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National Public Prosecution Authority
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By email: info@nppa.gov.rw

Amsterdam, 4 April 2014
Our ref. 20140254A.MP/ns

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Re: Jean-Claude Iyamuremye – Criminal complaint against President Paul Kagame e.a. for genocide, crimes against humanity, responsibility, war crimes, enforced disappearances, torture and murder, committed in Rwanda & Congo

Dear Prosecutor General,

On behalf of our client, Mr. Jean-Claude Iyamuremye, we hereby file a criminal complaint concerning genocide, crimes against humanity, war crimes, enforced disappearances, torture and murder committed in the period between 1996 and 1997 by Paul Kagame, president of Rwanda, and other senior Rwandan military and political leaders, in Rwanda and the Democratic Republic of Congo (DRC).

Pursuant to Art. 122 of the Rwandan Penal Code (RPC) this criminal complaint is also directed against Rwandan state institutions with legal personality which have supported the commission of crimes mentioned above. These state institutions include the State of Rwanda, its armed forces and the Ministry of Defence.

This criminal complaint focusses in particular on the enforced disappearance of the father and brother of Mr. Iyamuremye in 1996 and 1997 in Rwanda, and the attacks on Hutu refugee camps between September 1996 and May 1997 in the DRC by Rwandan forces led by the current President. Regarding the crimes committed in the DRC, this complaint centres primarily around the

attack on Port Onatra (*Office National des Transports*) in Mbandaka, near Wendji, as Mr. Iyamuremye is one of few survivors of this massacre.

Background

This criminal complaint concerns the events that took place after the genocide in Rwanda in 1994.

In July 1994, the Rwandan Patriotic Front (RPF) came to power in Kigali, after the Rwandan Patriotic Army (RPA), the military wing of the RPF led by Mr. Kagame, invaded Rwanda. The new government introduced significant changes in the area of policy and legislation. All the measures were aimed at consolidating the power of the RPF.¹

Between 1994 and 2000, Mr. Kagame held the position of Vice President and Defense Minister in the Rwandan government. The Vice Presidency was a new creation of the RPF and despite the vague job description, it was clear that Mr. Kagame controlled both the government and the army.²

While the regime, led by Mr. Kagame, militarised Rwandan society³, (potential) political opponents, primarily Hutus, started being persecuted systematically, both in Rwanda and the DRC.⁴ Hutus were abducted, murdered and convicted in politically motivated trials.

The first reports of killings date from late 1994, right after the RPF established the new government.⁵

The justice system in Rwanda is to this day used to persecute Hutus; both the *gacaca* procedures⁶ and the national judicature⁷ are politically influenced.

For a detailed account of the crimes of the RPF/RPA we refer to reports of the United Nations⁸, Amnesty International⁹, Human Rights Watch¹⁰ and the book of Rwanda expert Prof. Philip Reyntjens.¹¹

¹ F. Reyntjens, *Political Governance in Post-Genocide Rwanda*, p. 2.

² *Ibidem*, p. 2.

³ *Ibidem*, p. 21.

⁴ *Ibidem*, pp. 24, 57. Reyntjens bases his conclusions on several reports, e.g.: *Front Line Rwanda, Disappearances, Arrests, Threats, Intimidations of Human Rights Defenders, 2001-2004*, Dublin, 2005.

⁵ *Ibidem*, p. 4.

⁶ B. Ingelaere, "The Rise of 'Meta-conflicts' during Rwanda's *Gacaca* Process", in S. Marysse, F. Reyntjens, S. Vandeginste (Eds.), *L'Afrique des grands lacs. Annuaire 2010-2011*, Paris, L'Harmattan, 2011, pp. 303-318.

⁷ Reyntjens, p. 73.

⁸ United Nations, Security Council, *Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo, S/1998/581*, 29 June 1998; United Nations, Office of the High Commissioner for Human Rights, *Democratic Republic of the Congo, 1993-2003. Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and Interna-*

Facts

Enforced disappearance of the father and brother of Mr. Iyamuremye

In the period after the genocide, Mr. Iyamuremye's father and brother (Mr. Francois Biziyaremye and Mr. Gerard Karangwanwa) both disappeared.

In his Dutch immigration procedure, Mr. Iyamuremye gave several statements regarding these events.¹² We are also in the possession of a statement by an eyewitness, who for security reasons (for now) wishes to remain anonymous.¹³ The following is based on what Mr. Iyamuremye himself has stated about the disappearances and the mentioned statement of the eyewitness.

Mr. Biziyaremye disappeared on November 12, 1996, after two RPF soldiers arrested him at his house. This happened shortly after he was released from Majyambere prison, where he had been interrogated and tortured for two weeks. During his imprisonment, the RPF tried to persuade him to testify against the old regime, which Mr. Biziyaremye refused. After those two weeks Mr. Biziyaremye briefly returned to his home, before disappearing again on 12 November 1996. Naturally, his family did everything to find out what had happened to Mr. Biziyaremye. Unfortunately they were unable to do so and have never heard from him since.

