

THE HIGH COURT OF GASABO LOCATED IN KABUGA THAT TRIES CRIMINAL CASES REGARDING PROVISIONAL INCARCERATION AND RELEASE IN THE FIRST INSTANCE IN THE CASE RPGR0678/10/ Kgl/NM ON THIS DAY OF 06/07/2010 DECIDES THE FOLLOWING:

The prosecution on the High Court of Gasabo

THE DEFENDENT: Carl Peter Erlinder, son of Atwood Erlinder and Jane Lois Bihl, born on April 14, 1948 in Chicago , Illinois , married to Masako Isui, law Professor in Minnesota , USA ;

CHARGES:

1. Denying and downplaying genocide through his publications and conferences. The charge is prescribed and punishable by article 4 of the law No 33 bis/2003 of September 6, 2003 that punishes the crime of genocide, crimes against humanity and war crimes;
2. Spreading rumors that are capable of threatening the security of the Rwandan people. The charge is prescribed and punishable by article 166 of the law No 21/77 of August 18, 1977 establishing the criminal law book;

I. THE NATURE OF THE TRIAL

1. After interrogation by the judicial police and prosecution; an arrest warrant for Carl Peter Erlinder was issued by the prosecutor at the high court of Gasabo;
2. The lead prosecutor at the High Court of Gasabo wrote to the Presiding Judge of the High Court of Gasabo, charging Carl Peter Erlinder, who is being prosecuted for the above mentioned charges, requesting that he be brought in front of the judges;

3. The order of the Presiding judge of June 4, 2010 put the trial on June 4, 2010 ;

II. TRIAL PROCEEDINGS

4. On June 4, 2010, the prosecution represented by Muhumuza Richard, Carl Peter Erlinder assisted by lawyers Mr Gershon Otachi Bw'Omanwa, Mr Kenned Ogeto, Me Kurt P. Kerns, Mr Kazungu Jean Bosco, Mr Gatera Gashabana, Mr Mucyo Donatien, Mr Bzimana Shoshi, Mr Furaha Amida, Mr Buhuru Pierre Celestin and Byukusenge Elisee as a translator.

4. When Carl Peter Erlinder confirmed his identity the prosecutor was asked to clearly explain in English the conclusions of the criminal investigation. The prosecutor explained that in reference to articles 93 and 94 of the law No 13/2004 of May 17, 2004 relating to trials of criminal cases, modified and completed by the law No 20/2006 of April 22, 2006 he received Carl Peter Erlinder who is accused of denying and downplaying genocide through his publications and his speeches. He is also accused of spreading rumors that are capable of threatening the security of the Rwandan people;

5. Upon Mr Kazungu's request, Carl Peter Erlinder was allowed to sit down because he was not feeling well;

6. The prosecutor added that there is strong evidence against Carl Peter Erlinder especially through his publications and conferences. For instance, in his article published on February 2, 2009 he said 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*". The fact that Carl Peter Erlinder said that what happened in Rwanda in 1994 were civilians-on- civilians killings is evidence that he denies genocide. Carl Peter Erlinder asserted that the killings were triggered by the assassination of Rwandan and Burundian Presidents. However, it is well known that the genocide was planned by the Habyarimana regime and was executed by Sindikubwabo and Kambanda. Carl Peter Erlinder continues to spread rumors without any proof that Rwandan officials are to blame for the assassination of the Presidents of Rwanda and Burundi . All these charges, in reference to article 166 CPLII are capable of threatening security and stability of Rwanda . They also can instigate riots and civil disobediences;

7. Even though the genocide was planned by the Interahamwe during the MRND regime by putting up a list of Tutsis and Hutus to be killed, during the Military I Trial at the ICTR, Carl Peter Erlinder denied and downplayed genocide. He managed to prove that the genocide has not been planned nor executed by the military officials he was representing and showed that his clients were mostly preoccupied by the country's

sovereignty. The prosecutor stressed that Carl Peter Erlinder had no reason to deny or downplay genocide adding that he continued to do so through out many other trials;

8. The prosecutor pointed out the article by Carl Peter Erlinder titled: "*Rwanda: no conspiracy, no genocide planning...no genocide?*" where he said that "*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*". Carl Peter Erlinder attested that what happened in Rwanda in 1994 were civilians-on- civilians killings even though he is the lead defense counsel for several of the accused at the ICTR in Arusha;

