IN ITS RULING OVER CRIMINAL CASES THE SUPREME COURT MADE A PUBLIC RULING IN THE CASE RPA 0255/12:

THE PARTIES:

THE PROSECUTION (on appeal)

And the DEFENDANTS who are:

1. **INGABIRE UMUHOZA Victoire** (on appeal), daughter of Gakumba Pascal and Dusabe Therese, born on 03/10/1968 in Gisenyi village, Gisenyi cell, Gisenyi sector, Rubavu district, western Province, residing in Amahoro village, Rukiri I cell, Remera sector, Gasabo district, Kigali City in the Republic of Rwanda, married to Muyizere Lyn with whom they have 3 children, a Rwandese currently detained in Kigali Central Prison, who has no other known criminal record.

2. **NDITURENDE Tharcisse** alias Henri Wallen, Henri Menge, Henri Hatali Mulinde, reported to have been a lieutenant colonel in the FDLR, son of Gashuhe Celestin and Nyandwi Josepha, born in 1970 in Mungugu village, Rubona cell, Kigembe sector, Gisagara district, Southern Province in the Republic of Rwanda, a Rwandese married to Uwimana Claudine with whom they have one child, who has no other known criminal record.

3. **HABIYAREMYE Noel,** reported to have been a lieutenant colonel in FDLR, son of Hakizimana Richard and Nyirabashumba Godeberthe, born in 1967 in Rwamashyongoshyo village, Ruhita cell, Gikoro sector, Gasabo district, Kigali City in the Republic of Rwanda, a Rwandese married to Mukamana Petronille with whom they have 3 children, who has no other known criminal record.

4. **UWUMUREMYI Vital** (on appeal) alias Muhindo Muhima Dieudonne, Gaspard Kalimba, Hirwa Emmanuel, Kambale Mulume, reported to have been a major in FDLR, son of Semivumbi Andre and Nyirabakate Anastasie, born in 1969 in Nyarubande village, Rwambogo cell, Musanze sector, Musanze district, northern Province in the Republic of Rwanda, a Rwandese married to Kanzayire Claudine with whom they have 3 children, currently detained in Kigali Central Prison, who has no other known criminal record.

5. **KARUTA Jean Marie Vianney,** reported to have been a captain in FDLR, son of Binyoni Jean Bosco and Mukamudenge Melanie, born in 1975 in Kaberi village, Shangi cell, Shangi sector, Nyamasheke district, western Province in the Republic of Rwanda, a Rwandese married to Tuyishime Devota with whom they have one child, who has no other known criminal record.

COMPLAINT:

Appeal against the verdict rendered by the High Court on case RP 0081-0110/10/HC/KIG on 30/10/2012.

OFFENCES PROSECUTED

With regard to Ingabire Umuhoza Victoire:

On the first instance she was prosecuted for the following offences:

1. The crime of genocide ideology as prescribed and punishable by articles 2 and 4 of law no 18/2008 of 23/07/2008 punishing the crime of genocide ideology.
2. The crime of conspiracy in terrorist activities as prescribed and punishable by articles 21-3, 75 and 76 of law no 45/2008 of 09/09/2008 against terrorism which was in force at the time of the crime.
3. The crime of inciting divisionism prescribed and punishable by articles 3 and 5 of law no 47/2001 punishing the crime of segregation and of inciting divisionism which was in force at the time of the crime.
4. The crime of deliberately spreading rumors with intent to incite the population to rebel against the existing authorities which is prescribed and punishable by article 166 of decree no 21/77 of 18/08/1977 establishing the Rwandan penal code which was in force at the time of the crime.
5. The crime of creating an armed group with intent to unleash war as prescribed and punishable by article 163 of decree no 21/77 of 18/08/1977 establishing the Rwandan penal code which was in force at the time of the offence.
6. The crime of intent to undermine the existing authorities and the constitution using terror and war as prescribed by articles 21, 22, 24 and 164 of law no 21/77 of 18/08/1977 establishing the Rwandan penal code which was in force at the time of the offence.

With regard to Nditurende Tharcisse, Habiyaremye Noel, Uwumuremyi Vital and Karuta Jean Marie Vianney;

1. The crime of being a member of and working for a terrorist group as prescribed and punishable by articles 9 and 80 of law 45/2008 of 09/09/2008 against terrorism which were in force at the time of the crime.
2. The crime of taking part in attacks with intent to undermine the existing authorities in Rwanda and the constitution as prescribed and punishable by article 164 76 of law no 21/77 of 1/08/1977 establishing the Rwandan penal code which was in force at the time of the crime.
3. The crime of creating up an armed force with the intent to launch an armed attack which is prescribed and punishable by article 163 of decree no 21/77 of 18/08/1977 establishing the Rwandan penal code in force at the time of the crime.

THE NATURE OF THE CASE IN BRIEF.

[1] Nditurende and Habiyaremye who are reported to have had the rank of Lt Colonel, Uwumuremyi that of a major and Karuta a captain were soldiers in the ranks of the FDLR army operating in the

Democratic Republic of Congo (DRC). The prosecution took legal proceedings in which it alleged that the group had the intent to seize power in Rwanda using war, and it is in that context that the defendants had at various times participated in attacks in Rwanda.

[2] In its case also, the prosecution alleged that Uwumuremyi together with Nditurende his superior and Karuta broke away from FDLR and then under the incitement of Ingabire created an armed group called Coallition des Forces Democratiques (CFD) which was affiliated with Ingabire's FDU-Inkingi political party whose objective was to stir up insecurity in Rwanda using terror. It also alleged that Ingabire made a contribution to that group in the form of money and the fact that the intent to stir up insecurity in Rwanda did not materialize was due to the fact that Nditurende was arrested in Burundi while he was involved in planning activities to carry out the plan, whereas the others were arrested later.

[3] As of Habiyaremye who was also arrested in Burundi together with Nditurende, the prosecution charged him with having had contacts, after breaking away from FDLR, with a politician named Rusesabagina Paul based outside Rwanda with the aim of setting up another illegal armed group (PDR-Ihumure) whose objective was also to carry attacks into Rwanda.

[4] The prosecution also charged Ingabire with having at different times publically expressed thoughts containing a genocidal ideology and diversion tactics with the intention to downplay genocide, incite divisionism and deliberately spread rumors through various means of mass media including internet, the printed press, radio and television talks with the intention of inciting the people against the current government.

[5] On the basis of all those acts, the prosecution took legal proceedings against all those who are charged with committing the above mentioned offences.

[6] Before proceeding with the trial of the case in its substance, the court examined among other things the following preliminary questions submitted to it by the defendants:

-to determine whether former FDLR fighters who returned to Rwanda are not to be persecuted for offences they committed in DRC following the communiqué signed by the Republic of Rwanda and DRC on 09/11/2007;

-to determine whether the decision of the Dutch court to send to Rwanda the so-called A,D and E elements of proof had to receive an exequatur for Rwanda before being used in the trial;

-to determine whether the court has the competence to change the qualification of an offence submitted to it.

[7] Concerning the issue of former FDLR fighters, in short the High Court reaffirmed that the agreement signed between Rwanda and DRC dealt with joining forces together to track those who committed genocide, human rights violations and war crimes, but that does not mean that those who committed other offences prescribed and punishable by the Rwandan penal code are not liable to prosecution since it is not even mentioned anywhere in the communiqué.

[8] Concerning elements of proof referred to as A, D and E, on the basis of article 91, paragraph 1 of law no 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of the courts as amended and completed up to now, the court decided that the Dutch decision to send to Rwanda those elements need not to be executed in Rwanda because it was executed by the legal Dutch authorities, and what the court was asked to do in this case was to examine the elements sent in accordance with the Rwandan legislation.

[9] Concerning the competence of the court to re-qualify a charge, it re-affirmed that whenever it is found necessary, it is the court that has the right to harmonize the qualification of an offence with the acts submitted to it legally.

[10] Concerning the case in its substance, the court determined that Uwumuremyi, Nditurende, Habiyaremye and Karuta were convicted of the crime to undermine the existing authorities and the constitution using an armed attack because of their role in various attacks which they carried out in Rwanda at different times when they were in FDLR. In addition, Uwumuremyi and Ingabire were convicted of the crime of conspiracy to undermine the existing authorities and the constitution using terror and war after re-qualifying the offence of creating an armed group they were charged with, basing also on the fact that it was Ingabire who submitted to Uwumuremyi the plan to create an armed group affiliated to FDU-Inkingi, which they both agreed on and to which they incited Nditurende to adhere but whom the court found not to have accepted it despite taking part in the discussions. Ingabire alone was convicted of the crime of downplaying genocide.

