

ICTR-98-41-A
11-06-2010
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United Nations
Nations Unies

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Adama Dieng

Date: 11 June 2010

THE PROSECUTOR

v.

Aloys NTABAKUZE

Case No: ICTR-98-41- A

JUDICIAL RECORDS/ARCHIVES
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“THE HIGH COURT OF GASABO... THAT TRIES CRIMINAL CASES REGARDING PROVISIONAL INCARCERATION AND RELEASE IN THE CASE RPGR 078/10/KIGALI ON ...06/07/2010...” THIS IS AN OFFICIAL TRANSLATION OF THE DECISION FROM KINYARWANDA

Office of the Prosecutor

Hassan A. Jallow
Alex Obote-Odora
George W. Mugwanya
Inneke Onsea
Renifa Madenga
Madeleine Schwarz
Abubacarr Tambadou
Evelyn Kamau
William Mubiru
Priyadarshini Narayanan
Aisha Kagabo

Counsel for the Defence

Peter E. Erlinder, Lead Counsel
André TREMBLAY, Co-counsel

Legal Assistants

Sandrine Gaillot
Joseph Holmes

1974/A

RONPJ0678/10/Kig/NM

COURT DECISION
RDP03/10/TG1/GSBO

**THE HIGH COURT OF GASABO, SITTING IN KABUGA AND AT FIRST INSTANCE
IN A CRIMINAL MATTER RELATING TO DETENTION AND PROVISIONAL
RELEASE IN CASE No. RONPJO678/Kgl/NM, RENDERED ON THIS 7TH DAY OF
JUNE 2010 THE FOLLOWING DECISION:**

CASE

THE PUBLIC PROSECUTOR of the High Court of Gasabo

Versus

ACCUSED: Carl Peter Erlinder, son of Atwood Erlinder and Jane Lois Bihl, born on 14 April 1948 in Chicago, Illinois, married to Masako Isui, Professor of Law in Minnesota, USA.

COUNTS

1. Denying and minimizing genocide in his various writings and speeches. This offence is provided for and punishable under Article 4 of Law No. 33*bis*/2003 of 6 September 2003 punishing the crime of genocide, crimes against humanity and war crimes.

Translation certified by LSS, ICTR

2. Spreading rumours likely to disrupt the security of Rwandans. This offence is provided for and punishable under Article 166 of Legislative Decree No. 21/77 of 18 August 1977 establishing the Penal Code.

I. FACTS

1. After the questioning of Carl Peter Erlinder by the judicial police and the Public Prosecutor, the Legal Officer at the High Court of Gasabo established an arrest warrant against the Accused.
2. In his letter to the President of the High Court of Gasabo, the Chief of Prosecutions at the High Court of Gasabo requested the appearance of Carl Peter Erlinder, charged with the offences mentioned of above, before the judge's chambers.
3. By Order of 4 June 2010, the President scheduled the hearing for 4 June 2010.

II. PROCEDURE

4. On 4 June 2010, the Public Prosecutor, represented by Richard Muhumuza, and Carl Peter Erlinder, assisted by Messrs Gershom Otachi Bw'Omanwa, Kenned (*sic*) Ogeto, Kurt P. Kerns, Jean-Bosco Kazungu, Gatera Gashabana, Donatien Mucyo, Shoshi

Bizimana, Ms Amida Furaha and Mr Pierre-Célestin Buhuru, entered an appearance. Interpretation was done by Elisée Byukusenge.

4. [sic] The Accused, Carl Peter Erlinder, confirmed his identity which was read to him. Prosecution Counsel requested to make his submissions in English to enable the Accused to better understand the charges against him. A copy of the submissions was handed over to the Accused. He stated that his submissions were pursuant to Articles 93 and of Law No. 13/2004 of 17 May 2004 establishing the Criminal Procedure Code, as modified and complemented by Law No. 20/2006 of 22 April 2006, because he [Carl Peter Erlinder] was charged with denying and minimizing genocide in his statements, and of spreading rumours likely to disrupt the security of Rwandans.

