux ont protesté contre l'arrestation de Monsieur Peter ERLINDER mais seul le Greffe du TPIR est susceptible de prendre les mesures qui aboutiront à mettre en œuvre l'immunité due à toute personne arrêtée pour des motifs concernant sa mission devant le TPIR.
23. Dans les faits, tant qu'en application de son devoir de protection, le Greffe du TPIR n'aura pas exigé la libération de Peter ERLINDER, la Défense de Monsieur KALIMANZIRA constate que sa liberté de parole n'est pas assurée et qu'elle ne peut donc pas exercer pleinement sa mission de défense.

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PAR CES MOTIFS,

La Défense de Monsieur Callixte KALIMANZIRA sollicite donc que la Chambre d'appel du Tribunal Pénal International pour le Rwanda :

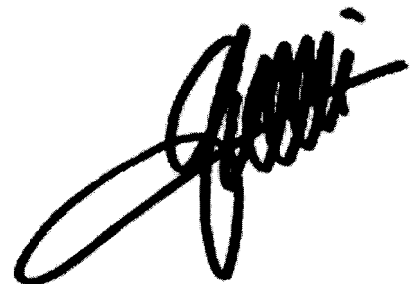
- **ACCUEILLE** la présente requête ;
- **ENTENDE** les parties sur cette question ;
- **AJOURNE** *sine die* l'audience d'appel jusqu'à ce que le Greffe garantisse et mette en œuvre le devoir de protection qu'il doit aux avocats de la Défense agissant sous l'égide du TPIR.

Fait à Arusha, le 10 juin 2010

Arthur VERGISEN
Conseil principal



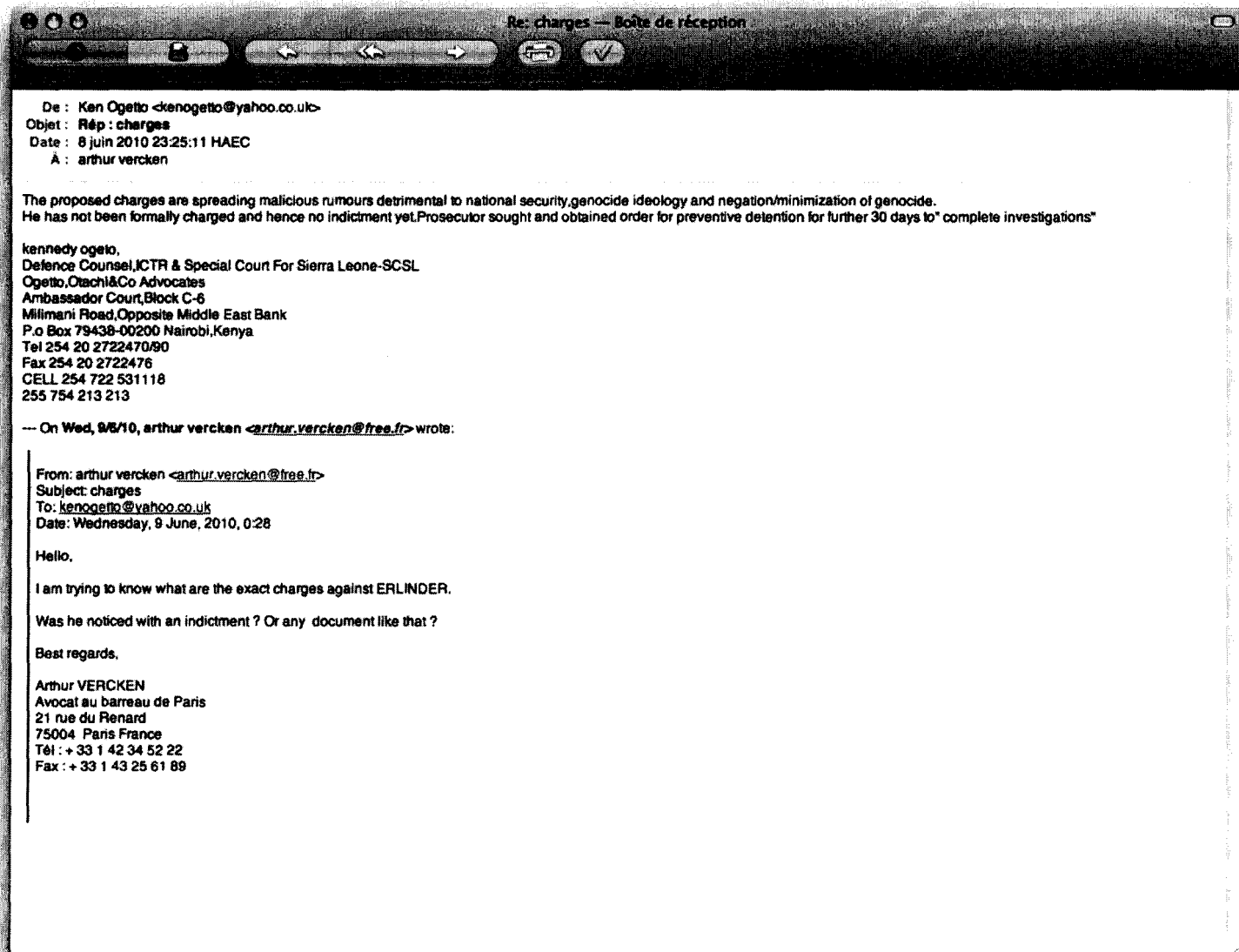
Anta GUISSÉ
Co-conseil



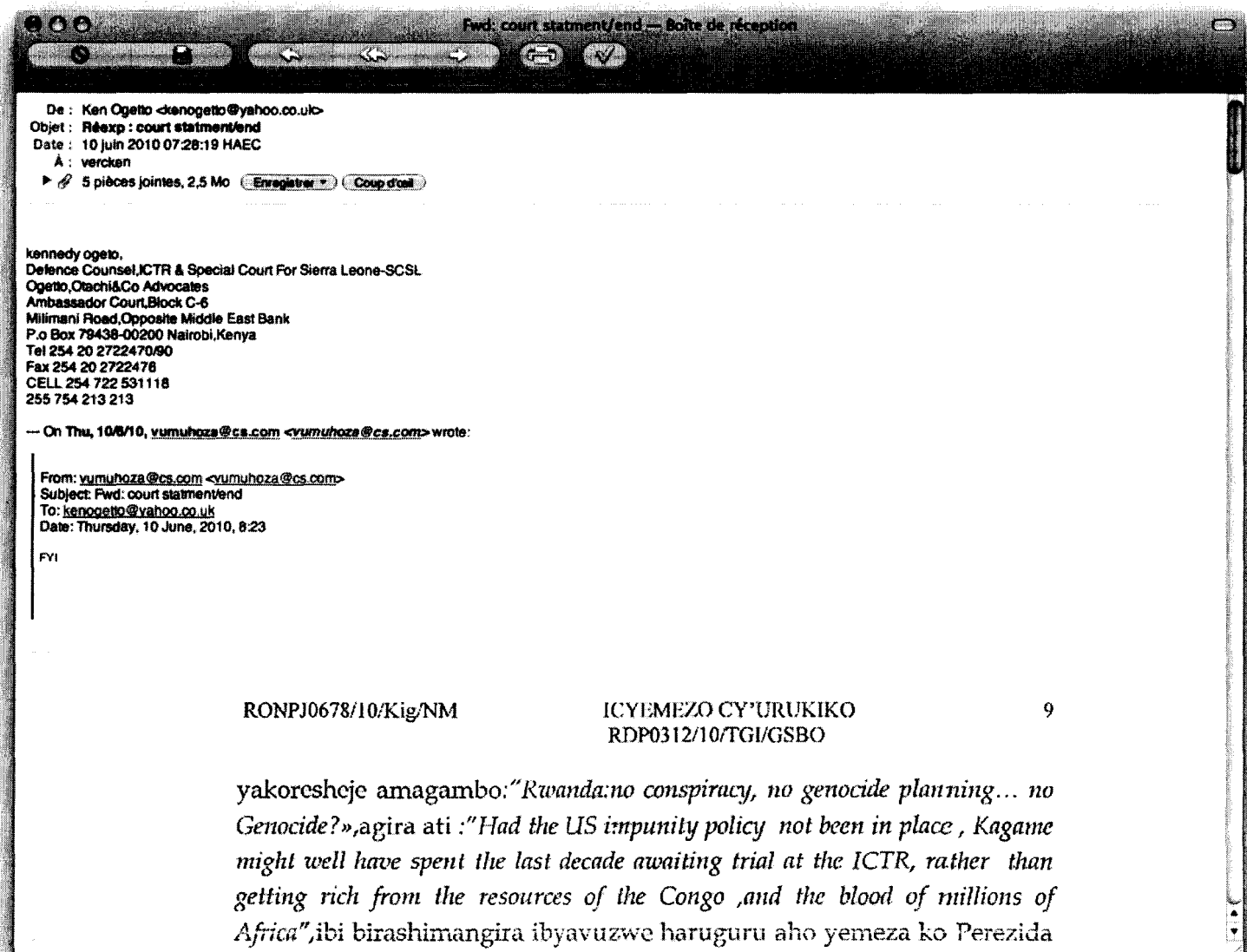
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ANNEXE 1

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ANNEXE 2

URUKIKO RWISUMBUYE RWA GASABO RURI KABUGA
RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA KU
IFUNGWA N'IFUNGURWA RY'AGATEGANYO KU RWEGO RWA
MBERE MURI RONPJ0678/10/Kig/NM NONERUKIWA 07/6/2010
RWEMEJE IBUKURIKIRA.

