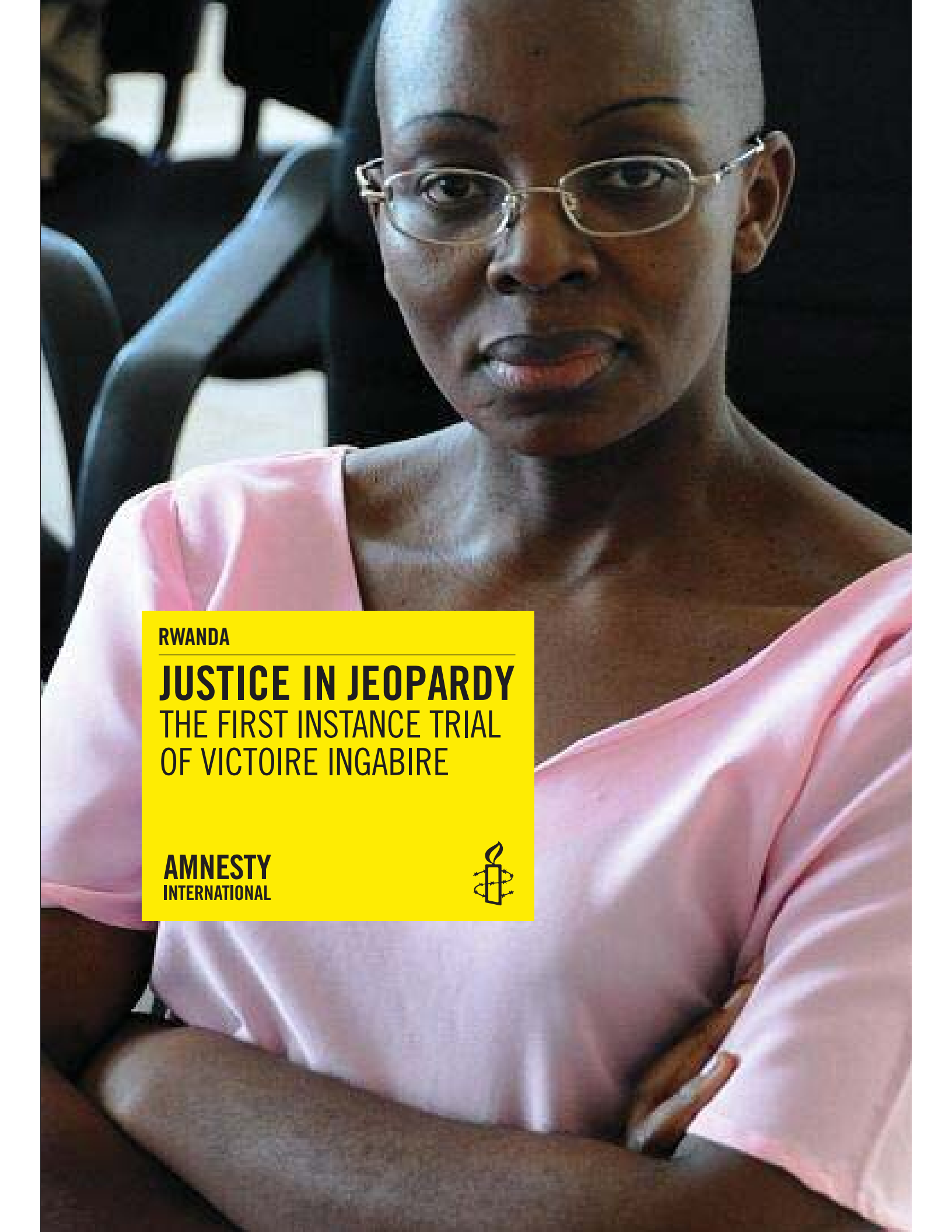


A close-up portrait of a Black woman with a shaved head, wearing thin-rimmed glasses and a pink off-the-shoulder top. She has a serious expression and is looking directly at the camera. Her arms are crossed in front of her.

RWANDA

**JUSTICE IN JEOPARDY**  
THE FIRST INSTANCE TRIAL  
OF VICTOIRE INGABIRE

**AMNESTY**  
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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**AMNESTY**  
**INTERNATIONAL**



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*Cover photo:* Victoire Ingabire at the High Court of Kigali, Rwanda, November 2011.  
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# 1. ACRONYMS

ACHPR: African Charter on Human and Peoples' Rights

CDF: Coalition of Democratic Forces

DRC: Democratic Republic of the Congo

FDLR: Democratic Forces for the Liberation of Rwanda

FDU-Inkingi: United Democratic Forces-Inkingi

ICCPR: International Covenant on Civil and Political Rights

RDR: Republican Rally for Democracy in Rwanda

RPF: Rwandan Patriotic Front

UFDR: Union of Rwandan Democratic Forces

UNCAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture)

## 2. INTRODUCTION

The arrest of opposition politician Victoire Ingabire after her return to Rwanda to contest the 2010 elections attracted widespread international attention. The criminal trial, one of the longest in Rwandan history, is both politically and legally important, as a test of the Rwandan judiciary's capacity to deal with high-profile political cases fairly and independently.

Victoire Ingabire, President of the United Democratic Forces (FDU-Inkingi), came to Rwanda in January 2010 to participate in the 2010 presidential elections. On 16 January 2010, her first day in the country after 16 years abroad, she made a speech at the Genocide Memorial Centre in the capital, Kigali, and laid a remembrance wreath. Her speech, which referred to problems with reconciliation and ethnic violence, addressed issues that are rarely discussed openly in Rwanda.

Victoire Ingabire was arrested in April 2010. She was bailed on house arrest and prevented from leaving Kigali. She was subsequently re-arrested on 14 October 2010 and was remanded in pre-trial detention.

Four men, all reportedly former members of the Democratic Forces for the Liberation of Rwanda (FDLR),<sup>1</sup> an armed group operating in eastern Democratic Republic of the Congo (DRC), were brought to trial alongside Victoire Ingabire as co-accused.

Amnesty International observed almost the whole trial from September 2011 to April 2012. The organization's focus was on the fairness of the proceedings and the court's capacity to try the case in line with international standards.

The charges against Victoire Ingabire fell into two broad categories – speech-related charges and terrorism-related charges. The prosecution alleged that Victoire Ingabire conspired with the four co-accused to form an armed group called the Coalition of Democratic Forces (CDF), and that her objective was to cause insecurity in Rwanda and force the government into peace talks by waging war. All four co-accused pleaded guilty, made confessions and requested reduced sentences for cooperating with the court.

In relation to the terrorism-related charges, the court failed to test evidence brought by the prosecution that was obtained after a period of prolonged incommunicado detention of the co-accused. Confessions of two co-accused incriminating Victoire Ingabire were made after a prolonged period of detention in Camp Kami, a military camp where Amnesty International has documented allegations of the use of torture to coerce confessions. One defence witness, or court informer, claimed he had been held in Camp Kami with one of the co-accused and alleged that the individual's confession had been forced.

The speech-related charges were brought against Victoire Ingabire following the public expression of her political views. The prosecution alleged that as leader of various political groups in the diaspora, and after her return to Rwanda in 2010, she had uttered, published, wrote or made known to the public through print, radio or the internet, statements or ideas aimed at minimizing the 1994 Rwandan genocide.

Amnesty International found that key concerns emerged from the observation of the first instance trial. In the build-up to the trial, official statements were made by the Rwandan authorities which posed problems in relation to Victoire Ingabire's presumption of innocence, including precursory conclusions about the weight of evidence brought against her. The freedom of expression charges lacked a clear legal basis. Certain expression-related charges were based on pieces of imprecise and broad Rwandan legislation, including laws punishing "genocide ideology" and "discrimination and sectarianism." Amnesty International found no indication of advocacy or incitement to violence or ethnic hatred in the evidence put forward by the prosecution during the trial.

Victoire Ingabire was at times treated unfairly during the trial. The judges showed signs of hostility and anger towards the defendant regularly interrupting her. The court subjected defence statements to intense scrutiny, but failed to ask rudimentary questions about evidence put forward by the prosecution.

On 30 October 2012, Victoire Ingabire was convicted and sentenced to eight years in prison. She appealed to the Supreme Court on 17 December 2012.

## METHODOLOGY

Amnesty International observed the trial for adherence to international fair trial standards attending all proceedings from September 2011 to April 2012 apart from four days. Amnesty International wrote to the Prosecutor General, the Minister of Foreign Affairs and the Minister of Justice on 2 September 2011 to inform the Rwandan government of the organization's intention to send a legal consultant to monitor the trial.

The trial, alongside Victoire Ingabire, of her co-accused who pleaded guilty and who made confessions, is not addressed in this report.

Amnesty International wrote to the Rwandan authorities on 28 February and 7 March 2013 to provide a summary of the report's findings and to request a written response. At the time of writing, the organization had not received a reply.

## AMNESTY INTERNATIONAL'S WORK ON RWANDA

Since the ruling party, the Rwandan Patriotic Front (RPF) came to power after the 1994 genocide, individuals, including political opponents, journalists and human rights defenders have been harassed, intimidated, arbitrarily arrested and imprisoned by the Rwandan authorities. Amnesty International has documented many such individual cases and has called for full investigations into allegations and prosecutions of those responsible.