5. At the request of Mr Kazungu, Carl Peter Erlinder, was authorized to sit down as he was not feeling well.

6. Prosecution Counsel submitted that there was prima facie evidence of guilt against Carl Peter Erlinder in his writings and speeches. He mentioned, for example, Carl Peter Erlinder's written work of 2 February 2009. He further stated that recently in 2008, the Accused stated that 40 dignitaries of the Kagame administration were the subject of investigations after that conducted by France in 2006, which resulted in the indictment of the authorities who killed the Rwandan President. Prosecution Counsel affirmed that the Accused stated that what happened in 1994 was a civil war. He stated that the Accused

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denied the genocide while insisting that the death of the Presidents of Rwanda and Burundi triggered the killings, whereas it has been established that the genocide had been planned by the Habyarimana regime and executed by Sindikubwabo and Kambanda. He stated that the Accused, without providing any evidence in support therefor, also spread rumours that Rwandan authorities were responsible for the murder of the Presidents of Rwanda and Burundi. He submitted that, pursuant to Article 166 of the Penal Code, Book II, this statement disrupted the peace of Rwandans and was likely to stir up the citizens and rouse them against the current regime.

7. Whereas the genocide was planned, under the MRND regime, by the *Interahamwe* who drew up lists of Tutsi and Hutu who had to be killed, Carl Peter Erlinder denied and minimized the genocide in *Military I*, in which he was ICTR Defence Counsel. Carl Peter Erlinder denied and minimized the genocide by stating that the soldiers he was defending neither planned nor carried out the genocide. The Accused affirmed that his clients were rather defending national integrity. Prosecution Counsel submitted that the Accused did not end there, as he denied and minimized the genocide in other cases.

8. Prosecution Counsel showed that in his piece of writing entitled, “*no genocide planning, no genocide*”, Carl Peter Erlinder stated that, had it not been for the policy of impunity practised in the United States of America, Kagame would already have been tried and punished instead of looting the riches of the Congo and spilling the blood of Rwandans. While he was Defence Counsel at the International Criminal Tribunal for Rwanda, Carl

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Peter Erlinder submitted that that what happened was a massacre of members of the population.

9. Prosecution Counsel submitted that in his submissions before an Oklahoma court, Carl Peter Erlinder stated that he was not denying the killings that were committed by RPF soldiers targeting the Hutu or the Tutsi. He stated that the Accused submitted that the killings were not committed by the then regime prior to the genocide, that they were rather comparable to those committed in Burundi, and that the killings in Rwanda were triggered by the murder of the second and third Hutu presidents. The Accused also minimized the genocide of the Tutsi by affirming that some people described the genocide as the Rwandan tragedy. However, the ICTR has evidence which shows that the genocide was planned and executed by the regime of President Habyarimana.

10. Prosecution Counsel further submitted that Carl Peter Erlinder has stated in his writings that some people describe the genocide as the Rwandan tragedy. He submitted that The Accused also minimized the genocide of the Tutsi by affirming that this concept is used as pretext by the Rwandan State. Elsewhere in his writings, the Accused considers the genocide as a war and, even in the *Military I* case, he submitted that the killings committed against the Tutsi in 1994 did not constitute genocide. He further states that in Rwanda, this issue is being used as a hurdle against those who want to challenge Kagame during the 2010 elections.

11. In his written piece of 6 May 2010 which he described as “public”, Carl Peter Erlinder stated that some UN documents show that it was Kagame who triggered the Rwandan genocide and the killings in the east of the Democratic Republic of Congo. In so doing, he expressed his negation of history in attempting to deny the genocide, a word he writes in quotation marks, whereas the international community uses it and has accepted that there was genocide. In the *Edouard Karemera* case before the ICTR, the Chamber stated that the genocide of the Tutsi no longer raises doubt. However, Carl Peter Erlinder ignores this decision and wants to make Rwandans believe that the Head of State committed genocide. Moreover, in his letter of 6 April 2006 to the Prime Minister of Canada relating to the visit she was going to make to the current President of Rwanda, Carl Peter Erlinder sought to stir up members of the Rwandan population against each other, referring to the Kagame regime as the most dictatorial in Africa, in violation of Article 166 of Legislative Decree No. 21/77 of 18 August 1977 establishing the Penal Code.
12. Considering his various writings and pursuant to Articles 93 and 94 of Law No. 13/2004 of 17 May 2004 relating to the Code of Criminal Procedure as modified and complemented by Law No. 20/2006 of 22 April 2006, the Public Prosecutor prayed the Court to take into account the prima facie evidence resulting from the writings of Carl Peter Erlinder and to order his provisional detention, especially as that was the only guarantee that the Accused would appear before the Court whenever necessary and that he would not escape from justice.