Ubushinjacyaha ku rwego Rwisumbuye rwa Gasabo Au nom du peuple Rwandais

UREGWA: Carl Peter Erlinder mwene Atwood Erlinder na Jane Lois
Bihl, wavutse ku wa 14/4/1948 i Chicago Illinois, yashakanye na Masako
Isui, akaba ari Law Professor in Ninesota -U.S.A;

IBYAHA AKURIKIRANWEHO:

1. Guhakana no gupfobya jenocide akoresheje inyandiko n'ibiganiro bitandukanye. Icyaha giteganywa kandi kigahanishwa ingingo ya 4 y'itegeko n°33bis/2003 ryo ku wa 06/9/2003 rihana icyaha cya jenocide, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara;
2. Gukwirakwiza ibihuhwa bishobora guhungabanya umutekano w'abanyarwanda. Icyaha giteganywa kandi kigahanishwa ingingo y'i 166 y'itegeko-Teka n°21/77 ryo ku wa 18/8/1977 lishyiraho igitabo cy'amategeko ahana;

I. IMITERERE Y'URUBANZA

1. Nyuma yo kubazwa n'ubugenzacyaha ndetse n'ubushinjacyaha, Carl Peter Erlinder yakorewe inyandiko imufata n'Umushinjacyaha ku rwego rwisumbuye rwa Gasabo;
2. Umushinjacyaha uyobora Ubushinjacyaha ku rwego rwisumbuye rwa Gasabo yandikiye Perezida w'urukiko rwisumbuye rwa Gasabo, bushinja Carl Peter Erlinder, ukurikiranyweho ibyaha byavuzwe haruguru, busaba ko anyuzwa mu nama y'abacamanza;
3. Itegeko rya Perezida ryo ku wa 04/6/2010 ryashyize iburanisha ku wa 04/6/2010;



II. IMIGENDEKERE Y'URUBANZA

4. Ku wa 04/6/2010, Ubushinjacyaha buhagarariwe na Muhumuza Richard, Carl Peter Erlinder yunganiwe na Me Gershom Otachi Bw'Omanwa, Me Kenned Ogeto, Me Kurt P. Kerns, Me Kazungu Jean Bosco, Me Gatera Gashabana, Me Mucyo Donatien, Me Bizimana Shoshi, Me Furaha Amida, Me Buhuru Pierre Célestin naho umusemuzi ari Byukusenge Elisée;

4. Carl Peter Erlinder amaze kwemeza ko umwirondoro asomewe ari uwe, Umushinjacyaha yasabye gusobanura umwanzuro w'ubushinjacyaha mu cyongereza kugira ngo byumvwe neza n'ushinjwa, akomeza asobanura ko impamvu Ubushinjacyaha bushingiye ku ngingo za 93 n'ya 94 z'itegeko 13/2004 ryo kuwa 17/05/2004 ryeyekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 22/4/2006; yashikirije Carl Peter Erlinder ari kuba ashinjwa guhakana no gupfobya jenocide mu byo yagiye atangaza no mu byo yagiye avuga ndetse akanaregwa gukwirakwiza ibihuhwa bishobora guhungabanya umutekano w'abanyarwanda;

5. Bisabwe na Me Kazungu, Carl Peter Erlinder yemerewe kwicara kuko yavuze ko yumva atameze neza;

6. Umushinjacyaha yavuze ko hari impamvu zikomeye zituma Peter Carl Erlinder acyekwaho icyaha zigaragarira mu nyandiko n'ibiganiro, nko mu nyandiko Carl Peter Erlinder yanditse tariki ya 02/02/2009 akaba yaranavuze ko vuba aha mu 2008 abayobozi 40 bari mu buyobozi bwa Kagame bwaje gukurikira iperereza ry'ubufaransa rya 2006 naryo ryashinjaga abayobozi bishe Perezida w'u Rwanda ndetse agatsindagira ko ibyabaye mu 1994 ari intambara y'abaturage ubwabo bigaragara ko yahakanaga jenocide atsindagira ko ubwicanyi bwatewe n'urupfu rwa Perezida w'u Rwanda na Perezida w'u Burundi kandi nyamara yaramaze kugaragara ko jenocide yateguwe n'ubutegetsi bwa Habyarimana ishyirwa mu bikorwa na Sindikubwabo na Kambanda, akomeza gukwiza ibihuhwa adafitiye ibimenyetso ko ubutegetsi bw'u Rwanda aribwo bwishe Perezida w'u Rwanda na



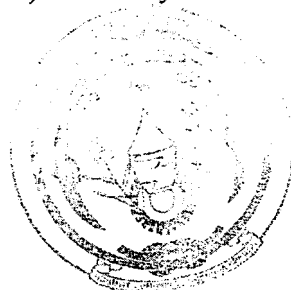
Perezida w'u Burundi, ibi hashingiwe ku ngingo y'i 166CPLII, ibi byahungabanyije umudendezo w'u Rwanda, byanatera imyigaragambyo no kwanga ubutegetsi buriho;

7. Nubwo jenocide yari yateguwe n'interahamwe mu gihe cya MRND, hakorwa lisiti z'abatutsi n'abahutu bagombaga kwicwa, mu rubanza rwa Gisirikare I yunganiragamo abasirikare muri TPIR, Carl Peter Erlinder yahakanye anapfobya jenocide, agaragaza ko itateguwe kandi itashizwe mu bikorwa n'abasirikare yunganiraga ahubwo baharaniraga ubwigenge bw'igihugu bitari bihagije ngo ahakane jenocide, anayipfobye, ibi yabikomeje no mu zindi manza;

8. Umushinjacyaha yagaragaje ko Carl Peter Erlinder mu nyandikio yise ngo nta jenocide yateguwe ndetse nta jenocide yabayeho, aho yanavuze ko USA yaba idafite amategeko ahana, ngo Kagame yagombye kuba yaragejejwe imbere y'inkiko agahanwa aho gukomeza kuvoma umutungo wa Kongo amena amaraso y'abanyarwanda, anashimangira ko ibyabaye ari ubwicanyi bw'abaturage kandi ari umwunganizi mu Rukiko Mpanabyaha rwashiriweho u Rwanda i Arusha;

9. Umushinjacyaha yavuze ko mu kirego cye mu rukiko rw'akarere ka Oklahoma, Carl Peter Erlinder, yavuze ko adahakana ubwicanyi ku bahutu cyangwa abatutsi bishwe n'ingabo za FPR, ubu bwicanyi butatewe na Leta yariho mbere ya jenocide ahubwo abugereranya n'ubwicanyi mu Burundi kandi ko imbarutso y'ubwicanyi mu Rwanda ari urupfu rwa Perezida w'umuhutu wa kabiri ndetse n'uwa gatatu wari wishwe ndetse akaba yarakomeje apfobya jenocide yakorewe abatutsi avuga ko ari amahano yagwiriye u Rwanda bamwe bita jenocide, iyi inafitiwe ibimenyetso muri TPIR ko yateguwe ikanashirwa mu bikorwa n'ubutegetsi bwa Perezida Habyarimana;

10. Umushinjacyaha yakomeje agaragaza kandi ko Carl Peter Erlinder mu nyandiko yavuze ngo amahano yabaye mu Rwanda bamwe bita jenocide, akaba ahakana anapfobya jenocide yakorewe abatutsi ndetse ko

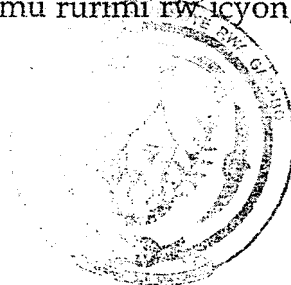


ari amagambo akoreshwa na Leta y'u Rwanda ngo babone icyo bitwaza,ubundi yandika jenocide nk'intambara yabaye ndetse muri dosiye Military I,yanditse ubwe ko ubwicanyi bwakorewe abatutsi ari ubwicanyi bwakozwe atari jenocide yakozwe mu 1994 kandi ko iki ari ikibazo mu Rwanda bakoresha kugira ngo babashe gukumira abashobora guhangana na Kagame mu matora yo mu mwaka w'i 2010;