Mr. Karangwanwa disappeared in February 1997, shortly after he had sent a letter about the disappearance of his father to the Rwandan authorities. A copy of that letter, in which he also expressed concerns about his own safety, is attached to this complaint. Two RPF soldiers arrested him at home and said they would take him for a short interrogation at a police station in Muhima. Mr. Karangwanwa's wife later tried to discover where her husband had been taken and inquired after his whereabouts at every police station in the neighbourhood, as well as with local leaders, all to no avail: Mr. Karangwanwa disappeared without a trace.

Neither Mr. Iyamuremye nor his family ever received any official statement about the possible deaths of his father or brother. We therefore have to assume that they are both victims of enforced disappearances.

tional Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003, Geneva, August 2010.

⁹ Amnesty International, Rwanda: Ending the Silence, London, 25 September 1997; Amnesty International, Democratic Republic of Congo: Deadly Alliances in Congolese Forests, 3 December 1997.

¹⁰ Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997.

¹¹ F. Reyntjens, Political Governance in Post-Genocide Rwanda.

¹² IND, Record of interrogation, on 23 August 2011 at IND location Hoofddorp; Memorandum au UNHCR Geneve, Bureau de Protection, 5 maart 2012, p. 2.

¹³ Disappearance of father and brother Jean Claude Iyamuremye, (unofficial) translation of account written in 2009, 25 November 2013.

Port Onatra in Mbandaka & Wendji

The RPA committed widespread crimes in the DRC in 1996 and 1997, of which Hutu refugees were the main target.¹⁴ Reports and eyewitness accounts show that, during the so-called First Congo War, units of the RPA systematically attacked refugee camps in the DRC and violated basic principles of humanitarian law.¹⁵

President Kagame has acknowledged that the Rwandan government was responsible for planning and directing the military campaign that largely destroyed the Hutu refugee camps in the DRC.¹⁶ Eyewitnesses state that most attacks resulted in a massacre of unarmed civilians and refugees.¹⁷

The international crimes of the RPA in the DRC have been documented in various public sources. The UN, for instance, in a recent report concluded that most of the 617 documented incidents in the DRC fall within the category of war crimes and crimes against humanity, and that the RPA possibly committed genocide.¹⁸

From September 1996 to May 1997 the RPA hunted down Rwandan refugees all the way to the west of the DRC; massacres took place between Shabuna and Kingulube, at Shanji, Walikale, Tingi-Tingi, Kasese, Biaro, and finally at Boende and Mbandaka/Wendji.¹⁹ The exact number of Rwandan refugees that have been killed in the DRC is unclear. Estimates range from several tens of thousands to 233,000.²⁰

¹⁴ Human Rights Watch, *Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo*, New York, October 1997, p. 21.

¹⁵ United Nations Security Council - Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo. P. 2; Human Rights Watch, *Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo*, New York, October 1997, p. 1.

¹⁶ In an interview with the *Washington Post* Kagame says the following about the First Congo War: "*The impetus for the war, was the Hutu refugee camps. (...) The first goal was to dismantle the camps. (...)*"¹⁶ During the attacks the RPA did not distinguish between *génocidaires*, Interahamwe, former FAR (*Forces Armées Rwandaises*) soldiers and Hutu refugees.

¹⁷ United Nations General Assembly, Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of the Congo) since September 1996, 2 July 1997, A/52/942, para. 42.

¹⁸ United Nations, Office of the High Commissioner for Human Rights, *Democratic Republic of the Congo, 1993-2003. Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003*, Geneva, August 2010, para. 31.

¹⁹ Reyntjens, p. 111.

²⁰ United Nations General Assembly, Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of the Congo) since September 1996, 2 July 1997, A/52/942, para. 43. The UN report estimates 140,000 deaths. Other sources calculate a much higher number of victims. Emizet for example states that 233,000 have been killed, see: K. Emizet, "The Massacre of Refugees in Congo: A Case of UN Peacekeeping Failure and International Law," *Journal of Modern African Studies*, 38:2 (2000), pp. 173-179.

Mr. Iyamuremye is one of the victims of the attacks on Wendji and Onatra, the port of Mbandaka. He barely survived the attacks of the RPA.²¹

In the morning of 13 May 1997, Mr. Iyamuremye was in Wendji Secri, a village about twenty kilometers from Mbandaka, when the RPA attacked with missiles and ground troops. Together with hundreds of Rwandan refugees Mr. Iyamuremye fled to Mbandaka, the capital of Equateur province. The RPA chased the refugees and fired at them from pickup trucks.

Mr. Iyamuremye arrived in Mbandaka between ten and eleven o'clock in the morning. Here he gave a merchant his last money in exchange for a white headband, which the locals wore in order to distinguish themselves from the refugees. Mr. Iyamuremye then joined the other refugees in Port Onatra, a large complex with several buildings near the river. Hundreds of refugees had already gathered here, hoping that they would be able to leave the DRC by boat.

The army reached Mbandaka around eleven o'clock in the morning and besieged Port Onatra. These troops consisted mainly of RPA elements, the soldiers spoke Kinyarwanda and several refugees recognized the soldiers from Rwanda. Mr. Iyamuremye heard how one of the army commanders of the RPA was addressed as 'Commander David' or 'Dany'. At Port Onatra the RPA opened fire on the refugees, many died as a result.