[11] Concerning Habiyaremye, the court found that even though he admitted having had meetings with Rusesabagina, nothing proves that they had unequivocally reached the level of agreeing on the plan to create an armed force and on its mission, so he was acquitted of that offence.

[12] Concerning being a member of and operating in a terrorist organization, the court found that Uwumuremyi, Nditurende, Habiyaremye and Karuta who were charged with that offence should not be prosecuted on the basis of law no 45/2008 of 09/09/2008 against terror, because the acts they were charged with had been committed prior to the promulgation of that law.

[13] Concerning sentences, the High Court sentenced Karuta to a prison term of 2 years and seven months, Nditurende and Habiyaremye to 3 years and six months each, Uwumuremyi 4 years and six months commuted to 3 years and six months with a two year remission for the remaining one year. Ingabire was sentenced to an eight year prison term.

[14] Concerning the reduction of sentences for Karuta, Nditurende, Habiyaremye and Uwumuremyi, the court based on the fact that they unequivocally pleaded guilty as provided under article 35 of the law on criminal case proceedings, and they asked for forgiveness, thus facilitating the work of justice; it also based on the fact that it was their first known offence. For Karuta in particular, the court found that he had fled when he was at a young age and had also a lower rank in the acts they were accused of having committed. Concerning Uwumuremyi, the court based on the fact that the conspiracy offence with intent to undermine the existing authorities and the constitution using terror and war had had no serious consequences.

[15] For Ingabire, the court reduced her sentence on the basis of the length of time she had spent abroad which prevented her from getting enough accurate information on the country, and the fact that one of the reasons which made her decide to come to work in Rwanda was for her to be able to check that information which she said she obtained from those inside the country or from reports she read.

[16] The court also based on the letter the prosecution submitted to it which Ingabire wrote to the President of the Republic of Rwanda on 06/11/2011 in which she asked for forgiveness from those she had offended in her verbal messages or writings.

[17] The Prosecution, Ingabire and Uwumuremyi were not satisfied with the court ruling and they appealed the verdict to the Supreme Court.

[18] Concerning the appeal of the Prosecution, it said that it was not satisfied with the fact that Habiyaremye, Nditurende, Uwumuremyi, Karuta and Ingabire were not convicted of the crime of creating an armed group with intent to carry out an armed attack as prescribed by article 163 of law no 21/77 of 18/08/1977 establishing the Rwandan penal code in force at the time, due to a wrong interpretation of the law by the court.

[19] The Prosecution also appealed the fact that Ingabire was acquitted of the offence of intentionally spreading rumors with intent to incite the population against the existing authorities by disregarding the legislation in force at the time and the evidence it produced.

[20] The Prosecution also said that the sentence Ingabire received on the crimes she was convicted of was extremely reduced by disregarding their weigh,t and that in reducing it, the court stated that she had pleaded guilty when she had denied all the offences she was charged with during her trial.

[21] In her appeal, Ingabire and her defense counsel said that the High Court had disregarded the following preliminary issues:

- the fact that, on the basis of the 09/11/2007 agreement signed between Rwanda and DRC, former FDLR fighters are not liable to prosecution for offences they committed when they were still in DRC forests;

- the fact that the Dutch court decision to send to Rwanda the elements of proof referred to as A, D and E should not have been implemented before an exequatur in Rwanda was requested;

- the fact that the elements of proof had only to be used for the crime of conspiracy in terrorist activities;

- the fact that the High Court had no power to convict Ingabire of the charge of downplaying genocide basing on a law that is different from the one used by the Prosecution in cross-examining her and in filing the charges in court;

- the fact that the High Court had no competence to convict her of the crime of treason with intent to undermine the existing authorities and the constitution and that of downplaying genocide since they were not submitted to the court by the Prosecution;

- the fact that the offence of downplaying genocide does not fulfill all the requirements of international legislation that Rwanda adheres to.

[22] In examining all those issues, the Court found that they were related to Ingabire's argumentation of her case in substance at the appeal, and therefore it was going to examine them together with the other arguments she had presented.

[23] Concerning the substance of the case, Ingabire and her defense team argued that the trial proceedings of her case had not respected the basic principles of a fair trial and that she was even convicted of crimes she had not committed.

[24] Concerning Uwumuremyi, he lodged an appeal requesting a reduction of the sentence and a remission of the sentence on the basis that he had pleaded guilty and asked for forgiveness.

[25] The case was pleaded on 25/03/2013 and on different other dates that followed up to 31/07/2013 when the trial proceedings were concluded, with the prosecution represented by Hitiyaremye Alphonse who was deputy chief prosecutor, Ruberwa Bonaventure and Mukurarinda Alain both prosecutors at the national level, Ingabire was assisted by M Gatera Gashabana and M Iain Edwards, Uwumuremyi by M Murenzi Eugene, Habiyaremye by M Ntambara Emmanuel, Karuta by M Ngabonziza Joseph, and Nditurende by M Mucyesha David.

[26] Before going into the substance of the case, Nditurende and Habiyaremye presented an obstacle related to the fact that they were illegally detained, when for them they had completed their sentence given the date of their imprisonment on 22/09/2009. In a trial case that preceded another one concluded on 28/03/2013, the Court had decided that the mentioned obstacle was not valid.

[27] During the case trial, the Court listened to testimonies of three witnesses: Rwamamara Angelus, Musonera Frank, and another witness who testified in public but whose name was withheld and his face hidden, code-named "AA".

II. CHARGES CONSTITUTING THE CASE AND THEIR ANALYSIS:

A .CONCERNING INGABIRE'S APPEAL

1. **To determine whether the High Court has not respected the principle of the right to a fair trial.**

[28] M Gatera Gashabana said that the main reason that pushed his client to lodge an appeal was because the High Court had not respected the principle of the right to a fair trial including in particular the right to presumption of innocence as long as the accused has not been convicted, the right for the accused to be treated on equal terms, the right to a trial by an independent and impartial court.

[29] He further said that, the fact that those rights have not been respected is shown by the different examples below:

- the fact that Ingabire's defense team went through a physical check by the security organs before entering the trial room while the same was not done for the prosecution even though both were parties to the same case and had to be treated on equal terms;

- Failing to examine the obstacles presented that had to do with the principle of equal offenses for equal sentences and the principle of the non-retroactivity of the law;

-The fact that in the course of the trial proceedings, a judge resorted to shutting up Ingabire' defense counsel whenever they tried to intervene in her interest, and the fact that he visibly harassed them;

- Refusing to hear a witness who had written to the court on 10/04/2012 requesting to give testimony on how some members of the intelligence service had asked Uwumuremyi to testify that Ingabire collaborated with FDLR.

- The fact that the court did not say anything about the physical check subjected to one witness who had been presented by Ingabire's defense counsel (Lt Colonel Habimana Michel) with the intention to intimidate him while he had no legal defense.

[30] The Prosecution says that the allegations by Ingabire's defense counsel that they were subjected to a check before entering the trial room when it was spared of it are baseless because during the trial proceedings, the members of Ingabire's defense team requested the court to take a decision on the check they said they were subjected to alone and the court decided that everybody who entered the trial room had to undergo a physical check, whether they were parties to the case, spectators, members of the defense counsel or the prosecution.

[31] Concerning the failure to examine the obstacles presented with regard to the principle of the equality of offences and penalties and that of the non-retroactivity of the law, the Prosecution once again said that M Gashabana's allegations had no truth since the court had examined the issue and taken a decision on it as it appears on page 4 paragraph 7 of the trial.

[32]On Ingabire's defense team's allegations that the judge harassed and silenced them whenever they tried to say something in her interest, the Prosecution responded that M Gashabana distinguished himself by bringing into the court offending and provoking language to the other parties and even to the judges, to the extent that the court could not let that behavior continue.

[33] The Prosecution also said that the allegations by Ingabire and her defense counsel that the High Court refused to hear a person who had requested in writing to testify on how Uwumuremyi had been brought into the trial allegedly in order to incriminate Ingabire at the request of intelligence service were not true, because nobody asked that he be summoned, or said anything about that letter that the court refused to examine.