13. Carl Peter Erlinder pleaded not guilty to all the charges against him. He stated that in all his writings he never spoke ill of Rwanda. Given that his writings were drafted in English, he prayed the Court to appreciate their value, adding that his writings would pose no problem even if they were translated into French or Kinyarwanda. He stated that it was incumbent upon the Public Prosecutor to prove that his writings had caused problems. He specified that his writings do not violate any law in force in the United States of America, or the Constitution of that country or the laws of the Commonwealth of which Rwanda is a member. He explained that he had no intention of causing trouble in Rwanda, specifying that the expressed opinions for which he was being prosecuted were public knowledge and that he was ready to explain himself.
14. Carl Peter Erlinder stated that only FPR leaders doubt the truth of his writings. He recalled that he came to Rwanda in September 2004 and returned there in 2010 to defend a candidate for the presidency who had trouble with the law. He added that his colleagues had advised him not to go to Rwanda, warning him that he could be arrested. However, as he had information that Rwanda was a democratic country, he decided to go there. He stated that he was arrested whereas he committed no offence when he got to Rwanda. Moreover, he said nothing in French or in Kinyarwanda. However, he stated that he was optimistic about the decision which the Court was going to render, given that he had noticed changes in many areas in Rwanda. He stated that he was not accusing anybody and expressed gratitude for the assistance granted him.

15. Carl Peter Erlinder expressed his concerns about the type of care he would receive in prison as an elderly white man. He assured the Court that he would comply with all its orders. He added that his provisional detention had traumatized him and prayed the Court to grant him provisional release so that he could receive treatment in the United States of America.
16. Carl Peter Erlinder stated that he acknowledged that genocide was committed but that he knew nothing about its planning, as he was not in Rwanda at the time of the events. He explained that this arose from the Judgment rendered by the ICTR in the “*Military*” cases, and that it was not incumbent on him to say whether the genocide was planned.
17. Mr Jean Bosco Kazungu, Counsel for Carl Peter Erlinder, first thank the Court for having listened to the Accused and for having given the floor to the Defence. He pointed out that the Defence was not in possession of the case-file. He prayed the Court to grant his client’s request to enter an appearance as a free man pursuant to Article 87 of Law No. 13/2004 of 17 May 2004 relating to the Code of Criminal Procedure as modified and complemented by Law No. 20/2006 of 22 April 2006, while the Prosecution was investigating the case. If need be, the Court could impose restrictive measures on the Accused as provided for under Article 90 of the said law, especially as the Accused had been hospitalized for two days. He insisted that his client was showing obvious signs of weakness, that he had cooperated with the authorities who arrested him and that he was

advanced in age. In conclusion, he prayed the Court to be guided by the precedent established in the *Victoire Ingabire* case.

18. Mr Kurt P. Kerns submitted that his client had committed no offence, granted that he had made no statement on Rwandan territory. He submitted that the Accused had violated no law in force in Rwanda and added that the problem in question arose from the manner in which people had construed the remarks that were made. He stated that Erlinder had neither denied nor minimized the genocide, specifying that the mere fact of having placed the word "genocide" in quotation marks or of having used the expression "killings" in lieu of "genocide" did not mean that genocide of the Tutsi did not take place. He added that had the Accused committed these offences, he would not have ventured to come to Rwanda.
19. Mr P. Kerns submitted that the Prosecution's allegations were based only on rumours and that releasing his client would be without consequences. He prayed the Court to grant the Accused the same opportunity as was granted to the client that he had come to defend.
20. After hailing Rwanda for its characteristic freedom, Mr Kennedy Ogetto submitted that his client was being prosecuted for the writings in an academic context and added that he [his client] respected Rwanda and Rwandans. He stated that his client had difficulty understanding that he was taken for somebody who minimizes the genocide, on the basis of his writings. He explained that the issue at stake arose from the fact the Prosecution

took excerpts from Erlinder's writings and construed them in its own way. He specified that that the Accused had neither denied the planning of genocide nor its execution. He recalled that in the "*Military I*" case before the ICTR on 9 February 2009, the Chamber found that the soldiers concerned were not guilty of planning genocide. The Accused did not therefore dispute the Chamber's decision, given that in that trial the planning and execution of genocide was not established.