9. The prosecutor said that in a civil lawsuit filed at the Oklahoma City Federal court, Carl Peter Erlinder attests that he recognizes the killings of Hutus and Tutsis by RPF soldiers. According to Carl Peter Erlinder, such killings which have not been instigated but the regime that was in place before the genocide are comparable to the killings that took place in Burundi and that the triggering event for the killings in Rwanda is the assassination of the second or third Hutu President. Carl Peter Erlinder continued to downplay genocide against the Tutsis by asserting that it is that tragedy that some people call genocide, the same genocide of which there is evidence at the ICTR that the genocide was planned and executed by the Habyarimana regime;

10. The prosecutor also showed that, in his publications, Carl Peter Erlinder said that there are some people who call genocide the tragedy that engulfed Rwanda . He therefore denies and downplays genocide against the Tutsis. He also believes that these terminologies are used by Rwandan officials as a pretext. Usually, in his publications, there is no distinction between genocide and civil war. During the Military I trial at the ICTR he wrote that the killings of Tutsis that took place in Rwanda in 1994 are not genocide and that this is a tool Rwandan officials use to silence people who would like to challenge Kagame in presidential elections of 2010;

11. In his press release of May 6, 2010 , Carl Peter Erlinder said that among the UN classified documents there are documents that prove that Kagame is the key trigger of the genocide and war crimes in Eastern DRC . Carl Peter Erlinder denies history by trying to deny genocide, a word he usually put in quotation marks even though this word has been accepted at the International level. During Karemera Edouard trial at the ICTR, people were reminded that genocide against the Tutsis is not disputable. However, Carl Peter Erlinder seems to not listen and continues to allege that the Rwandan President committed genocide. On April 6, 2006 Carl Peter Erlinder sent an open letter to Canadian Prime Minister Harper titled: "*Regarding state visit of current President of Rwanda* ". In order to stir up civil disobedience Carl Peter Erlinder attested that "*Kagame regime is the most repressive military dictatorship in Africa* ". This is punishable by article 166 of the law No 21/77 of August 18, 1977 establishing the criminal law book.

12. With regard to Carl Peter Erlinder's diverse publications, in reference to articles 93 and 94 of the law No 13/2004 of May 17, 2004 relating to trials of criminal cases, modified and completed by the law No 20/2006 of April 22, 2006, the prosecution asked

the court to focus on strong evidence with regard to his publications then temporarily detain him since investigation continues. The prosecution said that this is the only way to ensure availability of the accused each time we need him. Temporary detention will also prevent the accused from escaping justice, he added.

13. With regard to all the charges the prosecutor leveled, Carl Peter Erlinder started by pleading not guilty on all of them. He said that in all his writings he did not intend to tarnish Rwanda 's image. He asked the court to carefully evaluate his publications all of which are written in English. He added that should anyone translate them into other languages such as French or Kinyarwanda no crime would be found. Instead, the prosecution must prove that his publications constitute any crime because all of them are protected by free speech guarantees under the US constitution and the laws of the commonwealth of which Rwanda is a member. Among the charges against Carl Peter Erlinder, he denied any intent to destabilize Rwanda adding that he is ready to explain;

14. Carl Peter Erlinder said that except the leadership of the RPF, no other person deny his publications, and recalled that he had come to Rwanda in 2004 and returned in 2010 to assist a presidential candidate in his legal troubles. His colleagues tried to deter him from coming arguing that he could be arrested, but as there was talk about democratic progress in Rwanda, he decide to come anyway.. He was arrested when he did nothing in Rwanda or published anything in French or Kinyarwanda. However, he has confidence in the decision to be taken by the court since he noticed that many things have changed in Rwanda . He does not complain against anyone and appreciate the assistance he is receiving.

15. Carl Peter Erlinder was concerned by the way he will be treated in prison as an old white man. He promised to the court that he will comply with all requirements. The incarceration in Rwanda has strongly destabilized him and he exhorted the court to release him so he can travel to U.S. for medical treatment.

16. Carl Peter Erlinder said that there was genocide in Rwanda , but he knew nothing about its preparation because he was not there. This was revealed at the ICTR during the trial called "Military" so he can not respond if there was the time for preparation of the genocide.

17. In defense of Carl Peter Erlinder, Maitre Jean Bosco Kazungu first thanked the court for taking the time to listen to the accused and then give the floor to the defense. He said that the defense has not given the file of the case and requested the court to grant bail to the accused under Article 87 of Law No. 13/2004 of 17 May 2004 related to criminal trials as amended and supplemented by Law No. 20/2006 of 22 April 2006, the prosecutor may well continue its investigation while our client is not incarcerated, and if necessary it will be subject to certain restrictions under Article 90 of this law. We must bear in mind that he spent two days in hospital and he continues to show signs of physical weakness and because of his advanced age. He concluded by asking the court to refer to the decision on Ms. Ingabire Victoire.