Amnesty International has called for the revision of Law N° 18/2008 relating to the Punishment of the Crime of Genocide Ideology (the 2008 "genocide ideology" law), and Law N° 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism (the 2001 law on "discrimination and sectarianism").<sup>2</sup> The "genocide ideology" and "sectarianism" laws were introduced to restrict speech that could promote hatred in the years following the 1994 genocide. However, the vague wording of these laws has been misused to criminalize criticism of the government and legitimate dissent by opposition politicians, human rights activists and journalists. In a 2010 report *Safer to Stay Silent: The Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and*

'Sectarianism', Amnesty International voiced concern about this legislation. The ambiguity of the "genocide ideology" and "sectarianism" laws means that Rwandans are scared of punishment for saying the wrong thing: leading to self-censorship within Rwandan society. The report also found that many Rwandans, even those with specialist knowledge of Rwandan law including lawyers and human rights workers, were unable to precisely define "genocide ideology". The research found that even judges, the professionals charged with applying the law, noted that the law was broad and abstract.<sup>3</sup>

The Rwandan government expressed a commitment in April 2010 to review the 2008 "genocide ideology" law. During Rwanda's Universal Periodic Review at the United Nations Human Rights Council in January 2011, the Rwandan government reiterated this pledge. The draft of the new "genocide ideology" law was before parliament at the time of writing.

The trial of Victoire Ingabire also highlighted concerns around the unlawful detention of individuals by Rwandan military intelligence, another focus of Amnesty International's research. The organization documented more than 45 cases of unlawful detention and 18 allegations of torture or other ill-treatment by Rwandan military intelligence in 2010 and 2011.<sup>4</sup> Scores of people were held in detention in military camps and the safeguards which protect detainees in police stations and other official places of detention were circumvented. Many detainees were held as part of the Rwandan authorities' investigations into grenade attacks in 2010 and 2011. Individuals were arrested arbitrarily, by the military, sometimes acting in collaboration with the police. Those arrested were almost exclusively men aged between 20 and 45. Most of the cases documented by Amnesty International were of civilians, including demobilized military. Individuals alleged cases of torture, including serious beatings, electric shocks and sensory deprivation to force confessions during interrogations. During their detention by the military, often spanning several months, individuals were denied access to lawyers, family members and medical assistance.

A number of these cases involved individuals detained at Camp Kami, a military camp situated in Kinyinya sector on the outskirts of Kigali. Camp Kami has a notorious reputation and its name instils fear in Rwandans. Many former detainees at Camp Kami alleged that they had been forced to confess to crimes or to sign statements under duress, often due to beatings or other forms of torture.

## 3. BACKGROUND

### RESTRICTED FREEDOM OF EXPRESSION AND ASSOCIATION IN RWANDA

The RPF tightly controls political space, civil society and the media, contending that this is necessary to prevent renewed violence.<sup>5</sup> Clampdowns on perceived critics occurred in the lead-up to elections in 2003 and 2010.<sup>6</sup> The silencing of critics has been effective in creating a repressive environment where people dare not speak out.

### THE 2010 CLAMPDOWN

Restrictions on freedom of association prevented new opposition parties from contesting the August 2010 presidential elections. Victoire Ingabire's FDU-Inkingi party and the Democratic Green Party of Rwanda were unable to obtain security clearance to organize meetings needed for their registration. The Ideal Social Party (PS-Imberakuri) was the only new party which successfully secured registration, but decided not to field a candidate in the elections.

The president of the PS-Imberakuri party, Bernard Ntaganda, was arrested on 24 June 2010. His arrest came on the first day that presidential candidates could register for the elections and just hours before a demonstration was planned by his party in Kigali. On 11 February 2011, he was sentenced to four years in prison for "divisionism" for public speeches criticizing government policies ahead of the elections, breaching state security, and attempting to plan an "unauthorized" demonstration. His prosecution for threatening state security and "divisionism" was based solely on his speeches criticizing government policies.<sup>7</sup>

Rwandan journalist and deputy editor of the Kinyarwanda newspaper, *Umuwugizi*, Jean-Leonard Rugambage, was shot dead outside his home in Kigali on 24 June 2010. He had been investigating the shooting of the exiled former head of the Rwandan army, Kayumba Nyamwasa, in South Africa. The article had alleged that Rwandan intelligence officials were linked to the shooting. There is no indication that Rwandan police explored all leads into the killing of Jean-Leonard Rugambage.<sup>8</sup>

Agnes Nkusi Uwimana, editor of *Umurabyo*, and her deputy editor, Saidati Mukakibibi, were arrested on 8 and 10 July 2010 respectively. The two women had written articles criticizing government policies and made corruption allegations against senior government officials, including President Kagame. The articles also made references to the prevailing feeling of insecurity before the elections and contended that there were growing divisions within the security forces.<sup>9</sup> On 5 April 2012, they were sentenced on appeal to four and three years in prison respectively for opinion pieces published before the 2010 elections. They were both convicted of endangering national security, and Agnes Nkusi Uwimana was also found guilty of defamation.

Two private Kinyarwanda language newspapers, *Umuseso* and *Umuwugizi*, were indefinitely closed by the Rwandan authorities in 2010 after claims that some of their articles threatened national security. Their editors fled the country.<sup>10</sup>

On 14 July 2010, André Kagwa Rwisereka, vice-president of the Democratic Green Party of Rwanda, was found beheaded in Butare, southern Rwanda. Before his death, he had told

colleagues that he was concerned for his security. The police opened investigations, but the prosecution claimed to have insufficient evidence to press charges.<sup>11</sup>

### “GENOCIDE IDEOLOGY” AND “DIVISIONISM”

Since 2003, the Rwandan government has conducted a broad campaign against what it describes as “divisionism” and “genocide ideology”. A series of four parliamentary commissions<sup>12</sup> from 2003 to 2008 investigated allegations of “divisionism” and “genocide ideology” making public accusations against hundreds of Rwandans, as well as both Rwandan and international organizations, the media and schools. These commissions promoted expansive interpretations of “divisionism” and “genocide ideology” which exceeded restrictions on freedom of expression laid out in international law.

### VICTOIRE INGABIRE

Victoire Ingabire lived outside Rwanda for 16 years before her return to the country in 2010. She had previously worked in an international accounting firm in the Netherlands until she left her post in April 2009.

She was politically active for years and worked with a range of Rwandan opposition groups in the diaspora. She joined the Republican Rally for Democracy in Rwanda (RDR) in 1997, becoming President of the Netherlands branch in 1998 and President of the party in 2000. Between 2003 and 2006, she was President of the Union of Rwandan Democratic Forces (UFDR), a coalition of political opposition parties to which the RDR belonged. Then in 2006, she helped create the FDU-Inkingi party, later becoming its President.

Victoire Ingabire attempted to bring together a range of political opposition parties in the diaspora with the purported aim of creating an opposition movement to counter the RPF in Rwanda. She participated in a number of international conferences, including in Spain and the Netherlands where she made speeches and written interventions.

She came to Rwanda in January 2010 with the aim of participating in the 2010 elections. On 16 January 2010 - her first day in the country after 16 years abroad - she made a speech<sup>13</sup> at Kigali Genocide Memorial Centre. Her speech, which referred to problems with reconciliation and ethnic violence, was perceived as controversial in the Rwandan context.

## 4. TRIAL NARRATIVE

### JUDICIAL FRAMEWORK

The first instance trial was conducted at Kigali High Court. In the Rwandan judicial system, the Supreme Court is the highest appellate court with jurisdiction over the High Court and the Military High Court.<sup>14</sup> The constitution specifies that it is the court responsible, amongst other things, for examining whether international treaties and agreements and laws are compatible with the Constitution.<sup>15</sup> The High Court is the court of first instance for certain crimes and has territorial jurisdiction over the whole country.<sup>16</sup> It is also the court of first instance for some offences committed outside Rwanda.<sup>17</sup>

### TRANSLATION

The trial was mainly carried out in the Kinyarwanda language. The court provided a translator, paid for by the court, because the Ingabire defence team had a British lawyer who did not speak Kinyarwanda. The translation also allowed trial observers and members of the diplomatic community monitoring the trial to be able to follow the proceedings.

The court translators, state attorneys from the Ministry of Justice, provided translation services throughout the trial, except on occasions when the trial proceedings were in French, or when the English lawyer was not in court, then no translation was provided. The court translators spoke the three main languages used in the court: Kinyarwanda, English and French. On most occasions when translation was not provided, the Amnesty International trial observer obtained the services of local interpreters to understand trial proceedings.

### TIMEFRAME OF THE TRIAL

The trial ran from September to December 2011 and from March to April 2012.

- On 26 September 2011, the defence presented a submission challenging the retroactive application of the 2008 “genocide ideology” law and the 2008 law on counter terrorism as evidence brought by the prosecution allegedly pre-dated these laws. In the same submission, the defence challenged the jurisdiction of the High Court to try certain crimes committed outside Rwanda.
- On 7 March 2012, Victoire Ingabire also made a legal challenge to the Supreme Court contending that the 2008 “genocide ideology” law and the 2003 law repressing the crime of genocide, crimes against humanity and war crimes contravened articles in the Constitution guaranteeing freedom of expression. This challenge was heard by the Supreme Court on 27 March 2012.
- On 16 April 2012, Victoire Ingabire withdrew from the court proceedings stating she no longer had confidence that her trial would be fair.
- The trial continued on 18 April 2012 without Victoire Ingabire or her lawyers.
- Between June and October 2012, the judgment in the case and the defence’s request to the Supreme

Court to review the two laws were pending and were postponed and rescheduled several times.