21. Mr Kennedy Ogetto further submitted that the Prosecution was not telling the truth when it alleged that in his letter of 6 June 2006 to the Prime Minister of Canada, Peter Erlinder stated that Kagame's regime was the most dictatorial in Africa. Proof was that a paragraph of that letter showed that his writings were excerpts from the journal "Economics Magazine". Thus he could not be held liable for anything, granted that he only reproduced the excerpts from the journal. The allegations against him had no connection with the ideas he had wanted to express. In their writings, the former Prosecutor of the ICTR, Carla Del Ponte, and Michel H., who was a member of the Office of the Prosecutor at the ICTR, dealt with this matter. He pointed out that the writings published by Peter Erlinder came from a well-known source and wondered why the Prosecution was targeting only his client. He submitted that the prosecution of his client was not based on his writings, but was rather motivated by the fact that his client defended very well the accused persons before the ICTR, and by the case of the Rwandan President.

22. Lastly, Mr Kennedy Ogetto prayed the Court to dismiss the Prosecution's request because it had not presented prima facie evidence of guilt likely to justify the provisional detention of Erlinder. He submitted that the Prosecution had not indicated the facts of the investigations it had carried out and that it only wanted to take advantage of the presence of his client in Rwanda to have him convicted.
23. Taking the floor, Mr Gershom Otachi Bw'Omanwa started by thanking the Rwandan courts. He then requested the provisional release of Peter Erlinder on the ground that the Prosecution had finished questioning him on the offences charged, and which were based on the writings that he had published on the internet. He submitted that the problem was the interpretation that had been made of the writings and stated that Peter Erlinder could always explain them while he was free. Moreover, he further stated that releasing the Accused would allow him to continue to deal with the case-files of his clients who are being prosecuted before the ICTR.
24. Prosecution Counsel submitted that the arrest and detention of Carl Peter Erlinder had nothing to do with his coming to Rwanda to defend his client or with his status of Defence Counsel at the ICTR. He further submitted that the Accused was rather arrested for offences committed and for which he had been brought before the Court. As to the allegations by his Counsel that they could not have the case-file, Prosecution Counsel stated that they should have requested it before. On this point, the Court recalled that the Defence had not shown any prejudice suffered.

25. Prosecution Counsel considered that it was quite normal for the Prosecution and the Defence to differ in their arguments. He prayed the Court to consider his request based on the laws in force and to make a decision on the health of Peter Erlinder, to see whether detention would cause him problems. On this point, he specified that the Prosecution was not competent to give a medical opinion and that he would not be opposed to his provisional release.
26. On behalf of the Defence team, Mr Kazungu recalled that Erlinder had been hospitalized and, therefore, the Prosecution should assist the Defence in explaining to the Court the seriousness of his health condition. He further stated that there was a bill issued by King Faysal Hospital and medical examination results showing that the Accused had effectively been hospitalized. Lastly, he prayed the Court to consider this evidence in relation to Erlinder's health condition which was deteriorating and to rule that the investigations should continue while he was free.
27. Prosecution Counsel confirmed that Carl Peter Erlinder had been hospitalized twice but that the doctors did not state that his detention would affect his health. On this point, he recalled that even a person in custody receives medical care.

28. Mr Kurt P. Kens submitted that even if the Defence had no evidence on the poor state of Peter Erlinder's health, on seeing him one notices that he has health problems. He further submitted that, if need be, the Defence could present a medical certificate to the Court.

29. The Court closed the hearing and scheduled the date to render its decision for 7 June 2010 at 4.30 p.m.

III. DELIBERATIONS

30. The Court finds that Carl Peter Erlinder denies the prima facie evidence on the basis of which the Prosecution is charging him with having denied or minimized the genocide and for having spread rumours likely to disrupt national peace, but does not deny the various speeches and writings which he made and published while he was out of Rwanda. His pretext is rather that, as his writings are in English, Prosecution Counsel misconstrued them, adding that he said nothing bad about Rwanda.

