



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Adama Dieng

Date: 17 April 2012

ICTR-01-75-AR11bis
17th April 2012
(370/A - 362/A)

JEAN UWINKINDI

v.

THE PROSECUTOR

Case No. ICTR-2001-75-AR11bis

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**DEFENCE EXTREMELY URGENT MOTION FOR STAY OF UWINKINDI'S
TRANSFER TO RWANDA, AND REQUEST FOR TIME TO FILE SECOND
MOTION FOR RECONSIDERATION OF THE DECISION OF 16 DECEMBER 2011
ON APPEAL AGAINST THE REFERRAL OF HIS CASE TO RWANDA**

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For the Defence

Claver Sindayigaya

369/A

Background

1. On 28 June 2011, a chamber of the Tribunal designated under Rule 11bis of the Tribunal's Rules of Procedure and Evidence ("Referral Chamber" and "Rules" respectively) ordered the referral of the Accused to the Republic of Rwanda for trial before the High Court of Rwanda ("the Referral Decision"). On 16 December 2011 the Appeals Chamber dismissed the Accused's appeal and endorsed the Referral Decision ("the Decision of 16 December"). On 25 January 2012, the Defence filed an extremely urgent motion for review or reconsideration of the Appeal Decision of 16 December ("First Motion for Reconsideration"). This motion was dismissed in the Appeals Chamber's "Decision on Uwinkindi's Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion" of 23 February 2012 ("the Decision of 23 February").

Jurisdiction and Summary of Remedies Sought

2. As the Appeals Chamber noted at paragraph 11 of the Decision of 23 February, "The Appeals Chamber may reconsider a previous interlocutory decision under its inherent discretionary power to do so 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice'"¹

3. It is submitted that there are now powerful reasons based on very recent developments in the case of Victoire Ingabire before the High Court in Rwanda that permit the Defence to file a second extremely urgent motion for reconsideration on the grounds that it is necessary to do so to prevent an injustice. The injustice that is to be prevented is the transfer of the Accused to the Republic of Rwanda for trial; there is new and compelling evidence that provides strong grounds to believe that the Accused will be deprived of a fair trial in Rwanda.

4. Further, given the imminence of the Accused's transfer to Rwanda, the Defence urgently requests an interim stay of his transfer pending full resolution of the instant, as well as a subsequent more detailed motion, by the Appeals Chamber. The Defence recalls that in his "Decision on the Monitoring Arrangements for the Trial of Jean Uwinkindi in the Republic of Rwanda" dated 5 April 2012, the President of the Tribunal requested the Registrar to ensure

¹¹ Citing *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203, and *Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Decision on Peter Erlinder's Motion to Reconsider Order Imposing Sanctions, 1 September 2011, p. 3.

368/A

that transfer take place within 14 days of the filing of that decision, that is, by Thursday, 19 April 2012.

Overview of the Ingabire Trial

5. Over the last week, in the course of the trial of Victoire Ingabire, one of the most controversial and closely observed trials in recent Rwandan history, compelling evidence has come to light to suggest that the Rwandan prosecution authority has acted in a manner inconsistent with any respect for that defendant's right to a fair trial. At the same time, the High Court has permitted serious violations of the defendant's fair trial rights to go unchecked. This is a case that is being heard now, in the very High Court before which Mr Uwinkindi would be tried. The trial is being closely and carefully monitored by international NGOs, specifically Amnesty International and Human Rights Watch, by national and international journalists, and by other observers from, *inter alia*, the American, British and Dutch Embassies in Kigali. Notwithstanding this close scrutiny, there are strong reasons to believe that Ingabire's fair trial rights have been seriously breached in the several ways set out below.

6. Victoire Ingabire is a 43-year old Rwandan woman who lived in exile in the Netherlands since 1994. She moved to the Netherlands before the start of the genocide in order to study. She became involved in politics, rising to the position of president of a party called FDU-Inkingi. In January 2010 she returned to Rwanda for the first time since 1994 to increase the party's profile and to contest the presidential election in August 2010.

7. She was prevented from officially registering her party in Rwanda, and therefore from officially registering her candidature for the election. In April 2010 she was arrested and interviewed about a number of offences she had allegedly committed, including genocide ideology, spreading rumours "calculated to incite the public against the leadership", divisionism, and terrorism. She denied the accusations and was released under strict bail conditions. She continues to deny the allegations.

8. In October 2010 she was rearrested and interviewed again. Eventually an indictment against her was prepared formally charging her with genocide ideology, spreading rumours "calculated to incite the public against the leadership", discrimination and sectarianism, complicity in terrorist acts, recruiting into an armed group with the aim of waging war, and conspiracy to commit terrorism. Her trial started in September 2011.