11.Mu nyandiko ye,ku wa 06/5/2010,Carl Peter Erlinder yavuze ko ageneye bose,yavuze ko muri documents za ONU harimo izigaragaza ko Kagame ariwe mbarutso ya jenocide mu Rwanda n'ubwicanyi muri Congo y'Uburasirazuba,aha akaba ahakana amateka agerageza guhakana jenocide,ijambo yandika mu dukubo kandi ryaremewe rikanakoreshwa ku rwego mpuzamahanga,aho mu rubanza rwa Karemera Edouard muri TPIR bavuze ko jenocide y'abatutsi ari ikidashidikanywaho,nyamara akabirengaho yereka abanyarwanda ko umuyobozi mukuru yakoze jenocide na none aho ku wa 06/4/2006 yandikiye Minisitiri w'intebe wa Canada ku kwita kw'isurwa rya Perezida uriho mu Rwanda,agendereye kuzana umwiriyane mu banyarwanda kandi ko ubutegetsi bwa Kagame aribwo buri kw'isonga muri Afrika mu butegetsi bw'igitugu,ibi binyuranye n'ingingo y'i 166 y'itegeko teka n°21/77 ryo ku wa 18/8/1977 lishyiraho igitabo cy'amategeko ahana;

12.Ku bw'inyandiko ze zitandukanye,hashingiwe ku ngingo za 93 na 94 z'itegeko 13/2004 ryo kuwa 17/05/2004 ryekeye imiburanishirize y'imanza z'inshinyabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 22/4/2006,Ubushinjacyaha kwasabye urukiko kwita ku mpamvu zikomeye zishingiye ku byo Carl Peter Erlinder yanditse,agategekwa gufungwa by'agateganyo mu gihe iperereza rikomeje cyane ko aribwo buryo bwonyine bwatuma uregwa aboneka igihe cyose yakenerwa kandi byatuma adacika ubutabera;

13.Ku byavuzwe n'Ubushinjacyaha,Carl Peter Erlinder yatangiye ahakana ibyaha aregwa byose,avuga ko ibyo yanditse byose atavuze nabi u Rwanda,ibi byanditswe mu rurimi rw'icyongereza asaba urukiko



kuba arirwo rwabiha agaciro kandi ko n'uwabishyira mu rundi rurimi nk'igifaransa cyangwa ikinyarwanda,nta kibazo cyagaragaramo ahubwo ko Ubushinjacyaha aribwo bugaragaza ko ibyo yanditse byataye ibibazo kandi biteganywa n'amategako yose ya Leta zunze Ubumwe za Amerika na Constitution yabo ndetse n'Umuryango w'Ibihugu bikoresha ururimi rw'icyongereza,u Rwanda rwinjiyemo,nta mugambi yarafite wo guteza imyivumbagatanyo mu Rwanda mu byo ashinjwa byabonwaga na bese kandi yiteguye gusobanura;

14.Carl Peter Erlinder yavuze ko uretse ubuyobozi bwa FPR nta wundi wahakana ibyo yanditse,yibutsa ko yajye mu Rwanda muri Nzeli 2004,agaruka mu 2010 yaraje kunganira umukandida Perezida mu bibazo yarafite kandi yabuzwaga na bagenzi be kuza mu Rwanda kuko yafatwa,yumvise ko havugwa démocratie araza,afatwa ntacyo yakoreye mu Rwanda cyangwa yavuze mu gifaransa cyangwa mu kinyarwanda ariko yizeye icyemezo kizafatwa n'urukiko cyane ko yabonye byinshi bigenda bihinduka mu Rwanda kandi ko ntawe yarega icyaricyo cyose ndetse ashima uburyo yafashijwe;

15.Carl Peter Erlinder yagaragaje impungenge z'ukuntu yakwitabwaho ageze muri gereza nk'umuzungu w'umusaza ndetse ko yizeza urukiko kuba yakubahiriza ibyo rwamutegeka byose dore ko iri fungwa aho agereye mu Rwanda ryamuteye ihungabana,asaba kurekurwa akajya kwivuriza muri Amerika;

16.Carl Peter Erlinder yavuze ko yemeje kuba harabayeho jenocide ariko itegurwa ryayo atarimenya dore ko atarahari,ibi bikaba byaragaragaye muri TPIR mu rubanza rwa Gisirikare,akaba atabazwa niba harabayeho igihe cyo gutegura jenocide;

17.Mu kunganira Carl Peter Erlinder,Me Kazungu Jean Bosco yatangiye ashimira urukiko kuba rwumvise ushinjwa no ku bw'ijambo rihawe ubwunganizi,avuga ko badafite dosiye,asaba ko uwo yunganira yahabwa amahirwe yo kwitaba adafunzwe nkuko biteganywa n'ingingo ya 87 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 22/4/2006,Ubushinjacyaha bugakomeza dosiye uwo bunganira ari hanze byaba ngombwa akagira ibyo ategukwa kubahiriza nkuko biteganywa n'ingingo ya 90 y'iryo



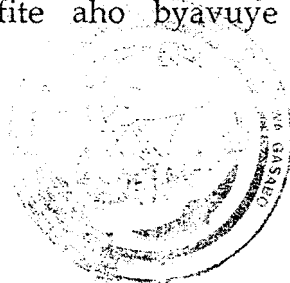
tegeko dore ko amaze iminsi 2 mu bitaro,yakomeje kugaragaza gucika intege kw'uyu bunganira n'ubufatanye n'inzego zamufashe ndetse ko ashaje,asoza asaba urukiko guhera kuri jurisprudence y'icyemezo cyafashwe kuri Madamu Ingabire Victoire;

18.Me Kurt P.Kerns yavuze ko uwo yunganira nta cyaha yakoze kuko ntacyo yigeze avugira mu Rwanda,ntaho yanyuranyije n'amategeko y'u Rwanda ahubwo ko habaye ikibazo ku buryo abantu bagiye basobanura cyangwa bavuga kuri icyo kibazo gusa ko Erlinder atahakanye cyangwa ngo apfobye jenocide kuko gushyira ijamba mu dukubo cyangwa kurikoresha nk'ubwicanyi,atavuze ko nta jenocide yakorewe abatutsi kandi ko iyo aba yarabikoze atari kuza mu Rwanda;

19.Me Kurt P.Kerns yavuze ko ibyo Ubushinjacyaha bwazanye ari ibivugwa mu magambo ndetse ko uwo yunganira arekuwe ntacyo byatwara,asaba ubutabera no gutanga amahirwe nk'ayahawe uwo yaraje kunganira;

20.Nyuma yo gushimira u Rwanda ku bw'ubwisanzure bururanga,Me Kennedy Ogetto yavuze ko uwo yunganira yafashwe kubera ibyo yanditse ku rwego rwa za kaminuza ndetse ko uyu yunganira yubaha u Rwanda n'abanyarwanda bityo yagowe no kumva ko apfobya jenocide kuko azi ibyo yanditse ahubwo ko Ubushinjacyaha bukura bimwe mubyo Peter Erlinder yanditse bukabiha ibisobanuro bwabyo ndetse ko atigeze ahakana itegurwa n'ishyirwamubikorwa rya jenocide dore ko mu rubanza Military I muri TPIR ku wa 09/02/2009,abacamanaza bemeje ko abasirikare badahamwa n'icyaha cyo gutegura jenocide,akaba atarahakanye icyemezo cy'urukiko kuko nta tegurwa n'ishyirwa mu bikorwa rya jenocide ryari muri urwo rubanza;

21.Me Kennedy Ogetto yavuze ko inyandiko ya Peter Erlinder yo ku wa 06/4/2006 ya Minisitiri w'intebe wa Canada avuga ko ubuyobozi bwa Kagame ari ubw'igitugu muri Africa,Ubushinjacyaha bwabeshye kuko muri paragraphe ikurikira,bigaragaraga ko ibyo Peter yanditse yabikuye muri Economics Magazine bityo nta cyaha mu gihe yandukuye iby'icyo kinyamakuru dore ko ibyo ashinjwa bidahuye n'ibyo yashatse kuvuga,ibi bikaba byaranditsweho na Karl Del Pontes wahoze ari Procureur wa TPIR,Michel H. wabaye Umushinjacyaha muri TPIR bityo we akaba yarabyanditseho bifite aho byavuye bibatera kwibaza



impamvu Ubushinjacyah buhitamo gukurikirana Peret Erlinder, ibi bidashingiye kubyo yanditse ahubwo aruko yunganiye neza abaregwa muri TPIR ndetse na dosiye y'umuyobozi w'u Rwanda;

22.Me Kennedy Ogetto yashoje asaba ko ibyasabwe n'Ubushinjacyaha bitahabwa agaciro kuko nta mpamvu zikomeye bwagaragaje zashingirwaho Erlinder afungwa by'agateganyo, yemeza ko butagaragaza iperereza bwakoze ahubwo bushaka guhana uwo bunganira ari mu Rwanda;