31. The Court considers that prima facie evidence of guilt relating to the offence of having denied and minimized the genocide is found in his various writings, especially where he wrote 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.*". First, Carl Peter Erlinder affirms here that it

is the President of Rwanda, Paul Kagame, who killed in 1994 the former President of Rwanda, Juvénal Habyarimana, as well as the former President of Burundi, Cyprien Ntaryamira. He further states that it is this killing which triggered the genocide and that he [Paul Kagame] is therefore the cause of the genocide.

32. Moreover, the Court finds that Carl Peter Erlinder describes the genocide of the Tutsi in 1994 as "*Civilians-on-Civilians killings in Rwanda*". He thus considers the genocide as fighting that occurred between members of the population and argues that it was neither planned nor executed. Thus he used the following remarks: "*Rwanda : no conspiracy, no genocide planning...no Genocide?*" and states: "*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 Africans*". These remarks corroborate the above-mentioned writings in which he affirms that the President of the Republic of Rwanda is the cause of what he [Erlinder] calls Civilians killings, and that, accordingly, he [Paul Kagame] should be answerable therefor before the ICTR. Moreover, Carl Peter Erlinder states on page 4 of the same document that the: "*crimes were committed by the two sides*", and openly affirms that there were "*two genocides*". On this specific point, the Court considers that he is clearly denying the genocide because had there been two genocides they would not have been described as genocide.

33. The Court considers that the Accused denies the genocide in the complaints that he and his colleagues lodged against the President of Rwanda in which they affirm once more that this President is the cause of the genocide granted, as they allege, that it was perpetrated following the murder of Juvénal Habyarimana and Cyprien Ntaryamira for which he [Paul Kagame] is responsible. In this document, he describes the genocide as “*the civilian massacres*”. In his writings, especially in an article entitled “*Rwanda, perpetrators of genocide jailed*”, he describes the genocide as: “*The Rwandan tragedy...Some call genocide...*”. In this document, he [Erlinder] explains these facts which he does not describe as genocide and states that it is the President of Rwanda, Paul Kagame, who should be answerable therefor. He specifies that these events originated from what he calls “*a product of imperialism*”. He states that this is further compounded by the protection that the United States of America and the United Kingdom offered him [Paul Kagame]. In another document, he states that: “*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*”. In this passage, he denies the genocide and rather talks of “*civilian killing*”. He then explains the causes of these “*civilian killings*” and, in so doing, expresses his denial of the genocide (criminal responsibility).

34. Although Carl Peter Erlinder attempts to explain that the information in his article entitled “*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*”,

are drawn from other “sources”, it appears, as submitted by the Prosecution, that he [Erlinder] adds thereto his “*personal comments and individual position*”. On this point, especially on page 36 of this document, he writes as follows: “*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*”. These remarks are those of Carl Peter Erlinder himself and not those of the Tribunal. The Court is of the opinion that these writings contain facts which are provided for and punishable under Article 4(1) of Law No. 33 bis/2003 of 6 September 2003 punishing the crime of genocide, crimes against humanity and war crimes, which is worded as follows: “*Shall be sentenced to an imprisonment of ten (10) to twenty (20) years, any person who will have publicly shown, by his or her words, writings, or by any other means, that he or she has negated the genocide committed, rudely minimized it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence*”.

35. Based on his writings, Carl Peter Erlinder is charged with having attempted to rouse members of the population against established authority. In fact, he wrote the following: “*172 Raising such questions is impossible in Rwanda, given crimes of genocide denial and negationism which are not (sic) being threatened to silence political candidates seeking to oppose Kagame in upcoming 2010 elections*”; he [Erlinder] affirms that this is a maneuver employed by Kagame to silence anybody who would like to run for the post of President of the Republic of Rwanda. On page 42 of his document, he [Erlinder] states

that only the country's high authorities should be answerable for the genocide, thereby exculpating the perpetrators of this crime. He materialized this fact by the complaint that he and his colleagues made before the Tribunal and which was entitled: "*Complaint with Jury Demand in the United States District Court for the western District of Oklahoma*". This complaint, made on behalf of Mrs Juvénal Habyarimana and Mrs Cyprien Ntaryamira, was directed against and aimed at discrediting the country's high authorities. In fact he wrote 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*", and that the fact of not prosecuting them constituted an act of injustice and impunity.