Mr. Iyamuremye was able to escape the massacre with the help of Mr. Bertin Mboyo Iloma, superintendent at Port Onatra, who managed to smuggle Mr. Iyamuremye through the cordon of soldiers to a safe hiding place in one of the offices of the port. From his shelter Mr. Iyamuremye saw the RPA massacring Hutu refugees. Mr. Iyamuremye spend three days in hiding in the office, without food or water, until Mr. Iloma dared to pick him up. Mr. Iyamuremye ended up staying two weeks Mr. Iloma's family home.

Crucial parts of Mr. Iyamuremye's account are supported by various reports of international organisations.^{22 23 24 25 26}

²¹ Several statements can be found in Iyamuremye's immigration dossier concerning the events at Port Onatra, see: Memorandum au UNHCR Geneve, Bureau de Protection, 5 March 2012, and a short autobiography by Jean Claude Iyamuremye.

²² The attack of the RPA on Mbandaka and Port Onatra started in Wendji, see: United Nations, Office of the High Commissioner for Human Rights, Democratic Republic of the Congo, 1993-2003. Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003, Geneva, August 2010, para. 116.

²³ The Army mainly consisted out of RPA elements, see: Amnesty International, Democratic Republic of Congo: Deadly Alliances in Congolese Forests, 3 December 1997, p. 12; Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 21. United Nations Security Council, Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo, 29 June 1998, S/1998/581, p. 7, 52.

The total number of victims on that day may amount to 1,300.²⁷ The exact number of deaths in Mbandaka and Wendji is unclear, as the army threw the majority of victims into the Congo River.²⁸ In addition, an unknown number of refugees drowned in an attempt to escape the RPA by jumping into the river.²⁹ So-called 'clean ups' of mass graves further complicate establishing the exact number of deaths. A UN investigation team concluded in the spring of 1998 on the basis of forensic evidence that bodies were recently removed from a mass grave near Mbandaka.³⁰

Suspects

President Paul Kagame

This criminal complaint is primarily directed against President Paul Kagame. Several sources confirm that Mr. Kagame deliberately instructed the army to kill Hutu refugees in the DRC. Moreover, former RPA soldiers who testified before the Office of the Prosecutor at the ICTR stated that Mr. Kagame gave

²⁴ The RPA killed hundreds of refugees at Port Onatra, see: Amnesty International, Democratic Republic of Congo: Deadly Alliances in Congolese Forests, 3 December 1997, p. 11; UN General Assembly, Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of the Congo) since September 1996, 2 July 1997, A/52/942, para. 47; Amnesty International, Democratic Republic of Congo: Deadly Alliances in Congolese Forests, 3 December 1997, p. 11.

²⁵ The local population in Mbandaka wore white headbands in order to distinguish themselves from the refugees, see: United Nations Security Council, Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo, 29 June 1998, S/1998/581, p. 42; Amnesty International, Democratic Republic of Congo: Deadly Alliances in Congolese Forests, 3 December 1997, p. 12.

²⁶ 'Commander David' was one of the army commanders at the attack on Mbandaka and Port Onatra, see: Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 42.

²⁷ Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 42.

²⁸ United Nations, Office of the High Commissioner for Human Rights, Democratic Republic of the Congo, 1993-2003. Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003, Geneva, August 2010, para. 265.

²⁹ United Nations General Assembly, Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of the Congo) since September 1996, 2 July 1997, A/52/942, para. 47. See also: United Nations, Office of the High Commissioner for Human Rights, Democratic Republic of Congo, 1993-2003. Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003, Geneva, August 2010, para. 265; United Nations Security Council, Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo, 29 June 1998, S/1998/581, p. 2.

³⁰ United Nations Security Council, Report of the Investigative Team Charged with Investigating Serious Violations of Human Rights and International Humanitarian Law in the Democratic Republic of Congo, 29 June 1998, S/1998/581, p. 24.

the order to murder civilians.³¹ After the RPA came to power in 1994, Mr. Kagame fulfilled the role of vice president and minister of defense, while he exercised absolute power over the army.³² Since 2000, Mr. Kagame has been the president of Rwanda. Consequently, based on the Rwandan Constitution of 1991 and 2003, he is also commander-in-chief of the national army.³³ President Kagame is thus fully responsible for the crimes of the Rwandan army.

Mr. James Kabarebe

Mr. James Kabarebe has been the minister of defence of Rwanda since April 2010. Between 1994 and 1997 he was responsible for the military operations and training of the RPA as Chief of Plans. In addition, he was the Operations Commander during the military campaign of 1996-1997 in the DRC.³⁴ Mr. Kabarebe - also known as 'Commander James' - was described by an American Embassy official in Kinshasa as the most powerful military leader and influential strategist during the First Congo War.³⁵ President Kagame recognized Mr. Kabarebe as one of the most important military commanders in the DRC during the war, as he was responsible for the reorganisation of the Congolese army.³⁶ There are strong indications that Mr. Kabarebe also took part in the massacre of Hutu refugees in Mbandaka and Wendji.³⁷

³¹ Reyntjens, p. 99; Witness interview, 29 March 2002, ICTR ref R0000148; witness interview, 9 februari 2002, ICTR ref R0000233.

³² C. Waugh, Paul Kagame and Rwanda: Power, Genocide and the Rwandan Patriotic Front.