- On 18 October 2012, the Supreme Court ruled that the laws were in line with the Constitution.
- On 30 October 2012, the verdict in the first instance trial was handed down and Victoire Ingabire was sentenced to eight years in prison.
- FDU-Inkingi reported in a press statement that on 29 November 2012 Victoire Ingabire had officially received the judgment and the National Public Prosecution Authority had appealed to the Supreme Court on the same day.<sup>18</sup>
- The same FDU-Inkingi press statement reported that Victoire Ingabire had officially appealed to the Supreme Court on 17 December 2012.<sup>19</sup>

## 5. LEGAL FRAMEWORK

### FAIR TRIAL STANDARDS UNDER INTERNATIONAL LAW

Rwanda is a party to international and regional treaties that contain standards on fair trials and treatment in detention. These include the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup> the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>21</sup> and the African Charter on Human and Peoples' Rights (ACHPR).<sup>22</sup>

Rwanda became party to the ICCPR in 1975<sup>23</sup> and its second optional protocol on the abolition of the death penalty in 2008.<sup>24</sup> In 1983, it ratified the African Charter on Human and Peoples' Rights.<sup>25</sup> Rwanda is a state party to the East African Community Treaty, which requires state parties to abide by principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.<sup>26</sup> The Treaty also encourages state parties to uphold human rights in accordance with the ACHPR.<sup>27</sup>

Complementing the norms contained in these treaties, fair trial standards can also be found in a range of international and regional instruments adopted by the United Nations and the African Commission on Human and People's Rights. In particular, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted in 2001 by the African Commission on Human and Peoples' Rights, outline principles and rules to further strengthen and supplement the provisions relating to fair trial in the Charter and to reflect international standards.

### APPLICABLE RWANDAN LAW

The 2003 Rwandan Constitution<sup>28</sup> reflects certain principles of international human rights law including the right to a fair hearing and the presumption of innocence.<sup>29</sup>

The 2004 Code of Criminal Procedure<sup>30</sup> outlines an individual's rights following arrest and during detention and criminal trials, including the right to be presumed innocent.<sup>31</sup> It stipulates the responsibilities and powers of the judicial police and the court in the investigation of crimes and the gathering and presentation of evidence. It also specifies the obligation of the court to rule on whether the evidence, based on fact and law, tendered by the prosecution and the defence are correct and admissible.<sup>32</sup> It states that any doubt should be resolved in favour of the accused. The 2004 Law Relating to Evidence and Its Production also includes provisions relating to the burden of proof and the power of the court to order any party to produce elements of proof.<sup>33</sup> It also states that confessions or evidence coerced through torture are inadmissible in court.<sup>34</sup>

The responsibility of the judge to remain demonstrably impartial is provided for in the 2004 Law Relating to the Code of Ethics for the Judiciary.<sup>35</sup>

## 6. CHARGES AND CONVICTION

### CHARGES AGAINST VICTOIRE INGABIRE

The charges against Victoire Ingabire fell into two broad categories – speech-related charges and terrorism-related charges. At the beginning of the trial,<sup>36</sup> Victoire Ingabire was charged with the following six offences:

- Crime of “genocide ideology” provided for by Articles 2 to 4 of the Law N° 18/2008 of 23/07/2008 relating to the Punishment of the Crime of Genocide Ideology.
- Crime of “discrimination and sectarianism” provided for by Articles 3 and 5 of the Law N° 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism.
- Crime of willingly disseminating rumours aiming at inciting the public against the established authority provided for by Article 166 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda.
- Crime of complicity in acts of terrorism provided for by Articles 21 (item 3), 75 and 76 of the Law N° 45/2008 of 09/09/2008 on Counter Terrorism.
- Crime of creating an armed group provided for by Article 163 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda.
- Crime of recourse to terrorism, armed force and all other violence in order to harm the established authority and the constitutional principles provided for by Articles 21, 22, 24 and 164 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda.

### CASE MADE BY THE PROSECUTION DURING THE TRIAL

The prosecution alleged that Victoire Ingabire had conspired with the four co-accused to form the CDF.<sup>37</sup> The prosecution alleged the objective of the armed group was to wage war and cause insecurity in Rwanda, to harm the government using terrorism and to make the country appear insecure to the international community. It was alleged that the CDF then wanted to force the government into peace talks. The four co-accused all stated in their confessions presented in court that they had been former members of the FDLR.

The confessions of the co-accused alleged that Victoire Ingabire, through various proxies living in exile in Europe, sent money via Western Union transfers to finance the creation of the CDF and to purchase military equipment and weapons. The men alleged in their confessions, presented by the prosecution, that Victoire Ingabire and the co-accused had met and planned the creation of the CDF during face-to-face meetings in the DRC and the Republic of the Congo. During the meetings, they had allegedly discussed, amongst other things, further recruitment of people into the armed group. The prosecution submitted email correspondence, containing pseudonyms, allegedly between Victoire Ingabire and the co-accused. The prosecution submitted the men's Congolese voter cards which they allegedly used as identity cards whilst they travelled in the DRC. The prosecution also submitted air

tickets and Western Union transfer records allegedly used by the co-accused.

The speech-related charges were brought against Victoire Ingabire on the basis of the expression of her political views. The prosecution alleged that as leader of various political groups in the diaspora, and upon her return to Rwanda in 2010, she had uttered, published, written or made known to the public through print, radio or the internet, statements or ideas aimed at minimising the 1994 Rwandan genocide.<sup>38</sup> Her speech at the Kigali Genocide Memorial Centre was used as evidence by the prosecution that she was harbouring “genocide ideology.”<sup>39</sup> The prosecution alleged that she had intended to cause divisions amongst Rwandans, and had spread rumours about the Government of Rwanda with the aim of inciting the population against the authorities.<sup>40</sup> The prosecution also alleged that “genocide ideology” had been held by other members of Victoire Ingabire’s family and she had developed her beliefs from her parents.

## THE CHARGES AGAINST THE FOUR CO-ACCUSED

Vital Uwumuremyi,<sup>41</sup> Tharcisse Nditurende,<sup>42</sup> Noel Habiyaemye<sup>43</sup> and Jean Marie Vianney Karuta<sup>44</sup> were accused of the following three offences:

- Crime of belonging to and operating within a terrorist organization provided for by Article 80<sup>45</sup> of the Law N° 45/2008 of 09/09/2008 on Counter Terrorism.
- Crime of recourse to terrorism, armed force and all other violence in order to harm the established authority and the constitutional principles provided for by Article 164 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda.
- Crime of creating an armed group provided for by Article 163 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda.

All of Victoire Ingabire’s co-accused persons pleaded guilty and sought leniency from the court.<sup>46</sup>

## THE CONVICTION OF VICTOIRE INGABIRE

On 30 October 2012, Victoire Ingabire was convicted by the High Court of two crimes.

The first was conspiracy to harm the existing authority and the constitutional principles using terrorism, armed violence or any other type of violence. The court ruled that this crime was punishable under Article 165 of Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code of Rwanda, in application at the time the crime was committed, but that the sentencing should be based on Article 462 of N° 01/2012/OL of 02/05/2012 Organic Law instituting the Penal Code because it provided for a lighter penalty.

The second was the crime of grossly minimizing the genocide. The court ruled that this was provided for by Article 4 of 06/09/2003 - Law N° 33 Bis/2003 repressing the crime of genocide, crimes against humanity and war crimes, in application at the time the crime was committed, but that the sentencing should be based on Article 116 of N° 01/2012/OL of 02/05/2012 Organic Law instituting the Penal Code on the grounds that it provided for a lighter penalty.

The court ruled, amongst other things, that Victoire Ingabire was eligible for a reduced sentence because it was her first prosecution, and also stated that the charges relating to threatening state security never had serious consequences, as her acts were only at the planning stage.

### THE CONVICTION OF HER FOUR CO-ACCUSED

All four co-accused were convicted by the High Court of the crime of recourse to terrorism, armed force and all other violence in order to harm the established authority and the constitutional principles. Like Victoire Ingabire, Vital Uwumuremyi was also convicted of conspiracy to harm the existing authority and the constitutional principles using terrorism, armed force or any other type of violence.

All four men requested a reduced sentence, as they had pleaded guilty and requested leniency. The High Court sentenced Jean Marie Vianney Karuta to two years and seven months in prison.<sup>47</sup> Tharcisse Nditurende and Noel Habiwaremye received three years and six months each.<sup>48</sup> Vital Uwumuremyi was sentenced to four years and six months in prison; however, the court ruled that he only be imprisoned for three years and six months, followed by a one year sentence suspended for two years.

