

Arusha, 21 April 2016.

ICTR Acquitted persons,
c/o MICT,
P.O.Box 6016,
Arusha.

Mr. John Hocking,
MICT Registrar,
The Hague.

Subject: Concerns of the ICTR acquitted persons.

Mr. Registrar,

The ICTR acquitted persons, signatories to this letter, are seriously concerned by the slow pace characterizing the efforts geared towards getting them reunited with their families.

At the outset, we wish to bring to your attention the fact that more than a decade ago, we were brought to Arusha by force to face international criminal justice. We were arrested and accused of the most serious crimes. The ICTR asserted that our respective arrests were made on the basis of prima facie evidence. But the reality is that we were arrested on the basis of the positions we held in the Rwanda government in 1994 or merely on the basis of someone's social standing. After lengthy trials dealing with each of the charges brought up by the Prosecutor, the ICTR Chambers found us to be innocent. We were therefore acquitted of all charges and set free. It ought to be recalled that according to article 20 of the ICTR statute, the accused is considered innocent until proven guilty.

We deem it necessary to share with you our considerations on MICT's obligation to take care of the acquitted person until he joins his family (1), MICT's obligation to reunite us with our families (2), our reasons for refusing to return to Rwanda and bringing the UNHCR to provide us with international protection (3) and the relocation strategic plan (4).

1- Obligation to take care of the acquitted person until he joins his family.

Considering the harm done to the acquitted person, the fact that he has been unduly imprisoned for more than a decade, the fact that he was forcefully separated from his family, the fact that he can no longer take care of himself, the fact that he cannot exercise any income generating activities particularly because he has no identity document, the MICT has an obligation to take care of an acquitted person until he can be reunited with his family. The harm done to us is so immense that some of its aspects might remain irreparable. The United

Nations should therefore present excuses to the acquitted persons, do all it can to get them rehabilitated and reintegrated into society without forgetting to pay reparation. The Appeal Chamber's Decision on Ntagerura's Motion to appeal the president's decision of 31 March 2008 and the decision of Trial Chamber III of 15 May 2008 states clearly that the Tribunal has a duty to ensure the welfare of the acquitted person (paragraph 19)¹. So far, we appreciate that the MICT has done what it can to ensure our welfare. In the minutes of the 7455th meeting of the Security Council held on 3 June 2015, it is stated however that the President of MICT said: "Our planning focuses on concrete steps that can promote resettlement and also reduce costs to the international community, in keeping with the Mechanism's commitment to efficiency and cost savings"². We therefore request that the planning in question does not get implemented at the cost of the acquitted persons' welfare. In this line of thought, we request that the acquitted persons under MICT's care be considered as persons who are completely free and be accommodated adequately.

2- Obligation to reunite us with our families.

We were forcefully separated from our families. Our families reside today in Western countries where they have obtained nationality or refugee status. Our reintegration into society begins logically by our families. In general, we are people of advanced age. We need to be taken back into our families. It is the only sensible place where we can be taken care of adequately. Once again, the UN Tribunal got us arrested on wrong premises. The United Nations, hereby represented by the MICT, has an obligation to do whatever it takes to reunite us with our families. When countries harboring families of the acquitted persons respond negatively or drag their feet, the Tribunal or the UN should stand up, go back to see them and negotiate vigorously and convincingly so as to bring them to understand that the person seeking relocation has all the necessary merits to enter the said country and that international legal instruments encourage countries to welcome him. Indeed, the ICTR Trial Chamber III held that States have to cooperate with the Tribunal by complying not only with orders included in sentencing judgements, but also with orders in judgements of acquittal namely in facilitating reunification of the acquitted with his family³. We note, in this regard, that ICTR delegates visited France and Belgium as western countries where many acquitted persons' families reside and held discussions with the relevant authorities within those countries. However, Canada has never been visited in spite of the fact that there are two acquitted persons whose families live there and have even acquired Canadian nationality.