[34] On this issue, M Murenzi on his part explains that during the trial proceedings on 04/04/2012 in the High Court, a judge asked all the parties that those who wished to call on witnesses give their names and what they want them to testify on, and Ingabire's defense counsel mentioned only Habimana Michel, while the prosecution mentioned somebody called Nsabimana Phocas, and the court decided that those were the ones to be summoned, and therefore it had nothing to say about those who were not mentioned.

[35] He further says that it is incomprehensible how the person who wrote the above mentioned letter requested to testify on 10/04/2012 when the court had decided that it would not have anything to do with witnesses who had not been mentioned, and that again it is incomprehensible how the members of Ingabire's defense counsel would criticize the court for not having said anything about that letter when there hadn't been any request to summon the person who wrote it. He adds that if they thought that his testimony was going to have a great impact on the case, they had to show it.

[36] On the issue that the judge did not say anything about the physical check done on a defense witness with the intention to intimidate him by ignoring his rights, the Prosecution says that no single law was broken in submitting to a check an inmate in prison since inmates are checked anytime and even at an hour when it is deemed necessary.

[37] The prosecution adds that the check had no effect on the inmate or the trial proceedings since it was conducted after he had given his testimony to the court and it could not affect it in any way, and there was no reason to intimidate him since he had already given his testimony.

[38] On the issue that the witness was cross-checked in the absence of a counsel, the prosecution responds that he was not cross-checked as a defendant but rather that he was questioned for clarification about documents found on him during the check, it was an administrative questioning and therefore it was not necessary for him to be assisted by a counsel as provided under the law determining criminal case trial proceedings.

The court position:

[39]The court position is that the check conducted on Ingabire's defense team members before entering the trial room did not infringe on the right of the parties to be treated equally when the High Court had decided that all persons entering the trial room had to undergo a physical check, whether they are parties to the case, spectators, the defense counsel or the Prosecution, and nothing shows that the decision was not respected with regard to the Prosecution.

[40] On the allegations of Ingabire's defense members that the judge resorted to silencing them and harassing them whenever they tried to say something for the interest of their client, the court finds that whether in the statement of the trial proceedings or in the verdict report, nothing shows that the judge has gone beyond his duties of conducting trial proceedings which authorize him/her to bring back to the right path any case party who diverges from the norm in accordance with article 73 of law no 21/2012 of 14/06/2012 related to trial proceedings of civil, business, labor and administration cases which

stipulates the responsibility of a presiding judge. So when that responsibility is implemented, it should not be taken as a bias, harassment of a party or infringing on the basic principle for an impartial trial.

[41] On the issue of Ingabire's defense counsel's allegations that the High Court had refused to hear a person who requested in writing to give testimony on how Uwumuremyi had been brought into the case, the court finds them baseless because, as it appears in the statement of the trial proceedings of 04/04/2012, the court had informed all the parties to the case that all those who wished to summon witnesses to the case had to give their names and specify what they wanted them to testify on, and Ingabire and her defense counsel did not request that he be summoned, whether on that day or in the subsequent trial proceedings.

[42] The court finds therefore that the High Court had respected the legal rights the parties to case are entitled to within the due period with regard to witnesses they want to bring into the case. The fact that Ingabire and her defense counsel fulfilled the requirement on 04/04/2012 with regard to witness Habimana Michel alone and did not do it for the witness for whom they criticize the court for not having invited should be taken as a flaw in the case concluded at the first instance.

[43] Concerning the check conducted on Habimana Michel in the prison on the day on which he had just given his testimony in court, the court finds that it did not change anything to what he had said or what he wanted to say because it was done after he had finished giving the needed information to the court.

[44]The court finds also that the documents found in Habimana's room and the statement report of his interrogation *about* those documents have not changed the way the case was concluded because they were not taken into consideration when examining the validity of his testimony and therefore the concern of Ingabire's defense counsel is unfounded.

[45] In concluding, on the basis of how the case trial proceedings at the preceding level were conducted, the court finds that Ingabire's appeal with regard to the non respect of her right to a fair trial is unfounded.

To determine whether Ingabire is not guilt of the crime of treason with intent to undermine the existing authorities.

[46] The High Court convicted Ingabire of the crime of treason with intent to undermine the existing authorities mainly on the basis of the statements made by her co-accused who were former members of FDLR/FOCA battalion Bahama, who confirmed that she incited them to break away from that organization and to set up a military organization affiliated to FDU-Inkingi, who also confirmed that they met in Kinshasa and Brazzaville on her invitation in order to finalize the discussions they had started earlier, and that at different times from the month of 02/2008 until 01/2009 she sent them money through third parties, which money they used to buy different military equipment including guns, medicine, food, while they sent the rest to their families.

[47] The court also based on elements of proof which included the e-mails that her co-accused said they used to correspond with her using vumuhoza@cs.com and gpascal105@yahoo.fr and documents

obtained from Holland and DRC which showed that Ingabire used to send money, and that they met in Kinshasa and Brazzaville as they had admitted.

[48] On the basis of the flaws Ingabire brought out in her defense, the questions to be examined at the appeal level are the following:

- to determine whether the court convicted her of the crime of treason to undermine the existing authorities for which she had not been indicted;

- to determine whether she had been convicted on the basis of the statements of her co-accused who had been indicted on and pleaded guilty of the crimes for which they should not be prosecuted and punished;

- to determine whether the elements of proof obtained from Holland should not have been used in the case trial given that the decision of the Rotterdam court for a Rwandan exequatur had not been previously requested;

- to determine whether on the basis of the agreement reached between Rwanda and Holland, the pieces of evidence referred to as A, D and E should not have been used on the treason charge with intent to undermine the existing authorities that she had been convicted of;

- to determine whether the statements given by Habimana Michel and AA show that at the request of intelligence service, Ingabire's co-accused made false accusations against her;

- to determine whether the High Court convicted her on the basis of contradictory and inconsistent statements and evidence;

- to determine whether the High Court convicted her without showing her specific intent.

1. To determine whether the High Court convicted her of the crime of treason to undermine the existing authorities for which she had not been indicted.

[49] Ingabire says that the High Court decision should be annulled because the Prosecution accused her of the crime of conspiracy in terrorist activities, creating an armed group with intent to carry out an armed attack and intent to commit the crime of undermining the existing authorities and the constitution using terror and war, but the court convicted her of the crime of treason to undermine the existing authorities of which she was not accused, therefore contradicting the provision of article 119 of the law determining criminal trial proceedings which explains that on the basis of evidence at its disposal, the prosecution prepares a complete case file which it submits to the court, which examines it and then convicts or acquits the accused of the crimes submitted to it.

[50] She continues saying that she was not given a chance to defend herself on the treason charge with intent to undermine the existing authorities, and that contradicts article 64 of the law related to criminal trial proceedings which stipulates that the accused must be informed of what he/she is accused of and what the law prescribes for that.

[51] The prosecution says that what Ingabire says has no basis because there is no law preventing the court from re-qualifying an offence and the laws that prescribe it when they are found not to be appropriate, and the qualification can change based on how the offence was committed and the explanation given by each of the parties as long as the case has not been concluded. And it also says that some acts can be investigated in different ways without informing once again the accused and they are punished as intent to commit an offence, the offence per say or another offence.

The court position:

[52]The court finds that concerning an offence qualification in general, the High Court has explained in a clear way that the judge is submitted with the acts making up a given offence, which he/she matches with the prescription of the law on that matter, and then he/she gives it a qualification that he/she finds appropriate and which may be different from the one given by the prosecution.

[53] The court finds that the fact that a judge has a duty to match an offence qualification with the matter being pursued when he/she finds it not to match with what has happened is confirmed by legal experts like Henri D. Bosly and Damien Vandermeersch who were cited by the High Court, and others including Nyabirungu mwene Songa[1], Michel Franchimont, Ann Jacobs and Adrien Masset[2], Roger Marie and Andre Vitu[3].

[54] The Supreme Court has also maintained in different cases[4] that courts receive complaints about acts making up an offence, and that for a judge, re-qualifying an offence is for him/her a right and even a duty when the committed act does not match the offence qualification the prosecution has submitted.