367/A

9. The only witnesses, bar one, against Ingabire were her 4 co-defendants, all of whom had pleaded guilty and all of whom stood to benefit from significantly reduced sentences for crimes they had all committed whilst fighting in the outlawed FDLR rebel army in the Democratic Republic of Congo. Ingabire's defence team has stated that they have cogent material demonstrating that these men had been recruited by the Rwandan authorities to falsely testify against her in exchange for benefits including much shorter prison sentences, improved conditions of detention such as access to extra and better quality food and drink in prison, and money payments. The key prosecution witness was Vital Uwumuremye.

10. It should be noted for the sake of completeness that one of Ingabire's two lawyers was Iain Edwards, an English barrister formally assigned to the Defence team of Mr Uwinkindi.

Events of Wednesday, 11 April – Monday, 16 April 2012

11. On Wednesday, 11 April 2012, after having heard from Ingabire's co-accuseds and from Ingabire herself, and after very many weeks of legal argument, the High Court started to hear from the first witness to give what could be described as defence evidence.

12. The following is taken from Mr Edwards' notes of the proceedings which have been passed to Defence Counsel for Mr Uwinkindi. Due to professional commitments in London, Mr Edwards was not in Kigali last week and so these are not first-hand notes. However, he was in daily telephone contact with his Rwanda colleague, Maître Gashabana Gatera, and took notes of what Maître Gatera said transpired in court each day.

"Note of Evidence of Lt. Col. Michel Habimana – Wed. 11 April 2012"

Lt. Col. Michel Habimana – former FDLR spokesman. Currently in prison in Kigali, serving gacaca sentence of life imprisonment. He is not, never has been, member of FDU-Inkingi. He does not know Victoire Ingabire.

4 April 2012, ct. invited by def. to arrange for H. to be brought to ct. to give evidence. Ct. agreed, but insisted that def. were to first provide details of his identity. This was done. Produced at the High Court today. First witness expected to give evidence for def.

Pros. produced gacaca records. Element of H's sentence was stripping of all civil rights. Pros. submitted H. could not give sworn evidence as witness before a ct. Art. 59 Rwandan Code of Crim. Proc: "Persons against whom the Prosecution has evidence to suspect that they were involved in the commission of an offence cannot be heard as witnesses." Ct. agreed. However, H. was able to be heard as a court informer.

Ct. asked Gatera what information H. could provide and to what issue(s) he could speak. Submitted that as former spokesman of FDLR, he knew about origins of FDLR and could give detailed information about its missions abroad, the position of FDLR with regards other pol.

366/A

parties based abroad, particularly FDU-Inkingi, and could explain about any collaborative links between FDLR and FDU-Inkingi and/or Victoire. Could also provide information about the Bahama battalion.

H. given the floor, explained that he knew Uwumuremye. He knew him before and after 1994. He knew him in context of Op. Umoja Wetu as well as at the time of their repatriation. They were in fact arrested and repatriated to Rwanda together (RNA article of 14 October 2010 referred to the repatriation of these ex-FDLR officers in Feb. 2009: "Major Vital Uwumuremyi surrendered along with ex-FDLR spokesman Lt-Col. Michel Habimana alias Edmond Ngarambe and Capt. Pontien Nkeramihigo alias Amani Richard." <http://rnanews.com/politics/4342-ingabire-victoire-arrested-with-ex-fdlr-officer-details->). H. confirmed that it was he in the photo.

H. contradicted much of the pros. case. Apart from short-lived attempt to work with PDN-Igihango party (Democratic National Pact), the original FDLR had never collaborated with any pol. party. FDLR split into 2 factions following internal disagreements in 2005. One of these factions, FDLR-CMC, was more open to collaboration with pol. parties, but FDU-Inkingi was never one of them. Never any common ground between FDLR and FDU-Inkingi because latter was always firmly against any kind of military aspect to their struggle. It was suggested by FDU-Inkingi that there could conceivably be future cooperation if FDLR gave up its mil. ambitions and returned to Rwanda to work as a peaceful pol. organisation.

H. stated Uwu never held rank of Major within FDLR. He only ever reached rank of sous-lieutenant. He was not in FAR before 1994. He was a driver before leaving Rwanda and only received some mil. training in DRC at end of 1998. Would not have been possible for him to attain rank of Major.

H. was arrested with Uwu in DRC. They were held first in Gisenyi before being taken to Kami Camp in March 2009. Held in Kami together in terrible conditions. Often bound by the wrists and feet. Members of intel. service came several times to interrogate them. Asked if they knew Victoire. H. said didn't. Uwu said he did, although later admitted to H. that this was lie; he had just told interrogators that he knew V. because he wanted to see if this might improve his conditions of detention. Period of 1 or 2 days during which Uwu disappeared from the Camp; H. did not know where he went. He later learned from Uwu that he had been taken to DRC by intel. to round up former FDLR. He knew mobile nos of several ex-FDLR, made arrangements to meet them. When these ex-FDLR arrived for these apparent meetings, were arrested and repatriated.

