



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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Ref: OTP/2009/P/084
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Dear Mr. Roth,

I refer to your letter to me of 26th May 2009, your press release of 1st June 2009 and a petition of the same date all of which relate to the investigations of the allegations against members of the RPF.

Whilst the OTP-ICTR appreciates the interest of the Human Rights Watch (HRW) on this issue, I must say we find your letter of 26th May – which reached my office together with the other documents whilst I was away in New York to brief the UN Security Council – requires correction in several respects.

The suggestion that no investigations or prosecutions have been conducted or that since has been delayed against RPF members due to the threat of non-cooperation from Rwanda is not borne out. You are aware that since 2004, and despite the suspension of investigations in 2002 during my predecessor's time, I have publicly acknowledged on various occasions, including at the Security Council, the responsibility of my office to investigate the allegations against the RPF. My office has proceeded further to investigate some of these cases, to the knowledge of the Government of Rwanda. The latter has not, since the resumption of work on these files, threatened the ICTR nor suspended its cooperation with the Tribunal.

The OTP position on these allegations is no different from the way it deals with other cases. The decision whether to indict will be based solely on the availability of credible evidence and on the law and not on extraneous considerations or feelings of maintaining “balancing acts” by indicting “all sides” to the Rwandan armed conflict. It is erroneous in any case to state that the OTP-ICTR has failed to “address” these allegations against the RPF as you yourself admit they have been investigated by the office for several years now. You are already privy to some of the technical challenges that have been encountered in the handling of these cases.

Mr. Kenneth Roth
Executive Director
Human Rights Watch
Washington, DC
U.S.A.

As regards the Kabgayi case which I recently permitted Rwanda to prosecute, it is important to set the record straight in a number of respects. First, it is not the only or first case that the OTP has handed over to the Prosecutor General of Rwanda. I have already done so in respect of 35 files relating to the genocide for Rwanda to investigate and prosecute at its discretion. Several more such dossiers are likely to follow.

Secondly, the Kabgayi file in which four accused were prosecuted in Kigali is not according to the information I have the only instance of RPF soldiers being prosecuted in connection with the events of 1994. In 2007, the Prosecutor General at my request provided me with particulars of several military officers who had been prosecuted before military courts for offences committed against civilians in connection with the genocide of 1994. According to his report to me, out of a total of 42 RPF soldiers on this list, 19 were actually prosecuted for offences committed in 1994 falling within the jurisdiction of the ICTR with the rest being prosecuted for offences committed post 1994 against civilians suspected of being genocidaires. Of the 19 soldiers, 12 were convicted and sentenced to various terms of imprisonment, 5 were acquitted and the remaining two cases did not proceed due to the absence of the accused persons. This information was also made available to the HRW by the Rwandan authorities at the time. It is important that this record of prosecution is acknowledged and the impression that no prosecution other than the Kabgayi case has been undertaken in Rwanda is not promoted.

Thirdly, the indictment in the Kabgayi case was drafted by the Military Prosecutor in Rwanda and cleared with my office. The indictment clearly did not minimize the allegations and clearly stated them as violations not only of Rwandan law but also as war crimes under the Geneva conventions. The prosecution of the officers proceeded on that basis. Contrary to your claim, my office is not in possession of evidence that the Kabgayi killings were as such part of a planned military operation and you erroneously claim that my office transmitted such evidence to the Rwanda prosecution Service. The OTP did not transmit such or indeed any evidence or file in this case to the Rwandan Prosecutor. This was a case which was also investigated by the Rwandan authorities and prosecuted by them on the basis of evidence generated by their investigations and supported the case as set out in the indictment.

You allege unfairly, that my office maintained only a "cursory presence" at the trial and that it "did not constitute diligent monitoring". As you are no doubt aware, monitoring of a trial does not require a continuous presence throughout the proceedings. I had one Senior Trial Attorney and one Senior Legal Advisor to monitor the proceedings. Contrary to what you say in your letter there was an OTP monitor in court on every day of the trial. They have provided me with their reports and attested to the proceedings, which were held in public, as having complied with the standards of fair trial. The monitors' reports have also been supplemented with the written record of the proceedings as well as a full video recording of the trial. Although you admit to HRW monitoring the trial, you have not, seven months since the verdict, brought to my attention any evidence to support your allegation that the trial "proved to be a political whitewash and a miscarriage of justice".

As you may now be aware, I have reported to the Security Council that the trial in which two of the accused were convicted and sentenced to terms of imprisonment and the other two acquitted – was in my assessment properly conducted and that there is no reason to exercise the primacy of the ICTR in respect of this case. I have not hitherto provided HRW with such an assessment as I consider it important that the OTP-ICTR continues to maintain and is seen to maintain its independence in the exercise of its mandate.

I wish to draw your attention to the fact that the appeals Chamber of the ICTR in considering an appeal in the referral cases, set aside a finding by an ICTR trial chamber to the effect that the Rwandan judiciary is not independent and impartial. Thus the ICTR has not held that Rwandan courts are not independent or impartial as suggested in your letter. The reasons why the ICTR judges have so far declined to refer cases under Rule 11bis of the ICTR Rules and Procedure to Rwanda are essentially threefold: (a) the potential for prolonged solitary confinement of prisoners upon conviction; (b) the prospect of defence witnesses not making use of the witness protection programme due to its location in the Prosecutor General's office; and (c) the potential for defence witnesses refusal, out of fear, to travel to Rwanda to testify. I must say I find it difficult to reconcile your suggestion on the one hand that due to possible political interference, the accused would not be tried fairly but acquitted or have their crimes minimized and on the other that the accused would not be able to defend themselves properly due to the concerns raised by the ICTR judges in the context of deciding the Rule 11bis applications.

I do not share your views that my mandate as Chief Prosecutor will not be fulfilled and that the Tribunal will be seen to deliver victors justice unless the members of the RPF are prosecuted at the ICTR. The ICRT has understandably focused for many years in the genocide as this is the main crime base of its mandate. Despite our best efforts, hundreds of genocidaires roam freely in the rest of the world without indictment or arrest. Many of the major cases of the ICTR relating to the genocide remain so far unprosecuted and efforts are underway to find competent national jurisdictions to accept such cases.

The essence of the struggle against impunity is to ensure accountability, wherever it can be delivered, provided it is done effectively. It is my strong belief that the prosecution of cases of crimes committed by the members of the RPF, where amply supported by concrete evidence, have a potentially greater impact on national reconciliation if conducted effectively and in accordance with fair trial procedures by the Rwandan authorities themselves.

Sincerely,



Hassan B. Jallow
Chief Prosecutor, ICTR
Under Secretary-General, United Nations