³³ Rwanda Constitution of 1991, Article 45 [Commander-In-Chief]: The President of the Republic shall be the Supreme Chief of the Armed Forces. The Constitution of the Republic of Rwanda 2003, Article 110: The President of the Republic is the Commander-in-Chief of the Rwanda Defence Forces. He or she declares war in accordance with the provisions of Article 136 of this Constitution. He or she signs accords for armistice and peace agreements. He or she declares a state of siege and a state of emergency in accordance with the provisions of the Constitution and the law.

³⁴ See the website of the ministry of defense of Rwanda: <http://www.mod.gov.rw/?-The-Minister->: "From 1994 to 1997, he was the Commander of Republican Guard Brigade; Chief of Plans, Operations and Training of the RPA; the forward Operations Commander during the 1996/97 campaign in the former Zaire (Now the Democratic Republic of Congo)."

³⁵ Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 41.

³⁶ John Pomfret, "Rwandans Led Revolt in Congo," Washington Post, 9 July 1997. For more information about the role of Kabarebe in the DRC, see e.g. the interview with Kabarebe in Observatoire de l'Afrique Centrale: "Kigali, Rwanda. Plus jamais le Congo", Vol. 6, No. 10, 3-9 March 2003.

³⁷ The Spanish Judge Fernando Andreu issued an arrest warrant in 2008 for these crimes. The warrant was issued against James Kabarebe and 39 other RPA officials for their role during the "mass killings of Rwandan refugees and the Congolese civilian population, particularly during the attacks against refugee camps situated in the territory of Zaire and specifically the camps of Kibumba, Mubunga, Lac Vert, and later Tingi-Tingi, Kindu and Mbandaka." Juzgado Nacional de Instrucción n. 4, Audiencia Nacional, Madrid, 6 February 2008, p. 58. See also: "Spanish Judge Indicts 40 Rwandan Military Officers for Genocide", CNN, 6 February 2008.

Mr. Jackson Nkurunziza (aka Jack Nziza, nicknamed 'The Exterminator')

Mr. Jackson Nkurunziza was the director of the Rwanda Directorate of Military Intelligence.³⁸ Mr. Nkurunziza is thought to have been responsible for several massacres in the DRC, including in Maniema, South Kivu and Haut-Congo. Congolese humanitarian workers nicknamed Mr. Nkurunziza 'the exterminator' for his part in the massacres of Hutus in Congo.³⁹ He told aid workers in Shabunda that his mission was to eliminate all ex-FAR and Interahamwe soldiers, which in practice amounted to exterminating all Hutu refugees, including civilians, in the DRC.⁴⁰

Other suspects

During the First Congo War, the ADFL and the RPA tried to conceal the identity of the top military leaders. Many officers wore no uniform and used only their first names in public in order to prevent recognition, which complicates the identification of individual army commanders by name.⁴¹ However, according to the report of Human Rights Watch from October 1997, the following soldiers were present at the massacres at Port Onatra in Mbandaka and Wendji.

Mr. Godfrey Kabanda

Mr. Godfrey Kabanda led the AFDL/RPA during the attack on the Hutu refugees in Mbandaka on May 13, 1997.⁴² Mr. Kabanda also temporarily exercised military leadership over Equateur province.⁴³

Commander 'David'

Commander David is originally from Rwanda but grew up in Uganda. Evidence indicates that Mr. David was present at the massacre in Mbandaka on 13 May 1997. After the departure of Commander Godfrey and Commander Wilson, Mr. David was also responsible for the Equateur province.⁴⁴ Mr. Iyamuremye stated that commander David was one of the commanders who were present at the massacre at Port Onatra.

³⁸ S. van Leeuwen & R. Koops, "Cutting Dutch Aid Clear Signal to Rwanda," Radio Netherlands Worldwide, 9 November 2010, <http://www.rnw.nl/english/article/cutting-dutch-aid-clear-signal-rwanda-0>.

³⁹ Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 45.

⁴⁰ Ibidem, p. 45.

⁴¹ Ibidem, p. 115.

⁴² Olivier Lanotte, Chronology of the Democratic Republic of Congo/Zaire (1960-1997), Online Encyclopedia of Mass Violence, 6 April 2010, <http://www.massviolence.org/Chronology-of-the-Democratic-Republic-of-Congo-Zaire-1960-1997>, ISSN 1961-9898.

⁴³ Human Rights Watch, Democratic Republic of Congo: What Kabila Is Hiding, Civilian Killings and Impunity in Congo, New York, October 1997, p. 44.

⁴⁴ Ibidem, p. 42.

Lt. Colonel/Col. Cyiago (Kiago)

According to independent sources, Colonel Cyiago was partly responsible for the massacres between Kisangani and Mbandaka. Mr. Cyiago speaks Kinyarwanda and Kiswahili and was often used as an interpreter.⁴⁵

Commander/Lt. Colonel Wilson

Various sources indicate that Mr. Wilson was responsible for a special unit of the RPA, which mainly consisted of senior Rwandan soldiers. This unit was involved in major military operations in the DRC (such as the massacres at Biaro, Kasese I and II). Mr. Wilson was also, according to sources, one of the officers at the slaughter of Mbandaka. Mr. Wilson's nickname was 'Gaddafi'.⁴⁶

Colonel 'Richard'

Based on statements of AFDL soldiers, Colonel Richard was one of the commanders during the AFDL/RPA operation in Mbandaka and Wendji. He was also present at the massacre at Mbandaka and Port Onatra on May 13, 1997.⁴⁷

State institutions and organisations with legal personality

Pursuant to article 122 of the RPC it is possible to hold criminally liable for genocide and crimes against humanity those 'state institutions and organisations' which have supported these crimes in any way.

