

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

INGABIRE VICTOIRE UMUHOZA

V.

REPUBLIC OF RWANDA

APPLICATION 003/2014

ORDER



The Court composed of: Augustino S. L. RAMADHANI; President, Elsie N. THOMPSON, Vice-President; Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSÉ, Ben KIOKO, Rafâa BEN ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE – Judges; and Robert ENO - Registrar.

In the matter of:

Ingabire Victoire UMUHOZA

represented by:

- i. Mr. Gatera Gashabana – Counsel
- ii. Dr. Caroline Buisman – Counsel

V.

The Republic Of Rwanda

represented by:

Mr. Rubango Kayihura Epimague, Senior State Attorney, Republic of Rwanda.

After deliberation,

Delivers the following Order:

I. Subject of the Application

1. The Court received, on 3 October 2014, an Application by Ingabire Victoire Umuhoza, (hereinafter referred to as “the Applicant”), instituting proceedings against the Republic of Rwanda (hereinafter referred to as “the Respondent”).
2. The Applicant is a Rwandan citizen and leader of the opposition party *Forces Democratiques Unifiées*, (FDU Inkingi).

3. The Application is brought against the Attorney General of the Republic of Rwanda as the representative of the Respondent.
4. The Applicant prays the Court for the following orders and remedies;
 - i) Find violations of Articles 1, 7, 10 and 11, 18 and 19 of the Universal Declaration of Human Rights; Articles 7, 3, 9 and 15 of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"); and Articles 7, 14, 15, 18 and 19 of the International Covenant on Civil and Political Rights.
 - ii) Repeal with retroactive effect sections 116 and 463 of Organic Law N° 01/2012 of 2 May 2012 relating to the Penal Code as well as that of Law N° 84/2013 of 28 October 2013 relating to the punishment of the crimes of the ideology of the Genocide;
 - iii) Review of the Case;
 - iv) Annul all the decisions that had been taken since the preliminary investigation up till the pronouncement of the last judgment;
 - v) Release on parole; and
 - vi) Grant her costs and reparations.

II. Summary of the facts

5. The Applicant contends that when the genocide in Rwanda started in April 1994, she was in the Netherlands to further her university education in economics and business administration.
6. The Applicant avers that in 2000, she became the Leader of a Political Party known as the "*Rassemblement républicain pour la démocratie au Rwanda*". That Applicant states that she had been a member of the party since 1998.
7. According to the Applicant, sometime later the party merged with two other political parties to form the "*Force démocratique Unifiée*" (FDU) headed by the Applicant.

8. The Applicant contends that in 2010, after spending nearly 17 years abroad, she decided to return to Rwanda to contribute in nation-building, and among her priorities was the registration of the political party, FDU Inkingi.
9. The Applicant adds that she did not attain this objective because as from 10 February 2010, charges were brought against her by the judicial police, the Prosecutor and Courts and Tribunals of the Respondent. The Applicant alleges that she was charged with spreading the ideology of genocide, aiding and abetting terrorism, sectarianism and divisionism, undermining the internal security of a state, spreading rumours which may incite the population against political authorities, establishment of an armed branch of a rebel movement and attempted recourse to terrorism.
10. On 30 October 2012 and 13 December 2013, the Applicant was sentenced to 8 and later 15 years imprisonment by the High Court and the Supreme Court of Rwanda.
11. The Applicant submits that all local remedies have been exhausted.

III. Procedure

12. By a letter dated 3 October 2014, Counsel for the Applicant seised the Court with the Application and by letter dated 19 November 2014, the Registry of the Court served the Application on the Respondent.
13. By a letter dated 6 February 2015, the Registry transmitted the Application to all States Parties to the Protocol, the Chairperson of the African Union Commission (hereinafter referred to as "the AUC") and the Executive Council of the African Union.
14. By a letter dated 23 January 2015, the Respondent filed its Response to the Application and by letter dated 14 April 2015 the Applicant filed her Reply to the Respondent's Response to the Application.