## 7. FAIR TRIAL CONCERNS

### THE PRESUMPTION OF INNOCENCE

According to Article 14(2) of the ICCPR: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.” The Human Rights Committee tasked with providing an authoritative interpretation of this treaty, to which Rwanda is a state party, has made clear with regard to the presumption of innocence that: “The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”<sup>49</sup> Fundamental to ensuring respect for the right to obtain a fair trial, respect for one’s presumption of innocence imposes “a duty on all public authorities to refrain from prejudging the outcome of a trial.”<sup>50</sup>

The African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa similarly state that “public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect.”<sup>51</sup> While analyzing a provision of the European Convention on Human Rights similar to Article 14(2) of the ICCPR, the European Court of Human Rights clarified that one aspect of the presumption of innocence “is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings [...] It not only prohibits the premature expression by the tribunal itself of the opinion that the person ‘charged with a criminal offence’ is guilty before he has been so proved according to law [...], but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority.”<sup>52</sup>

The presumption of innocence is also enshrined in the Rwandan Constitution. Article 19 states that: “Every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defence have been made available.”<sup>53</sup>

Several official statements made both before and at the beginning of Victoire Ingabire’s trial posed problems in relation to the presumption of innocence. On 23 May 2010, President Kagame told the *Daily Monitor*, a Ugandan newspaper:

*“On our side we have evidence, which has been brought to her attention, and about 10 things she has been denying. Now she’s saying that seven of them are actually true and this has come as a result of the overwhelming evidence that was put in front of her including the people she was working with, the former soldiers in the FDLR who are here in our hands, who are testifying to these accusations.”*<sup>54</sup>

In the interview, President Kagame went on to discuss Victoire Ingabire’s reported meetings with the FDLR in the DRC and proof of financial contributions. President Kagame also stated

that Victoire Ingabire had initially denied these visits, but had subsequently admitted they had occurred when presented with the evidence of the co-accuseds' testimonies.

In the same interview, President Kagame appeared to imply that Victoire Ingabire would be found guilty:

*"...issues are being sorted out. This woman will certainly be where she belongs... Now the outsiders who want so badly Ingabire to be an opposition leader here or later on be our president, well, they may wait for a while."*<sup>55</sup>

On 9 April 2011, President Kagame tweeted:

*"She is in court for crimes committed-opposition politics (to do with her) just used as cover... good amount of evidence against her has come from The Netherlands... and she has been responsible for the delay of her case ...."*<sup>56</sup>

This was followed by further comments:

*"Also u/stand that u make her the opposition that she isnt, and opposition need not commit crime .. And if they do justice is done... What will u really say when, as will happen, she herself admits guilt to these charges because of overwhelming evidence!???"*<sup>57</sup>

In a context where freedom of expression is severely restricted and the President has a strong influence over society, commenting on Victoire Ingabire's culpability before the trial may have shaped the context in which Victoire Ingabire was brought to trial and may have impacted on her ability to receive a fair trial.

The right to presumption of innocence was not always respected during the trial. On 7 September 2011, following a complaint from the defence team about security personnel insisting on checking their files and bags before entering the court, the prosecution declared that this happens across the world and added that the defence was representing a "bunch of criminals" and could not be trusted.<sup>58</sup>

## VAGUE NATURE OF SPEECH-RELATED CRIMINAL PROVISIONS

According to Article 15(1) of the ICCPR: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed." Reflecting the principle of legality, this provision requires that criminal offences must be precisely defined in order to ensure legal certainty. The law must be accessible enough to give the individual a proper indication of how the law limits his or her conduct and it must be formulated with sufficient precision so that the individual can regulate his or her conduct.<sup>59</sup>

The prosecution's speech-related charges against Victoire Ingabire lacked a clear legal basis because some of the charges were based on imprecise and broad pieces of Rwandan legislation. Rwandan law currently criminalizes vast swathes of speech and writing, including the legitimate exercise of one's freedom of expression. Problematic laws were used to underpin the prosecution's case including the 2008 "genocide ideology" law and the 2001

law on “discrimination and sectarianism.” These laws were introduced to restrict speech that could promote hatred in the decade following the 1994 genocide. However, the vague wording of these laws has been misused to criminalize criticism of the government and legitimate dissent by opposition politicians, human rights activists and journalists. The crime of minimizing the genocide is covered under Article 4 of Law No. 33 bis/2003 repressing the crime of genocide, crimes against humanity and war crimes.<sup>60</sup>

Article 19 of the ICCPR guarantees the right to freedom of opinion – which may not be restricted or limited – and the right to freedom of expression. The ICCPR allows state parties to impose limits on freedom of expression, but only if provided for by law and necessary to protect the rights of others, such as the right to be free from discrimination, and for the protection of national security, public order, public health and morals. Any such restrictions must also be necessary – which includes a requirement of proportionality – to meet one of the aims.

States are also required, under Article 20(2) of the ICCPR, to prohibit (though not necessarily to criminalize) advocacy of hatred that constitutes incitement to hostility, discrimination or violence. However, any such prohibitions which result in restrictions of freedom of expression must also comply with the three-part test for restrictions under Article 19(3) of the ICCPR. As the UN Human Rights Committee has stated, restrictions on freedom of expression “may not put in jeopardy the right itself.”<sup>61</sup> There is a growing consensus that the international legal prohibition on advocacy of hatred that constitutes incitement to discrimination, hostility or violence in Article 20(2) of the ICCPR should only be enforced with criminal sanctions – if at all – as a last resort to address the most severe cases.<sup>62</sup>

The Human Rights Committee has criticized so-called “memory laws,” noting: “Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the [ICCPR] imposes on States parties in relation to the respect for freedom of opinion and expression.”<sup>63</sup>

Articles 2 and 3 of the 2008 “genocide ideology” law<sup>64</sup> provide definitions of “genocide ideology”, but the law’s vague language fails to establish certainty as to what behaviour is prohibited. Moreover, the extremely broad scope of conduct and speech that is, or may be, prohibited under this law, all of which are punishable by long prison sentences, fail to meet the international requirement of proportionality, as they go well beyond that which is necessary to prevent hate speech or meet any other legitimate interest. In addition, the sweeping and imprecise nature of the 2001 law on “discrimination and sectarianism” fails to meet the requirements of legality in international human rights law.<sup>65</sup> The law does not give individuals a proper indication of how the law limits his or her conduct and is not formulated with sufficient precision for individuals to know what conduct is criminal.<sup>66</sup> Amnesty International’s research has shown that Rwandan law experts have been unable to easily decipher what conduct is criminal under these laws, and more importantly, what expressed opinions are legitimate.<sup>67</sup>

## CONCERNS REGARDING FREEDOM OF EXPRESSION

From the information available to Amnesty International, the organization has not yet seen evidence that Victoire Ingabire has engaged in expression which violated the prohibition in Article 20(2) of the ICCPR against advocacy of hatred that constitutes incitement to

discrimination, hostility or violence.

Recurring questions arose throughout the course of the trial, including on statements made by Victoire Ingabire, in relation to impunity for RPF war crimes,<sup>68</sup> the potential culpability of President Kagame in the shooting down of former President Habyarimana's plane,<sup>69</sup> flaws in the system of gacaca<sup>70</sup> community courts,<sup>71</sup> her characterization of the Rwandan government as authoritarian<sup>72</sup> and problems linked to ethnicity and reconciliation.<sup>73</sup> Certain evidence heard during the trial included political party statements issued whilst Victoire Ingabire was responsible for the political party in question. The subjects raised by Victoire Ingabire are not publicly discussed in Rwanda and are perceived as sensitive.

Victoire Ingabire's opinions on such sensitive issues were not seen by the prosecution and the court as falling within the boundaries of protected freedom of expression. Throughout the trial, the court set a challenging standard for Victoire Ingabire to meet regarding her disputed expression, suggesting that even the expression of her opinion required support from her own research rather than that of the United Nations or international human rights organizations.

Certain arguments in relation to the expression-related charges were premised on Victoire Ingabire's alleged intention to espouse a double genocide theory,<sup>74</sup> and her alleged intention to trivialize the 1994 genocide. This argument was in part linked to Victoire Ingabire's comments made during trial proceedings in relation to the UN mapping report on the DRC, which stated that crimes against humanity and war crimes committed by the Rwandan army in the DRC could amount to genocide.

Two pieces of evidence were also important. The first was Victoire Ingabire's speech<sup>75</sup> at the Kigali Genocide Memorial Centre, in which the court acknowledged that she had accepted there was a genocide against the Tutsi, but that, by speaking about Hutu who were also killed, she had put forward a concept of a double genocide, because she was placing the crimes on an equal standing. The second piece of evidence was Article 5 of the Constitutional Charter of the FDU Inkingi party, which states that a requirement for registering members is to recognize, and unequivocally condemn, what it characterized as the Rwanda genocide committed by both warring parties since 1990.<sup>76</sup>

If Victoire Ingabire had intended to incite ethnic hostility or violence whilst making those arguments, then punishing such expression may have been a legitimate restriction on freedom of expression. Amnesty International has so far found no indication of advocacy of hatred that may constitute incitement to violence or ethnic hatred in the evidence put forward by the prosecution during the trial.