The crimes described above, committed in 1996 and 1997 against Mr. Iyamuremye, his relatives and other Hutus, are the direct result of a deliberate state policy. These crimes could not have been committed without the support of a great variety of Rwandan institutions and organisations, such as the State of Rwanda, its armed forces and the Ministry of Defence. As a result, any investigation into the crimes should extend to the role of those Rwandan institutions and organisations.

Witnesses

There are a number of witnesses that can provide vital evidence in the investigation into the crimes described in this complaint. Many are however concerned about their safety and security if they were to testify against President Kagame. One of the witnesses mentioned below was recently attacked in Kigali; the witness believes that this attack is related to the facts described in this complaint. For these reasons we have redacted the identifying information below. The identity of those witnesses will only be disclosed to the Rwandan authorities under a number of strict conditions, necessary to secure the safety of the persons involved, and which we are willing to discuss at any time.

⁴⁵ Ibidem, p. 44.

⁴⁶ Ibidem, p. 44.

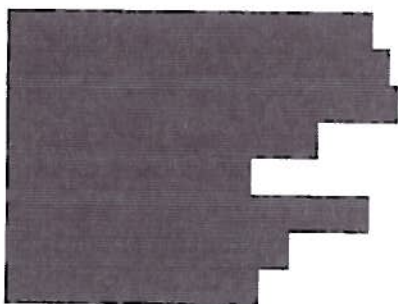
⁴⁷ Ibidem, p. 45.

Mr. Bertin Mboyo Iloma family members

Mr. Bertin Mboyo Iloma was superintendent at Port Onatra and offered Mr. Iyamuremye a hiding place during the massacre in Port Onatra. Mr. Iloma has passed away, but his family could testify about the massacre at Port Onatra and the presence of Mr. Iyamuremye at the family home.

Other witnesses of the massacre at Port Onatra & Wendji

The following witnesses were in Mbandaka/Wendji at the time of the massacres:



Witnesses of the enforced disappearances

The following persons can offer relevant evidence in respect of the circumstances surrounding the disappearance of Mr. Iyamuremye's father and brother:

1. 
2. 
3. 
4. 

We are in the possession of the information necessary to contact the above mentioned witnesses.

Legal qualification of the acts

The facts described above can be qualified as genocide, crimes against humanity, war crimes, enforced disappearance, torture and murder.

The president of Rwanda, Mr. Paul Kagame, and other senior Rwandan political and military leaders are criminally liable for those facts, under different forms of liability that will be discussed below. In this context, we want to emphasise that President Kagame is not only Rwanda's political but also military leader, as commander-in-chief of the national army.

Enforced disappearances of Mr. Iyamuremye's father and brother

The disappearances of Mr. Iyamuremye's father and brother as described above fulfil all elements of the crime of enforced disappearance, either as stand-alone criminal conduct or as part of crimes against humanity.

Rwanda has not yet criminalised enforced disappearances as a stand-alone crime. However, it has criminalised enforced disappearances as crimes against humanity in Art. 120 sub 9 RPC.

Enforced disappearance as a crime against humanity consists of the following elements, pursuant to the ICC Elements of Crimes:

Article 7 (1) (i)

Crime against humanity of enforced disappearance of persons

Elements

1.

The perpetrator:

- (a) Arrested, detained or abducted one or more persons; or
- (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

2.

- (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
- (b) Such refusal was preceded or accompanied by that deprivation of freedom.

3.

The perpetrator was aware that:

- (a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
- (b) Such refusal was preceded or accompanied by that deprivation of freedom.

4.

Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

5.

Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.

6.

The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7.

The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8.

The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

In the current case, all the elements of the crime have been fulfilled. Mr. Iyamuremye's father and brother have both been deprived of their liberty by the Rwandan authorities, who have never provided any information about what happened to them. Moreover, their enforced disappearances fits within a pattern of conduct and broader attack on the civilian population which started in 1994.

International human rights bodies have expressed their concern about enforced disappearances in Rwanda. The Committee against Torture, for example, in its 2012 Country Report on Rwanda, stated the following:

The Committee expresses its concern about reported cases of enforced disappearance and the State party's failure to provide information about the whereabouts of the disappeared or to thoroughly investigate the disappearances, particularly in the cases of André Kagwa Rwisereka and Augustin Cyiza. The Committee is also concerned that 21 of the 24 cases submitted to the State party by the Working Group on Enforced or Involuntary Disappearances remain outstanding (arts. 2, 11, 12, 13, 14 and 15). The State party should take all appropriate steps to effectively protect all persons from enforced disappearance. It should ensure that all cases of enforced disappearance are thoroughly investigated and that those responsible for enforced disappearances are prosecuted, and if found guilty, punished by appropriate penalties. The State party should also ensure that any individual who has suffered harm as a direct consequence of enforced disappearance has access to all available information which might be useful to determining the whereabouts of the disappeared person, as well as to fair and adequate compensation. The State party should reinforce its efforts to clarify all outstanding cases referred to it by the Working Group on Enforced and Involuntary Disappearances. Furthermore, the State party is urged to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.⁴⁸

Crimes against Hutus in the DRC; Port Onatra & Wendji

The killings directed at Hutus in the DRC, including the attacks at Port Onatra and Wendji, can be qualified as follows.