36. In this plan aimed at rousing Rwandans against established authority, Carl Peter Erlinder wrote a letter to Prime Minister Harper (Canada) on 6 April 2006, which was entitled: "*Regarding state visit of current President of Rwanda*". He then affirmed that the "*Kagame Regime is the most repressive military dictatorship in Africa*". The fact of having published the letter on the internet and of having published it by other means of communication was aimed at rousing members of the population against established authority. These offences are provided for and punishable under Article 166 of Legislative Decree No. 21/77 of 18 August 1977 establishing the Penal Code, worded as follows: *Whoever, either by speeches made in meetings or in public places, or by any written materials, printed matter, pictures or emblems, posted, distributed, sold, sold to or displayed to the public, or by knowingly spreading false rumours, rouses or attempts*

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to rouse the population against established authority, rouses or attempts to rouse the citizens against each other, or alarms the population and thereby seeking to cause trouble on the territory of the Republic, shall be punished with a term of imprisonment of from two to ten years and a fine of from two thousand to one hundred thousand francs or with either such imprisonment and fine only, without prejudice to heavier sentences provided for in other provisions of this Code ”.

37. The offences with which Carl Peter Erlinder is charged are provided for by the the legal provisions cited above, and prima facie evidence of guilt against the suspect has been adduced. Pursuant to Article 93 of Law No. 13/2004 of 17 May 2004 relating to the Penal Code, as modified and complemented by Law No. 20/2006 of 22 April 2006, *“A suspect shall not be subjected to pre trial detention unless there are concrete grounds to prosecute or her and the offence he or she is accused to have committed is punishable with at least two (2) years’ imprisonment”*. It appears that the sentence provided for one of the two offences with which the Accused is charged is at least two years’ imprisonment, while for the other it is more than two years.

38. Carl Peter Erlinder and his counsel request his provisional release, especially on grounds of health, on the basis of Article 87 of Law No. 13/2004 of 17 May 2004 relating to the Code of Criminal Procedure, as modified and complemented by Law No. 20/2006 of 22 April 2006. This Article is worded as follows: *“A suspect is entitled to be free during the time of investigation. However, on (sic) the interest of the preparation of the case file, or*

on (sic) security of the accused or national security, an accused can be subjected to certain conditions, or in certain circumstances, to be remanded in custody in accordance with the procedure and conditions provided for in the following Articles ... ”.

- 39. The fact that Carl Peter Erlinder was ill and examined by a doctor is evidenced by the “Hospital Discharge Form” which was issued to him by King Faysal Hospital on 3 June 2010. However, the doctor does not indicate that there is a nexus between the arrest and detention of the Accused and his illness. Furthermore, the doctor still does not indicate that detention of the Accused would seriously affect his health, all the more so as nothing deprives him of his right to receive treatment, if need be. As to his advanced age, it cannot be considered as a valid ground to justify his release. Accordingly, the request for release does not comply with the provisions of Articles 93 and 94 of Law No. 13/2004 of 17 May 2004 relating too the Code of Criminal Procedure, as modified and complemented by law No. 20/2006 of 22 April 2006 referred to above. In fact, Article 94 is worded as follows: *“An accused person against whom there are strong reasons to suspect that he or she has committed an offence can be remanded in custody pending trial even if the offence he or she is suspected to have committed is punishable with an imprisonment which is less than two (2) years but exceeding one month, if there is fear that he or she can escape or, if his particulars are unknown or undoubtful (sic) or if there are strong, unusual and exceptional circumstances that urgently require the detention pending trial in the interest of public security:*

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1° If the pretrial detention is the only means to preserve evidence or to stop the accused from interfering with the investigation or putting pressure on witnesses and complainants or stop fraudulent communication between the accused persons and their accomplices;

2° If such detention is the only means to protect the accused, to ensure that the accused will be available whenever he or she is needed by judicial organs or to put a halt to the commission of an offence or to prevent it's (sic) recurrence;

3° If, considering the gravity of the offence, circumstances under which it was committed and the extent of harm caused has led to exceptional unrest and disruption of the law and order in which case detention becomes the only means to put them to an end'. The provisions of this Article are the cornerstone of the Prosecution's concerns, because the Accused does not reside in Rwanda and is requesting to return the United States, which raises fear that his provisional release could jeopardize the conduct of investigations into offences of this nature which have consequences for Rwanda and its citizens.