## FAILURE OF THE COURT TO TEST PROSECUTION EVIDENCE OBTAINED AFTER PROLONGED INCOMMUNICADO DETENTION OF CO-ACCUSED

Article 7 of the ICCPR states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". One of the consequences of the absolute prohibition of torture and other forms of ill-treatment is that any evidence obtained by such methods must be excluded from any proceedings. As the Human Rights Committee has made clear: "The guarantees of fair trial may never be made subject to measures of derogation that would

circumvent the protection of non-derogable rights. [...] as article 7 is [...] non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred.”<sup>77</sup> This exclusionary rule prohibiting the use of statements obtained by torture or other forms of ill-treatment also derives from states’ obligations under the UNCAT.<sup>78</sup>

The exclusionary rule applies not only to statements made by the accused, but also to statements made by any other person, whether or not called to testify as a witness.<sup>79</sup> In addition, the fact that a person confesses or confirms a coerced statement to an authority different from the one responsible for the ill-treatment does not preclude the possibility that such confession or later statement is resulting from the ill-treatment endured and must therefore be excluded from the proceedings.<sup>80</sup>

According to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the circumstances during which statements were made will be directly relevant to the question of its admissibility: “If there are doubts about the voluntariness of statements by the accused or witnesses, for example, when no information about the circumstances is provided or if the person is arbitrarily or secretly detained, a statement should be excluded irrespective of direct evidence or knowledge of physical abuse. The use of evidence obtained otherwise in breach of human rights or domestic law generally renders the trial as unfair.”<sup>81</sup> The African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa further clarifies the scope of the exclusionary rule to cover any form of coercion, which includes statements obtained during incommunicado detention: “Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion.”<sup>82</sup> It should also be recalled that prolonged incommunicado detention, which includes no access to lawyers, doctors, and relatives and no judicial review of the lawfulness of detention, violates states’ obligations under international law, including guarantees against arbitrary detention and torture.<sup>83</sup> According to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: “Whether the use of torture for the purpose of extracting information can be established or not is irrelevant in cases of enforced disappearances as the very fact that a person is kept incommunicado for a prolonged period of time amounts to torture or at least cruel, inhuman or degrading treatment.”<sup>84</sup>

Concerning the access to information which could indicate that statements were made in violation of Article 7 of the ICCPR, the Human Rights Committee has made clear that the defendants’ right to have adequate facilities for the preparation of his or her defence, guaranteed by Article 14 (3) (b) of the ICCPR, includes “access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (for example, indications that a confession was not voluntary). In cases of a claim that evidence was obtained in violation of Article 7 of the Covenant, information about

the circumstances in which such evidence was obtained must be made available to allow an assessment of such a claim.”<sup>85</sup> Moreover, Article 14(3)(e) of the ICCPR, which guarantees the right of the defendant to examine, or have examined, the witnesses against him or her, includes the right “to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.”<sup>86</sup> Finally, the burden shall be on the state to prove that statements are given of the person’s free will.<sup>87</sup>

Confessions or evidence coerced through torture are inadmissible in court under Rwandan law. The 2004 Law relating to Evidence and its Production states that confessions or evidence obtained by torture or brainwashing are prohibited in all courts, including specialized courts.<sup>88</sup>

The prosecution’s case against Victoire Ingabire rested in large part on confessions made by the co-accused after spending months in unlawful and incommunicado military detention. Amnesty International has documented how normal safeguards, which protect detainees in police stations and other official places of detention, are circumvented in these detention facilities.<sup>89</sup> Scores of people were held in such conditions in 2010 and 2011 and some detainees reported torture and ill-treatment. In the trial, when it came out that testimonies of two of the co-accused were made after prolonged unlawful and incommunicado military detention, the judges failed to ask questions to test the circumstances in which the confessions had been made.

During the limited questions that the court permitted the defence, it materialized that Tharcisse Nditurende and Noel Habiyaemye were unlawfully held in incommunicado detention by the Rwandan military before incriminating Victoire Ingabire. On 11 and 14 November 2011, the defence raised concerns to the court that Tharcisse Nditurende and Noel Habiyaemye had been arrested in September 2009, but only reappeared seven months later on 23 April 2010 when they were interviewed at the Criminal Investigations Department (CID).<sup>90</sup>

The answers provided by Tharcisse Nditurende were short. He said he had been held at Camp Kami with Noel Habiyaemye and that they were brought to CID on 23 and 24 April 2010. They were interviewed for two days and on 24 April, they signed confessions. Little information on conditions at Camp Kami was disclosed by Tharcisse Nditurende. He stated the Rwandan Defence Force took him there. He was unable to give the names of any commanding officers, or identify who interrogated him, although he believed they worked for military intelligence. When prompted, he was unable to say how many times he was interrogated, but he estimated it exceeded three. He told the court he did not have access to a lawyer, stating that he did not know he could be assisted by a lawyer during his time at Camp Kami. He said that notes were taken during interrogations, but that he was not aware of where those notes were. He dismissed the notion, put forward by the defence, that he had been mistreated, advised to plead guilty or coerced to confess.<sup>91</sup>

The prosecution called into doubt the defence’s reasoning for asking such questions. It said that the defence needed to prove to the court that Tharcisse Nditurende had been poorly treated and was not permitted to cross-examine him on the basis of allegations. The prosecution said it would be for the court to act on evidence, if it could be produced.

During the questions posed by the defence to Tharcisse Nditurende,<sup>92</sup> the judge seemed to willingly obstruct the defence from asking questions about detention conditions in Camp Kami, including to clarify if the co-accuseds' confessions had been coerced or induced. The court did not request or provide information about where the interrogation notes from Camp Kami were held, if they were handed over to the police and why they could not be submitted to the court as evidence. Neither the court nor the prosecution raised questions about what had happened to the two men during the seven-month period.

Serious concerns remain that the circumstances in which the co-accuseds' confessions were made were not fully investigated by the court.

An individual testifying for the defence said that he had been held at Camp Kami at the same time as Vital Uwumuremyi and that the terrorism-related accusations against Victoire Ingabire were fabricated under coercion from state security.

On 11 April 2012, Michel Habimana, a former FDLR spokesman, was summoned by the defence as a witness.<sup>93</sup> He was being held in Kigali Central prison after being sentenced to life imprisonment by a gacaca court. Michel Habimana claimed in court that he had been arrested with Vital Uwumuremyi in the DRC. He said that they were allegedly held in Gisenyi, and then Camp Kami from March 2009. Michel Habimana said the conditions were harsh. He recounted being tied by his hands and feet and being questioned by guards who asked if he knew Victoire Ingabire. He told them he did not know her, but Vital Uwumuremyi said he did, allegedly admitting later to Michel Habimana that he said it to try and improve his conditions.

After testifying in court, Michel Habimana's prison cell was searched following orders from the prosecutor's office and he was interrogated by a judicial police officer about the evidence he gave in court. A statement from this interrogation and the notes were forwarded to the prosecutor by the Director of Kigali Central Prison. The prosecution submitted Michel Habimana's notes seized in the search, as evidence. They claimed that these demonstrated that Victoire Ingabire's defence lawyer improperly prepared the witness. The defence claimed that the witness had been intimidated by the prosecution's intervention.

Victoire Ingabire withdrew from the trial after this incident, claiming that her right to a fair trial had been undermined.

## CONDUCT OF THE FIRST INSTANCE TRIAL

As a fundamental component of the right to a fair trial under Article 14(1) of the ICCPR, in the determination of any criminal charge against a person, he or she shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal.

As regards the requirement of impartiality of the tribunal, the Human Rights Committee underlined that: "The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial".<sup>94</sup>

Moreover, with regard to the guarantee of a fair hearing, “[f]airness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.”<sup>95</sup>

In criminal trials, where the prosecution has the machinery of the state behind it, the principle of equality of arms is an essential guarantee of the right to defend oneself. It ensures that the defence has a reasonable opportunity to prepare and present its case on a footing equal to the prosecution.

On 26 September 2011, the defence presented a submission to the court on the principle of non-retroactivity of criminal law and on the territorial jurisdiction of the High Court. The submission called into question much of the evidence in the prosecution’s case. The prosecution expressed surprise at the submission suggesting it was a move by the defence to delay the trial and called its contents baseless. The prosecution claimed it was a trap that had been prepared for a long time and that the defence was scared to present a defence. The prosecution requested a week’s adjournment to study the submission.

The presiding judge also expressed surprise at the submission and complained about other purported examples of misconduct by the defence. These examples were not clearly linked to the defence’s submission. The judge expressed anger that the defence had not provided written submissions responding to the prosecution’s dossier earlier, and that the submission came after the defence’s opposition to a previous adjournment requested by the prosecution to allow evidence to come from the Netherlands. The accusations by the judge suggested the defence had intentionally wasted the court’s time and was demonstrating a lack of respect for the rights of the co-accused.<sup>96</sup>

The judge told the defence that the submission had been made in a barbaric way. When the defence interjected, the presiding judge refused the counsel the right to respond to the concerns raised by the court informing them that there would be no further discussion on the issue. On 27 September 2011, the defence team wrote a letter to the presiding judge to complain. On 3 October 2011, when the court reconvened, the judges provided the defence with an opportunity to outline the concerns they had raised in the letter.<sup>97</sup>

The treatment of evidence by the court is central to the presumption of innocence, and the prosecution and the defence should have equal time and opportunities to make their case. Article 45 of the 2004 Rwandan Code of Criminal Procedure states that: “Evidence should be based on all grounds, of fact and law, provided that parties were given a chance to discuss on them. A court gives a final ruling on whether the evidence tendered for the prosecution and defence is correct and admissible.”<sup>98</sup>

The High Court judges did not treat evidence provided by the prosecution and defence equally. The court generally subjected evidence presented by the defence to significant scrutiny, but failed to ask rudimentary questions around evidence tendered by the prosecution.

A recurring aspect of the trial is that when Victoire Ingabire referred to others’ publications as a basis for her viewpoint, the court undermined the author, or the fact that Victoire Ingabire took the same opinion as the author. On 20 October 2011, the judge pushed Victoire

Ingabire to tell the court why she had decided to agree with certain people's points of view. During the exchange, the judge told Victoire Ingabire that she should only voice opinions based on her own research.<sup>99</sup>

In Rwandan law, Article 11 of the 2004 Law Relating to the Code of Ethics for the Judiciary states that: "A judge shall be impartial and shall demonstrate it in proceedings before court as well as in decisions he or she takes [...]".