[55] Concerning Ingabire's allegation that she was not given time to defend herself on the treason charge with intent to undermine the existing authorities and the constitution, the court finds it to be untrue because, as it appears on paragraph 78 of the case concluded by the High Court, M Gatera Gashabana himself said that, based on the way the prosecution explains the acts on which they indict Ingabire related to the creation of an armed group, he finds that those acts were not aiming to undermine the external state security but rather to undermine the state internal security which is prescribed by articles 164-177 of the penal code in force at the time the acts she is accused of were committed.

ii. ***To determine whether Ingabire was convicted on the basis of testimonies given by her co-accused who are indicted for and plead guilty of offences for which they should not be prosecuted.***

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[1] Droit penal general zairois, Kinshasa, Editions Droit et Societe "DFS", 1989,p.111.
[2] Manuel de procedure penale, 2e edition, Bruxelles, Larcier, 2006, p.528
[3] Traite de Droit Criminel, Tome I, Problemes generaux de la science criminelle, Droit penal general, 3e ed., Paris, Editions Cujas, 1978, p.448 et s.
[4] RPAA 0117/07 of 17/09/2010
RPA 0033/11/cs of 14/09/2012

[56] Ingabire and her defense team say that the communiqué signed between Rwanda and DRC on 09/11/2007 was meant to reassure FDLR fighters who wanted to return home peacefully but who were afraid because of offences they had committed, and that was the reason why there was provision that the only offences to be prosecuted were those related to genocide, war crimes and grave human violations, and those to be prosecuted were those who were being tracked by the Rwandan judicial system or the International Criminal Tribunal for Rwanda based in Arusha.

[57] They go on saying that the fact that the High Court had accepted that agreement and the definition of those who had to be prosecuted, but that later it decided that those who had committed other crimes prescribed and punishable by the law could also be prosecuted was to undermine the importance of that agreement, which could then be cause for concern for former FDLR fighters who had voluntarily returned home through Mutobo camp and later returned to civilian life.

[58] On this issue, the Prosecution says that Ingabire's basis for appeal has no grounds because of the following reasons:

- she never lived in DRC so that she may say that she is concerned by that communiqué;

- she has no legal right to defend FDLR members because criminal responsibility is individual and she has only to appeal for matters concerning her personally;

- from the first instance, she pleaded her case stating that she was part of or collaborated with the FDLR group and there is no reason why she would ask the Supreme Court to change the High Court decision for the sake of reassuring the former fighters of that group;

-it is not mentioned anywhere in the communiqué that those who have committed otner offences prescribed and punishable by the Rwandan laws are not liable to prosecution;

- the communiqué concerns only former FDLR fighter who have voluntarily returned home while her co-accused did not return home voluntarily.

The court position:

[59] In the communiqué signed on 09/11/2007 between Rwanda and DRC[5], the government of Rwanda and DRC agreed to cooperate in finding a solution to peace and security problems in the two countries of the great lakes region.

[60] In that context, the DRC government committed itself among other things to resettle the disarmed ex-FAR fighters and Interahamwe far from the Rwandan border in case they do not want to return home to Rwanda and are not wanted by the Rwandan justice or the International Criminal Tribunal for Rwanda pending the resolution of their problem, and even

[5] Joint communiqué of the government of the Democratic Republic of Congo and the government of Rwanda on a common approach to ending the threat to peace and security of both countries and the Great Lakes Region.

to arrest and send to Rwanda or to the International Criminal Tribunal for Rwanda those who are wanted for genocide crimes, grave human right violations or war crimes.

[61] The government of Rwanda committed itself among other things to sensitize through appropriate programs the ex-FAR and Interahamwe and their families to return into their country and to help them resettle into the normal life. The two countries also committed themselves to cooperate in tracking and handing over to justice those who are suspected of genocide, human right violations and war crimes.

[62] What is clear is that in what the two governments had committed themselves to do was in particular to put effort into tracking and handing over to justice those who are accused of particular genocide crimes, grave human violations and war crimes, but nothing was said about other offences.

[63] The court finds that, as it had been decided by the High Court, the fact that both countries did not say anything about the other offences other than genocide, war crimes and grave human violations does not mean that other offences are not prosecutable and punishable in accordance with the legislation of each of the countries.

III. To determine whether the elements of proof from Holland should not have been used in the case trial because the decision of the Rotterdam court for an exequatur in Rwanda had not been requested.

[64] Ingabire says that document A, D and E seized at her home in Holland should not have been used in Rwanda because the decision of the Rotterdam court in Holland to have them sent to Rwanda had not previously received an exequatur as provided under article 91 of organic law no 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of the courts.

[65] The prosecution says that the point made by the appeal has no basis because in criminal cases, decisions which require an exequatur for implementation in Rwanda are those related to criminal cases concluded abroad which can be accepted in Rwanda upon the request of the prosecution or the victim of that offence when determining the compensation to be paid on the soil of the Republic of Rwanda as it was provided under article 17 of the criminal code in force at that time. The prosecution goes on to explain that on this issue, it was neither a decision of the prosecution requesting its implementation in Rwanda nor a decision about determining compensation to be paid in Rwanda.

The court position:

[66] Article 91 of organic law no 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of the courts provides that the High Court has among its powers to try complaints that require to execute in Rwanda cases or decisions taken by foreign jurisdictions , whereas article 17 of the criminal code in force at the time of the case trial in the High Court provides that: "a penal case that has been decided in a foreign jurisdiction can be accepted in Rwanda upon request of the prosecution or the offence victim, when it has to determine the compensation to be paid on the soil of the Republic of Rwanda".

[67] When the court analyses those two points and the decision taken by the Dutch court of sending to the Rwandan prosecution elements of proof A, D and E so that they may be used in investigating and analyzing in particular the crime of conspiracy in the crime of terror that Ingabire is accused of, it finds, as the High Court has confirmed, that the decision does not require authorization of execution in Rwanda because no penalty to be executed was decided, and there is no compensation to be paid in Rwanda.

IV. To determine whether on the basis of the agreement concluded between Rwanda and Holland, the elements of proof referred to as A, D and E should not have been used in the crime of treason with intent to undermine the existing authorities that Ingabire was convicted of.

[68] Ingabire says that the Rotterdam court in Holland decided that the elements of proof referred to as A, D and E which were seized at her home when it was searched by the competent authorities of that country be sent to Rwanda and be used only in the crime of conspiracy in terrorist activities.

[69] She says that where she finds fault with the High Court is that after confirming that she had never given money to support FDLR terrorist activities as it appears on paragraph 254 of the case on page 68, the High Court disregarded what had been agreed on by both countries, including the content of the agreement itself, and used those elements of proof in a new offence called treason with intent to undermine the existing authorities and the constitution using terror and war.

[70] She concludes asking this court to abide by what had been agreed on when the Rotterdam court decision was taken, and to respect the agreement both countries reached with regard to the use of that decision.

[71] The prosecution says that it lodged a complaint to the court about acts that constitute the crime of terrorism and that it is what the High Court has examined and found that the acts she was accused of have taken place and it gave them an appropriate qualification. The fact that it

found that those acts constituted a crime of treason in the crime to undermine the existing authorities did not violate any law because it is the court that determines the appropriate qualification of an offence, it is not obliged to stick to the qualification given by the parties, moreover the agreement between Rwanda and Holland was respected since the court has clearly demonstrated that there is no other way that crime of treason in the crime to undermine the existing authorities could be committed without resorting to terrorism and war.

The court position:

[72] As it appears in the French text, the Rotterdam court in Holland examined whether the documents seized at Ingabire's home by the security organs of that country could be sent to Rwanda in the context of the cooperation requested by the Rwandan prosecution.

[73] In its decision, the court said that it only examined the documents seized at Ingabire's home with regard to her suspicion of conspiracy in the crime of terrorism. It decided that the documents which received the letter signs of A, D and E could be sent to Rwanda because those were the ones that could be linked to the crime of conspiracy in the crime of terrorism punishable by the legislation of both countries in conformity with the laws in the Dutch penal code and the Rwandan law no 45/2008 of 09/09/2008 against terrorism.

[74] The concerned authorities in Holland and Rwanda agreed that the documents referred to as A, D and E would only be used in the crime of conspiracy in the crime of terrorism by examining the suspicion of her financing terrorism.