Genocide

Arts. 114 and 115 RPC punish the crime of genocide.

The large-scale killings of Hutus in the DRC, of which the massacres at Mbandaka and Wendji form an integral part, can be qualified as genocide, as all necessary elements of the crime of genocide have been fulfilled.

In 1996 and 1997, the Rwandan army killed a significant number of ethnic Hutus in the DRC, with the apparent aim to destroy this ethnic group. The nature and scope of the military operations in the DRC, as well as the high number of victims, show that the aim of those operations must have been the destruction – in part - of the Hutus as an ethnic group.

The partial destruction of an ethnic group amounts to genocide when the part of the group at which the destruction is directed is of sufficient importance to have an impact on the group as a whole.⁴⁹ In the *Krstic* case, the ICTY Appeals Chamber determined that the destruction of a relatively small percentage of the Bosnian Muslim group in Srebrenica should nevertheless be qualified as genocide, because of its impact on the entire Muslim population of Bosnia.⁵⁰

⁴⁸ Committee against Torture, 2012 Country Report on Rwanda, CAT/C/RWA/1, para. 14.

⁴⁹ ICTY, Appeals Chamber, *Krstic*, 19 April 2004, Case No: IT-98-33-A, par. 8.

⁵⁰ *Ibidem*.

The killing of Hutu refugees in the DRC is in this respect comparable to the crimes committed against the Muslim in Srebrenica, as the impact of the killings in the DRC is still strongly felt today, among all Hutus, whether in Rwanda, the DRC or elsewhere in the diaspora.

Crimes against humanity

Crimes against humanity are defined in Arts. 120 and 121 RPC.

The scope and nature of the killings in the DRC, aimed at the Hutu civilian population, amount to a widespread and systematic attack on the civilian population. The intentional massacres at Port Onatra and in Wendji were part of this attack, which in effect must also be qualified as an attempt to exterminate all Hutu refugees in the country.

War crimes

War crimes are punished under Arts. 123 – 125 RPC.

At the relevant time, there was an armed conflict on Congolese territory, in which the Rwandan armed forces were involved. Irrespective of the nature of this conflict, the killing of Hutu civilians by Rwandan armed forces in the DRC can only be qualified as a war crime, as this killing, for which there is an overwhelming amount of evidence, was committed in the context of that conflict.

Torture

The crime of torture is punishable under Arts. 176 and 177 RPC.

There are no contextual elements for the crime of torture. It is punishable by itself, for each individual act.

Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The killings of Hutu refugees in Mbandaka and Wendji, in May 1997, were committed by members of the Rwandan armed forces, i.e. public officials. Without any doubt these killings were accompanied by the most severe pain and suffering. Moreover, the victims of these acts of torture were fully within the power and under the control of the Rwandan armed forces, and as such deprived of their liberty.

The refugees in Mbandaka and Wendji were targeted because of their ethnicity, which shows that the acts of torture were based on discriminatory grounds.

As a result, all elements necessary for the crime of torture have been fulfilled here.

Murder

The crime of murder is defined in the Rwanda Penal Code. The attacks in Mbandaka and Wendji amount to premeditated killings, as it was clearly the objective of the military operations to kill the Hutus which had sought refuge there.

Murder, although not an international crime, is one of the most serious offences. No State exists, to our knowledge, that does not punish the wilful killing of a human being.

Individual criminal responsibility

There is overwhelming evidence in human rights reports and academic studies that President Kagame, because of his position in the Government, bears responsibility for all systematic and widespread human rights violations, including forced disappearances, that occurred in Rwanda after 1994. The disappearance of Mr. Iyamuremye's father and brother is no exception to this rule.

Bearing in mind the central role of President Kagame in these human rights violations, in particular the continuing campaign against political opponents, one can safely assume that President Kagame possesses or has access to information about the fate of Mr. Iyamuremye's father and brother. The same applies to other high ranking Rwandan leaders, especially those who are active in the field of (national) security.

All of these individuals are liable as co-perpetrators of the enforced disappearance, as a crime against humanity, of Mr. Iyamuremye's father and brother. According to Art. 90 RPC, both perpetrators and co-perpetrators can be prosecuted for violations of the criminal code.

Enforced disappearances remain a very serious crime. Because of the lack of information as to what has happened to arrested persons, usually political opponents, investigations into these crimes are complex. Often it is very difficult, if not impossible, to find out which public official arrested the 'disappeared persons' and what subsequently happened to them. The result is often a 'wall of silence', as is clearly illustrated in this case. Only the highest public officials, members of the Rwandan government, can break down this wall, and should therefore be held criminally responsible for failing to do so.

The criminal responsibility of President Kagame and other members of the Rwandan leadership was also highlighted by the Committee against Torture in their report quoted above, in which the Committee concluded that Rwanda had

failed to properly investigate instances of enforced disappearances in the country.

With regard to the massacres in Mbandaka and Wendji, it is clear that the killings were committed by members of Rwandan armed forces.