During judicial proceedings, the judges' treatment of Victoire Ingabire appeared at times rather confrontational. They often spoke in a raised voice, reprimanded or argued with Victoire Ingabire, while not acting with the prosecution in the same way. On occasions, the judges invited the defendant to speak and immediately interrupted when she began. These interruptions to challenge the admissibility of evidence were often made when the defence was seeking to present information on sensitively perceived subjects, including reports from international human rights organizations and the United Nations.<sup>100</sup> The judges did not constantly challenge or undermine the evidence submitted by the prosecution in the same way that they treated evidence put forward by the defence.

## 8. CONCLUSION

Victoire Ingabire's first instance trial raised various fair trial concerns. The case has been appealed to the Supreme Court and it is essential that there is now strict compliance with international fair trial standards.

From the start of the investigations, comments by President Kagame relating to Victoire Ingabire's culpability and the prosecution's evidence against her, raised concerns around her right to the presumption of innocence. Such statements may have shaped the context in which the trial was conducted and indicated that the authorities had prejudged the outcome of the trial.

The prosecution's speech-related charges were based on imprecise and broad pieces of Rwandan legislation and therefore lacked a clear legal basis. The defence team could not have been able to clearly decipher what conduct would be criminal under these laws and what expressed opinions would be legitimate. However, evidence heard in the trial, despite touching on sensitively perceived subjects within the Rwandan context, fell within the framework of what constitutes legitimate freedom of expression. Victoire Ingabire should not be convicted in relation to her legitimate and peaceful exercise of freedom of expression.

The court did not properly examine or investigate the circumstances in which the confessions of the co-accused could have been made. When it was stated that the statements were given after a period of unlawful detention in a military camp where torture is known to be used, the court did not act appropriately. No information was provided or requested by the court about the interrogation notes from Camp Kami, if they were handed over to the police, and why they could not be submitted to the court as evidence.

The accused was not treated in a fair and impartial way. The judges displayed signs of hostility and anger towards the defendant and regularly interrupted her. There was an inequality of arms and the evidence presented by the defence was repeatedly undermined, whereas basic questions about the evidence presented by the prosecution were not asked. The defendant was repeatedly challenged by the court, in a manner which appeared intentionally confrontational.

The Rwandan authorities have a responsibility to ensure that Victoire Ingabire's appeal trial meets standards under Rwandan and international law.

## 9. RECOMMENDATIONS

### To the Rwandan government:

- Ensure that Victoire Ingabire is provided with an appeal trial which complies with international fair trial standards.
- Guard all individuals' right to the presumption of innocence and refrain from making public statements regarding individuals' culpability prior to sentencing.
- Encourage judges to uphold the principle of equality of arms by ensuring that each party has the same procedural means and opportunities available to them during the trial and are in an equal position to make their case under conditions that do not place them at a substantial disadvantage vis-à-vis the opposing party.
- Ensure that any statement obtained by torture or other ill-treatment is inadmissible in any proceedings, except in proceedings against a person accused of torture or other ill-treatment as evidence that the statement was made.
- Encourage judges to test evidence, including by asking probing questions about individuals who may have been detained in secret or military facilities to ascertain when and by whom they were arrested, where they were detained, by whom, about what and how many times they had been interrogated, whether any records existed of these interrogations, whether they had access to a lawyer and independent medical assistance and if they had been subjected to torture or other ill-treatment.
- Encourage judges to summon authorities responsible for detention to provide information on conditions and circumstances of detention and to subpoena records which may potentially include exculpatory evidence.
- Complete the review of Law N° 18/2008 relating to the Punishment of the Crime of Genocide Ideology and bring it in line with Rwanda's obligations under international human rights law.
- Revise Law N° 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism to bring it in line with Rwanda's obligations under international human rights law.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

- Ensure that international and Rwandan human rights organizations have unhindered access to all Rwandan detention facilities and are able to interview detainees in private.

- Ratify the Optional Protocol to the Convention against Torture.

**To the Rwandan judiciary:**

- Provide Victoire Ingabire with an appeal trial which complies with international fair trial standards.

- Ensure that Victoire Ingabire is not convicted in relation to her legitimate and peaceful exercise of freedom of expression.

- Ensure that any statement obtained by torture or other ill-treatment is inadmissible in any proceedings, except in proceedings against a person accused of torture or other ill-treatment as evidence that the statement was made.

- Test the evidence, including by asking probing questions about individuals who may have been detained in secret or military facilities to ascertain when and by whom they were arrested, where they were detained, by whom, about what and how many times they had been interrogated, whether any records existed of these interrogations, whether they had access to a lawyer and independent medical assistance and if they had been subjected to torture or other ill-treatment.

- Summon authorities responsible for detention to provide information on the conditions and circumstances of detention and subpoena records which may potentially include exculpatory evidence.

- Ensure that all lawyers are able to access, at the earliest appropriate time, appropriate information, files and documents to enable them to provide effective legal assistance to their clients.

- Show demonstrable efforts to uphold the principle of equality of arms by ensuring that each party has the same procedural means and opportunities available to them during the course of the trial and are in an equal position to make their case under conditions that do not place them at a substantial disadvantage vis-à-vis the opposing party.

- Decide on matters impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

**To foreign governments:**

- Call for Victoire Ingabire's appeal trial to comply with international fair trial standards.
  
- Request the Rwandan authorities ensure that Victoire Ingabire is not convicted for her legitimate and peaceful exercise of freedom of expression.
  
- Observe the appeal trial.

## ENDNOTES

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<sup>1</sup> The FDLR is largely composed of Rwandan Hutu. It contains remnants of the Interahamwe and former Rwandan soldiers responsible for the 1994 Rwandan genocide, as well as fighters not involved in the genocide, including many too young to have participated in the genocide.

<sup>2</sup> Amnesty International, *Rwanda: Safer to stay silent: The chilling effect of Rwanda's laws on 'genocide ideology' and 'sectarianism'* (AFR 47/005/2010), 31 August 2010, <http://www.amnesty.org/en/library/info/AFR47/005/2010/en> [accessed 5 March 2013].

<sup>3</sup> Amnesty International, *Rwanda: Safer to stay silent: The chilling effect of Rwanda's laws on 'genocide ideology' and 'sectarianism'* (AFR 47/005/2010), 31 August 2010, pp.17-18, <http://www.amnesty.org/en/library/info/AFR47/005/2010/en> [accessed 5 March 2013].

<sup>4</sup> Amnesty International, *Rwanda: Shrouded in secrecy: Illegal detention and torture by military intelligence* (AFR 47/004/2012), 8 October 2012, <http://www.amnesty.org/en/library/info/AFR47/004/2012/en> [accessed 5 March 2013].

<sup>5</sup> Up to 800,000 Rwandans were killed in the 1994 genocide, most of them ethnic Tutsi, but also Hutu who opposed this organized killing and the forces that directed it.

<sup>6</sup> Amnesty International, *Rwanda: Unsafe to speak out: Restrictions on freedom of expression in Rwanda* (AFR 47/002/2011), 3 June 2011, <http://www.amnesty.org/en/library/info/AFR47/002/2011/en> [accessed 5 March 2013].

<sup>7</sup> Amnesty International, *Rwanda: Rwandan opposition politician jailed for exercising rights* (PRE 01/059/2011), 11 February 2011, <http://www.amnesty.org/en/for-media/press-releases/rwanda-opposition-politician-jailed-exercising-rights-2011-02-11> [accessed 5 March 2013].

<sup>8</sup> Amnesty International, *Rwanda: Pre-election attacks on Rwandan politicians and journalists condemned*, 5 August 2010, <http://www.amnesty.org/en/news-and-updates/pre-election-attacks-rwandan-politicians-and-journalists-condemned-2010-08-05> [accessed 5 March 2013]

<sup>9</sup> Amnesty International, *Rwanda: Unsafe to speak out: Restrictions on freedom of expression in Rwanda* (AFR 47/002/2011), 3 June 2011, <http://www.amnesty.org/en/library/info/AFR47/002/2011/en> [accessed 5 March 2013].

<sup>10</sup> Amnesty International, *Rwanda: Unsafe to speak out: Restrictions on freedom of expression in Rwanda* (AFR 47/002/2011), 3 June 2011, <http://www.amnesty.org/en/library/info/AFR47/002/2011/en> [accessed 5 March 2013].

<sup>11</sup> Amnesty International, *Rwanda: Pre-election attacks on Rwandan politicians and*

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*journalists condemned*, 5 August 2010, <http://www.amnesty.org/en/news-and-updates/pre-election-attacks-rwandan-politicians-and-journalists-condemned-2010-08-05> [accessed 5 March 2013].

<sup>12</sup> The first Commission, which published its findings just months ahead of the 2003 parliamentary and presidential elections, effectively called for the dissolution of the Democratic Republican Movement (MDR), the strongest opposition party, and named 47 individuals as responsible for “discrimination and division”. It interpreted “divisionism” to include opposition to government policies. The report prompted the collapse of the MDR, and its leader, Faustin Twagiramungu, was only able to run in the presidential elections as an independent candidate.