[75] However, as it appears in the text of the case decided by the High Court, the elements of proof that received the letter signs of A, D and E were examined in relation to the crime of undermining the existing authorities which is prescribed by article 164 of the penal code, different from the crime of terrorism which is prescribed by law no 45/2008 of 09/09/2008 on fighting terrorism.

[76] The court finds also that even in the new penal code, though it appears that the two offences are related, both being offences against the state security, they are different in nature because they are prescribed and punishable by different laws.

[77] The court finds therefore that those elements of proof which received the letter signs A, D and E have been used in an offence in which they were not to be used and they should not be taken into consideration in determining whether Ingabire can be convicted or acquitted of the treason charge with intent to undermine the existing authorities, therefore her appeal with regard to those elements of proof is valid.

v. To determine whether the information provided by Habimana Michel and AA shows that Ingabire's co-accused falsely testified against her at the request of the intelligence service.

Habimana Michel's testimony

[78] Ingabire and her defense counsel say that the High Court hastily invalidated without examining it the testimony given by Habimana Michel who was a Lt Colonel in FDLR/FOCA and its spokesperson and who returned home at the same time as Uwumuremyi during the Umoja Wetu operation, with whom they were detained at Kami where they were held in the same room, and that his testimony contradicted the evidence the prosecution had based on.

[79] They explain that Habimana Michel revealed that when they were still at Kami, individuals from the intelligence service told them that if they accused Ingabire of having collaborated with them in FDLR, it would help them to get released. Uwumuremyi accepted but the other refused, what makes it clear that all of what Uwumuremyi Vital said about his collaboration with Ingabire in creating an armed group is false, it is rather what had been devised by the intelligence service in order to simply have her jailed.

[80] They also say that the information explains why in 02/2010 Ingabire was questioned about the e-mails she used to exchange with Uwumuremyi and Nditurende before they were questioned about them, given that Nditurende was interrogated for the first time in 04/2010, Uwumuremyi for the first time in 10/2010, and it also explains the reason why she was not shown the evidence they had to question her about creating an armed group because that evidence was still being fabricated, and being matched with her statement and the trips she had made in Congo.

[81] The prosecution says that the information provided by Habimana was not overlooked, but rather the High Court explained that the elements of proof provided by Ingabire and her defense counsel (including Habimana's statement) trying to show that the acts she was accused of had not existed were groundless.

[82] They also say that it became clear during Habimana's questioning in the High Court that he came into the court room having been told what he was going to be questioned on and what to respond. That is why he came to answer a question that he had not been asked which was on the list of questions Ingabire's defense counsel had prepared to ask, but which the court had refused to be asked. It is to be noted that while that decision was being taken, Habimana was secluded waiting to be called to testify.

[83] The prosecution says that, the fact that he had been prepared, contradicts what Ingabire and her defense counsel said that they had mentioned him as a witness without knowing him,

not having met him or talked to him given that they had seen him on a picture in an issue of Imvaha together with Uwumuremyi when they were returning home after being arrested during Umoja Wetu operation, and they felt that he might have information on Uwumuremyi that would be useful to the court.

[84] The prosecution also says that it was discovered that Habimana was prepared about what he had to tell the court. The prosecution issued a search warrant to search him in prison, and they seized pieces of paper on which he had written all the information related to Uwumuremyi that he had told the court, and the High Court found that it was written in a way that perfectly matched the way M Gatera Gashabana had prepared the questions to ask him.

AA's account

[85] In the letter he wrote to the High Court, AA said that in 2009, when he was in Mutobo where reintegration camps for soldiers who broke away from FDLR are held, 3 men from Kigali who had been called by the one named Angelus who worked there came into the house in which he was, they called PPU (that is Uwumuremyi), dean of the 25th promotion and told him that they had a job for him, they ordered him to go round saying that Ingabire assisted FDLR in order to attack Rwanda. He accepted and they gave him a check of 300,000 Rwf and they right away promoted him from the rank of captain he had in the Congo to that of major, and told him to recruit others who would help him in the task they had given him. He also said (in that letter) that if there was anything he might have forgotten, Uwumuremyi and Angelus should assist him.

[86] In the testimony he gave in this court, he said that since 2007 he had lived in Musanze district, Gataraga sector, Rubindi cell, Gataraga village, but that he used to go to Mutobo from time to time to visit somebody who lived there. He repeated what he had written in the above-mentioned letter apart adding that before giving him the task, those who called Uwumuremyi showed him a picture in a newspaper, and then asked him if he recognized the person on that picture. He did not recognize the person right away but then he heard one of them read out the name of Ingabire, then after reading it, they informed him that she was going to come to Rwanda and they asked him if he could later say that she helped FDLR in exchange of employment.

[87] In the answers to questions from the plaintiffs and the defense and even the court, he said that the house where what he says took place had a room and a living room and another small room that had a door opening to the back, with also other rooms which opened to the back housing other people who numbered about eight and who also heard the message given to Uwumuremyi or learned it from those who had heard it as it was spread around, but he didn't recall any of the names of those who heard it.

[88] Regarding whether those who gave Uwumuremyi the mission to incriminate Ingabire were aware that he was listening to them, he said that they were because they saw him going back and forth from the room to the living room, and they were also aware that those in the next rooms could hear them.

[89] On the question of knowing the day and the month that took place, he responded that he did not remember, but that it was on a Thursday, a day he remembers because every Friday meat was delivered and they had just made an order on that Thursday.

[90] On the question of knowing whether the three men called by Angelus came on the day he called them, he had no answer for it but he rather said that the lawyer who asked him that question should put it to Rwamamara Angelus.

[91] On the question of the number of persons who came to see Uwumuremyi and who gave him the job, he said that those who came from Kigali were two, Rwamamara Angelus being the third. On the question of how he learned where they had come from, he said that he heard Angelus asking them when they 'had left Kigali'.

[92]On the question of knowing whether Uwumuremyi was an acquaintance to him, he said that there was no way he wouldn't know him since they lived in the same camp. (*How wouldn't I know somebody we lived together in the same compound?)*

[93] On knowing what made him write to the High Court requesting to testify, he said that he had been approached for information by M Gatera Gashabana around 03/2010 after calling him on a phone he had kept belonging to another person. When he answered it, Gashabana told him that he worked in a court and inquired from him about the person whose phone he had, and about the person who was dean of the 25th promotion. He told him that it was Uwumuremyi. He asked him how he knew him and then proposed him to meet. They met in Byangabo. He added that he realized that M Gatera Gashabana was asking him about things he knew that they had taken place in the house he lived in, and that after giving him account of what he had seen, he asked him to put it in writing. He did it and then brought him a written text at the High Court.

[94] He also said that after M Gatera Gashabana collected information from him, he telephoned the head of Mutobo camp for advice and this one told him not to be intimidated by anyone and to respond to what he was being asked if he judged it necessary.

[95] On knowing whether he was called by other people other than M Gatera Gashabana inquiring about the case of Ingabire, he said that no one else called.

[96] On the question of knowing how the information reached him that his testimony was needed in this court without coming through the address and telephone number he had given in his written communication, he said that the members of Ingabire's defense counsel sent the message to him through his friend called Mama Zuzu whose other name he doesn't know. On knowing how they learned that Mama Zuzu was his friend, he said that they had been seen together for a long time to the extent that anybody who saw him inquired after her.

[97] Concerning the check he said Uwumuremyi received, he said it was given to him in his presence and he saw it again when they were below the house when Uwumuremyi was showing it to a friend telling him the amount of money they had given him, but he did not pay attention to knowing who had issued the check because it didn't seem to be his business. And on knowing the person to whom Uwumuremyi showed the check, he said that he didn't remember him.

[98] On the question of knowing in what way Uwumuremyi was promoted to the rank of a major, he answered that he did not have it in the books when he entered Mutobo, it was in the house in which he stayed that those who gave him the mission to testify against Ingabire told him to introduce himself as a major from that time on.

[99] Concerning the job Rwamamara Angelus had in Mutobo camp, he said that he was an informant who worked for the "DMI".

The statement of Rwamamara Angelus and that of Musonera Franck

[100] In his testimony, Rwamamara Angelus said that he was a soldier with the rank of sergeant in charge of security in Mutobo camp since 2008. The attestation of employment issued by MINADEF says that he is a military staff in Land Forces, in the 2nd Division, 305 Brigade, who is in charge of security in Mutobo camp which is in charge of reintegration into ordinary life of those who broke away from the insurgents.

