

Arusha, October 5, 2007.

ICTR Detainees
Arusha - Tanzania

Mr. President of the ICTR,
Honorable Judges of the ICTR,

Subject: Denunciation of the motions for the transfer of the cases of detainees
Yusuf Munyakazi Gaspard Kanyarukiga and Ildephonse Hategekimana

Mr. President,
Honorable Judges,

On September 7, 2007, the Prosecutor of the International Criminal Tribunal for Rwanda introduced before the President of the Tribunal motions for the transfer of the cases of detainees Yusuf Munyakazi, Gaspard Kanyarukiga and Ildephonse Hategekimana to Rwandan jurisdictions. On October 2, 2007, Honorable Judge Dennis C. M. Byron, President of the Tribunal, designated special chambers whose mission is to take decisions on these cases. We, signatories of the present letter (detainees awaiting trial, detainees undergoing trial and convicted persons staying at UNDF), still preoccupied with the state of the administration of justice within the ICTR, submit to you our views and considerations on those motions. Our current position is dictated by the same apprehensions as those regularly mentioned in our abundant correspondence on the subject.

Indeed, when we heard about the first negotiations between the Prosecutor of the ICTR and the government of Rwanda on the issue of transfer of ICTR cases to Rwanda, we alerted the UN Secretary General and denounced the fact that the Prosecutor allows himself to be influenced and to be led to carry out selective prosecutions in order to cover up criminals in power in Kigali and ensure their impunity.

In the letter addressed to the UN Secretary General on February 16, 2004, we denounced the project of transfer to Rwanda of the ICTR detainees and convicted persons because, as far as we are concerned:

"There is no doubt that people in power in Kigali, concerned about muzzling definitively all their former rivals in case they don't make them disappear, are not happy to see some high level politicians and military officers, some businessmen and some intellectuals who, even though sentenced by the ICTR, escape being under their control. In fact, Kigali fears that they continue claiming their innocence and pointing out, with evidence to support their claims, that the RPF and its leaders including General Kagame bear the foremost responsibility for the Rwandan slaughter. If the Kigali current regime is conducting today a robust propaganda campaign (and multiplies declarations through international and national radios, national and international newspapers) in order to obtain the transfer of detainees and the imprisonment in Rwanda of the ICTR convicted persons, it is not because

they are Rwandans ... but because the regime always considers them as their fierce opponents to be eliminated by all means".

Besides, we recalled in that letter of February 16, 2004, the "confession" of former UN Secretary General, Boutros-Boutros Ghali, who regretted to have taken wrong decisions regarding the ICTR and regarding persons detained by that same Tribunal. We then raised two questions which are still topical:

"Are UN authorities about to once again make decisions loaded with serious consequences even if it means making "a confession" later on? Should the main UN decision makers on the Rwandan case perpetually regret to have made mistakes as if errors do not inspire caution and a more attentive and human look at those who have to support the consequences of their decisions?"

In the letter addressed to the ICTR President on August 6, 2007, we indicated that the Kigali regime is conducting under various pretexts a policy of annihilation and even of slow extermination of members of the Hutu ethnic group; that the Rwandan police do not hide that Hutu detainees are automatically presumed guilty and therefore find normal that those detainees are the object of extrajudicial executions. In this regard, recent reports of Amnesty international and Human Rights Watch support unequivocally what we said. Just recently, Professor Filip Reyntjens supported further the findings of Amnesty International and Human Rights Watch during his interview on RFI (Radio France International). He said: *"There is a recent December 2006 Amnesty international report which gives a quite unfavorable point of view, which suggests that people should not be transferred to Rwanda notably because their trials would not be fair. Also Amnesty International mentions accounts of torture and maltreatment"*¹.

Mr. President,
Honorable Judges,

The Prosecutor based his argument in his motions on the recent suppression of the death penalty in the Rwandan criminal code. The reality is that the Kigali regime has finally accepted suppression of the death penalty with the objective of convincing foreign countries to arrest numerous opposition members living in exile and to have them tried in Rwanda as well as to have under its thumb the ICTR detainees. By so doing, it will have definitively neutralized all its political opponents and threatened all those who may still have the audacity to denounce its crimes. The Prosecutor is fully aware of that criminal intent by the Rwandan authorities whose paralyzing interference in the administration of justice is well known and whose syndicates of informers grouped under the IBUKA and

¹ Filip Reyntjens interview with Radio France International on 19 September 2007. Details of his position are found in *"Expert report - Filip Reyntjens on behalf of Vincent Bajinya in the City of Westminster Magistrates' Court"*, 2007.