<sup>13</sup> Victoire Ingabire, “Unity and Reconciliation Speech at Gisozi Genocide Memorial Centre”, <http://www.victoire-ingabire.com/Eng/victoires-quotes/> [accessed 5 March 2013].

<sup>14</sup> Article 145/1 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434> [accessed 5 March 2013]. Also see N° 03/2012/OL of 13/06/2012 Organic Law determining the organization, functioning and jurisdiction of the Supreme Court.

<sup>15</sup> Article 145/3 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434> [accessed 5 March 2013].

<sup>16</sup> Article 149 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434> [accessed 5 March 2013].

<sup>17</sup> Article 149 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434> [accessed 5 March 2013].

<sup>18</sup> FDU-Inkingi, “Rwanda: Political prisoner Ingabire files an appeal to the Supreme Court”, 17 December 2012, <http://www.fdu-rwanda.com/en/english-rwanda-political-prisoner-ingabire-files-an-appeal-to-the-supreme-court> [accessed 5 March 2013].

<sup>19</sup> FDU-Inkingi, “Rwanda: Political prisoner Ingabire files an appeal to the Supreme Court”, 17 December 2012, <http://www.fdu-rwanda.com/en/english-rwanda-political-prisoner-ingabire-files-an-appeal-to-the-supreme-court> [accessed 5 March 2013].

<sup>20</sup> International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [accessed 5 March 2013].

<sup>21</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entered into force 26 June 1987, in accordance with article 27 (1), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [accessed 5 March 2013].

<sup>22</sup> Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), <http://www.achpr.org/instruments/achpr/> [accessed 5 March 2013].

<sup>23</sup> ICCPR, entered into force, 23 March 1976, Article 7, ratified by Rwanda, 16 April 1975, [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) [accessed 5 March 2013].

<sup>24</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989, entered into force 11 July 1991, in accordance with article 8 (1), accession by Rwanda 15 December 2008, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en) [accessed 5 March 2013].

<sup>25</sup> Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), ratified by Rwanda 15 July 1983, <http://www.achpr.org/instruments/achpr/> [accessed 5 March 2013].

<sup>26</sup> Article 7(2) of the Treaty establishing the East African Community: [http://www.eac.int/treaty/index.php?option=com\\_content&view=article&id=72:article-7-operational-principles-of-the-community&catid=38:chapter-2&Itemid=165](http://www.eac.int/treaty/index.php?option=com_content&view=article&id=72:article-7-operational-principles-of-the-community&catid=38:chapter-2&Itemid=165) [accessed 5 March 2013].

<sup>27</sup> Article 6 of the Treaty establishing the East African Community: [http://www.eac.int/treaty/index.php?option=com\\_content&view=article&id=71&Itemid=164](http://www.eac.int/treaty/index.php?option=com_content&view=article&id=71&Itemid=164) [accessed 5 March 2013].

<sup>28</sup> The Constitution of the Republic of Rwanda, promulgated on 4 June 2003: <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434> [accessed 5 March 2013].

<sup>29</sup> Article 19 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003: "Every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defence have been made available. Nobody shall be denied the right to appear before a judge competent by law to hear his or her case." <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434&rid=30694692> [accessed 5 March 2013].

<sup>30</sup> Law N° 13/2004 of 17/5/2004 relating to the Code of Criminal Procedure, promulgated on

17 May 2004, published on 30 July 2004:

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1333> [accessed 5 March 2013]. Modified and complemented by the Law N° 20/2006 of 22/04/2006, O.G special N° of 27 May 2006.

<sup>31</sup> Law N° 13/2004 of 17/5/2004 relating to the Code of Criminal Procedure, promulgated on 17 May 2004, published on 30 July 2004,

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1333> [accessed 5 March 2013]. Article 44 states: “An accused is presumed innocent until proved guilty. Prior to proof of offence the accused shall not present his or her defence.”

<sup>32</sup> Law N° 13/2004 of 17/5/2004 relating to the Code of Criminal Procedure, promulgated on 17 May 2004, published on 30 July 2004:

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1333> [accessed 5 March 2013]. Article 19 states: “The Judicial police is responsible for investigation of crimes, receiving complaints and documents relating to the offences, gathering evidence for the prosecution and defence and, searching for perpetrators of the crimes, their accomplices and accessories so that they can be prosecuted by the Prosecution.” Article 45 states: “Evidence should be based on all grounds, of fact and law, provided that parties were given a chance to discuss on them. A court gives a final ruling on whether the evidence tendered for the prosecution and defence are correct and admissible.”

<sup>33</sup> Law N° 15/2004 Relating to Evidence and Its Production, published in the Official Gazette on 19/07/2004, <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1523> [accessed 5 March 2013]. Article 3 states: “Each party has the burden of proving the facts it alleges. A judge may nevertheless order any contending party to produce elements of proof they have.”

<sup>34</sup> Articles 5 – 8 of Law N° 15/2004 Relating to Evidence and Its Production, published in the Official Gazette on 19/07/2004,

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1523> [accessed 5 March 2013].

<sup>35</sup> 29/5/2004 - Law N° 09/2004 Relating to the Code of Ethics for the Judiciary, promulgated on 25 May 2004, published on 1 June 2004:

<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1570> [accessed 5 March 2013]. Article 11 states: “A judge shall be impartial and shall demonstrate it in proceedings before court as well as in decisions he or she takes.”

<sup>36</sup> Amnesty International trial observation, 9 September 2011.

<sup>37</sup> Amnesty International trial observation, 9 September 2011, 12 September 2011.

<sup>38</sup> Amnesty International trial observation, 14 September 2011.

<sup>39</sup> Amnesty International trial observation, 15 September 2011.

<sup>40</sup> Amnesty International trial observation, 16 September 2011.

<sup>41</sup> Amnesty International trial observation, 22 September 2011.

<sup>42</sup> Amnesty International trial observation, 19 September 2011.

<sup>43</sup> Amnesty International trial observation, 21 September 2011.

<sup>44</sup> Amnesty International trial observation, 21 September 2011.

<sup>45</sup> Vital Habiyaemye was also charged under Article 9 of the Law N° 45/2008 of 09/09/2008 on Counter Terrorism.

<sup>46</sup> Amnesty International trial observation, 19 - 22 September 2011.

<sup>47</sup> See New Times, "Prosecution appeals Ingabire ruling", 1 December 2012, <http://www.newtimes.co.rw/news/index.php?i=15193&a=61320> [accessed 5 March 2013].

<sup>48</sup> See New Times, "Prosecution appeals Ingabire ruling", 1 December 2012, <http://www.newtimes.co.rw/news/index.php?i=15193&a=61320> [accessed 5 March 2013].

<sup>49</sup> Human Rights Committee, Article 14: Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 30.

<sup>50</sup> Human Rights Committee, Article 14: Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 30.

<sup>51</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle N(6)(e)(ii).

<sup>52</sup> European Court of Human Rights, *Huseyn and Others v Azerbaijan*, Applications Nos 35485/05, 45553/05, 35680/05 and 36085/05, para. 225.

<sup>53</sup> Article 19 of the Constitution of the Republic of Rwanda, promulgated on 4 June 2003, <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7796&iid=1434&rid=30694692> [accessed 5 March 2013].

<sup>54</sup> "Why I fell out with Generals, says Kagame", *The Daily Monitor*, 23 May 2010, <http://www.monitor.co.ug/News/National/-/688334/923580/-/x064gg/-/index.html> [accessed 5 March 2013].

<sup>55</sup> "Why I fell out with Generals, says Kagame", *The Daily Monitor*, 23 May 2010, <http://www.monitor.co.ug/News/National/-/688334/923580/-/x064gg/-/index.html> [accessed 5 March 2013].

<sup>56</sup> Twitter account of Paul Kuiper of Lid Humanistisch Vredesberaad HVB (Humanist Peace

Council, Netherlands), @pkuiper, see favourites, <https://twitter.com/pkuiper/favorites> [accessed 19 February 2013]. Also see “Paul Kagame Discussing Victoire Ingabire On Twitter”, 10 April 2011, <http://coloredopinions.blogspot.co.uk/2011/04/paul-kagame-discussing-victoire.html> [accessed 5 March 2013].

<sup>57</sup> Twitter account of Paul Kuiper of Lid Humanistisch Vredesberaad HVB (Humanist Peace Council, Netherlands), @pkuiper, see favourites, <https://twitter.com/pkuiper/favorites> [accessed 19 February 2013]. Also see “Paul Kagame Discussing Victoire Ingabire On Twitter”, 10 April 2011, <http://coloredopinions.blogspot.co.uk/2011/04/paul-kagame-discussing-victoire.html> [accessed 5 March 2013].

<sup>58</sup> Amnesty International trial observation, 7 September 2011.

<sup>59</sup> See Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Commission on Human Rights, E/CN.4/2006/98, para. 46. As the UN Human Rights Committee has noted, restrictions on the right to freedom of expression – in order to be lawful - must also “be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly,” UN Human Rights Committee, General Comment 34 (2011), para. 25.

<sup>60</sup> Law No. 33 bis/2003 repressing the crime of genocide, crimes against humanity and war crimes, promulgated on 6 September 2003, published on 1 November 2003, <http://lip.alfa-xp.com/lip/Amategekodb.aspx?Mode=r&pid=7726&iid=1191&rid=30692299> [accessed 5 March 2013].

<sup>61</sup> Human Rights Committee, Article 19, Freedom of opinion and expression, General Comment No. 34, CCPR/C/GC/34, para. 21.

