

Mr. Hassan B. Jallow
Prosecutor, ICTR
P.O. Box 6016
Arusha, Tanzania

Antwerp, 11 January 2005

Dear Mr. Jallow,

When discussing the need to prosecute RPF suspects during a conversation we had in September 2004, you told me you were about to review the evidence and make a determination on this issue. With the ICTR's completion strategy in mind, I contacted you again around the end of the year to inquire about progress. On 6 January 2005 you informed me that you were unable to disclose whether you had come to a decision or what that decision would be. Of course, I accept and respect your position.

However, having co-operated with the ICTR and your office since 1995, the failure to prosecute RPF suspects puts me before a grave moral dilemma. During a previous visit to Arusha in April 2003, I met with the "Special Investigations" team, which has gathered compelling evidence on a number of massacres committed by the RPF in 1994. These crimes fall squarely within the mandate of the ICTR, they are well documented, testimonial and material proof is available, and the identity of RPF suspects is known. If they are left unprosecuted, the ICTR will have failed to eliminate one of the root causes of genocide and other crimes – impunity. Indeed, it is precisely because the regime in Kigali has been given a sense of impunity that, during the years following 1994, it has committed massive internationally recognised crimes in both Rwanda and the DRC. Article 6(2) of the Statute explicitly rules out immunity, including for Heads of state or government or for responsible government officials. This principle is contravened when, as is currently the case, a message is sent out that those in power need not fear prosecution. In addition, by meting out victor's justice, the ICTR fails to meet another stated objective, namely to "contribute to the process of national reconciliation and the restoration and maintenance of peace".

Under these circumstances, the ICTR risks being part of the problem rather than of the solution. While I remain committed to the cause which is at the heart of the mandate of the ICTR, on ethical grounds I cannot any longer be involved in this process. I shall, therefore, not be able to co-operate with the OTP unless and until the first RPF suspect is indicted.

In order to avoid possible misunderstanding, there is one point I must make clear. I do not intend with this position to exert pressure on you or your office. Not only would such an attempt be futile, but it would also run counter to my own conviction, as I have in the past denounced the pressures, and indeed the blackmail, exerted on the Prosecutor by the Rwandan government. Your office must function in total independence and not be influenced by my personal moral considerations.

Allow me to wish you a prosperous and productive new year.

Yours sincerely,

Professor Filip Reyntjens