23.Me Gershom Otachi Bw'Omanwa yatangiye ashimira inkiko z'u Rwanda, akomeza asabira Peter Erlinder kurekurwa, agakurikiranwa ari hanze kuko Ubushinjacyaha bwarangije kumubaza ku byo ashinjwa bishingiye ku nyandiko yanditse kuri internet kandi yemeza ikibazo gishingiye ku buryo byasobanuwe ndetse yagira ibyo abisobanuraho ari hanze agira n'ibyo akora kuri dosiye afite muri TPIR aho yunganira abaregwa;

24.Umushinjacyaha yavuze ko ifatwa n'ifungwa rya Carl Peter Erlinder ntaho bihuriye no kuba yarajye mu Rwanda kunganira uwo yunganira cyangwa kuba hari abo yunganira muri TPIR ahubwo yafashwe kubera ibyaha yakozwe byatumye agezwa imbere y'urukiko naho kubyo kuba abunganizi badafite dosiye bari kubisaba urukiko; rumwibutsa ko nta mbogamizi bagaragaje bibatera;

25.Umushinjacyaha yasobanuye ko kuba batabona ibintu kimwe n'ubushinjacyaha ari ibisanzwe, asaba urukiko gusuzuma ibyifuzo by'ubushinjacyaha rugashingira ku mategeko no gufata icyemezo ku bijyanye n'ubuzima bwa Peter Erlinder niba yagira ikibazo afunzwe kuko nk'Ubushinjacyaha batari abaganga kandi butarwanya irekurwa rye;

26.Me Kazungu mw'izina rya bagenzi be bose, yibukije ko Erlinder yagiye mu bitaro kandi Ubushinjacyaha bukwiye kubafasha kumvikanisha uburemere bw'uburwayi bwe ndetse ko hari facture ya Hôpital Roi Faycal igaragaza ko yagiye mu bitaro n'ibizamini yakorewe, asaza asaba urukiko kwita kuri ibi bimenyetso ku buzima bwa Erlinder buri mu bibazo, iperereza rigakomeza ari hanze;



27. Umushinjacyaha yemeje ko Carl Peter Erlinder yagiye mu bitaro inshuro ebyiri ariko abaganga batagaragaje ko ifungwa rye ryatera ibibazo ku buzima bwe kandi ko n'ufunzwe avurwa;

28. Me Kurt P. Kens yavuze ko nta kimenyetso bagaragaza cyemeza ibibazo by'uburwayi bwa Peter Erlinder ariko ko aho ari nabyo bigaragaza ko afite ibibazo ndetse ko bibaye ngombwa bazana icyemezo cya muganga;

29. Iburanisha ryarapfundikiwe, isomwa ry'icyemezo riteganyijwe ku wa 07/6/2010 i saa kumi n'igice (16h30');

III. UKO URUKIKO RUBIBONA

30. Kuba Carl Peter Erlinder ahakana impamvu zikomeye zishingirwaho mu kumushinja guhakana no gupfobya jenocide ndetse no gukwirakwiza ibihuhwa bishobora guhungabanya umutekano w'abanyarwanda ntahakana imvugo n'inyandiko zitandukanye yakoreye hanze y'u Rwanda dore ko yitwaza kuba inyandiko zarakozwe mu cyongereza bityo Ubushinjacyaha buziha ibisobanuro zidakwiye kandi we ataziha ndetse ko nta kibi yavuze ku Rwanda;

31. Impamvu zikomeye zituma akekwa guhakana no gupfobya jenocide mu nyandiko zitandukanye ni nkaho yagize ati: *"In early 2008, Spain indicted 40 leading members of Kagame government which followed a late 2006 French indictment charging Kagame and his followers with assassinating former Rwandan and Burundian Presidents, the crime that triggered 1994 Civilian -on- civilian killings in Rwanda."*, muri iya magambo Carl Peter Erlinder yemeza ko mbere na mbere Perezida w'u Rwanda Paul Kagame, ariwe wishe uwari Perezida w'u Rwanda Habyarimana Juvénal n'uwari Perezida w'u Burundi Ntaryamira Cyprien muri 1994, yarangiza akongeraho ibi aribyo byateye jenocide gutyo akaba ariwe watumye jenocide ibaho;

32. Nanone Carl Peter Erlinder yise jenocide y'abatutsi yo muri 1994 *"Civilian -on- Civilian killings in Rwanda"* aho ayifata nk'imirwano yabaye hagati y'abaturage ndetse ko itateguwe, itanashizwe mu bikorwa aho



yakoresheje amagambo: *"Rwanda: no conspiracy, no genocide planning... no Genocide?"*, agira ati: *"Had the US impunity policy not been in place, Kagame might well have spent the last decade awaiting trial at the ICTR, rather than getting rich from the resources of the Congo, and the blood of millions of Africa"*, ibi birashimangira ibyavuzwe haruguru aho yemeza ko Perezida wa Repubulika y'u Rwanda ariwe wateye ibyo we yita *Civilians killings*, gutyo ngo akaba ariwe ukwiye kubibazwa imbere ya ICTR muri iyi nyandiko kandi, ku rupapuro rwa 4 Carl Peter Erlinder avuga ko ibyaha by'ubugome byakozwe n'impande zombi: *"Crimes committed by the two side"*, akanerura yemeza ko habaye jenocide ebyiri *"two genocide"*, aha biragaragaza ko rwose ko ahakana jenocide dore ko zitashoboraga kuba ebyiri zombi ngo zitwe jenocide;

33. Mu gukomeza guhakana jenocide Carl Peter Erlinder agaruka ku birego we na bagenzi be bareze Perezida w'u Rwanda bongera kwemeza ko jenocide yo mu Rwanda ariwe wayiteye ngo kuko yabaye ingaruka y'urupfu rwa Habyarimana Juvénal na Ntaryamira Cyprien rwakozwe nawe, aho jenocide ayita *"the civilian massacres"* ndetse akomeza mu nyandiko ze kuri article *"Rwanda ;perpetrators of genocide jailed"* jenocide ayita: *"The Rwandan tragedy....Some call genocide...."* muri uru rwandiko yerekana n'ibyo bintu we atita jenocide kandi ko ukwiye kubibazwa ari Perezida w'u Rwanda Paul Kagame, kuko byavuye kucywo we yita *"a product of imperialism"* yanakurikiwe no kumukingira ikibaba bikozwe na US na UK ndetse ahandi akanakoresha imvugo: *"Kagame ordered the final assault within minutes after learning of the successful missile attack..., long BEFORE any retaliatory, civilian killing had occurred anywhere in Rwanda"*, aha ahakana jenocide akivugira civilian killing, yarangiza akavuga icyateye izo civilian killings nacyo cyerekana guhakana jenocide (uburyozwacyaha);

34. Mu nyandiko Carl Peter Erlinder yise *"Genocide war crime cover -ups and UN falsification of History of suppressed. UN prosecutors memoirs and the real politic of the UN International criminal tribunals"* nubwo agenda agerageza kwerekana ko ibyo avuga bifite ahandi biva "sources", ariko



agenda yiyongereramo ibyo Ubushinjacyaha bwita personal comments and individual position, nko ku rupapuro rwa 36 rw'iyo nyandiko aho agira ati: «*and if the architects of the genocide*», «*on trial in the military 1 case did not plan or conspire to kill tutsi civilians or to commit other crimes, it is necessary to entirely reconsider how to conceptualize and characterize the violence in Rwanda during April-July 1994*» aya magambo ni aya Carl Peter Erlinder ubwe si ay'urukiko, inyandiko zikubiyemo ibikorwa bigize ibiteganywa bikanahanwa n'ingingo ya 4 igika cya 1 y'itegeko n°33bis/2003 ryo ku wa 06/9/2003 rihana icyaha cya jenocide, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara iteganywa ko «*Azahanishwa igihano cy'igifungo kuva ku myaka cumi kugeza kuri makumyabiri uzaba yagaragaje mu ruhame haba mu mvugo, mu nyandiko, mu mashusho cyangwa ubundi buryo ubwo ari bwo bwose ko atemera jenocide yabaye, yayipfobeye, yagerageje gusobanura cyangwa kwemeza ko yari ifite ishingiro cyangwa uzaba yayihishiriye cyangwa yononnye ibimenyetso byayo.*»