15. By a letter dated 4 January 2016, the Court notified the Parties that the Application had been set down for public hearing on 4 March 2016.
16. By letters dated 10 February 2015, 26 January 2016 and 1 March 2016, Advocate Gatera Gashabana, the representative of the Applicant, wrote to the Court inquiring whether the Applicant could physically attend the public hearing and testify as a witness and whether video conferencing technology could be used to allow the Applicant to follow the proceedings of the Court in the Application. By letters dated 26 January 2016 and 2 March 2016, the Registry of the Court informed the Applicant that the Court did not deem the presence of the Applicant at the public hearing necessary and declined the Applicant's request to be heard as a witness and that it did not have the capacity to facilitate the use of video conferencing technology.
17. By letters dated 29 February 2016 and 1 March 2016, representatives of the Applicant wrote to the Registry of the Court requesting an adjournment of the public hearing. In the letter of 1 March 2016, the representative of the Applicant however requested to be heard on procedural matters.
18. By a letter dated 1 March 2016 received on 2 March 2016, the Respondent notified the Court of its deposition of an instrument of withdrawal of its declaration made under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"). The letter further stated:

"The Republic of Rwanda requests that after deposition of the same, the Court suspends hearings involving the Republic of Rwanda including the case referred above until review is made to the Declaration and the Court is notified in due course."
19. By a letter dated 2 March 2016, the Registry confirmed receipt of the Applicant's letters of 29 February 2016 and 1 March 2016. It informed the Applicant that the public hearing would proceed as scheduled for 4 March 2016 and that the Court did not have the capacity to allow the participation of the Applicant by

video-conferencing technology. It further served on the Applicant the Respondent's letter dated 1 March 2016.

20. By a letter dated 2 March 2016, the Registry confirmed receipt of the Respondent's letter of 1 March 2016. It informed that Respondent that the public hearing would proceed as scheduled for 4 March 2016. It further served on the Respondent the Applicant's letters dated 29 February 2016 and 1 March 2016.
21. By a letter dated 3 March 2016, the Office of Legal Counsel and Directorate of Legal Affairs of the AUC notified the Court of the submission of the Respondent's instrument of withdrawal of its declaration made under Article 34(6) of the Protocol, which was received at the AUC on 29 February 2016.
22. By a letter dated 3 March 2016, the Respondent acknowledged receipt of the Court's letter of 2 March 2016. The Respondent stated that it found the Applicant's reasons to request adjournment of the public hearing compelling. The Respondent further requested to be allowed to be heard on its request of 2 March 2016 to suspend pending cases before the court involving the Respondent.
23. At the public hearing on 4 March 2016, the Applicant was represented by Advocate Gatera Gashabana and Dr. Caroline Buisman. The Respondent did not appear.
24. At the request of the Applicant, the Court heard the representatives of the Applicant on procedural matters in which they requested the Court to take the following measures:
"
 - i. Reject the *amicus curiae* brief submitted by the National Commission for the Fight Against Genocide.
 - ii. Order the Respondent to facilitate access to the Applicant for her representatives.

- iii. Order the Respondent to facilitate access to video conferencing technology for the Applicant to follow the proceedings of the Court on this matter.
 - iv. Order the Respondent to comply with the Court's Order of 7 October 2015 to file pertinent documents."
25. Following the public hearing, on 18 March 2016, the Court issued an Order as follows:
- "
- i. Orders that the Parties file written submissions on the effect of the Respondent's withdrawal of its Declaration made under Article 34(6) of the Protocol, within fifteen (15) days of receipt of this Order.
 - ii. Decides that its ruling on the effect of the Respondent's withdrawal of its Declaration under Article 34(6) of the Protocol shall be handed down at a date to be duly notified to the Parties.
 - iii. Orders the Applicant to file written submissions on the procedural matters stated in paragraph 15 above, within fifteen (15) days of receipt of this Order."
26. By a letter dated 29 March 2016, the Court notified the Parties of the Court's Order of 18 March 2016.
27. By a letter dated 13 April 2016, the Respondent submitted its observations on the Court's Order of 18 March 2016.
28. By a letter dated 15 April and received on 18 April 2016, the Applicant submitted its observations on the Court's Order of 18 March 2016.
29. By a letter dated 4 May 2016, the Registry served the observations of the Respondent on the Court's Order of 18 March 2016 on the Applicant, and requested her to submit her observations if any, within 15 days.