At the ICTR-MICT joint meeting held on 17 December 2014 with the residents of the safe house, we were told that the ICTR Registrar, Mr Bongani Majola, met French authorities who told him that they were willing to reconsider requests for relocation. At the same meeting, reference was made to the speech on immigration that President Francois Hollande delivered on 15 December 2014 stating that denying family reunification to a French citizen intending to get reunited with his/her legal spouse would be unbearable as well as contrary to principles of European law and even to principles of international law. It was then suggested to both

¹ *In Re. André Ntagerura*, Case No. ICTR-99-46-A28, *Decision on Motion to appeal the president's decision of 31 March 2008 and the decision of Trial Chamber III of 15 May 2008*, 18 November 2008, paragraph 19

² PV of the 7455th meeting of the Security Council held on 3 June 2015, Intervention of the President of MICT, Judge Meron, P.5/31-6/31 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7455

³ *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, *Decision on appropriate remedy*, 31 January 2007, paragraph 78.

ICTR and MICT Registrars to get again in touch with French authorities and see if those two developments meant that France was ready to allow reunification with families in that country. The suggestion was well received. Since then, however, we never heard that anything was done to that end.

All the UN needs to do is present strong legal arguments in favor of family reunification and remind those UN member states that they have ratified international agreements or conventions that consecrate the sanctity of family. One of them is the International Covenant on Civil and Political Rights which states that family is the natural and fundamental element of society and has a right to be protected by society and the state (Art 23, 1).

3- Our reasons for not returning to Rwanda and bringing the UNHCR to provide us with international protection.

Through the Rwanda Minister of Justice⁴, the Rwanda Government stated that the acquitted persons have nothing to fear; that they can go back to Rwanda and acquire travel and identity papers; the ICTR/MICT authorities who have met with the Rwandan government officials tell us that personal property left behind in Rwanda will be recovered but the letter of the Minister dated 14.04.2014 does not specifically commit the Rwanda government to that promise. During meetings with Mr. Sam Akorimo, the Head of MICT Registry (Arusha Branch) suggested that we should consider going to live in Rwanda. The responses he got were a clear refusal to go to Rwanda because this country has no respect at all for human rights. It is common knowledge that violation of human rights by the RPF government since October 1990 until today remains a subject of great concern. Annual reports by Amnesty International, Human Rights Watch and the US State Department are a credible testimony to this assertion. As we write now, Rwandans are disappearing, imprisoned or killed simply because they have dared criticize President Kagame or have indicated that an alternative political party can exist and eventually compete democratically for the highest office in the land⁵. We also refer to the United Kingdom judgement in the case of *the Government of the Republic of Rwanda v. Vincent Brown et al.*⁶, where it is especially pointed out that:

182. There is much evidence of torture and Table C gives some of the detail. Once again the victims are in and outside Rwanda, sometimes in Uganda and in other neighbouring countries. Sometimes torture at, for example, the Rwandan military intelligence camps such as Kami and Kinyinya is raised as an issue in the courts, but the courts do not appear to follow this up. There is a suggestion that there are other secret detention centres where torture takes place.

⁴ Letter no.007/MO/conf/2014 dated 23 April 2014 addressed by the Rwanda Minister of Justice to the ICTR Registrar.

⁵ Sentencing of General Rusagara and Lt Colonel Byabagamba to heavy prison terms on 31 March 2016; imprisonment of Victoire Ingabire for having dared run for the post of President of Rwanda, a politically motivated trial based on fabricated evidence and confessions from co-accused who had been held in detention at Camp Kami where torture is alleged to have been used to coerce them into confession.

⁶ In the Westminster Magistrates' Court, *between the government of the Republic of Rwanda*, requesting state - v - *Vincent Brown (aka Vincent Bajinya), Charles Munyazeza, Emmanuel Nteziryayo, Celestin Ugirashebuja and Celestin Mutabaruka*, requested persons, 22 December 2015, <https://www.judiciary.gov.uk/wp-content/uploads/2015/12/rwandan-five-judgment-21-12-15-final-version.pdf>.