IV. DISPOSITION

[The Court]

39. [Sic] Finds that the Prosecution's grounds establishing that there is prima facie evidence of guilt against Carl Peter Erlinder, charged with the crime of denying and minimizing the genocide and that of spreading rumours likely to disrupt the security of Rwandans, have merit.

40. Rules that Carl Peter Erlinder should be provisionally detained in prison for 30 days for the abovementioned reasons.

41. Orders that Carl Peter Erlinder should be provisionally detained in prison for 30 days.

42. Recalls that the time-limit to appeal this Decision is five days.

This Decision has been rendered in public hearing on this 7th day of June 2010 by the High Court of Gasabo, composed of Judge Maurice Mbishibishi, assisted by the Registrar.

Judge:

Maurice Mbishibishi

[Signed]

Registrar:

Jean Damascène Nkuriyingoma

[Signed]

True copy

J.D. Nkuriyingoma

[Signature and seal]

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RONPJ0678/10/Kig/NM

COURT DECISION
RDP03/10/TG1/GSBO

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ICYEMEZO CY'URUKIKO
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1

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 NONERUKUKUWA 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 umusemuze ari Byukusenge Elisée;

4. Carl Peter Erlinder amaze kwemeza ko umwironoro 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 zigagararira 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



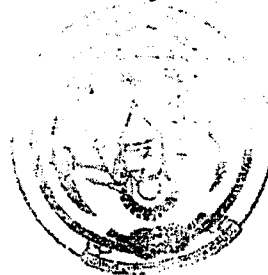
Perezida w'u Burundi, ibi hashingiwe ku ngingo y'i 166CPLII, ibi byahungabanyije umudendezo w'u Rwanda, byanatera imyigaragambyo no kwanga ubutegetsu buriho;

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 yaragejewe 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 yagwiriyeye u Rwanda bamwe bita jenocide, iyi inafitiwe ibimenyetso muri TPIR ko yateguwe ikanashirwa mu bikorwa n'ubutegetsu 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



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ICYEMEZO CY'URUKIKO
RDP0312/10/TGI/GSBO

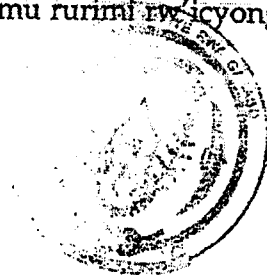
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ari amagambo akoreshwa na Leta y'u Rwanda ngo babone icyo bitwaza,ubundi yandika jenocide nk'intambara yabaye ndetse muri dosiye Military I,yanditse ubwe ko ubwicanyi bwakorewe abatutsi ari ubwicanyi bwakozwe atari jenocide yakozwe mu 1994 kandi ko 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 umwiryane 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'inshinjabyaha 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 byateye ibibazo kandi biteganywa n'amategeko yose ya Leta zunze Ubumwe za Amerika na Constitution yabo ndetse n'Umuryango w'Ibihugu bikoresha ururimi rw'icyongereza,u Rwanda rwinjijemo,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 Ubushinjacyaha buhitamo gukurikirana Peret Erlinder, ibi bidashingiye kubyo yanditse ahubwo aruko yunganiye neza abaregwaga 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 byasobanurwe 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 yakoze 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 butarwanyira 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 Fayçal igaragaza ko yagiye mu bitaro n'ibizamini yakorewe, asaza asaba urukiko kwita kuri ibi bimenyetso ku buzima bwa Erlinder buri mu kibazo, 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 akekwe 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 genoside...."* muri uru rwandiko yerekana n'ibyo bintu we atita jenocide kandi ko ukwiye kubibazwa ari Perezida w'u Rwanda Paul Kagame, kuko byavuye kucyo 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'iyonyandiko 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 *«Azahamishwa igihano cy'igifungo kuva ku myaka cumi kugeza kuri makumyabiri uzaba yagaragaje mu ruhamye liaba 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:«Umuntu wese, uzaba yitwaje ali za diskuru arugiye mu nama cyangwa ahantu h'uruterane, ali inyandiko z'ubwoko bwose z'imashini, amashusho cyangwa ibimenyetso by'amoko yose, bimanitswe, bitanzwe, biguzwe cyangwa bigulishijwe cyangwa bishyizwe mu maso ya rubanda, ali ukwamamaza nkana ibihaha akagomesha cyangwa akagerageza kugomesha rubanda arwangisha ubutegetsi buliho, agatera cyangwa akagerageza gutera intvururu mu baturage ashaka ko bazasubiranamo, agatera rubanda intugunda ashaka kubyutsa imidugararo muri Repubulika,azahanishwa igifungo kuwa ku myaka ibili kugeza ku icumi n'ihazabu y'amafaranga kuwa ku ibihumbi bibili kugeza ku bihumbi ijana, cyangwa kintwe gusa muri ibyo bihano, aho bidatambanyije 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 ryekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 22/4/2006 ko:«Ukurikiranyweho icyaha ntashobora gufungwa mbere y'urubanza keretse hari impamvu zikomeye zimushinja kandi icyaha ashinjwa kibaba icyaha amategeko yateganyirije guhanisha igifungo cy'imyaka ibiri nibura.» ibyaha byombi akekwa igiteganyirijwe igihano cy'ibanze gito akaba ari icy'imyaka ibiri;

