

NEW YORK
CITY BAR

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June 17, 2010

H.E. Paul Kagame
President
Republic of Rwanda
P.O. Box 21
Kigali, Rwanda

Re: Professor Peter Erlinder

Your Excellency:

I write on behalf of the Association of the Bar of the City of New York to urge the Government of Rwanda to immediately and unconditionally release Professor Peter Erlinder, an American lawyer¹ who traveled to Rwanda on May 23, 2010 for the purpose of providing legal representation to Victoire Ingabire, an opposition presidential candidate accused of denying and minimizing the 1994 genocide in violation of Rwanda's 2008 Genocide Ideology law. The arrest of Professor Erlinder on May 28, 2010 undermines both the independence of lawyers in Rwanda and the integrity of Rwanda's judicial system. We understand that Professor Erlinder was released on medical bail on June 17, 2010. A release on medical bail, however, is not sufficient; we therefore call on your government to vacate forthwith the charges against Professor Erlinder so that he can resume his professional duties on behalf of his client.

The Association is an independent non-governmental organization with more than 23,000 members in over 50 countries. Founded in 1870, the Association closely follows human rights legislation, developments and violations through its Committee on International Human Rights, which investigates and reports on human rights conditions in the United States and throughout the world.

¹ Peter Erlinder is a 62-year-old American lawyer and Professor of Law at William Mitchell College of Law in St. Paul, Minnesota in the United States. Professor Erlinder is a frequent litigator and consultant, often on an uncompensated pro bono basis, in criminal defense cases in the U.S. He was the President of the National Lawyers Guild from 1993-1997 and is now a board member of its foundation. Since 2003, he has been a defense attorney at the International Criminal Tribunal for Rwanda ("ICTR") and is the President of the ICTR defense lawyers association. He was the lead counsel for Major Aloys Ntabakuze in the first instance "Military I" trial and is still counsel of record on a pending appeal in that case.

The Association's Committee on African Affairs monitors and responds to legal and policy developments in Africa. Both of these Committees have been monitoring the situation involving Professor Erlinder closely and have reported deep concerns about the Rwandan government's choice to arrest and detain him.

We do not intend to single out Rwanda for criticism or, of course, to take any position on the merits of the charge against Professor Erlinder's client. The Association has for many years defended lawyers (and judges) against attacks on their professional independence by executive or legislative branches of governments around the world. The professional independence of lawyers is essential to the just functioning of every nation's legal system, and the Association has therefore come to the aid of lawyers (regardless of their personal or political views) who have been sanctioned, detained, imprisoned or tortured by countries as diverse as Argentina, South Africa and China because of the identity of their clients or their perceived identification with the government's political opponents. We have similarly challenged punitive treatment of judges in Venezuela, Spain and Pakistan because of the chilling effects of those actions on judicial independence and the rule of law.

The arrest of Professor Erlinder is particularly egregious. He was held in custody in a Rwandan prison since his arrest on May 28. A five-hour hearing was held on June 4 in which Judge Maurice Mbishibishi granted the prosecution's request to continue to imprison Professor Erlinder for the purpose of further investigation and interrogation. Professor Erlinder, who is 62 years old, pleaded not guilty and asked the judge to grant him a conditional release in order for him to secure appropriate treatment for his deteriorating health. At a bail hearing on June 7, the Professor's further request to be released on bail was rejected, despite his health problems. Professor Erlinder was finally released on medical bail on June 17. A release on medical bail, however, does nothing to address the underlying injustice of his arrest or the pending charges against him. Beyond its personal impacts on Professor Erlinder, the Rwandan Government's actions contravene the United Nations' Basic Principles on the Role of Lawyers,² which were adopted to provide specific substance to the due process guarantees recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In particular, the Basic Principles guarantee the professional independence of lawyers. The Preamble to the Principles states that they "should be respected and taken into account by Governments," and Article 16 specifically requires that "Governments shall ensure that lawyers...are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference... and shall not suffer, or be threatened with, prosecution." Under Article 18 of the Basic Principles, "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions." Article 23 of the Principles states that "Lawyers like other citizens are entitled to freedom of expression, belief."³

As evidenced in *The Case of Elci and Other v. Turkey* before the European Court of Human Rights, the Basic Principles have become a recognized part of international law. The Court emphasized "the central role of the legal profession in the administration of

² Adopted by The United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. U.N. Doc. A/Conf. 144/28/Rev. 1 at 188/1990.

³ *Id.*

justice and the maintenance of the rule of law.”⁴ Specifically, “[t]he freedom of lawyers to practise their profession without undue hindrance is an essential component of a democratic society... Persecution or harassment of members of the legal profession thus strikes at the very heart of the...system. For this reason, allegations of such persecution in whatever form...but particularly detention of lawyers... will be subject to especially strict scrutiny by the Court.”⁵

The Report of the U.N.’s Special Rapporteur on the independence of judges and lawyers also addressed “the increased number of complaints concerning Governments’ identification of lawyers with their clients’ causes... Identifying lawyers with their clients’ causes... unless there is evidence to that effect, could be construed as intimidating and harassing the lawyers concerned. The Governments have an obligation to protect such lawyers from intimidation and harassment.” (emphasis added)⁶

In addition to these serious violations of international law, Professor Erlinder’s arrest has led to serious delays at the ICTR, delays that are surely contrary to Rwanda’s own interest in securing justice for the victims of the 1994 genocide. We understand that a large number of lawyers with imminent court appearances have formally requested that the courts postpone their cases, and the majority of ICTR defense lawyers have signed a petition saying they will not work unless their safety can be guaranteed. As you know, the Security Council mandate requires that ICTR first instance trials end by December 31, 2010. ICTR officials advise that, if defense lawyers are not able to function for fear of prosecution, “the tribunal’s proceedings will be prolonged.” Indeed, because of its concern about Professor Erlinder’s arrest, on June 9, 2010 the Appeal Chambers of the ICTR instructed the Registrar “on an urgent basis” to obtain all information regarding the exact nature of the charges against Professor Erlinder. Having received no reply, on June 15 the Appeals Chamber instructed the ICTR Registrar to notify the Rwandan government that Professor Erlinder enjoys immunity from prosecution on account of his statements before the ICTR and demanded his immediate release. A copy of the Registrar’s Note Verbale is attached.

For all these reasons, the Association urges you to immediately and unconditionally release Professor Erlinder and, by so doing, help assure the proper functioning of the ICTR and the credibility of Rwanda’s own judicial system.

Respectfully yours,



Samuel W. Seymour
President

ccs: Hon. Martin Ngoga, Prosecutor General for Rwanda
Hon. Hillary Rodham Clinton, Secretary of State
Mr. Johnnie Carson, Assistant Secretary of State for African Affairs

⁴ *The Case of Elci and Other v. Turkey*, Applications nos. 23145/93 and 2509/94, decided in Strasbourg 13 November 2003, para. 669.

⁵ (Emphasis added.) *Id.*

⁶ UN document E/CN.4/1998/39, para. 179.