See also our various correspondences about the subject:

- Our letter of 18 March 2002
- Our letter of 19 February 2005
- Our letter of 10 January 2007
- Our letter of 23 January 2007
- Our letter of 19 April 2007
- Our letter of 08 July 2007

AVEGA associations fabricate prosecution witnesses and terrorize defense teams and defense witnesses at all levels. He is also informed about the very high number of prisoners awaiting trial in that country many of them staying in detention with blank prosecution files. The Prosecutor's motions fall within the framework of the tripartite agreement between the US, Great Britain and RPF leaders in power in Kigali. Its purpose is to quickly put an end to the ICTR mandate in order to protect members of that front from criminal prosecution for the crimes they committed in Rwanda during the period covered by the ICTR jurisdiction. This astounding truth has just been revealed by Florence Hartmann, former spokesperson of Prosecutor Carla Del Ponte in her book entitled *"Paix et châtement; les guerres secrètes de la politique et de la justice internationales"* (Paris, Flammarion, 10 septembre 2007) [*Peace and punishment; the secret wars of international politics and justice*], particularly on pages 262 to 275. As a direct and privileged witness, the author reveals in a detailed manner the pressures exerted on the ICTR Prosecutor, Carla Del Ponte, by the American Ambassador, Richard Prosper, in May 2003 to force her to abandon special investigations under way against members of the RPF and to transfer ICTR cases to Rwanda. She revealed how the Americans and the British collaborated to oust Madame Carla Del Ponte from the post of ICTR Prosecutor in order to have plenty of elbow room to protect RPF members from prosecution. In her book, Florence Hartmann reports on the negotiations held in Washington D.C. from 14 to 16 May 2003. **At the end of the meeting of May 14, 2003, Ambassador Richard Prosper "concluded by underlining the need for arriving at an agreement on the transfer of cases to Rwanda".** The following is what Florence Hartmann writes about the meeting of 16 May 2003:

*Friday May 16, at 11 a.m. The Rwandans are not present. Del Ponte has gone to the State Department to discuss about the ICTY. Prosper and his advisers wait for her in a small office. They submit to her a document entitled "Summary of the conclusions between the government of Rwanda and the ICTR" and formulated like a road map. Although she had fallen into a trap, Del Ponte agreed nonetheless to look at the text. The document was a travesty of the content of the discussions of the previous day. **It provided for relinquishing all investigations against suspects of the Rwandan Patriotic Army (APR) by the ICTR prosecutor's office and for their referral to Rwandan jurisdictions, without any guarantee of results (...)***

Del Ponte protested [...]

When Prosper suggested sending her at The Hague the new version of the document by fax, she left with relief.

The document arrived the following week at the office in The Hague. The Americans had made no substantial modification [...]

Del Ponte rejected the document with a stroke of her hand and left to her advisers the task of informing Prosper of her refusal to endorse it. For her part, she informed Kofi Annan's office which condemned the American maneuver but reproached Del Ponte for having exposed herself to pressures from a State [...]

Prosper did not accept defeat [...]

The Americans asked to British to take the lead [...]

At the end of June [2003], Jack Straw handed to Kofi Annan, during his

stopover in Geneva, a letter requesting the separation of the post of the Prosecutor, hitherto common to the ICTR and the ICTY, and the appointment of a separate Prosecutor for the Arusha Tribunal [...] (the underlining is ours)

Mr. Hassan Bubacar Jallow, the current ICTR Prosecutor endorsed that macabre agreement when he took office as revealed by the Hirondele Agence Press:

"In November 2003, while New York was debating the text which led to the Resolution of 26 March 2004 in regard to the "completion strategy" of the ad hoc tribunals, Pierre Richard Prosper reassured President Kagame. Florence Hartmann confirms thus that "he convinced him to not worry about the text of the future resolution because the Gambian Hassan Bubacar Jallow appointed at the beginning of September to replace Carla Del Ponte had endorsed the US promise to the Rwandan authorities about the relinquishment of prosecution against Tutsi soldiers by the ICTR"².

² Fondation Hirondele - Agence De Presse Hirondele at Arusha International Criminal Tribunal for Rwanda, September 7, 2007.

Mr. President,
Honorable Judges,

Accepting the motions submitted to you by the Prosecutor supposedly with a view to complying with the ICTR "completion strategy" would mean that you also subscribe to that plan concluded in 2003 aimed at ensuring impunity to RPF leaders including President Kagame who were implicated in the massacres of several thousands of Rwandans and to allow the elimination by the same persons suspected of serious crimes against humanity, all persons now under the responsibility of the ICTR. It is indeed obvious that the overall implementation of that American-British plan includes also the transfer of the ICTR convicted persons to Rwandan prisons. We think that this might be one of the reasons why no decision was made since 2003 about the transfer of convicted persons to countries which have accepted to receive them³.