There is evidence, as explained above, that President Kagame personally ordered the Rwandan armed forces to attack the Hutu refugees in the DRC. This makes President Kagame criminally liable as well, as co-perpetrator. The same applies to all other Rwandan political and military leaders in the relevant chain of command.

It is apparent that there was a common criminal purpose among the co-perpetrators to destroy the Hutus in the DRC, in whole or in part, including those who had sought refuge in Port Onatra.

In addition to being co-perpetrators in the commission of the crimes set out in this complaint, President Kagame and other Rwandan political and military leaders are also liable for the crimes committed by their subordinates. Rwanda recognises so-called command responsibility in Art. 133 RPC, which reads as follows:

The fact that any of the acts provided under this Chapter from section one to section 3 of this Organic Law was committed by a subordinate shall not relieve his/her superior, of criminal liability if he/ she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the offender and inform relevant authorities.

The fact that an accused person acted pursuant to an order of a Government or a superior shall not relieve him/her of criminal liability where, it was obvious that the order could lead to the commission of any of the offences provided under this Chapter.

Rwanda military and political leaders must have been fully aware of the crimes that were committed by the Rwandan forces in the DRC.

Bearing in mind the efficiency of public administration in Rwanda and the well-functioning discipline and chain of command in the Rwandan army, there can also be no doubt that the military in the DRC were under the effective control of the current President and other political and military leaders. Finally, it is clear that, in spite of that effective control, none of the suspects undertook any disciplinary or penal action to either stop the further commission of these crimes or to bring to justice those who bear responsibility.

Jurisdiction, retro-active application of criminal law and statutes of limitation

Some crimes were committed on Rwandan territory (the enforced disappearances); others appear to have been committed outside Rwanda, namely in the DRC.

Rwanda can, however, exercise criminal jurisdiction in both cases. Under Art. 13 RPC, Rwanda's criminal law also applies to acts committed by Rwandan nationals abroad. Thus, on the basis of this nationality principle, and assuming that all potential suspects are of Rwandan nationality, the crimes can be prosecuted in Rwanda; see also Art. 211 of the Rwandan Code of Criminal Procedure (RCCP).

The question may arise whether the acts committed in 1996 and 1997 fall outside the scope of Rwandan penal law, as a result of the prohibition against retro-active effect of later criminal legislation or as a result of applicable statutes of limitations.

Enforced disappearances are a continuing crime which will only cease once Rwandan authorities present all available information concerning Mr. Iyamuremye's father and brother and have conducted a thorough investigation into their disappearance. Since this has not happened, the commission of the crime continues until the present day and thus raises no problem of retro-active application of criminal law or applicable statutes of limitations.

As far as the crimes in the DRC are concerned, these crimes were committed in 1996 and 1997; the attack at Port Onatra, of which Mr. Iyamuremye was both victim and eye-witness, occurred in May 1997.

Rwanda has on multiple occasions asked for the extradition of persons for crimes committed during the genocide in 1994. The requests generally include the crime of genocide, crimes against humanity, war crimes, torture and murder: the same crimes covered by the present criminal complaint. For this reason, we assume this complaint will not encounter any legal obstacles related to possible retro-active application of criminal law or applicable statutes of limitations.

Finally, at the time of their commission, in 1996 and 1997, all of the international crimes set out in this criminal complaint (genocide, crimes against humanity, war crimes, and torture) were crimes under general international law, which all States, including Rwanda, were obliged to criminalise and prosecute.

There is no immunity, of any kind, for President Kagame

There is no rule of international law which bars a State from prosecuting its own nationals, whatever official function they may hold.

If national law were to impose obstacles to investigating and prosecuting heads of State, ministers, or other State officials, such rules would violate the obligations of the State under various treaties and customary international law to investigate and prosecute international crimes, irrespective of the position of the alleged perpetrator.

The Rwandan law of criminal procedure, in Art. 222 RCCP, explicitly provides for the filing of criminal complaints against persons with privilege of jurisdiction. According to the law, such a criminal complaint should be transmitted to the Prosecutor General, who shall personally conduct the investigation.

Art. 223 RCCP clearly shows that any immunity only serves to protect the official function, not the individual that occupies the relevant position. The crimes committed by President Kagame, and the other suspects mentioned in this complaint, cannot fall within the lawful exercise of public power because of their very nature. They must therefore be excluded from any functional immunity or privilege that might otherwise apply.

Rwanda has a duty to prosecute under international law

The crimes described in this complaint are serious and mandate in their own right investigative and prosecutorial action by the Rwandan authorities. Rwanda is obliged under international law to investigate and prosecute acts of genocide, crimes against humanity, war crimes and torture.

Art. 6 of the Genocide Convention reads as follows:

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Art. 7 (1) of the Torture Convention provides the following:

The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

Art. 146 of the Fourth Geneva Convention (1949) reads as follows:

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case.

As far as crimes against humanity are concerned, the obligation to investigate and prosecute these crimes is part of customary international law.

As a result, Rwanda is under an obligation to thoroughly and genuinely investigate and prosecute the crimes described and persons mentioned in this criminal complaint.