18. Maitre Kurt P. Kerns said his client has committed no crime because nothing has been published when he was in Rwanda ; therefore he broke no law in Rwanda . He said that there was a misunderstanding that Erlinder has denied or downplayed the genocide. He added that putting the word between quotation marks or use it as a major massacre, does not mean that there has no genocide against the Tutsi. If he has said that, he would not come to Rwanda .

19. Maitre Kurt P. Kerns said that the prosecutor's accusations are hearsay and that his client will do no harm to anyone if he was released. He asked the court to give the accused the same opportunity as those granted to the one he had come to defend.

20. After having welcomed the freedom that prevails in Rwanda , Maitre. Kennedy Ogetto said his client was arrested for his writings published in his capacity as a scholar and that his client respect Rwanda and Rwandans. Therefore he was pained to acknowledge that he was accused to deny the genocide because he is familiar with his writings but rather it is the prosecutor who takes some passages out of context. He never denied the preparation and execution of genocide as stated in the Military I trial at the ICTR ruling on February 9, 2009 , the judges concluded that the military were not guilty of preparing the genocide. He did not contest the decision of the court as the trial was not about preparation and execution of genocide.

21. Maitre Kennedy Ogetto said that the letter Peter Erlinder addressed to Canadian Prime Minister dated 6 April 2006 where he said that President Kagame's regime is a dictatorship in Africa ; the prosecutor lied, because in the following paragraph, it is clear that what Peter wrote was quoted from Economics Magazine. In this case, it is not a crime since he cited the Magazine that he is being accused doesn't match with what he meant. This was written by Karl Del Pontes, former prosecutor of the ICTR, Michel H.

which was one of the ICTR investigators. So Peter has actually cited his sources. One wonders why the Attorney Peter Erlinder is accused here. It is not for his publications, but rather because he has defended his clients at the ICTR and has opened a case involving the Rwandan leader.

22. Maitre. Kennedy Ogetto concluded by requesting the court to reject all the prosecutor's demands because he has not presented serious reasons on why Peter Erlinder should be kept in detention. He asserted that the prosecutor does not show investigations but wants to punish his client because he is on Rwandan soil.

23. Maitre Gershom Otachi Bw'Omanwa first thanked the courts of Rwanda , and continued by requesting that Peter Erlinder be released because the prosecutor has finished questioning him about the crimes he allegedly committed on the basis of its publications on internet. He also said that the problem lies in misinterpretation and could give some clarification as a free man, at the same time; he would be able to continue to handle the pending case at ICTR

24. The prosecutor said that the arrest and imprisonment of Peter Carl Erlinder has nothing to do with the fact that he came to Rwanda as counsel for his client or as a lawyer at the ICTR, he was arrested instead because of his crimes and this the reason of his appearance in the court. Regarding the fact that lawyers do not have the file, the prosecutor said that they could ask it at the court. The court reminded him that they have not demonstrated that this was a problem for them.

25. The prosecutor responded that not agreeing with the prosecutor is normal. He asked the court to consider appeals of the prosecutor based on laws and take appropriate decisions if the health of Peter Erlinder can be deteriorated while in prison. The prosecutor recalled that he had no medical expertise, but if it is proved that the accused may have a health problem in prison, the prosecutor would not oppose his release.

26. Maitre Kazungu, on behalf of his colleagues recalled that Erlinder was admitted to the hospital and that the prosecutor has the duty to assist the defense to do explain to the court the seriousness of his illness since there is a bill from King Faisal Hospital showing that he has been in the hospital and the medical examinations that had been performed. He concluded by asking the court to take into account the relatively fragile health of Erlinder, and grant him bail while investigations continue.

27. The prosecutor confirmed that Carl Peter Erlinder was admitted to hospital twice but doctors have not established that his detention could be the source of his health problems and recalled that even the prisoners receive necessary medical care.

28. Maitre Kurt P. Kens said there was no medical reports attesting the illness of Peter Erlinder but it is visible to the naked eye that it is not healthy but that a medical certificate may be produced if necessary.

29. The trial ended here, and it was announced that the court decision will be released on June 7, 2010 at 4:30 PM local time.

The Court Position

30. The fact that Carl Peter Erlinder rejects the serious reasons used to charge him with genocide denial and downplaying genocide, in addition to him spreading rumors capable of endangering the security of the Rwandan people, he doesn't deny a variety of speeches and writings that he made abroad, even though he claims that because his writings were in English they may be misinterpreted by the prosecution to mean what he didn't mean, and that he never said anything wrong about Rwanda.