30. By a letter dated 4 May 2016, the Registry served the observations of the Applicant on the Court's Order of 18 March 2016 on the Respondent, and requested the Respondent to submit its observations if any, within 15 days.
31. This Order is with respect to the procedural matters raised by the Applicant as alluded to in paragraph 24 above.

Issue 1: The Applicant's Request to Reject the *amicus curiae* brief submitted by the National Commission for the Fight Against Genocide.

32. At the public hearing, the Applicant made an oral application subsequently supported by written submissions requesting the Court to deny the National Commission for the Fight Against Genocide (hereinafter "NCFAG") *amicus curiae* status and requesting it not to receive their observations.
33. The Applicant contests the neutrality of NCFAG, on the basis that it has no independent status from the Respondent, as it is an official organ responsible to the President whose policies and orientation are determined by the Consultative Council which acts under the orders of the President of the Respondent State.
34. The Applicant further argues that NCFAG is instrumental in implementing genocide laws which are vague and subject to criticism. The Applicant also argues that the Executive Secretary of NCFAG has already expressed public criticism of the Applicant.
35. The Respondent did not submit observations on this issue.
36. In deciding this matter, the Court is guided by Rule 45 of its Rules which provides:

"The Court may, of its own accord, or at the request of a party, or the representatives of the Commission, where applicable, obtain any evidence which in its opinion may provide clarification of the facts of a case. The Court may, inter alia, decide to hear as a witness or expert or in any other capacity any person whose evidence, assertions

or statements it deems likely to assist it in carrying out its task.”(Emphasis added).

37. Rule 45 of the Court’s Rules entitles the Court in its discretion to receive any evidence from any person, which in its view would assist it in the determination of a case.
38. The role of *amicus curiae* in proceedings is to provide the Court with arguments or views which may serve to assist the Court in its consideration of legal issues under consideration by the Court.¹ The determination of whether an entity is entitled to be admitted as *amicus curiae* in a proceeding is a matter of the discretion of the Court. In exercising this discretion, the Court entitled the NCFAG to be admitted as *amicus curiae* in these proceedings on 10 July 2015. Further, on the substance of the admission of the *amicus curiae*, the Court also has the discretion to take what it considers relevant and non-partisan from the *amicus curiae*. Therefore, the ultimate control over who the Court admits as *amicus curiae* and what the Court considers in substance from the *amicus curiae* is the Court itself.
39. It is on this basis that the Court rejects the Applicant’s request and upholds its decision of 10 July 2015 admitting NCFAG as *amicus curiae* in these proceedings.

Issue 2: The Applicant’s Request to Order the Respondent to facilitate access to the Applicant by her Representatives.

40. The Applicant alleges that Respondent has intimidated the Applicant’s representatives by subjecting Advocate Gatera Gashabana to a “full search” when visiting the Applicant in prison, in contravention of the law and regulations relating to the profession of counsel and concept of attorney client privilege. The Applicant states that this is in violation of Article 48, 50 and 54 to 57 of Law

¹ See IACtHR (Judgment) 2 May 2008, Kimel v. Argentina, para. 16

83/2013 dated 11 September 2013 pertaining to the creation, organization and operation of the Rwandan Bar Association.

41. Further, the Applicant argues that co-counsel Dr. Caroline Buisman continues to have difficulties in obtaining a visa to enter the Republic of Rwanda despite her travel to the Republic of Rwanda on many occasions prior to her involvement in the Applicant's case. The Applicant avers that Dr. Caroline Buisman's visa status has continuously remained "pending."
42. The Applicant avers that the restrictions on her representatives frustrate the Applicant's right to file a complaint before the Court and undermine her right to an effective remedy.
43. In support of these allegations, the Applicant has relied on various letters decrying the alleged acts of intimidation that were previously filed with the Court. In the letter of 15 February 2016 written to the President of the Rwandan Bar Association, Advocate Gatera Gashabana, representative of the Applicant, alleges that on a visit to the Applicant on 5 February 2016, the prison department of the Respondent informed him that prior to his visit, all documents in his possession were to be searched, failing which he would not be allowed to see the Respondent.
44. The Respondent did not submit observations on this issue.
45. Rule 28 of the Court's Rules provides that "Every party to a case shall be entitled to be represented or to be assisted by legal counsel and/or by any other person of the party's choice." Further, Rule 32 enjoins States to cooperate with the Court.
46. Rule 28 recognizes the right of Parties in a case before the Court to represent themselves or to be represented by legal counsel of their choice. Rule 32 recognizes the obligation of States to ensure they cooperate with the Court to facilitate proceedings before the Court. From a reading of these two Rules, the Respondent is enjoined to assist the Applicant and her representatives in order to facilitate proceedings before this Court.