On behalf of our client, we offer every possible assistance in the collection of evidence. We are, of course, willing to submit the various documents and reports mentioned in this complaint. Moreover, Rwanda is advised to liaise with the Dutch authorities with a view to obtaining testimonies and other evidence that is available in the Netherlands. Likewise, it is recommended that other states be approached with a similar goal, facilitating the collection of evidence.

In light of the gravity of the crimes and the overwhelming evidence which is already available, we suggest that the suspects mentioned in this criminal complaint be immediately located and provisionally detained.

In a system based on the rule of law one should be able to submit a genuine and well-documented criminal complaint, such as the present one, without fear of repercussion. In a system based on the rule of law the prosecutorial authorities will conduct their investigations independently from other state organs, and will take their decisions on prosecutorial action without political interference.

* * *

Finally, on behalf of Mr. Iyamuremye we kindly ask to be kept informed on all future investigative or prosecutorial action taken in this case. Mr. Iyamuremye assumes he will be recognised and admitted as *partie civile* in all criminal proceedings originating from the present complaint.

In the unlikely case you decide to reject our complaint, we would like to know how and where to challenge your negative decision.

Yours sincerely,

i.g.



Göran Sluiter



Michiel Pestman

KARANGANDA Gérard
ancien Bourgmestre de Kicukiro
de l'année de 1994 resté au Rwanda
Commune Kicukiro Foyer KOUKOU
Préfet de la ville de KIGALI

KIGALI, le 29.1.1997

- OBSERVATEURS DES DROITS DE L'HOMME
KIGALI - RWANDA

- C.I.C.R - KIGALI
RWANDA.

J'ai l'honneur de vous faire part de mes inquiétudes
vis-à-vis de ma sécurité après ma démission du Foyer au Rwanda
le 27.1.1997. En effet, quand je suis revenu au village, j'ai appris que
mon père Bizimungu François qui était parti quelques jours avant moi
a été enlevé le 22/02/1996 et fait porté disparu. Son corps a été vu par
un ~~passager~~ le 15/12/1996 dans le secteur de Kanombe, Colline Gakoni.
A mon service, il y a eu trois de bulletins communs que mon nom sera
comme celui de mon père. Actuellement mon service est à la case.

Comme étant que je figure sur la liste récemment publiée
dans le journal officiel et que l'autorité locale semble me laisser
libre à la maison chez les parents car la même et est délégué.

Comme étant que je pleure mon coupable devant la commission
partir à une personne pendant les événements de 1994, raison pour
laquelle je ne peux pas me faire pardonner devant l'autorité.
Je souhaite voir de votre soutien comme organisme qui fait
respecter les droits de la personne.

Mon souhait également est que le parquet soit soit sûr
de mon dossier pour que je puisse comparaître devant la justice qui
doit si elle veut établir la vérité des choses. Comme vous l'entendez
je ne peux pas bouger et ici de crainte d'être vu au cours de route.
Vous pouvez aller me contacter chez moi à côté du Bureau des Services
Kicukiro. Je vous exhorte de tout cœur de venir à mon aide
surtout pour être plus entre les mains du Procureur de la République
pour que ma famille et moi soyons réintégrés.

Comptant sur votre habituelle compréhension, je vous prie
d'accepter mes vifs remerciements.

KARANGANDA Gérard
Kicukiro

Karanganwa Gérard

Kigali le 29.01.1997

Ancien bourgmestre de KICUKIRO

Refugié de 1994, Rentré au Rwanda

Commune Kicukiro secteur Kicukiro

Préfecture de la ville de Kigali

- OBSERVATEUR DES DROITS DE L'HOMME KIGALI-RWANDA

- C.I.C.R-KIGALI RWANDA

J'ai l'honneur de vous faire part de mes inquiétudes vis-à-vis de ma sécurité après ma rentrée du Zaïre au Rwanda Le 27/01/1997. En effet, quand je suis arrivé au village, J'ai appris que mon père Biziyaremye François qui était rentré quelques jours avant moi a été enlevé le 12/12/1996 et fut porté disparu. Son corps a été vu par les passagers le 15/12/1996 dans le secteur Kanombe, Cellule Gakoni.

A mon arrivé, il y a eu trop de bruit comme quoi mon sort sera comme celui de mo père. Actuellement mon arrivé est à la une.

Considérant que je figure sur la liste récemment publiée dans le journal officiel et que l'autorité locale semble me laisser libre à la maison chez les parents car la mienne a été détruite.

Vu que mon père a été enlevé à partir de là où je loge, considérant que je plaide non coupable devant les accusations portés à ma personne pendant les événements de 1994, raison pour laquelle je ne peux pas me faire pardonner devant l'autorité.

Je souhaite jouir de votre soutien comme organisation qui fait respecter les droits de la personne.

Mon souhait également et que le parquet soit saisi de mon dossier pour que je puisse comparaitre devant la justice qui doit à elle seule établir la vérité sur les choses. Comme vous l'attendait je ne peux pas bouger d'ici de crainte d'être ravis en cours de route.

Vous pouvez alors me contacter chez moi à coté du bureau du secteur KICUKIRO. Je vous exhorte de tout cœur de venir à mon aide surtout pour être placé entre les mains du Procureur de la République pour que ma famille et moi soyons sécurisés.

Comptant sur votre habituelle compréhension, Je vous prie d'agrèer mes vifs remerciements.

KARANGANWA Gérard.