[101] He said that he had known Uwumuremyi as dean of the 33rd promotion (he had first said 34th promotion but later corrected himself), but that he had never talked to him in a particular way, and he admitted also knowing witness AA whom he used to see coming into the camp from time to time to visit a person who lived there, but that they had nothing in common apart that later a relative of his came to be jailed and thereafter he used to say that he was behind it. He also said that there was no reason he would have introduced people into a house which was not his when he had his own place in Mutobo camp.

[102] On the question of knowing whether his job description included intelligence gathering, he said that as somebody in charge of the security of Mutobo, he had to have information on

that environment. When asked whether in his job there was any secret information he wouldn't reveal, he said that he never heard of any secrecy in his job.

[103] As of Musonera Franck, he on his part said in his testimony that he had been managing the camp of Mutobo since 2001, that Uwumuremyi came into the camp with the rank of a major, that Rwamamara Angelus was one of the military staff in charge of security in the camp, that the unit in charge of security was not part of the Demobilization Commission, that he knows AA because he used to see him coming into the camp to visit a person who lived there, and that later he even came to see him twice about an issue of a relative of his who had been detained.

[104] He was asked whether AA at any time had called him on the phone for any reason and he said that he called him asking for help because he had a relative whose detention had been instigated by one of the employees of Mutobo camp, namely Rwamamara Angelus, and he later came to see him about that case, and told him that on the basis of the information he had on the person who instigated the detention, there was a contradiction with what he had told him.

[105] He was asked whether AA had sought advice from him about the information he was asked about Uwumuremyi Vital and he said that he hadn't mentioned anything to him related to it.

Findings from the investigation done on witness AA

[106] After witness AA testified in front of the court and provided some explanation, the prosecution asked the court for authorization to carry out an investigation on what he had said because there were a lot of things which were difficult to understand in his statements, and the court authorized it but subject to respecting its decision on ensuring the witness' security.

[107] In the trial proceedings of 17/06/2013, the prosecution presented an investigation report of the findings. It said that the investigation showed that AA did not live in the northern province as he was saying, that he was not known in the location he had mentioned, that he has lived in Kigali for a long time because the place where he lives was given to him by his parents, and it was there that he received his identity card. It also said that the investigation showed that the person AA calls his very close friend, Mama Zuzu, is Alice Muhirwa, the FDU-Inkingi party treasurer and that they had a phone conversation at least 4 times on 18/04/2012 on one of the phone numbers checked and at least 70 times from 07/04 to 18/04/2012 on another number checked.

What the parties say about AA's testimony

[108] Ingabire's defense counsel says that AA has shown that he has no interest in this case because he has no connection with Ingabire and her party and he has no difference with Uwumuremyi, and that he gave his testimony being aware of the negative impact it could have on his relationship with his family and his personal security in general, but that he was only motivated by judicial considerations.

[109] Ingabire's defense counsel says also that AA's testimony should be given consideration since both Rwamamara Angelus and Musonera Franck confirmed that they knew him and used to see him in Mutobo, and that the way he described the house in which he lived, its features and those who occupied it matches the truth, which shows that he talks about the things he knows and personally saw even though he was mistaken about Uwumuremyi's promotion, mentioning the 24th when it was the 33rd , but that mistake does not change his statement in general, considering that Angelus himself had previously mistakenly mentioned the 34th promotion only to rectify later. It also said that the mistake about Uwumuremyi's rank is a small one that has no weight.

[110] It says that the way AA responded by asking Uwumuremyi and Rwamamara to assist him given that they were present when the events he testified about were taking place shows that he is an 'innocent' man who does not make up stories, because if it was the case, he wouldn't have asked them to help him answer the questions he was asked.

[111] Concerning his lying about his address, it says that it should not invalidate his testimony because it was dictated by the fear that members of his family might know that he had testified in this case.

[112] It says that AA in his testimony explains how Uwmuremyi Vital was entrusted with the mission to testify against Ingabire when the latter had just announced that she was going to return home in Rwanda to contest for the presidency of the Republic, and that he corroborates Habimana Michel's account that Uwumuremyi and Ingabire had never met or talked, and he shows the reason why Ingabire was questioned in 02/2010 about stories whose source the prosecution cannot show because her co-accused had not yet been questioned about them.

[113] It also says that it is not surprising for the DMI intelligence agents to talk about very sensitive matters like those mentioned to Uwumuremyi knowing that AA was listening to them because they considered him as an insignificant person, more so when it is in that place where they were sitting that he stayed when he was in Mutobo.

[114] Concerning Rwamamara Angelus' testimony, it says that the fact that he refused to confirm AA's account is not astonishing because it would have been considered as treason since

it was a state secret that he couldn't reveal, because as a military staff he has some obligations to respect or otherwise he would expose himself to severe punishment.

[115] Ingabire says that AA's testimony corroborates what she had presented to the court concerning the way her co-accused were introduced into the case, and that even when the prosecution defended itself against her appeal, it accepted obtaining the information about her charges from the intelligence organs.

[116] She also says that the fact that Angelus denies what AA says is understandable because it is about making up stories for an opponent to the current government who came to contest the post of the President of the Republic, and she wouldn't understand a government employee who would dare to stand in front of the people and say that what she is being accused of is forgery.

[117] Concerning what the prosecution said that AA had lied about not having had any contact with FDU-Inkingi people, she says that AA was never asked that question, that the question he was asked was rather: *"apart from M Gatera Gashabana who called you about Ingabire's case, are there any other people who would have called you about it"*, and he answered that there were none.

[118] On the allegations that AA would have talked at least 70 times with FDU-Inkingi treasurer Alice Muhirwa between 07/04 and 18/04/2012, she also said that she wondered what they talked about during all that time, that when one checks the MTN report you find that one call comes back several times and elsewhere the antenna they used is not given.

[119] Uwumuremyi says that witness AA knows him because he used to come to Mutobo camp to visit a person who worked there but that they never had any conversation or ever met at the place where he was staying in the camp.

[120] He says that AA's testimony shows on the side of Ingabire and her defense counsel team that they are trying to invent things that never existed, and they are trying to reconcile them with what has taken place when they say that witness AA's description of the house in which he lived matches the way Angelus described it, when the issue is not to know if AA has or has not lived in the camp of Mutobo, but rather the question being to know whether what they said had taken place or not.

[121] He says that there are many questionable things about AA's testimony, like saying that he heard him being asked to testify against Ingabire, recalling the year and the day that took place but failing to recall the month; to say that Uwumuremyi was given a check of 300,000 Rwf from CSS bank when he was looking on but failing to identify the person who had issued it, and even maintaining that he was promoted to the rank of a major in a living room in his presence.

[122] Concerning the rank he had while he was in Mutobo in particular, he says that what AA says is impossible because military promotions have procedures and appropriate venues. He continues saying that in the issue of Imvaho of 16th to 18th /02/2009 there was a story of FDLR soldiers returning home after being captured in Goma during Omaja Wetu operation with a picture of the returnees, and below it there were these words: "those who broke away from FDLR, from the left there is Major Uwumuremyi Vital known as Muhinda Dieudonne or Katumba Pepe, Lt col Habimana Michel and Capt Nkeramihigo Cosma", that story was written in the month of February before he knew where Mutobo camp was located, which means that he did not receive the rank of major in Mutobo as AA maintains.

[123] He also says that when Lt Colonel Habimana Michel himself was asked by the High Court a question related to the rank Uwumuremyi had, he said that when they were in Gisenyi on 12/04/2009 after being captured in Umoja Wetu operation and during the time they were at Kami where they were detained, he used to hear him say that he was a major, long before going to the Mutobo rehabilitation course where he was allegedly promoted.

[124] He says that Ingabire and her defense counsel team do not explain why, as someone who had accepted to testify against Ingabire and to recruit people to help him, he couldn't at least gather ten persons to help him in the mission he was given knowing that he had just received a reward, had money and was a promotion dean, managing 304 persons.

[125] He, in addition, says that if they accept Lt Colonel Habimana Michel's account that when they were at Kami, the intelligence staff asked him to testify against Ingabire and he accepted, they do not explain why they would once again come to find him in Mutobo to ask him to do what they had asked him before.