218. *From the evidence I heard and read I have no doubt at all that the overall picture of Rwanda is of an authoritarian repressive state that is not less so than it was and is probably more so than in 2008-9, a state that is stifling opposition in a number of ways. There is evidence that the state is suspected of threatening and killing those it considers to be its opponents or they simply disappear at home and abroad. There is evidence that suspects can be tortured in secret camps where basic human rights are ignored.*

553. *In 2008 and 2009 the District Judge and the High Court agreed that both prosecution and defense witnesses had been attacked and killed. Diana Ellis QC in her closing submissions at Page 6, Paragraph 11 quotes from the ICTR Appeals Chamber decision in the case of Kanyarukiga. "26. The Appeals Chamber considers that there was sufficient information before the Trial Chamber of harassment of witnesses testifying in Rwanda and that witnesses who have given evidence before the Tribunal experienced threats, torture, arrests and detentions, and, in some instances, were killed". That was a case where the ICTR refused to transfer the defendant.*

567. *Nerad also reminded the court of the 2012 Amnesty report which found that the Rwandan military is operating a series of hidden detention facilities where it holds people for months without bringing charges. The report documents torture. In 2013 Mr Ntaganda, an opposition party leader was beaten, starved and denied medical care while he was serving four years for "disturbing national peace, divisionism and organization of illegal demonstration". (Paragraph 33).*

593. *I accept that a number of witnesses in this case have told investigators that they are too frightened to give evidence in Rwanda. I find that they are frightened and are expressing their genuinely held views. Many of the witnesses are from rural backgrounds and are of relatively low educational attainment. The reputation of the GoR at home and abroad as I have found in Paragraphs 221-223 cannot be of assistance either but Witteveen's evidence of his experience, which I accept, is that the witnesses are more frightened of local repercussions rather than national ones although both are feared. The witnesses' fears vary from a concern that they will be killed or imprisoned and tortured to a fear of losing their benefits as genocide survivors. Some fear they may be charged with genocide minimization type offences or prosecuted for offences arising out of the genocide.*

We further note with great concern that Rwanda recently withdrew from the African Court of Human Rights its declaration consenting to the Court's jurisdiction over individuals⁷. Additionally, we wish to underline that our spouses and children can't dare return to Rwanda because they are either refugees in western countries or have acquired nationality in the said countries following a refugee status they had been granted due to persecution they could face in Rwanda. Under such circumstances, we can't envisage family life in Rwanda.

⁷ 29 February 2016. See Ministry of Justice of Republic of Rwanda Press Release, available at: http://www.minijust.gov.rw/fileadmin/Documents/Photo_News_2016/Clarification2.pdf.

For those reasons mentioned above, notably, our response to the offer of the government of Rwanda was and still remains that the Kigali government is not sincere and that we can't return to our country as long as Rwanda is and remains an authoritarian repressive state. That's also why several of us applied to the UNHCR to provide them with protection. Indeed, requests covered with a note verbale from the ICTR were sent to the UNHCR in the cases of Andre Ntagerura, Gratien Kabiligi and Protais Zigiranyirazo. This brought the UNHCR to write to countries where the applicants wanted to go recommending the three acquitted persons to be given asylum. However, the recommendations were not acted upon accordingly by concerned countries. Andre Ntagerura wrote a letter to UNHCR on 08 December 2014 and requested the Tribunal to send it covered with a Note Verbale. Up until today, he has not been informed whether it was sent. In the letter, he reminded the UNHCR that what is urgently needed by the acquitted person is the grant of UNHCR protection. Another application by Prosper Mugiraneza covered with a note verbale from the ICTR was also sent to the UNHCR. It is obvious that accompanying requests from acquitted persons with a note verbale has a potential to stimulate the UNHCR to react. But we have been confounded by MICT's attitude since January 2015. Some of us wrote letters to the UNHCR seeking its protection. When they asked the MICT Arusha branch to cover their letter with a note verbal, the response was icy silence. They had no choice but to personally send the letters.