35. Mu nyandiko ze, Carl Peter Erlinder anakekwaho kwangisha Leta iriho abaturarwanda aho yanditse ko: "172 *Raising such questions is impossible in Rwanda, given crimes of genocide denial " and negationism which are not being threatened to silence political candidates seeking to oppose Kagame in upcoming 2010 elections; yemeza ko ari iturufu Perezida Paul Kagame akoresha agira ngo acecekeshe abashaka kwiyamamariza ku mwanya wa Perezida wa Repubulika y'u Rwanda naho ku rupapuro rwa 42 akerekana ko abayobozi bakuru b'igihugu aribo baryozwa jenocide ayikura ku bayikoze; abigaragaza mu kirego we na bagenzi be bashyikirije urukiko bise "Complaint with Jury Demand in the United State District Court for the western District of Oklahoma", mu izina rya Madame Habyarimana Juvénal na Madame Ntaryamira Cyprien barega abayobozi bakuru b'igihugu, yandagaza abayobozi b'igihugu agira ati : "Both Kagame and RPA bear responsibility for their scope and extent, and the conspiracy to avoid responsibility for their own crimes that continue to day "kandi ko kutabakurikirana ari injustice and impunity;*

36. Muri uwo mugambi wo kwangisha abanyarwanda ubuyobozi, Carl Peter Erlinder mu ibaruwa ubwe yandikiye Prime Minister Harper (Canada) akayita: "Regarding state visit of current President of Rwanda", tariki ya 6/4/2006, yemeje ko: "Kagame Regime is the most repressive



military dictatorship in Africa" abishyira kuri internet n'ahandi hose hari public ni ukwangisha abaturage ubuyobozi cyane iyo kubishyira kuri internet n'ahandi hose hari public, ibikorwa biteganywa kandi bigahanirwa ingingo y'i 166 y'Itegeko-Teka n°21/77 ryo ku wa 18/8/1977 lishyiraho igitabo cy'amategeko ahana iteganya ko: «Umunu wese, uzaba yitwaje ali za diskuru avugiyeye mu nama cyangwa ahantu h'uruterane, ali inyandiko z'ubwoko bwose z'inashini, amashusho cyangwa ibimenyetso by'amoko yose, binanitswe, bitanzwe, biguzwe cyangwa bigutishijwe cyangwa bishyizwe mu maso ya rubanda, ali ukwamamaza nkana ibihaha akagomesha cyangwa akagerageza kugomesha rubanda arwangisha ubutegetsi buliho, agatera cyangwa akagerageza gutera intururu mu baturage ashaka ko bazasubiranamo, agatera rubanda intugunda ashaka kubiyutsa imidugararo muri Repubulika, azahanishwa igifungo kuva ku myaka ibili kugeza ku icumi n'ihazabu y'amafaranga kuva ku ibihumbi bibili kugeza ku bihumbi ijana, cyangwa kimwe gusa muri ibyo bihano, aho bidatanyirizwe ibihano birushijeho gukomera byateganyijwe n'andi mategeko y'iki gitabo cy'ibihano.»;

37. Nkuko ingingo z'amategeko zimaze kugaragazwa, ibikorwa bihanirwa bigize ibyaha Carl Peter Erlinder akekwa kuba yarakoze, byagaragarijwe impamvu zikomeye zituma akekwa kuba yarabikoze bityo nkuko biteganywa n'ingingo ya 93 y'itegeko 13/2004 ryo kuwa 17/05/2004 ryakeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo kuwa 22/4/2006 ko: «Ukurikanyweho icyaha ntashobora gufungwa mbere y'urubanza keretse hari impamvu zikomeye zimushinja kandi icyaha ashinjwa kikaba icyaha amategeko yateganyirije guhanisha igifungo cy'imyaka ibiri nibura.» ibyaha byombi akekwaho igiteganyirijwe igihano cy'ibanze gito akaba ari icy'imyaka ibiri;

38. Carl Peter Erlinder kimwe n'abamwunganira basaba gukurikiranwa adafunzwe cyane ko arwaye bashingiyeye ku ngingo ya 87 y'itegeko n°13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo kuwa 22/4/2006 iteganya ko: «Ukekwa icyaha akurikiranwa adafunze. Ariko, ku bw'inyungu z'itegurwa rya dosiye y'urubanza cyangwa ku mpamvu z'umutekano we cyangwa uw'igihugu, ashobora gutegekwa kugira ibyo



yubahiriza cyangwa se mu bihe bimwe na bimwe, gufungwa by'agateganyo hakurikijwe amategeko.....»;

39. Kuba Carl Peter Erlinder yararwaye kandi akaba yarasuzumwe na muganga ibi byemejwe muri «Hospital Discharge Form» yahawe ku wa 03/6/2010 muri King Faysal Hospital, Kigali, ariko muganga akaba ataremeje isano iri hagati y'ifatwa n'ifungwa rye n'uburwayi yarafite ndetse ko ntaho yagaragaje ko gufungwa kwe byagira ingaruka zidasanzwe ku buzima bwe dore ko nta kimuvutsa uburenganzira bwe bwo kuvuzwa igihe cyose byaba ngombwa naho kuba ari muzabukuru nabyo atari impamvu yakwitwaza bityo ifungurwa basaba ryaba rinyuranyije n'ibiteganywa n'ingingo ya 93 y'itegeko 13/2004 ryo kuwa 17/05/2004 ryakeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 22/4/2006 ryavuzwe haruguru ndetse n'iya 94 yaryo iteganywa ko «Ukurikiranyweho icyaha ufite impamvu zikomeye zimuhanyira icyaha, ashobora gufungwa mbere y'urubanza n'icyo yakozwe basanze ari icyaha amategeko yateganyirije igifungo kitageze ku myaka ibiri (2), ariko kirenze ukwezi kumwe, niba batinye ko yacika, niba umwirondoro we utazwi cyangwa ushidikanywaho, cyangwa se niba hari impamvu zikomeye z'inibonekarimwe zigomba kumufungisha mbere y'urubanza kubera ko adafunzwe byatera impagarara mu gihugu:

1° Iyo ifungwa ry'agateganyo ari bwo buryo bwonyine bwo gutuma ukurikiranywe adasibanganya ibimenyetso cyangwa se ngo yotse igitutu abatangabuhanyira n'abakorewe icyaha cyangwa se habaho ubwumvikane hagati y'abakurikiranwe n'ibyatso byabo;

2° Iyo iryo fungwa ari bwo buryo bwonyine bwo kurinda ukurikiranywe, bwo gutuma inzego z'ubutabera zimubonera igihe zimukeneye, bwo gutuma icyaha gihagarara cyangwa se kitongerwa gusubirwamo ;

3° Iyo icyaha ukurikije uburemere bwacyo, uburyo cyakozwemo n'inkurikizi cyateye, cyatumye habaho inidugararo idasanzwe n'ihungabana ry'umudendezo rusange bityo ifungwa ry'agateganyo rikaba ari bwo buryo bwonyine bwo gutuma bihagarara.» ndetse ibyarondowe muri iyi ngingo bigize ipfundo ry'impungenge z'Ubushinjacyaha cyane ko ushinjwa atabarizwa mu Rwanda kandi asaba gusubira muri U.S.A. bitera impungenge ko irekurwa rye ryabangamira iperereza ku byaha nk'ibi bigira ingaruka ku Rwanda n'abarutuye;



700/A

IV.ICYEMEZO CY'URUKIKO

39.Rwemeje ko impamvu Ubushinjacyaha bufata nk'izikomeye kandi zituma Carl Peter Erlinder akekwa ibyaha byo guhakana no gupfobya jenocide ndetse n'icyo gukwirakwiza ibuhaha bishobora guhungabanya umutekano w'abanyarwanda zifite ishingiro;

40.Rwemeje ko Carl Peter Erlinder afungwa by'agateganyo mu gihe cy'iminsi 30 muri gereza nkuko byasobanuriwe ishingiro;

41.Rutegetse ko Carl Peter Erlinder afungwa by'agateganyo mu gihe cy'iminsi 30 muri gereza;

42.Rwibukije ko kujuririra iki cyemezo ari iminsi 5;

N'uko byemejwe kandi iki cyemezo gisomewe mu ruhamwe none ku wa 07/6/2010 n'Urukiko rwisumbuye rwa Gasabo,rugizwe n'umucamanza waruburanishije afashijwe n'umwanditsi.