[126] Uwumuremyi's defense counsel says on his part that AA lied on several accounts including his residence, the reason why he asked to testify, meeting M Gatera Gashabana in Byangabo, seeking advice from Musonera Franck and saying that Uwumuremyi was promoted to a major in his presence.

[127] He again says that AA made a mistake when he said that Uwumuremyi was in the 25th promotion when he was in the 33rd, what shows that he was talking about things he did not know, rather that he was simply repeating what he was asked to tell.

[128] Nditurende's defense counsel on his part says that if one considers the dates on which AA met with M Gatera Gashabana and matches them with what the prosecution investigation produced, in particular the 70 times he was called on the phone by Mama Zuzu, the other name for Muhirwa Alice, FDU-Inkingi's treasurer who has followed this case trial ever since it first started until the prosecution investigative report came out, and if you match that with the date

on which AA wrote to the High Court, and the way he contradicts himself in his testimony, you find unmistakably that he was pressurized to testify by Ingabire's defense counsel.

[129] He again says that when one considers the way AA contradicts himself in his testimony and you match it with what he has just said, you conclude that he was told to say what those who recruited him told him to tell or otherwise his account was prepared by someone else and they recruited another person to tell it.

[130] He also says that apart from matching things, there is no reason why people would choose to talk about very sensitive matters around several people who are not concerned, and for him AA chose to say that the conversation took place in the house he was in because in that camp it was the only one he had access to.

[131] He again says that AA lies on several accounts, for example where he says that Uwumuremyi was promoted to a major in a living room when that is impossible for promotion to be given in that way; where he says that he saw the check they gave him with the amount of money and the bank name but failed to know who had written it; and where he says that he called Musonera Franck on the phone for advice when in his testimony the latter denies it.

[132] On the question he was asked by the court of knowing whether there would be any consequence if it became evident that AA had been contacted by Ingabire's defense counsel, he said that the issue is that they denied it saying that, as a good citizen, AA took the initiative to testify after hearing the news about Ingabire's case on the radio, and he finds it to be a lie to the court because they should admit that they were the ones who contacted him.

[133] The prosecution on its part says that AA's testimony should not be given credit because of the following reasons:

- He lied that he resided in the Northern Province when the investigation showed that he has lived in Kigali for a long time and has received his identity card there;

- He refused to give the names of the one he calls Mama Zuzu whom he says he kept company for a long time, but later the investigation revealed that she was Muhirwa Alice who was FDU-Inkingi treasurer;

- He has concealed from the court, whether in correspondence or in his testimony that he had a point of contention with Rwamamara Angelus;

- He refused to admit that he was asked to testify when the MTN report shows that he talked on the phone with Muhirwa Alice about 70 times between 07/04/2012 and 18/04/2012, dates which precede and slightly follow the date on which he wrote and gave to the High Court a letter requesting to testify for Ingabire;

- He contradicted himself by first saying that he had taken the initiative to testify after listening to BBC news about the case on the radio, but when he returned in front of the court the following day, he said it was M Gatera Gashabana who had contacted him, they met in Byangabo and he asked him about his account which M Gatera Gashabana was familiar with but for which he wanted to get evidence;

- He again contradicted himself on the issue of the men who came from Kigali allegedly called by Angelus to meet Uwumuremyi, because in his letter of 10/04/2010 to the High Court he said that they were three but in front of the Supreme Court he said that they were two with Angelus as the third one;

- He was two times mistaken about the promotion of Uwumuremyi because in the letter he wrote to the High Court and in his testimony in front of the Supreme Court he said that he was in the 25th promotion when it was the 33rd.

[134] The prosecution also says that AA's testimony should not be given credit because he was not able to mention at least one person among those who were in the house in which he says the conversation about testifying against Ingabire took place so that the court may have a basis for investigation in case it wants to find out the truth of what he says; he was not able to explain the relationship or the working relationship he had with Angelus to the extent that this one would call people in Kigali to come and collaborate with Uwumuremyi in conspiring against Ingabire, and hold a conversation knowing that AA was listening; he was not able to show to the court how he learned that Uwumuremyi came into Mutobo camp with a rank other than that of a major and to show that rank; and neither was he able to explain to the court who had written the check given to Uwumuremyi apart from saying that he didn't feel concerned.

[135] It also says that the fact that Ingabire's two witnesses namely AA and Habimana Michel admit that Uwumuremyi was never a major without providing evidence for it shows that they made it up or it was previously drummed into them.

[136] It also says that the fact that AA says that Uwumuremyi did not know Ingabire when he was given the mission to testify against her shows that what he says is what he has been taught because as he admits it himself, he deduced it from his own analysis.

[137] Concerning the level of employment of Rwamamara Angelus, the prosecution says that the certificate given by the MINADEF contradicts the fabricated lie that he worked for the intelligence service which also shows that AA's testimony has no truth in it but that he was rather told what he had to tell.

[138] Concerning the allegations by Ingabire's defense counsel that Angelus would be betraying the oath of secrecy if he confirms what AA said and that he would be punished like someone

who has betrayed the state, the prosecution says that it does not understand what they call secrecy because Angelus's duties were to ensure security, and even if he did not say how he ensures it, that wouldn't prevent him from telling what he saw or heard.

The court position:

[139] The issue being examined is to know how valid Habimana Michel and AA's testimonies are on the basis of what the law provides and the knowledge they have about the facts they testify about.

[140] The court finds that Habimana and AA's testimonies both meant to demonstrate that the military intelligence organs made up crimes for Ingabire because Habimana pretends that when they were still at Kami, Uwumuremyi told him that he was asked by the intelligence service to testify that Ingabire collaborated with FDLR and he accepted. On his part, AA says that when they were in Mutobo, he heard Uwumuremyi being asked to later testify that Ingabire collaborated with FDLR and he accepted.

[141] Concering Habimana who was sentenced to life as confirmed by the High Court, the testimony he gave in that court had, in order to be credible, to be supported by other evidence, because article 63 of law no 15/2004 of 12/06/2004 concerning evidence in court and how it is given says in its third paragraph that testimony given by persons who have no possibility of being witnesses in court should be supported by other evidence.

[142] The court therefore finds that the High Court did not make any professional misconduct by invalidating Habimana's testimony because when the case was being tried in that court, there was no other evidence that was examined to support his testimony as provided by law, however his testimony should be reexamined by considering whether it would be credible given that it was supported by AA who testified for the first time at the appeal level.

[143] Concerning the basis for determining the credibility of AA's testimony, article 62 of law no 15/2004 of 19/07/2004 concerning elements of proof and how they are produced, stipulates that a testimony is an account given in court about what one personally saw or heard with regard to the point in contention, whereas article 65 of the same law stipulates that it is the court that determines if the witnesses' evidence is in line with the contentious issue, is detailed and is credible or not. It does not give importance to the number of witnesses, it mostly considers their knowledge of facts and how they give their account without inventing.

[144] Those articles imply that in assessing the credibility of a testimony, the court must examine if the witness is giving an account of what he personally saw or heard, how he came to know the information he is testifying about, how he explains it, his ability to recall and his independence.

[145] Thus, concerning AA's testimony, Ingabire's defense counsel says that his account corroborates the one of Habimana Michel because both state that Uwumuremyi was bribed by the military intelligence organs to falsely testify against Ingabire, that it should be considered as credible because he has no interest in this case, he gives an account of what he saw or heard himself without inventing anything, whereas the prosecution and those who are accused with her say that he lied about his address, lied that on his own initiative he requested to testify after hearing the news about Ingabire's case on the radio when it later became clear during the case trial that he was contacted so that he testify, and that all of what he says is what he has invented or been taught in order to demonstrate that Ingabire's offences were fabricated.

[146] Concerning the fact that AA lied about his residence, the court finds that the investigation carried out by the prosecution has shown that the place of residence he gave is wrong and this is not contested by Ingabire and her defense counsel apart saying that he was induced to do it because of the fear that his family members might learn that he had testified in this case.

[147] On this issue of lying about his residence, the court finds that the explanation given by Ingabire and her defense counsel lacks credibility since AA had been given all the possibility of answering in a concealed way for questions the answers of which he thought could reveal his identity and his place of residence, and he used it on several occasions by answering on pieces of paper that were only read by the judges, the litigants and their defense. The court finds however that lying on his address cannot stop examining his testimony because it did not affect the point of the contention in front of the court which was to know whether he really saw Uwumuremyi being given the mission to falsely testify against Ingabire.