31. The serious reasons why he is suspected of denying and downplaying genocide in his writing are where he said: *"In early 2008, Spain indicted 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."* In these words, Carl Peter Erlinder first alleges that it is the President of Rwanda Paul Kagame who killed former President Habyarimana Juvenal and former President of Burundi Ntaryamira Cyprien in 1994. Second he goes on to say that that incident is what triggered the genocide thus claiming that he was the one who made genocide possible.

32. In addition, Carl Peter Erlinder called the 1994 genocide against the Tutsis "*civilians-on- civilians killings in Rwanda* " where he compared the genocide to fighting between

two populations. He also added that the genocide was not planned and executed using these following article: "*Rwanda: no conspiracy, no genocide planning...no genocide?*" adding that "*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*". This statement confirms earlier statements where Carl Peter Erlinder attests that the current President of the Republic of Rwanda triggered what he calls civilians killings, and that he should therefore answer for his acts at the ICTR. On page 4 Carl Peter Erlinder attests that crimes were committed on both sides: "*crimes committed by the two sides*" and publicly admits that there were "*two genocides*", which confirms that Carl Peter Erlinder denies genocide given that there cannot be two genocides at the same time.

He used these words: "*Rwanda: no conspiracy, no genocide planning...no genocide?.*" saying: "*Had the US impunity policy not have been in place, Kagame might well have spent the last decade awaiting trial at ICTR, rather than getting rich from the resources of the Congo and the blood of millions of Africa.*". This confirms what was said earlier where he affirmed that it is the current President of the Rwandan Republic Kagame who is responsible for what he calls "*Civilian killings.*" He would thus be the one to appear in front of ICTR to answer to these charges. In this written statement on page 4 Carl Peter Erlinder also says that these heinous crimes were committed by both sides of the conflict: "*Crimes committed by the two side.*" He even goes on to say that there were two genocides, "*two genocides*". It's crystal clear here that he denies the genocide, since there couldn't have possibly been two of them and both still be called genocides.

33. Continuing his genocide denial, Carl Peter Erlinder also brings up charges him and his colleagues have leveled against the President of Rwanda. He reiterates that it was President Kagame again who was responsible for the Rwandan genocide because it occurred as a direct consequence of the assassination of Habyalimana Juvenal and Ntaryamira Cyprien who were both killed by him. Here he calls the genocide "*Civilian massacres*". He continues his writing with an article entitled; "*Rwanda ; perpetrators of genocide jailed*" calling the genocide: "*The Rwandan tragedy...Some call genocide*". In this writing he concludes that it's the Rwandan President Paul Kagame who should be charged with those crimes that he doesn't call genocide himself because they stem from what he calls "*a product of imperialism*" which subsequently was followed by the US and UK shielding him from prosecution. In other writings he uses words such as; "*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.*" Here he denies the genocide and talks only of civilian killings. He then talks about what triggered those killings, which amounts to genocide denial (defense).

In his writings he called: "*Genocide war crime cover-ups and UN falsification of history of suppressed UN prosecutor memoirs and the real politics of UN International Criminal*

Tribunal for Rwanda" even though he tries to show sources of what he's saying, but he keeps inserting what the prosecution calls personal comments and individual position. On page 36 of that writing for example he says:"and if the architects of genocide on trial in 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 words are Carl Peter Erlinder himself. They are not court words. The writings include actions that are consistent with the dispositions of and are punished by article 4 paragraph 1 of law # 33bis/2003 of 09/06/2003 that punishes the crime of Genocide, crime against humanity and war crimes. That law stipulates that: "will be handed a punishment of between 10 and 20 years of prison that who will have exhibited in public be it in speech, in writing, with pictures or any other form of expression showing that he denies the genocide that occurred, downplays it, tried to explain or to affirm that it was justified or that who will have concealed or altered evidence of such."

35. In his writings, Carl Peter Erlinder is suspected of discrediting the ruling regime to the Rwandan citizens where he wrote: "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;" He contends that it's an asset President Paul Kagame uses to silence those who wish to run for the office of President of Republic of Rwanda. On page 42 he claims that it is the country's top officials who are being accused of genocide thus exonerating those who committed it. He also makes that claims in the lawsuit him and his colleagues filed in court calling it "Complaint with Jury Demand in the United State District Court for the western District of Oklahoma" on the behalf of Mrs. Habyarimana Juvenal and Mrs. Ntaryamira Cyprien. In that lawsuit, they were accusing the country's top officials, slandering the country officials saying 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". They also say that failure to prosecute them is sheer injustice and impunity.