In fact, one morning one of these arrived at Kami, saw and recognised Uwu who had betrayed him. Called Adolphe, was so enraged, grabbed Uwu by the throat and said he was prepared to die, but that Uwu was going to die with him. During the hearing today, Uwu accepted this incident at Kami did take place.

Uwu was candid in his explanations to H. that he was working for the intel. service and that mission to DRC was for intel. service. H. also told ct. that whilst the two were being held at Kami, Uwu attempted to persuade him to work with him by cooperating with the intel. service and agreeing to bring accusations he knew were false against V. in order to discredit her personally and politically. Uwu had agreed to cooperate with Rwa authorities to falsely accuse V. H. also told ct. that he has never heard about group called CDF; if it had ever existed he would have known about it.

H. and Uwu stayed at Kami until May 2009. H. then taken to Mulindi, Uwu went to Mutobo Camp.

Re. Bahama battalion, allegedly created by Nditurende, H. explained there had been disagreements between Ndit and other FDLR commanders. Ndit deserted and took with him about 30 soldiers.

3651A

Pros. and ct. really obviously uncomfortable about this evidence. Pros. furious, tempers fraying, judges not happy. At the end of hearing, pros. said he had about a dozen questions to ask H. Adjourned to tomorrow.

Note of Evidence – Thurs. 12 April 2012

Thurs, 12 April, H. produced again. Asked numerous questions, did well, gave consistent answers. However, towards the end of evidence he stated that night before, after ct. his cell had been thoroughly searched by prison staff further to orders from pros. office. Docs had been seized. It had upset him. Was then interrogated by police judiciaire, Gérard Munyangeyo, starting from about 6.30pm the previous night. In ct, pros handed up letter from Director of PCK sent to the pros. In the letter, Director says that further to the pros. request to search H's cell and send all docs he had in the cell, Director was pleased to transmit those seized docs, annexed. One of annexed docs was handwritten note of H's interrogation by Munyangeyo. Evidently interviewed without a lawyer present. Not even advised he could have a lawyer present. The docs he was asked about all related to the evidence he was giving in ct.

Is not yet clear whether or not he was threatened or induced by police officer. To ask Monday. However, clear that the search of his cell and interrogation highly irregular. H. was not a pros. witness. He was witness of ct. Pros. had no jurisdiction over him. If pros. had any problems or concerns about his info, they should have raised concerns with judges. Should never have taken it upon themselves to have him interrogated behind closed doors. Gatera never experienced such behaviour from pros. before. Never heard of a wit. being subjected to search and seizure of personal effects or police interrogation about his evidence during testimony in ct. V. threatening and intimidating behaviour. Other def witnesses identified will refuse to cooperate and disappear? Behaviour of pros. unprecedented and scandalous. Blatant attack on Def. right to challenge and contradict pros. Irretrievable prejudice? No further defence witnesses will be prepared to participate. Abuse of process.

Fri. no ct. – genocide commemoration. Adjourned to Monday.

Note of Evidence – Mon. 16 April 2012

H. brought again to ct. this morning. Pros. indicated no further questions for him. Gatera told judges he had a few more questions to ask, to clarify details about the search of his cell, seizure of documents, interrogation by Munyangeyo, threats, promises. Ct. asked H. to step outside of courtroom, demanded to know exactly what questions Gatera proposed to ask. G. told judges the questions he wished to ask. Ct. ruled the questions were not relevant and ordered that H. be immediately returned to the prison. Not even brought back into ct. Gatera protested, arguing that other def. witnesses will be too frightened to come to testify if this is how they would believe they would be treated. Pros. stated they had sought to prove collusion between the Def. and H, that H. had not been brutalised, and that the interrogation had been in int. of justice.

V. then explained she had lost all faith in the fairness of the proceedings. Was a show trial, circus, she would boycott all future hearings. She also instructed her lawyers to follow suit, to no longer attend ct. to represent her. Pros. argued that alleged intimidation of def. witnesses was insufficient reason to boycott the trial and asked that she be brought to court in future even if against her will. Pros. also asked the ct. to appoint a new lawyer to represent her interests in any future in absentia proceedings.

364/A

Gatera withdraws as instructed. High Court will render decision on pros. request on Wednesday, 18 April."

13. Annexed to this motion is an article published by AFP entitled, "Rwandan opposition figure boycotts trial: lawyer" confirming certain of the more salient details regarding yesterday's hearing.