Mr. President,
Honorable Judges,

We suggest that you confirm the independence of the Tribunal, that you reject the Prosecutor's motions for transfer of cases to Rwanda, that you rather ask the three Presidents of the ICTR Trial Chambers to consult in order to schedule without delay the trials of the six detainees still waiting to be tried. Indeed, it is in that perspective that the UN Security Council reminded in its Resolution 1774 of 14 September 2007 that pursuant to its Resolution 1503 of August 2003: *"the tribunal must take all possible measures so that all trials at the first instance level be done with by the end of 2008 at the latest and that the totality of its work be finished in 2010"*. This does not imply that cases should be transferred to Rwanda.

We dare believe that the assurances recently given to a delegation of nine diplomats who had come from Dar Es Salaam to inquire about the implementation of the completion strategy and whose content was that *"the time allowed to finish proceedings before the Trial Chamber on 31 December 2008 will be respected with the exception of only one case which is expected to end in March 2009"* mean clearly that the ICTR intends to have tried even the six detainees awaiting trial.

In case the three trial Chambers may not be able to finish all the cases by the end of 2008, we suggest to the President of the ICTR to refer at the right time to the UN Security Council for the extension of the mandate of the Tribunal or to transfer unfinished cases before jurisdictions other than those of Rwanda.

As a measure of protest against the envisaged transfers and in order to express our deep dismay and our total denunciation of the American-British complicity to grant impunity to RPF criminals while pursuing our total annihilation, we, the detainees signatories of the present letter, have decided to launch a hunger strike starting this Monday 8 October 2007.

Sincerely yours,

The signatories: see annexed list.

³ The following countries have accepted to receive ICTR convicted persons in their prisons and have signed ad hoc agreements with the ICTR: Mali, Swaziland, Benin, Italy, France and Sweden.

Copy to:

- The United Nations Secretary General, New York;
- The President of the UN Security Council, New York
- Madame, M. Representative of a country, permanent member of the UN Security Council, New York (all)
- The Registrar, ICTR, Arusha
- The Prosecutor, ICTR, Arusha
- Defense Lawyers (all)
- ADAD President, Arusha.
- Commission of Human Rights, Geneva
- International Commission of Jurists, Geneva.
- American Association of Jurists.
- International Association of Democratic Jurists, New Delhi.
- European Court of Justice
- European Court for Human Rights
- African Court for Human Rights
- Center fighting against Impunity and Injustice in Rwanda, Brussels.
- Dukomere Association, Brussels
- Amnesty International, London.
- Lawyers without Borders, Paris
- FDIH, Paris
- HRW (Human Rights Watch)
- The press.

List of the detainee-signatories of the letter addressed to the ICTR President on October 5, 2007. Subject: Denunciation of the motions for the transfer of the cases of detainees Yusufu Munyakazi, Gaspard Kanyarukiga, and Ildephonse Hategekimana

1. Ildephonse Hategekimana
2. Augustin Ndindiliyimana
3. Kanyarukiga Gaspard
4. Munyakazi Yusuf
5. Ephrem Setako
6. Tharcisse Renzaho
7. N. Rutaganda Georges
8. Gerard Ntakirutimana
9. Semanza Laurent
10. Ferdinand Nahimana
11. Eliézer Niyitegeka
12. Gratien Kabiligi
13. Siméon Nchamihigo
14. Bizimungu Augustin
15. Ntahobari Shalom Arsène
16. Bikindi Simon
17. Zigiranyirazo Protais
18. Callixte Kalimanzira
19. François Karera
20. Simba Aloys
21. Alphonse Nteziryayo
22. Sylvestre Gacumbitsi
23. Aloys Ntabakuze
24. Elie Ndayambaje
25. Jean Baptiste Gatete
26. Pauline Nyiramasuhuko
27. Jean Bosco Barayagwiza
28. Edouard Karemera
29. Samuel Imanishimwe
30. Anatole Nsengiyumva
31. Casimir Bizimungu
32. Matthieu Ngirumpatse
33. Emmanuel Ndindabahizi
34. Seromba Athanase
35. Prosper Mugiraneza
36. Nsengimana Hormisdas
37. Joseph Nzirorera
38. Justin Mugenzi
39. François Nzuwonemeye
40. Juvenal Kajelijeli