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**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre

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ICTR/RO/06/10/175

NOTE VERBALE

The International Criminal Tribunal for Rwanda (ICTR) presents its compliments to the Ministry of Foreign Affairs and Cooperation of the Government of Rwanda and has the honour to refer to its previous Note Verbales of 31 May 2010, 9 and 10 June 2010 as well as the response from Prosecutor General Martin Ngoga of 2 June 2010 concerning the arrest in Kigali, on 28 May 2010, of Professor Peter Erlinder on allegations of genocide denial. Professor Erlinder is an American lawyer in charge of the defence of Mayor Aloys Ntabakuze before the ICTR.

Following the arrest of Professor Erlinder, the ICTR sought clarification from the Rwandan authorities on the motives of this arrest through its Note Verbale of 31 May 2010. This request drew from the need for the ICTR to ascertain the applicability of any immunity or privilege which Defence Counsel assigned to cases before this Tribunal enjoy in the context of their mandate.

~~In his response, Prosecutor General Martin Ngoga indicated that Professor Erlinder's arrest was "not at all related to his assignments at the ICTR".~~

Having subsequently learned that Professor Erlinder underwent a hearing before the High Court of Gasabo, the Tribunal requested, on 9 June, the Rwandan authorities to provide a formal copy of the charges leveled against Professor Erlinder. On 10 June, the ICTR transmitted another Note Verbale to the same end in compliance with an order of the Appeals Chamber sitting in the case of Mayor Ntabakuze. The Chambers' decision was attached to that Note Verbale.

In the meantime, the ICTR received the decision on the bail hearing for the Erlinder's case held on 7 June 2010 before the High Court of Gasabo. The ICTR notes that the Prosecution appearing before the High Court made specific references to words Professor Erlinder spoke and statements he made in his case before the ICTR. Excerpts of those submissions read as follows: "Carl Peter Erlinder denied and minimized the genocide by stating that the soldiers he was defending neither planned nor carried out the genocide. The Accused affirmed that his clients were rather defending national integrity: Prosecution Counsel submitted that the Accused did not end there, as he denied and minimized the genocide in other cases" [...] "While he was Defence Counsel at the International Criminal Tribunal for Rwanda, Carl Peter Erlinder submitted that what happened was a massacre of members of the population" [...] "the Accused considers the genocide as a war and, even in the Military I case, he submitted that the killings committed against the Tutsi in 1994 did not

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constitute genocide. He further states that in Rwanda, this issue is being used as a hurdle against those who want to challenge Kagame during the 2010 elections”.

Although no formal copy of the charges brought against Professor Erlinder has been received yet, the ICTR takes the view that the decision of the High Court constitutes a sufficient basis to identify a link between the nature of the accusations against Professor Erlinder and his mandate with this Tribunal.

The ICTR recalls that Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, to which the Republic of Rwanda is a party, provides that: “experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded [...] in particular [...] [i]n respect of words spoken or written and acts done by them in the course of their performance of their mission, immunity from legal process of every kind. The immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed in the mission for the United Nations.”

Under the circumstances, the ICTR seized the Office of Legal Affairs in the United Nations Secretariat in New York which is ultimately responsible for providing advice on immunity related matters. In light of the above, the Office of Legal Affairs advised the ICTR to formally assert immunity for Professor Erlinder without delay and request his immediate release accordingly.

The ICTR hereby notifies the Rwandan authorities that Professor Erlinder enjoys immunity and requests therefore, his immediate release.

The ICTR avails itself of this opportunity to renew to the Esteemed Ministry of Foreign Affairs and Cooperation of the Republic of Rwanda the assurances of its highest consideration.



Arusha, 15 June 2010

Copies:

Honorable Martin Ngoga, Prosecutor General of the Republic of Rwanda
Office of the Prosecutor-General, Kigali, Republic of Rwanda

His Excellency, Honorable Tharcisse Karugarama, Minister of Justice
Kigali, Republic of Rwanda

Ministry of Foreign Affairs and Cooperation

Attention: **Her Excellency, Honorable Louise Mushikiwabo**
Minister of Foreign Affairs and Cooperation
Kigali, Republic of Rwanda