Submissions

14. It is submitted that the evidence of these recent developments discloses the following:

- (i) the ability and willingness of the Rwandan prosecuting authorities to engage in highly irregular and abusive behaviour during a trial in relation to a defence witness (the distinction between a witness and a person giving information to the court is immaterial, it would be submitted);
- (ii) the willingness of the authorities to engage in this behaviour notwithstanding the fact this is a trial being observed by various different bodies, including international observers;
- (iii) the unwillingness and/or inability of the Rwandan High Court to sanction such behaviour;
- (iv) the readiness of the Rwandan High Court to prevent Defence Counsel from asking relevant questions going to the issue of threats and/or promises made to a defence witness by an organ of the State about his evidence;
- (v) the apparent lack of concern of the High Court about the impact that intimidating and irregular behaviour towards a defence witness was likely to have on the willingness of future defence witnesses to come and testify;
- (vi) all of these factors are of relevance to the question of whether Mr Uwinkindi will receive a fair trial in the High Court in Rwanda. As mentioned above, there are clear parallels between his case and that of Ingabire: both are politically sensitive cases involving issues that are highly controversial in Rwanda, especially given the line of defence Uwinkindi has chosen; both fall within the jurisdiction of the High Court; both have attracted considerable international attention and will be closely scrutinised by observers. It cannot be said that these events before the

363/A

High Court in Kigali happened some time ago and are therefore of limited relevance.

15. The Appeals Court will appreciate that the Defence would wish to investigate these developments further and assess fully how they impact on the position of Mr Uwinkindi. These developments are extremely recent and require a minimum of time to be digested and analysed. The Defence regrets that it is not at this stage in a position to make full submissions on the issue of reconsideration but submits that it has provided compelling *prima facie* material which should give the Appeals Chamber reasonable grounds for concern, as well as reasonable grounds to believe that a fully argued motion for reconsideration would not be frivolous or unwarranted. Full submissions applying these recent developments to the reasoning of the Appeals Chamber's Decision of 16 December can be made within 7 days.

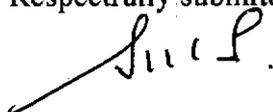
16. For the foregoing reasons, the Defence respectfully requests that the Appeals Chamber:

ISSUE an interim stay on the transfer of the Accused to Rwanda until such time as the Appeals Chamber decides on the merit of this and a subsequent more detailed motion; and

GRANT the Defence request for 7 days to file a more detailed motion for reconsideration.

3,162 words

Respectfully submitted,



362/A

ANNEX

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Rwandan opposition figure boycotts trial: lawyer

(AFP) - 12 hours ago

NAIROBI — Prominent Rwandan opposition figure Victoire Ingabire will boycott her trial for suspected terrorism and denying genocide in protest at the treatment of a witness, her lawyer said Monday.

Ingabire, an outspoken critic of President Paul Kagame's regime, "will no longer come to the court", Iain Edwards said, adding that her lawyers were also boycotting the hearings. "I'm no longer her lawyer," he said.

The leader of the Unified Democratic Forces (FDU), an opposition movement which is not recognised by Kigali, returned to Rwanda in January 2010 after a 17-year exile in the Netherlands.

She was accused of plotting to form a rebel group in September, on the second day of her trial on charges of fomenting insecurity and ethnic divisions.

Prosecutors said they had evidence of her alleged "terrorist" activities, including proof of financial transfers to the Democratic Forces for the Liberation of Rwanda (FDLR), a Hutu rebel movement based in neighbouring Democratic Republic of Congo.

Edwards said Ingabire on Monday took her decision to boycott her trial after the court cut short the hearing of a witness for the defence, former FDLR colonel Michel Habimana, who accused Rwandan authorities of rigging evidence against her.

"He gave a lot of information about how Rwandan authorities rigged their evidence against Ingabire, how intelligence services made promises to FDLR officers in exchange for false testimony," said the lawyer.

The witness also explained that accusations against Ingabire were merely aimed at stopping her from running in the (August 2010) presidential election" against Kagame, said Edwards.

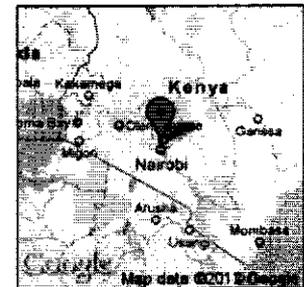
Kagame has ruled the small central African country ever since the 1994 genocide which saw an estimated 800,000 mostly ethnic Tutsis killed by Hutu extremists in a roughly 100-day period.

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Victoire Ingabire is led to the Rwandan High Court in 2011 (AFP/File, Steve Terrill)

Map



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