<sup>62</sup> See, Rabat Plan of Action on the prohibition of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; Conclusions emanating from the four regional expert workshops organised by OHCHR in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add4\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add4_en.pdf) [accessed 5 March 2013].

The Rabat Plan of Action reflects the conclusions of a series of global expert workshops on this subject in the Asia-Pacific region, the Americas, Europe and Africa which included the participation of experts, civil society and governments and took account of state practice in the judicial, legislative and policy spheres with respect to incitement-related prohibitions on expression.

<sup>63</sup> UN Human Rights Committee, General Comment 34 (2011), para. 49.

<sup>64</sup> Law No 18/2008 relating to the punishment of the crime of genocide ideology, Article 2, Definition of “genocide ideology”, states: “The genocide ideology is an aggregate of thoughts

characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing (sic) on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war. Article 3 states: "Characteristics of the crime of genocide ideology. The crime of genocide ideology is characterized in any behaviour manifested by acts aimed at dehumanizing (sic) a person or a group of persons with the same characteristics in the following manner: 1. Threatening, intimidating, degrading through diffamatory (sic) speeches, documents or actions which aim at propounding wickedness or inciting hatred; 2. Marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading createing (sic) confusion aiming at negating the genocide which occurred, stirring (sic) up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred; 3. Killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology."

Articles 2 to 4 of the Law N° 18/2008 of 23/07/2008 relating to the punishment of the crime of genocide ideology, promulgated on 23 July 2008, <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7726&iid=2396> [accessed 5 March 2013].

<sup>65</sup> Law N° 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, promulgated on 18 December 2001, <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7726&iid=1190> [accessed 5 March 2013].

<sup>66</sup> Amnesty International, *Safer to Stay Silent: The Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism'*, pp. 13 – 17, <http://www.amnesty.org/en/library/info/AFR47/005/2010/en> [accessed 5 March 2013].

<sup>67</sup> Amnesty International, *Rwanda: Safer to stay silent: The chilling effect of Rwanda's laws on 'genocide ideology' and 'sectarianism'* (AFR 47/005/2010), 31 August 2010, pp. 17 – 18, <http://www.amnesty.org/en/library/info/AFR47/005/2010/en> [accessed 5 March 2013].

<sup>68</sup> Amnesty International trial observation, various dates in September 2011, October 2011, December 2011, April 2012.

<sup>69</sup> Amnesty International trial observation, various dates in October 2011, December 2011, April 2012.

<sup>70</sup> In the aftermath of the 1994 genocide, the Rwandan government faced the challenge of assuring justice for those killed during the genocide. The majority of such trials took place before gacaca courts, a series of community tribunals to expedite trials of the vast majority of people suspected of participation in the genocide and reduce the prison population.

<sup>71</sup> Amnesty International trial observation, various dates in September 2011, October 2011, December 2011, April 2012.

<sup>72</sup> Amnesty International trial observation, various dates in September 2011, October 2011,

December 2011, April 2012.

<sup>73</sup> Amnesty International trial observation, various dates in September 2011, October 2011, December 2011, April 2012.

<sup>74</sup> A double genocide theory in the Rwandan context seeks to compare massacres by Hutu of Tutsi with massacres committed by Tutsi of Hutu.

<sup>75</sup> Victoire Ingabire, "Unity and Reconciliation Speech at Gisozi Genocide Memorial Centre", <http://www.victoire-ingabire.com/Eng/victoires-quotes/> [accessed 5 March 2013].

<sup>76</sup> Amnesty International trial observation, 14 October 2011.

<sup>77</sup> Human Rights Committee, Article 14, Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 6.

<sup>78</sup> Article 15 of the UNCAT states that: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". Also Committee against Torture, Implementation of Article 2 by States parties, General Comment 2, CAT/C/GC/2, §§3, 6 and 25; Committee against Torture, Concluding observations on Rwanda, CAT/RWA/CO/1, 26 June 2012, para. 23.

<sup>79</sup> *Inter alia*, European Court of Human Rights, *Harutyunyan v Armenia*, Application No. 36549/03, para. 59; European Court of Human Rights, *Othman (Abu Qatada) v. UK*, Application No. 8139/09, para. 266; Inter-American Court of Human Rights, *Cabrera Garcia and Montiel Flores v. Mexico*, para. 167.

<sup>80</sup> European Court of Human Rights, *Harutyunyan v Armenia*, Application No. 36549/03, para. 65; Inter-American Court of Human Rights, *Cabrera Garcia and Montiel Flores v. Mexico*, para. 173.

<sup>81</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the UN General Assembly, A/63/223, para. 45(d).

<sup>82</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle N(6)(d)(i).

<sup>83</sup> Article 9(3) and 9(4) ICCPR; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UNGA Resolution 43/173, principles 11, 15, 16, 17, 18, 19, 24, 37; Human Rights Committee, *Aboufaied v. Libya*, Communication 1782/2008, para. 7.2; Human Rights Committee, Prohibition of torture and cruel treatment or punishment, General Comment No. 20 on Article 7 ICCPR, para. 11; Committee against Torture, Implementation of Article 2 by States parties, General Comment No. 2, CAT/C/GC/2, para. 13; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, Report to the Commission on Human Rights, E/CN.4/2004/56, para. 37 and Report to the Human Rights Council, A/HRC/13/39/Add.5, para. 156; Working Group on Arbitrary Detention, Report to the Commission on Human Rights, E/CN.4/2005/6, para. 76; UN General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, A/RES/66/150, para. 22.

<sup>84</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report to the General Assembly, A/61/259, para. 56. See also, UN General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, A/RES/66/150, para. 22.

<sup>85</sup> Human Rights Committee, Article 14: Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 33.

<sup>86</sup> Human Rights Committee, Article 14: Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 39.

<sup>87</sup> Human Rights Committee, Article 14: Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 41; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report to the General Assembly, A/61/259, para. 64; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report to Commission on Human Rights, E/CN.4/2003/68, para. 26(k).

<sup>88</sup> Articles 5 – 8 of Law N° 15/2004 Relating to Evidence and Its Production, published in the Official Gazette on 19/07/2004, <http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1523> [accessed 5 March 2013].

<sup>89</sup> See Amnesty International, *Rwanda: Shrouded in secrecy: Illegal Detention and Torture by Military Intelligence*, <http://www.amnesty.org/en/library/info/AFR47/004/2012/en> [accessed 5 March 2013].

<sup>90</sup> Amnesty International trial observation, 11 and 14 November 2011.

<sup>91</sup> Amnesty International trial observation, 14 November 2011.

<sup>92</sup> Amnesty International trial observation, 14 November 2011.

<sup>93</sup> Please see *Jean Uwinkindi v. The Prosecutor*, Defence extremely urgent motion for stay of Uwinkindi's transfer to Rwanda, and request for time to file second motion for reconsideration of the decision of 16 December 2011 on appeal against the referral of his case to Rwanda.

<sup>94</sup> Human Rights Committee, Article 14, Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 21.

<sup>95</sup> Human Rights Committee, Article 14, Right to equality before courts and tribunals and to a fair trial, General Comment No. 32, CCPR/C/GC/32, para. 25.

<sup>96</sup> Amnesty International trial observation, 26 September 2011.

<sup>97</sup> Amnesty International trial observation, 3 October 2011.

<sup>98</sup> Law N° 13/2004 of 17/5/2004 relating to the Code of Criminal Procedure, promulgated on 17 May 2004, published on 30 July 2004:  
<http://lip.alfa-xp.com/lip/AmategekoDB.aspx?Mode=r&pid=7532&iid=1333> [accessed 5 March 2013].

<sup>99</sup> Amnesty International trial observation, *exempli gratia* on 18 October 2011.

<sup>100</sup> Amnesty International trial observation, *exempli gratia* on 18 October 2011.









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## **RWANDA: JUSTICE IN JEOPARDY**

### **THE FIRST INSTANCE TRIAL OF VICTOIRE INGABIRE**

The arrest of opposition politician Victoire Ingabire, after her return to Rwanda to contest the 2010 elections, attracted widespread international attention. On her first day in the country after 16 years abroad, Victoire Ingabire made a speech at the Genocide Memorial Centre in the capital, Kigali, in which she referred to problems with reconciliation and ethnic violence, subjects rarely discussed openly in Rwanda. She was later arrested on charges relating to terrorism and the expression of her opinions.

The criminal trial, one of the longest in Rwandan history, became both politically and legally important. Amnesty International observed the proceedings from September 2011 to April 2012 and focused on the court's capacity to abide by international fair trial standards.

This report is based on the findings of the trial observation mission to Rwanda. Before and during the first instance trial, Victoire Ingabire's presumption of innocence, enshrined in the Rwandan Constitution, was not respected. Speech-related charges were based on vague and broad legislation and lacked a clear basis. The supporting evidence did not demonstrate that she had intended to incite ethnic hatred or violence. The confessions of her co-accused implicating her in terrorism-related activities were made after a period of unlawful detention in a military camp where torture is known to be used. The court did not properly investigate the possibility that confessions were coerced and neither did it demonstrate impartiality by treating evidence presented by the defence equally with that of the prosecution.

Victoire Ingabire was sentenced to eight years' imprisonment in October 2012 and appealed to the Supreme Court on 17 December. Amnesty International is urging the Rwandan authorities to ensure that Victoire Ingabire's appeal meets standards under Rwandan and international law.

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