We note, however that there has been no response from UNHCR until today despite the fact that the acquitted persons are not concerned by the exclusion clause. This was indeed the conclusion reached by the **"Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law"** held in *Arusha, Tanzania, on 11-13 April 2011*⁸. This meeting was organized by UNHCR and ICTR and was attended by experts from these two UN institutions, along with others experts from 24 countries, drawn from governments, NGOs, academia and international organizations. Among those attending were delegates from the Office of the High Commissioner for Human Rights (OHCHR), the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Committee of the Red Cross (ICRC), the Special Tribunal for Lebanon and the African Court on Human and Peoples' Rights. They concluded that when a person is indicted by an international criminal tribunal or court and is subsequently acquitted on substantive (rather than procedural) grounds, following an examination of the evidence supporting the charges, the indictment can no longer be relied upon to support a finding of "serious reasons for considering" that the person has committed the crimes for which he or she was charged (paragraph 41 of the conclusions). The meeting also concluded that in practical terms, the issue of relocating acquitted persons who are unable to return to their country of origin due to threats of death, torture or other serious harm is a real problem. It was agreed that durable solutions need to be found for those acquitted by an international criminal tribunal or court and who are unable to return to their country of origin. The meeting underlined that this is a fundamental expression of the rule of law and essential feature of the international criminal justice system. Concern was accordingly expressed about the consequences of failing to find such solutions (paragraph 45 of the conclusions).

⁸ <http://www.unhcr.org/4e16d0a59.pdf>

Thus, we urge the MICT to sensitize the UNHCR to find an adequate and sustainable solution for those among us who already applied or will apply for international protection. This is what MICT ought to help us with.

4- Relocation strategic plan.

We were informed since 2014 that a relocation strategic plan was being drafted. Eventually, we came to know in 2015 that a strategy had been put together and adopted. This strategy concerns us and our future. We have requested to be given a copy of this precious document and no answer has been so far given. We avail ourselves of this opportunity to ask that a copy of the strategy be made available to each one of us. The United Nations is supposed to be a model of transparency and good governance.

In conclusion, the acquitted persons signatory to this letter wish to bring to your attention:

- a- That the MICT should not implement its plan to keep with the commitment to efficiency and cost saving at the detriment of the acquitted persons' welfare;
- b- That the MICT has to do whatever it takes to reunite us with our families. We don't see proactive, bold and sustained action being taken in this regard;
- c- That we can't return to Rwanda as long as it is and remains an authoritarian repressive state;
- d- That the MICT should sensitize the UNHCR to grant us international protection. Such protection would undoubtedly facilitate our acceptance by countries harboring our families;
- e- That we would appreciate being given the relocation strategic plan.

We stand ready to provide further clarifications if need be.

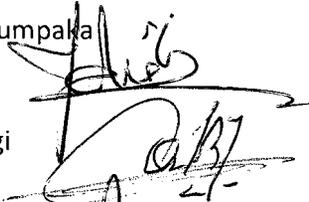
Sincerely yours,

ATTACHMENT:

- **Conclusions of the "Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law".**

The acquitted persons signatories to this letter.

Jerome Bicamumpaka



Gratien Kabiligi



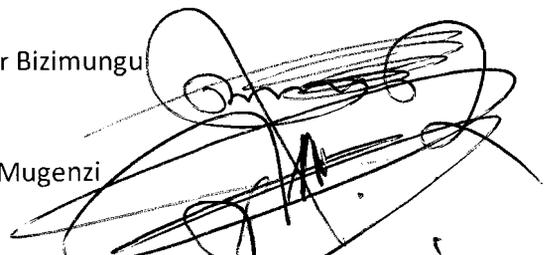
Prosper Mugiraneza



FX Nzuwonemeye



Casimir Bizimungu



Justin Mugenzi



Andre Ntagerura



Protais Zigiranyirazo.



Copy to:

- The President of the UN Security Council, New York,
- H.E. Ban Ki-Moon, UN Secretary General, New York,
- Honorable Judge Theodore Meron, MICT President, The Hague.
- Mr. Sam Akorimo, Head of the MICT Registry, Arusha Branch.
- Mr. Zeid Ra'ad Al Hussein, High Commissioner for Human Rights
- UN Human Rights Council
- African Commission on Human and Peoples' Rights
- Defense Counsels
- Our families.
- Human Rights Watch
- Amnesty International
- International Red Cross.
- The Press.