47. The Court is of the view that a physical search of the Applicant's representative in conformity with normal security practices to access the prison would not infringe on the rights of the Applicant or that of her representatives. However, any search of the documents of the Applicant's Representative would be in contravention international human rights norms before this Court.

48. In dealing with the question of the search of a lawyer's documents, the European Court of Human Rights in the case of *André and Another v. France* (Application no. 18603/03) held:

"The Court considers that searches and seizures at the premises of a lawyer undoubtedly breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client. Furthermore, the safeguarding of professional secrecy is in particular the corollary of the right of a lawyer's client not to incriminate himself, which presupposes that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the "person charged"

49. In addition to accepted standards under international law, the Court further notes that the Respondent's own national laws namely Articles 50, 54, 56 and 57 of Law 83/2013 dated 11 September 2013 pertaining to the creation, organization and operation of the Rwandan Bar Association, recognize and guarantee the right of lawyers to communicate with detained clients, professional secrecy and provide for procedures of search of an advocates office.

50. The Court therefore holds that the Respondent is under an obligation to take necessary measures to facilitate access to the Applicant by her representatives. Further, that the Respondent should refrain from taking any measures that would infringe on the Applicant's representative's rights to professional secrecy and to communicate freely with the Applicant.

Issue 3: The Applicant's Request to Order the Respondent to facilitate access to video conferencing technology for the Applicant to follow the proceedings of the Court on this matter.

51. The Applicant requests the Court to order the Respondent to make available video conferencing facilities to allow the Applicant to follow proceedings before the Court and provide evidence before the Court. The Applicant argues that the Respondent has video conferencing facilities which have previously been used in the context of proceedings before the International Criminal Tribunal of Rwanda.
52. The Applicant argues that the physical presence of an accused is a basic and common principle of a fair trial and that while the proceedings before the Court are not criminal in nature, they relate to the Applicant's criminal process in national courts of the Respondent, which she alleges were conducted unfairly.
53. The Applicant further argues that preventing her from participating via video-link means that would not address the Court directly and that she would be completely cut off from the proceedings and that this would undermine her right to an effective remedy.
54. The Respondent did not submit observations on this issue.
55. The Court notes that the importance of the personal presence of an Applicant as a procedural requirement is materially distinct from the protection of an Applicant's participatory right. While the presence of an Applicant at proceedings is protected by the right to access to the Court, the participatory right is safeguarded by the right to represent oneself personally or through a legal counsel. In the instant case, the Applicant's participation in proceedings is through her duly appointed representatives.
56. The Court further notes that pursuant to Rule 27(1), the procedure before the Court shall consist of written, and if necessary, oral proceedings. Further, pursuant to Rule 45, the Court may call witnesses if it deems that they are likely to assist it in carrying out its task. It is therefore up to the discretion of the Court to determine whether it shall hold oral proceedings and whether at those

proceedings it shall choose to hear witnesses. The Court recalls its decision of 26 January 2016 in which it did not deem the presence of the Applicant necessary and rejected the Applicant's request to appear before the Court as a witness.

57. The Court also notes that proceedings before it are guided by its Rules and its Rules currently do not provide for the modalities of taking of evidence by use of video conferencing technology. The modalities of taking of evidence by video conferencing technology would require the installation of necessary equipment and software, the deployment of Registry staff to the witness' location and conclusion of cooperation agreements between the Court and the state in which the witness is located. To this end, the Court recalls its decision of 2 March 2016 in which it informed the representative of the Applicant that the Court did not have the capacity to facilitate the participation of the Applicant in proceedings by video conferencing technology.
58. In the absence of Rules guiding the taking of evidence by video conferencing technology, the Court holds that it cannot compel the Respondent to provide access to video conferencing technology to allow the Applicant participate or follow proceedings before the Court and declines the Applicant's request.