36. In that plan to discredit Rwandan authorities to Rwandan citizens, Carl Peter Erlinder in his letter he himself wrote to Prime Minister Harper (Canada) that he called: "Regarding state visit of current President of Rwanda", on 04/06/2006, claimed that: "*Kagame Regime is the most repressive military dictatorship in Africa*" and published it on internet and in every other public place. Its amounts to discrediting the Rwandan authorities to the people of Rwanda , especially when you publish it on internet and every other public place. That kind of practice is punished by article 166 of organic law # 21/77 of 08/18/1977 creating criminal law book. That article stipulates that: "Anybody, who through his speeches made in meetings or in public gatherings, through all kinds of printed material, pictures or signs of all kinds, hanging, passed on as handouts, bought or sold or simply made accessible to the public, intentionally spreading rumors to leading or

attempting to lead people into disobedience discrediting the country's authorities, triggering or attempting to trigger riot among the people mounting one against the other, spreading chaos among the people to cause insecurity in the Republic, will be given a pain ranging between two and ten years and a monetary fine ranging between two thousand and 100 thousands, or just one of these pains so long as it is not in conflict with other more stringent pains given by other laws in this criminal law book.

37. According to the articles of the law described above, actions punished by law identified in the crimes Carl Peter Erlinder is suspected to have committed, for which incriminating reasons have been described, thus as stipulated by article 93 of law 13/2004 of 05/17/2004 related to criminal trials as written and completed by law # 20/2006 of 04/22/2006 that: " A defendant cannot be incarcerated before the actual trial unless there are serious reasons incriminating him with the charges he is being accused of and the crime he is charged with is by law punished with a pain of at least 2 years of prison. Of the two crimes he is suspected to have committed the lightest pain given by law is two years of prison.

38. Carl Peter Erlinder and his his defense team has requested to stand trial without being detained, especially that he is sick according to article 87 of law # 13/2004 of 05/17/2004 related to criminal trials as amended and completed by law #20/2006 of 04/22/2006 stipulating that: "The defendant is prosecuted without being detained. However, in the interest of trial file preparation or for reason of his security or of national security, he can be required to meet some conditions, or in some instances to be provisionally incarcerated according to the law...".

39. Because Carl Peter Erlinder got sick and was examined by a medical doctor as stated in his "Hospital Discharge Form" given to him on 06/03/2010 at King Faysal Hospital, Kigali, even though the doctor was unable to find any link between his illness and the conditions of his arrest and his detention and has not able to show that his incarceration could results in unexpected consequences on his health, especially that nothing prevents him from seeking medical treatment anytime it would be necessary. As to the fact that he is in his old age that is not a reason in his favor to say that his incarceration would be contrary to article 93 of law # 20/2006 of 04/22/2006 mentioned above and even of article 94 of same law stipulating that: "*A defendant with serious reasons incriminating him with a crime, can be incarcerated before trial even what he is being charged of appears to be a crime to which the law reserves a prison pain of less than 2 years, but greater than 2 years, if they are afraid that he may run away if his full identity is not know or is suspect, or if there are unique serious reasons that warrant his*

detention before the trial because his non detention could cause insecurity in the country.

- a. If provisional detention seems to be the only viable option to have him prosecuted without tampering with evidence or threatens prosecution witnesses and his victims or to avoid deal cutting between those being prosecuted and their accomplices.*
- b. If such detention is the only way to protect the defendant, or the only way the justice system can get hold of him every time they need him, or the only way to insure effective cessation of the crime or to avoid relapse.*
- c. If depending on the gravity of the crime, the way it was committed and the consequences it has generated, if it has resulted in unusual chaos or insecurity so that provisional detention becomes the only way to put an end to it." As it was stipulated in this article it is a cause of big concern for the prosecution especially that the defendant does not reside in Rwanda and has requested to go back to the U.S.A. . It is a concern to release him on bail because his release would stifle investigations of crimes like these that have dire consequences for Rwanda and the Rwandan people.*

IV. The Court Decision

40. The court have decided that the reasons the prosecution considers serious that make Carl Peter Erlinder suspected of the crimes of genocide denial and downplaying genocide, in addition to spreading rumors capable of causing insecurity of Rwandans are founded.
41. Has decided that Carl Peter Erlinder be provisionally detained for 30 days in prison as the reasons have been presented for that.

42. Reminds that he has five day to appeal this court decision

Thus we've made the decision and the decision was read in public today 06/07/2010 at the Superior Court of Gasabo, made of the trial judge assisted by the secretary

The judge

Mbishibishi Maurice

Signed

The Secretary

Nkuriyingoma Jean Damascene

Signed