38.Carl Peter Erlinder kimwe n'abamwunganira basaba gukurikiranwa adafunzwe cyane ko arwaye bashingiye ku ngingo ya 87 y'itegeko n°13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'itegeko n°20/2006 ryo ku wa 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 impanvu zikomeye zimuhanywe icyaha, ashobora gufungwa mbere y'urubanza n'ityo icyo yakozwe basanze ari icyaha amategeko yateganyirije igifungo kitageze ku nyaka ibiri (2), ariko kirenze ukwezi kumwe, niba batinye ko yacika, niba umwirondoro we utazwi cyangwa ushidikanywaho, cyangwa se niba hari impanvu zikomeye z'imbonekarimwe zigomba kunufungisha 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 abatangabuhamya n'abakorewe icyaha cyangwa se habaho ubwumvikane hagati y'abakurikiranwe n'ibytso byabo;

2° Iyo ifungwa ari bwo buryo bwonyine bwo kurinda ukurikiranywe, bwo gutuma inzego z'ubutabera zimubonera igihe zimukomeye, bwo gutuma icyaha gihagarara cyangwa se kitongerera gusubirwamo ;

3° Iyo icyaha ukurikije uburemere bwacyo, uburyo cyakozwemo n'inkurikizi cyateye, cyatumye habaho imidugararo 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;



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RONPJ0678/10/Kig/NM

ICYEMEZO CY'URUKIKO
RDP0312/10/TGI/GSBO

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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;

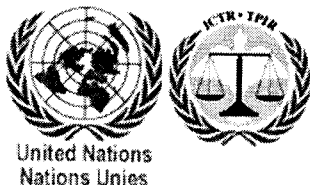
N'uko byemejwe kandi iki cyemezo gisomewe mu ruhamwe none ku wa 07/6/2010 n'Urukiko rwisumbuye rwa Gasabo,rugizwe n'umucamanza waruburanishije afashijwe n'umwanditsi.

Umucamanza
MBISHIBISHI Maurice
Sé

Umwanditsi
NKURIYINGOMA Jean Damascène
Sé

copie conforme à l'original
NKURIYINGOMA





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input checked="" type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input checked="" type="checkbox"/> F. A. Talon (Appeals/Team IV)
From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Me Andre G. Tremblay (names)	<input type="checkbox"/> Prosecutor's Office (names)
	<input type="checkbox"/> Other: (names)		
Case Name:	The Prosecutor vs. Aloys Ntabakuze		Case Number: ICTR-ICTR-98-41-A
Dates:	Transmitted: 11 June 2010		Document's date: 7 June 2010
No. of Pages:	10	Original Language:	<input type="checkbox"/> English <input type="checkbox"/> French <input checked="" type="checkbox"/> Kinyarwanda
Title of Document:	"The High Court of Gasabo... that Tries Criminal Cases regarding Provisional Incarceration and Release in the case RPGR 078/10/Kgl on06/07/2010 ..." Kinyarwanda original version and an official translation for the use by the Appeals Chamber in Ntabakuze case in relation to Peter Erlinder's incarceration in Rwanda		
Classification Level:	TRIM Document Type:		
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public	<input checked="" type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties
		<input type="checkbox"/> Accused particulars	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English French Kinyarwanda

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:

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