Issue 4: Applicant's Request to Order the Respondent to comply with the Court's Decision of 7 October 2015 to file pertinent documents.

59. The Applicant requests the Court to order the Respondent to comply with the Court's Decision of 7 October 2015 to file national laws, charge sheets and proceedings from the national courts related to the cases the Applicant was charged with before the national courts of the Respondent. The Applicant prays that in the event the Respondent fails to comply with the Court's Decision, the Court attach all legal consequences it deems necessary.
60. The Respondent did not submit observations on this issue. The Court however recalls that in response to the Court's Decision of 7 October 2015, the Respondent on 23 December 2015 filed observations in which it expressed

difficulties in complying with the Court's decision. The Respondent argued that the materials requested by the Court were not in its possession, but were with the Applicant and the Supreme Court of Rwanda and that it had no automatic right to possession of the materials requested.

61. The Respondent further argued that in complying with the Court's request, the Respondent would have to file an Application to the Supreme Court of Rwanda based on an Order of the Court and would have to prove why it would require such materials.
62. The Respondent contended that it is the Applicant who has relied on the materials and that pursuant to Rule 34(1), it is incumbent on the Applicant to file with the Court all evidence intended to be relied on.
63. The Respondent further contended that even if the Supreme Court of Rwanda ordered the Respondent be given access to make copies of the materials, the cost would be prohibitive considering the volume of those documents. The Respondent averred that it was not sufficiently resourced and equipped to be able to foot the bills of the Applicant or those of the Court.
64. In determining this issue, the Court is guided by Rule 41 of its Rules which states:

“The Court may, before the commencement of or during the course of the proceedings, call upon the parties to file any pertinent document or to provide any relevant explanation. The Court shall formally note any refusal to comply.”
65. The above Rule entitles the Court to request from any party any document which in its view it deems as pertinent.
66. By the Respondent's own admission, the materials sought are in the exclusive possession of the Supreme Court of Rwanda. The Court is of the view that the materials sought are official state documents which are in the primary custody of the Respondent. These materials are public documents or part of national court proceedings which should be public in nature.

67. The Court finds the reasons adduced by the Respondent to explain the non-compliance with its Decision of 7 October 2015 insufficient. The Court similarly finds no prejudice shall be occasioned to the Respondent in filing these documents with the Court.

68. For these reasons,

THE COURT,

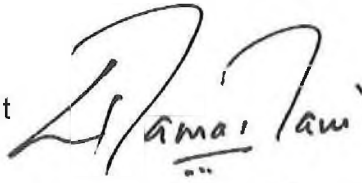
Unanimously:

- i. Declines the Applicant's request to reject the *amicus curiae* brief of the National Commission for the Fight Against Genocide.
- ii. Orders the Respondent to facilitate access to the Applicant for her representatives and to refrain from taking any measures that would infringe on the Applicant's right to access her representatives and the Applicant's representative's rights to professional secrecy and to communicate freely with the Applicant.
- iii. Declines the Applicant's request to order the Respondent to facilitate access to video conferencing technology for the Applicant to follow and participate in the proceedings before the Court.
- iv. Orders the Respondent to file with the Registry of the Court copies of the documents stated in its Decision of 7 October 2015.

Done at Arusha, this 3rd day of June in the year 2016, in English and French, the English version being authoritative.

Signed:

Augustino S. L. RAMADHANI, President



Elsie N. THOMPSON, Vice-President



Gérard NIYUNGEKO, Judge



Fatsah OUGUERGOUZ, Judge



Duncan TAMBALA, Judge



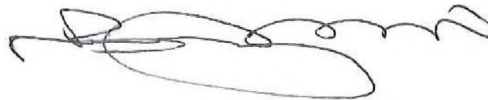
Sylvain ORÉ, Judge



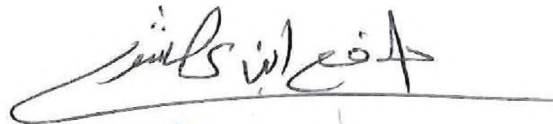
El Hadji GUISSÉ, Judge



Ben KIOKO, Judge



Rafaa BEN ACHOUR, Judge



Solomy B. BOSSA, Judge



Angelo V. MATUSSE, Judge



Robert ENO - Registrar.