Umucamanza

MBISHIBISHI Maurice

Sé

Umwanditsi

NKURIYINGOMA Jean Damascène

Sé

copie conforme
NKURIYINGOMA



699/A

ANNEXE 3

RPGR0678/10/Kgl/NM

COURT DECISION
RDP0312/10/TGJI/GSBO

THE HIGH COURT OF GASABO LOCATED IN KABUGA THAT TRIES
CRIMINAL CASES REGARDING PROVISIONAL INCARCERATION AND
RELEASE IN THE FIRST INSTANCE IN THE CASE RPGR0678/10/Kgl/NM ON
THIS DAY OF 06/07/2010 DECIDES THE FOLLOWING:

The prosecution on the High Court of Gasabo

THE DEFENDENT: Carl Peter Erlinder, son of Atwood Erlinder and Jane Lois Bihl, born on April 14, 1948 in Chicago, Illinois, married to Masako Isui, law Professor in Minnesota, USA;

CHARGES:

1. Denying and downplaying genocide through his publications and conferences. The charge is prescribed and punishable by article 4 of the law No 33 bis/2003 of September 6, 2003 that punishes the crime of genocide, crimes against humanity and war crimes;
2. Spreading rumors that are capable of threatening the security of the Rwandan people. The charge is prescribed and punishable by article 166 of the law No 21/77 of August 18, 1977 establishing the criminal law book;

I. THE NATURE OF THE TRIAL

1. After interrogation by the judicial police and prosecution; an arrest warrant for Carl Peter Erlinder was issued by the prosecutor at the high court of Gasabo;
2. The lead prosecutor at the High Court of Gasabo wrote to the Presiding Judge of the High Court of Gasabo, charging Carl Peter Erlinder, who is being prosecuted for the above mentioned charges, requesting that he be brought in front of the judges;
3. The order of the Presiding judge of June 4, 2010 put the trial on June 4, 2010;

II. TRIAL PROCEEDINGS

4. On June 4, 2010, the prosecution represented by Muhumuza Richard, Carl Peter Erlinder assisted by lawyers Mr Gershon Otachi Bw'Omanwa, Mr Kenned Ogeto, Me Kurt P. Kerns, Mr Kazungu Jean Bosco, Mr Gatera Gashabana, Mr Mucyo Donatien, Mr Bzimana Shoshi, Mr Furaha Amida, Mr Buhuru Pierre Celestin and Byukusenge Elisee as a translator.

4. When Carl Peter Erlinder confirmed his identity the prosecutor was asked to clearly explain in English the conclusions of the criminal investigation. The prosecutor explained that in reference to articles 93 and 94 of the law No 13/2004 of May 17, 2004 relating to trials of criminal cases, modified and completed by the law No 20/2006 of April 22, 2006 he received Carl Peter Erlinder who is accused of denying and downplaying genocide through his publications and his speeches. He is also accused of spreading rumors that are capable of threatening the security of the Rwandan people;
5. Upon Mr Kazungu's request, Carl Peter Erlinder was allowed to sit down because he was not feeling well;
6. The prosecutor added that there is strong evidence against Carl Peter Erlinder especially through his publications and conferences. For instance, in his article published on February 2, 2009 he said that *"In early 2008, Spain indicted 40 leading members of Kagame government which followed a late 2006 french indictment charging Kagame and his followers with assassinating former Rwandan and Burundian Presidents, the crime that triggered 1994 civilians-on-civilians killings in Rwanda"*. The fact that Carl Peter Erlinder said that what happened in Rwanda in 1994 were civilians-on-civilians killings is evidence that he denies genocide. Carl Peter Erlinder asserted that the killings were triggered by the assassination of Rwandan and Burundian Presidents. However, it is well known that the genocide was planned by the Habyarimana regime and was executed by Sindikubwabo and Kambanda. Carl Peter Erlinder continues to spread rumors without any proof that Rwandan officials are to blame for the assassination of the Presidents of Rwanda and Burundi. All these charges, in reference to article 166 CPLII are capable of threatening security and stability of Rwanda. They also can instigate riots and civil disobediences;
7. Even though the genocide was planned by the Interahamwe during the MRND regime by putting up a list of Tutsis and Hutus to be killed, during the Military I Trial at the ICTR, Carl Peter Erlinder denied and downplayed genocide. He managed to prove that the genocide has not been planned nor executed by the military officials he was representing and showed that his clients were mostly preoccupied by the country's sovereignty. The prosecutor stressed that Carl Peter Erlinder had no reason to deny or downplay genocide adding that he continued to do so through out many other trials;
8. The prosecutor pointed out the article by Carl Peter Erlinder titled: *"Rwanda: no conspiracy, no genocide planning...no genocide?"* where he said that *"Had the US impunity policy not been in place, Kagame might well have spent the last decade awaiting trial at the ICTR, rather than getting rich from the resources of the Congo, and the blood of millions of Africa"*. Carl Peter Erlinder attested that what happened in Rwanda in 1994 were civilians-on-civilians killings even though he is the lead defense counsel for several of the accused at the ICTR in Arusha;
9. The prosecutor said that in a civil lawsuit filed at the Oklahoma City Federal court, Carl Peter Erlinder attests that he recognizes the killings of Hutus and Tutsis by RPF soldiers. According to Carl Peter Erlinder, such killings which have not been instigated

but the regime that was in place before the genocide are comparable to the killings that took place in Burundi and that the triggering event for the killings in Rwanda is the assassination of the second or third Hutu President. Carl Peter Erlinder continued to downplay genocide against the Tutsis by asserting that it is that tragedy that some people call genocide, the same genocide of which there is evidence at the ICTR that the genocide was planned and executed by the Habyarimana regime;

10. The prosecutor also showed that, in his publications, Carl Peter Erlinder said that there are some people who call genocide the tragedy that engulfed Rwanda. He therefore denies and downplays genocide against the Tutsis. He also believes that these terminologies are used by Rwandan officials as a pretext. Usually, in his publications, there is no distinction between genocide and civil war. During the Military I trial at the ICTR he wrote that the killings of Tutsis that took place in Rwanda in 1994 are not genocide and that this is a tool Rwandan officials use to silence people who would like to challenge Kagame in presidential elections of 2010;

11. In his press release of May 6, 2010, Carl Peter Erlinder said that among the UN classified documents there are documents that prove that Kagame is the key trigger of the genocide and war crimes in Eastern DRC. Carl Peter Erlinder denies history by trying to deny genocide, a word he usually put in quotation marks even though this word has been accepted at the International level. During Karemera Edouard trial at the ICTR, people were reminded that genocide against the Tutsis is not disputable. However, Carl Peter Erlinder seems to not listen and continues to allege that the Rwandan President committed genocide. On April 6, 2006 Carl Peter Erlinder sent an open letter to Canadian Prime Minister Harper titled: *"Regarding state visit of current President of Rwanda"*. In order to stir up civil disobedience Carl Peter Erlinder attested that *"Kagame regime is the most repressive military dictatorship in Africa"*. This is punishable by article 166 of the law No 21/77 of August 18, 1977 establishing the criminal law book.

12. With regard to Carl Peter Erlinder's diverse publications, in reference to articles 93 and 94 of the law No 13/2004 of May 17, 2004 relating to trials of criminal cases, modified and completed by the law No 20/2006 of April 22, 2006, the prosecution asked the court to focus on strong evidence with regard to his publications then temporarily detain him since investigation continues. The prosecution said that this is the only way to ensure availability of the accused each time we need him. Temporary detention will also prevent the accused from escaping justice, he added.

13. With regard to all the charges the prosecutor leveled, Carl Peter Erlinder started by pleading not guilty on all of them. He said that in all his writings he did not intend to tarnish Rwanda's image. He asked the court to carefully evaluate his publications all of which are written in English. He added that should anyone translate them into other languages such as French or Kinyarwanda no crime would be found. Instead, the prosecution must prove that his publications constitute any crime because all of them are protected by free speech guarantees under the US constitution and the laws of the commonwealth of which Rwanda is a member. Among the charges against Carl Peter Erlinder, he denied any intent to destabilize Rwanda adding that he is ready to explain;

14. Carl Peter Erlinder said that except the leadership of the RPF, no other person deny his publications, and recalled that he had come to Rwanda in 2004 and returned in 2010 to assist a presidential candidate in his legal troubles. His colleagues tried to deter him from coming arguing that he could be arrested, but as there was talk about democratic progress in Rwanda, he decide to come anyway.. He was arrested when he did nothing in Rwanda or published anything in French or Kinyarwanda. However, he has confidence in the decision to be taken by the court since he noticed that many things have changed in Rwanda. He does not complain against anyone and appreciate the assistance he is receiving.

15. Carl Peter Erlinder was concerned by the way he will be treated in prison as an old white man. He promised to the court that he will comply with all requirements. The incarceration in Rwanda has strongly destabilized him and he exhorted the court to release him so he can travel to U.S. for medical treatment.

16. Carl Peter Erlinder said that there was genocide in Rwanda, but he knew nothing about its preparation because he was not there. This was revealed at the ICTR during the trial called "Military" so he can not respond if there was the time for preparation of the genocide.

17. In defense of Carl Peter Erlinder, Maitre Jean Bosco Kazungu first thanked the court for taking the time to listen to the accused and then give the floor to the defense. He said that the defense has not given the file of the case and requested the court to grant bail to the accused under Article 87 of Law No. 13/2004 of 17 May 2004 related to criminal trials as amended and supplemented by Law No. 20/2006 of 22 April 2006, the prosecutor may well continue its investigation while our client is not incarcerated, and if necessary it will be subject to certain restrictions under Article 90 of this law. We must bear in mind that he spent two days in hospital and he continues to show signs of physical weakness and because of his advanced age. He concluded by asking the court to refer to the decision on Ms. Ingabire Victoire.

18. Maitre Kurt P. Kerns said his client has committed no crime because nothing has been published when he was in Rwanda; therefore he broke no law in Rwanda. He said that there was a misunderstanding that Erlinder has denied or downplayed the genocide. He added that putting the word between quotation marks or use it as a major massacre, does not mean that there has no genocide against the Tutsi. If he has said that, he would not come to Rwanda.

19. Maitre Kurt P. Kerns said that the prosecutor's accusations are hearsay and that his client will do no harm to anyone if he was released. He asked the court to give the accused the same opportunity as those granted to the one he had come to defend.

20. After having welcomed the freedom that prevails in Rwanda, Maitre. Kennedy Ogetto said his client was arrested for his writings published in his capacity as a scholar and that

his client respect Rwanda and Rwandans. Therefore he was pained to acknowledge that he was accused to deny the genocide because he is familiar with his writings but rather it is the prosecutor who takes some passages out of context. He never denied the preparation and execution of genocide as stated in the Military I trial at the ICTR ruling on February 9, 2009, the judges concluded that the military were not guilty of preparing the genocide. He did not contest the decision of the court as the trial was not about preparation and execution of genocide.

21. Maitre Kennedy Ogetto said that the letter Peter Erlinder addressed to Canadian Prime Minister dated 6 April 2006 where he said that President Kagame's regime is a dictatorship in Africa; the prosecutor lied, because in the following paragraph, it is clear that what Peter wrote was quoted from Economics Magazine. In this case, it is not a crime since he cited the Magazine that he is being accused doesn't match with what he meant. This was written by Karl Del Pontes, former prosecutor of the ICTR, Michel H. which was one of the ICTR investigators. So Peter has actually cited his sources. One wonders why the Attorney Peter Erlinder is accused here. It is not for his publications, but rather because he has defended his clients at the ICTR and has opened a case involving the Rwandan leader.

22. Maitre. Kennedy Ogetto concluded by requesting the court to reject all the prosecutor's demands because he has not presented serious reasons on why Peter Erlinder should be kept in detention. He asserted that the prosecutor does not show investigations but wants to punish his client because he is on Rwandan soil.

23. Maitre Gershom Otachi Bw'Omanwa first thanked the courts of Rwanda, and continued by requesting that Peter Erlinder be released because the prosecutor has finished questioning him about the crimes he allegedly committed on the basis of its publications on internet. He also said that the problem lies in misinterpretation and could give some clarification as a free man, at the same time; he would be able to continue to handle the pending case at ICTR

24. The prosecutor said that the arrest and imprisonment of Peter Carl Erlinder has nothing to do with the fact that he came to Rwanda as counsel for his client or as a lawyer at the ICTR, he was arrested instead because of his crimes and this the reason of his appearance in the court. Regarding the fact that lawyers do not have the file, the prosecutor said that they could ask it at the court. The court reminded him that they have not demonstrated that this was a problem for them.

25. The prosecutor responded that not agreeing with the prosecutor is normal. He asked the court to consider appeals of the prosecutor based on laws and take appropriate decisions if the health of Peter Erlinder can be deteriorated while in prison. The prosecutor recalled that he had no medical expertise, but if it is proved that the accused may have a health problem in prison, the prosecutor would not oppose his release.

26. Maitre Kazungu, on behalf of his colleagues recalled that Erlinder was admitted to the hospital and that the prosecutor has the duty to assist the defense to do explain to the

court the seriousness of his illness since there is a bill from King Faisal Hospital showing that he has been in the hospital and the medical examinations that had been performed. He concluded by asking the court to take into account the relatively fragile health of Erlinder, and grant him bail while investigations continue.

27. The prosecutor confirmed that Carl Peter Erlinder was admitted to hospital twice but doctors have not established that his detention could be the source of his health problems and recalled that even the prisoners receive necessary medical care.

28. Maitre Kurt P. Kens said there was no medical reports attesting the illness of Peter Erlinder but it is visible to the naked eye that it is not healthy but that a medical certificate may be produced if necessary.

29. The trial ended here, and it was announced that the court decision will be released on June 7, 2010 at 4:30 PM local time.

The Court Position

30. The fact that Carl Peter Erlinder rejects the serious reasons used to charge him with genocide denial and downplaying genocide, in addition to him spreading rumors capable of endangering the security of the Rwandan people, he doesn't deny a variety of speeches and writings that he made abroad, even though he claims that because his writings were in English they may be misinterpreted by the prosecution to mean what he didn't mean, and that he never said anything wrong about Rwanda.

31. The serious reasons why he is suspected of denying and downplaying genocide in his writing are where he said: *'In early 2008, Spain indicted leading members of Kagame government which followed a late 2006 French indictment charging Kagame and his followers with assassinating former Rwandan and Burundian Presidents, the crime that triggered 1994 Civilians-on-Civilians killings in Rwanda.'* In these words, Carl Peter Erlinder first alleges that it is the President of Rwanda Paul Kagame who killed former President Habyarimana Juvenal and former President of Burundi Ntaryamira Cyprien in 1994. Second he goes on to say that that incident is what triggered the genocide thus claiming that he was the one who made genocide possible.

32. In addition, Carl Peter Erlinder called the 1994 genocide against the Tutsis "*civilians-on-civilians killings in Rwanda*" where he compared the genocide to fighting between two populations. He also added that the genocide was not planned and executed using these following article: *"Rwanda: no conspiracy, no genocide planning...no genocide?"* adding that *"Had the US impunity policy not been in place, Kagame might well have spent the last decade awaiting trial at the ICTR, rather than getting rich from the resources of the Congo, and the blood of millions of Africa"*. This statement confirms earlier statements where Carl Peter Erlinder attests that the current President of the Republic of Rwanda triggered what he calls civilians killings, and that he should therefore answer for his acts at the ICTR. On page 4 Carl Peter Erlinder attests that crimes were committed on both sides: *"crimes committed by the two sides"* and publicly

admits that there were "two genocides", which confirms that Carl Peter Erlinder denies genocide given that there cannot be two genocides at the same time.

He used these words: "*Rwanda: no conspiracy, no genocide planning...no genocide?*" saying: "*Had the US impunity policy not have been in place, Kagame might well have spent the last decade awaiting trial at ICTR, rather than getting rich from the resources of the Congo and the blood of millions of Africa.*". This confirms what was said earlier where he affirmed that it is the current President of the Rwandan Republic Kagame who is responsible for what he calls "*Civilian killings.*" He would thus be the one to appear in front of ICTR to answer to these charges. In this written statement on page 4 Carl Peter Erlinder also says that these heinous crimes were committed by both sides of the conflict: "*Crimes committed by the two side.*" He even goes on to say that there were two genocides, "*two genocides*". It's crystal clear here that he denies the genocide, since there couldn't have possibly been two of them and both still be called genocides.

33. Continuing his genocide denial, Carl Peter Erlinder also brings up charges him and his colleagues have leveled against the President of Rwanda. He reiterates that it was President Kagame again who was responsible for the Rwandan genocide because it occurred as a direct consequence of the assassination of Habyalimana Juvenal and Ntaryamira Cyprien who were both killed by him. Here he calls the genocide "*Civilian massacres*". He continues his writing with an article entitled; "*Rwanda; perpetrators of genocide jailed*" calling the genocide: "*The Rwandan tragedy...Some call genocide*". In this writing he concludes that it's the Rwandan President Paul Kagame who should be charged with those crimes that he doesn't call genocide himself because they stem from what he calls "*a product of imperialism*" which subsequently was followed by the US and UK shielding him from prosecution. In other writings he uses words such as; "*Kagame ordered the final assault within minutes after learning of the successful missile attack..., long before any retaliatory civilian killing had occurred anywhere in Rwanda.*" Here he denies the genocide and talks only of civilian killings. He then talks about what triggered those killings, which amounts to genocide denial (defense).

In his writings he called: "*Genocide war crime cover-ups and UN falsification of history of suppressed UN prosecutor memoirs and the real politics of UN International Criminal Tribunal for Rwanda*" even though he tries to show sources of what he's saying, but he keeps inserting what the prosecution calls personal comments and individual position. On page 36 of that writing for example he says: "and if the architects of genocide on trial in military 1 case did not plan or conspire to kill Tutsi civilians or to commit other crimes, it is necessary to entirely reconsider how to conceptualize and characterize the violence in Rwanda during April-July 1994. These words are Carl Peter Erlinder himself. They are not court words. The writings include actions that are consistent with the dispositions of and are punished by article 4 paragraph 1 of law # 33bis/2003 of 09/06/2003 that punishes the crime of Genocide, crime against humanity and war crimes. That law stipulates that: "will be handed a punishment of between 10 and 20 years of prison that who will have exhibited in public be it in speech, in writing, with pictures or any other form of expression showing that he denies the genocide that occurred,

downplays it, tried to explain or to affirm that it was justified or that who will have concealed or altered evidence of such.”.

35. In his writings, Carl Peter Erlinder is suspected of discrediting the ruling regime to the Rwandan citizens where he wrote: “172 Raising such questions is impossible in Rwanda, given crimes of genocide denial” and negationism which are not being threatened to silence political candidates seeking to oppose Kagame in upcoming 2010 elections;” He contends that it’s an asset President Paul Kagame uses to silence those who wish to run for the office of President of Republic of Rwanda. On page 42 he claims that it is the country’s top officials who are being accused of genocide thus exonerating those who committed it. He also makes that claims in the lawsuit him and his colleagues filed in court calling it “Complaint with Jury Demand in the United State District Court for the western District of Oklahoma” on the behalf of Mrs. Habyarimana Juvenal and Mrs. Ntaryamira Cyprien. In that lawsuit, they were accusing the country’s top officials, slandering the country officials saying that: “Both Kagame and RPA bear responsibility for their scope and extent, and the conspiracy to avoid responsibility for their own crimes that continue to day”. They also say that failure to prosecute them is sheer injustice and impunity.

36. In that plan to discredit Rwandan authorities to Rwandan citizens, Carl Peter Erlinder in his letter he himself wrote to Prime Minister Harper (Canada) that he called: “Regarding state visit of current President of Rwanda”, on 04/06/2006, claimed that: “*Kagame Regime is the most repressive military dictatorship in Africa*” and published it on internet and in every other public place. Its amounts to discrediting the Rwandan authorities to the people of Rwanda, especially when you publish it on internet and every other public place. That kind of practice is punished by article 166 of organic law # 21/77 of 08/18/1977 creating criminal law book. That article stipulates that: “Anybody, who through his speeches made in meetings or in public gatherings, through all kinds of printed material, pictures or signs of all kinds, hanging, passed on as handouts, bought or sold or simply made accessible to the public, intentionally spreading rumors to leading or attempting to lead people into disobedience discrediting the country’s authorities, triggering or attempting to trigger riot among the people mounting one against the other, spreading chaos among the people to cause insecurity in the Republic, will be given a pain ranging between two and ten years and a monetary fine ranging between two thousand and 100 thousands, or just one of these pains so long us it is not in conflict with other more stringent pains given by other laws in this criminal law book.

37. According to the articles of the law described above, actions punished by law identified in the crimes Carl Peter Erlinder is suspected to have committed, for which incriminating reasons have been described, thus as stipulated by article 93 of law 13/2004 of 05/17/2004 related to criminal trials as written and completed by law # 20/2006 of 04/22/2006 that: “ A defendant cannot be incarcerated before the actual trial unless there are serious reasons incriminating him with the charges he is being accused of and the crime he is charged with is by law punished with a pain of at least 2 years of prison. Of the two crimes he is suspected to have committed the lightest pain given by law is two years of prison.

38. Carl Peter Erlinder and his defense team has requested to stand trial without being detained, especially that he is sick according to article 87 of law # 13/2004 of 05/17/2004 related to criminal trials as amended and completed by law #20/2006 of 04/22/2006 stipulating that: "The defendant is prosecuted without being detained. However, in the interest of trial file preparation or for reason of his security or of national security, he can be required to meet some conditions, or in some instances to be provisionally incarcerated according to the law..."
39. Because Carl Peter Erlinder got sick and was examined by a medical doctor as stated in his "Hospital Discharge Form" given to him on 06/03/2010 at King Faysal Hospital, Kigali, even though the doctor was unable to find any link between his illness and the conditions of his arrest and his detention and has not able to show that his incarceration could results in unexpected consequences on his health, especially that nothing prevents him from seeking medical treatment anytime it would be necessary. As to the fact that he is in his old age that is not a reason in his favor to say that his incarceration would be contrary to article 93 of law # 20/2006 of 04/22/2006 mentioned above and even of article 94 of same law stipulating that: "*A defendant with serious reasons incriminating him with a crime, can be incarcerated before trial even what he is being charged of appears to be a crime to which the law reserves a prison pain of less than 2 years, but greater than 2 years, if they are afraid that he may run away if his full identity is not know or is suspect, or if there are unique serious reasons that warrant his detention before the trial because his non detention could cause insecurity in the country.*"
- a. *If provisional detention seems to be the only viable option to have him prosecuted without tampering with evidence or threatens prosecution witnesses and his victims or to avoid deal cutting between those being prosecuted and their accomplices.*
 - b. *If such detention is the only way to protect the defendant, or the only way the justice system can get hold of him every time they need him, or the only way to insure effective cessation of the crime or to avoid relapse.*
 - c. *If depending on the gravity of the crime, the way it was committed and the consequences it has generated, if it has resulted in unusual chaos or insecurity so that provisional detention becomes the only way to put an end to it."* As it was stipulated in this article it is a cause of big concern for the prosecution especially that the defendant does not reside in Rwanda and has requested to go back to the U.S.A.. It is a concern to release him on bail because his release would stifle investigations of crimes like these that have dire consequences for Rwanda and the Rwandan people.

IV. The Court Decision

40. The court have decided that the reasons the prosecution considers serious that make Carl Peter Erlinder suspected of the crimes of genocide denial and downplaying genocide, in addition to spreading rumors capable of causing insecurity of Rwandans are founded.
41. Has decided that Carl Peter Erlinder be provisionally detained for 30 days in prison as the reasons have been presented for that.
42. Reminds that he has five day to appeal this court decision

Thus we've made the decision and the decision was read in public today 06/07/2010 at the Superior Court of Gasabo, made of the trial judge assisted by the secretary

The judge
Mbishibishi Maurice
Signed

The Secretary
Nkuriyingoma Jean Damascene
Signed

I - INFORMATIONS GÉNÉRALES (à compléter par les Chambres / la Partie déposante)

A:	☐ Chambre I N. M. Diallo	☐ Chambre II R. N. Kouambo	☐ Chambre III C. K. Hometowu
	☐ OIC, JLSD P. Besnier	☒ OIC, JPU C. K. Hometowu	☐ F. A. Talon (Appeals/Team IV)
De:	☐ Chambre (noms)	☒ Défense Arthur VERCKEN - Anta GUISSÉ (noms)	☐ Bureau du Procureur (noms)
			☐ Autre: (noms)
Affaire:	Le Procureur c. Callixte KALIMANZIRA		Affaire No.: TPIR-05-88-A
Dates:	Transmis le: 10 juin 2010		Document daté du: 10 juin 2010
No. de Pages:	36	Langue de l'original: ☒ Français ☐ Anglais ☐ Kinyarwanda	
Titre du Document:	REQUÊTE RÉITÉRÉE EN AJOURNEMENT DE L'AUDIENCE D'APPEL SUITE À L'ARRESTATION AU RWANDA DE Me PETER ERLINDER		
Classification Level:		TRIM Document Type:	
☐ Ex Parte		☐ Indictment ☐ Warrant ☐ Correspondence ☐ Submission from non-parties	
☐ Strictly Confidential / Under Seal		☐ Decision ☐ Affidavit ☐ Notice of Appeal ☐ Submission from parties	
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APPEALS ON MERITS - PROOF OF SERVICE - ARUSHA PREUVE DE NOTIFICATION – CHAMBRE D'APPEL - ARUSHA

Date: 10 June 2010	Case Name / affaire: CALLIXTE KALIMANZIRA
	Case N° / n° de l'affaire: ICTR – 05 – 88 – A
ACCUSED / DEFENSE ☒ Accused / <i>Accusé</i> C. KALIMANZIRA see / voir "CMS4" ☒ Lead Counsel / <i>Conseil Principal</i> : ARTHUR VERCKEN ☐ In Arusha / à Arusha: (see / voir CMS3) ☐ Fax: ☒ Co-Counsel / <i>Conseil Adjoint</i> : ANTA GUISSÉ ☐ Arusha (see / voir CMS3) ☐ Fax:	
OTP / BUREAU DU PROCUREUR ☒ Hassan Bubacar Jallow, Prosecutor ☒ B. Majola, Deputy Prosecutor ☒ Alex Obote-Odora, Chief, ALAD ☒ Dior Fall , Senior Appeals Counsel in charge of case: (□ name) ☐ The Hague / La Haye ☐ Arusha (see / voir CMS3) ☐ Kigali	
From:	☐ Chief, CMS ☐ N. Diallo (TC I) ☐ R. Kouambo (TC II) ☐ C. Hometowu (TC III) ☐ F. A. Talon (Appeals/Team IV) ☐ Other
CC:	☐ Registrar ☐ OLA, NY ☐ Deputy Registrar ☐ ICTR Spokesperson ☐ M. Niang ☐ WVSS ☐ DCDMS ☐ CSS ☐ Other
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Documents name / Titre du document

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Pages

**REQUETE REITEREE EN AJOURNEMENT DE
L'AUDIENCE D'APPEL SUITE A
L'ARRESTATION AU RWANDA DE Me PETER
ERLINDER**

10/06/2010

724/A – 689/A

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