[148] The court finds also that even though AA was mistaken about Uwumuremyi's promotion since in his writing and in his testimony in front of the court he said that he was in the 25th promotion when he was in the 33rd, there is no doubt that he stayed in Mutobo camp when Uwumuremyi was there because the latter himself admits having seen him there and even other witnesses admit that he used to go there.

[149] Concerning the allegations that AA would have been contacted to give testimony, the court finds that it is not an issue in itself because it is the right of every litigant to seek evidence to substantiate the truth of what they say.

[150] Concerning the allegations that he would have been asked to lie and the interest he has in this case, the court finds that the issue should be examined after determining whether his account is credible or not.

[151] When the court analyses AA's account, it finds that the main points in it are the following: Uwumuremyi did not know Ingabire until 2009 when he met persons from Kigali who had been called by Rwamamara; Rwamamara works for the military intelligence service; Uwumuremyi

was given the task to testify against Ingabire and to recruit other people to help him in that task, and he accepted it; Uwumuremyi was rewarded a check of 300,000 Rwf and a promotion to the rank of a major from a captain.

[152] When all those points are put together, they imply that Uwumuremyi did not know Ingabire, but that he was manipulated by the military intelligence organs in fabricating elements of proof to incriminate her. The court must examine whether AA's account has the credibility to base on in deciding this case.

[153] Concerning the allegations that Uwumuremyi did not know Ingabire before, the court finds that AA's account is not about what he saw or heard, but rather what he deduced from his own analysis because he said that when Uwumuremyi was shown the picture of Ingabire on a newspaper, he seemed not to know her and that he had to read the name in order to know that it was Ingabire, and after reading it they told him that if that person came over he should say that she helped FDLR[6]. This does not conform to what is provided by article 62 of the law about elements of proof in trying cases and how they are produced, which stipulates as it was explained above, that testimony is an account given in court on what a person saw or heard him/herself with regard to the contentious issue, concluding therefore that his account on that point should not be given credibility.

[154] Concerning the allegations that Rwamamara worked for the military intelligence service, the court finds again that AA does not clearly show how he learned about it, where he got that information, whether it is what he heard people say and from whom he neard it, whether it is what he personally knows or if it is an analysis he made based on what he used to see, and even in this case his account does not meet the criteria of article 62 of the law about elements of proof in trial cases and how they are provided.

[155] Let alone the fact that AA does not show the source of information about Rwamamara working for the military intelligence service, the court finds that he himself contradicts his account when he denied it in his testimony in front of the court; it is again contradicted by Musonera Franck, the director of Mutobo camp who also said in his testimony that Rwamamara is one of the persons in charge of security inside the camp, and what they said has been confirmed by MINADEF in its statement contained in the case file.

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[6] Q: You told us that they came and showed him a person on a newspaper, did he recognize her right away?
A: The name was written under that picture and he recognized the name but he did not the person well.
Q: What told you that he didn't know her before?
A:It is because she was shown to him on the newspaper and when showing her to him they said that if ever she comes over he should say that she helped FDLR, clearly he didn't know her.
Q: What makes you say that he didn't know her?
A: Really he didn't know her.

[156] Concerning the witnesses Rwamamara might have invited to meet Uwumuremyi, in addition to not showing how he came to know them and considering that he and Angelus did not live in the same house and did not work together so that AA may know the people Angelus talked to on the phone, the court finds that AA contradicts himself given that in the letter he sent to the High Court requesting to testify, he said that they were 3 ("... 3 men from Kigali called by Angelus came into the house where I was..."), however in his testimony before the Supreme Court he said that they were two, Rwamamara Angelus being the third.

[157] Concerning the date Uwumuremyi would have been hired by the military intelligence service, the court finds that, apart from saying that it was in 2009, AA does not give the day and the month on which it took place, which is not understandable that he would not at least give the time of the year (at the beginning, in the middle or at the end) if what he says really took place, so that Rwamamara and Uwumuremyi whom he says had a role in that act can know whether they were in Mutobo on that day or during that time, or an investigation can be made on the guests from Kigali who came into Mutobo camp during that period.

[158] Concerning the 300,000 Rwf Uwumuremyi would have received as a reward, the court finds that despite saying that he was looking on when Uwumuremyi received a Zigama Credit Savings Bank (CSS) check, and that he again saw the check when Uwumuremyi was showing it to a friend when they were below the house, AA cannot say who had written the check, the name of the person it was shown to, which makes it impossible to carry out an investigation that would trace it in the bank or to question the person to whom it was shown.

[159] Concerning the persons who would have heard Uwumuremyi being given the mission to testify against Ingabire, the court finds that apart from saying that there were other people numbering about eight who were in the adjacent room, and that some of them heard it while others were told about it, AA cannot give at least the name of one person among those who heard it so that he can be questioned about what he heard.

[160] The court finds it incomprehensible for AA to say that the mission given to Uwumuremyi was heard by the persons who were in the adjacent room, and that the check was also seen by one other person, but when questioned, to say that he didn't remember any of them, considering that when the court asked him if he was acquainted with Uwumuremyi he had answered *"how couldn't I know somebody with whom we lived in the same compound?"*, one wonders why there is no one he could remember who can be questioned among those who lived with him in the compound.

[161] The court finds it also incomprehensible how people who are planning the offence to falsely testify against somebody in court would choose to talk about it around several non concerned persons knowing that they are listening to them.

[162] Concerning the rank of Uwumuremyi, the court finds that even though AA says that there was no record of him as a major when he entered Mutobo, he does not show how he came to know it, considering that he had no duty in that camp, moreover he doesn't demonstrate any knowledge of military promotion procedures in FDLR to be able to explain that according to his knowledge Uwumuremyi was not a major, and he doesn't give reasons he was promoted to a major as a reward at a time he was being prepared to reintegrate the civilian life.

[163] The court finds also that the information given by AA saying that those who gave a mission to Uwumuremyi promoted him to the rank of a major while sitting in the house where he was is contradicted by Franck Musonera, the director of Mutobo camp and Rwamamara, who both confirmed that they knew Uwumuremyi as a major since entering the camp, and it was also contradicted by Nditurende who was his superior in the FDLR army who confirmed that he had been promoted to major when they were still in DRC, and this corresponds to the article published in Imvaho when Uwumuremyi returned home to Rwanda during Umoja Wetu operation which shows that among those who returned home there was Major Uwumuremyi Vital.

[164] The court finds that what AA says that Uwumuremyi was promoted to the rank of a major in his presence is not a small error as Ingabire's defense presents it, and it is not about being mistaken because it is clear that what he says he saw or heard never happened, it is rather a lie to the court.

[165] When the court considers AA's testimony as a whole, it finds that there are questions that he failed to answer and for which if, as he pretends, they took place in his presence, he would have provided answers without any difficulty, one example being where he was asked if the men from Kigali came on the day Angelus called them and he said that the question should be put to Angelus[7]; where he was asked to give the month or the time of the year Uwumuremyi was given the mission and he said he didn't remember; where he was asked the name on the check of CSS bank and he said he did not pay attention to it. There is what he says was seen or heard by other persons but whose names he couldn't reveal so that they can be questioned, like the name of the person to whom Uwumuremyi showed the check or the names of the persons who were in the adjacent room who heard the mission he was given.

[166] When the court links it with the things he says but cannot prove how he came to know them, like where he says that Uwmuremyi did not know Ingabire before or that Rwamamara Angelus worked for the military intelligence service; and to that you add instances where he contradicts himself on essential things, like where he says that the persons who came from

[7] The question asked by M Murenzi, "...the day on which the three men were called by (Angelus), is it the one they came on?"
AA's answer: "If he wants to know those things, there is his telephone number, he can ask him."

Kigali to meet Uwumuremyi were three and in other instances he puts them to two; there are also instances where he says impossible things, like where he says that Uwumuremyi was promoted to the rank of a major in the house where he was, the court finds that what AA says about a meeting that might have taken place in the house he lived in and about the job and the reward Uwumuremyi received are not things he saw or heard himself.

[167] The court finds therefore that AA lied to the court intentionally, with the intention to get across the idea that the accusations leveled against Ingabire were fabricated by the intelligence service, which makes his testimony lose credibility.

[168] Regarding the probability that some people might have asked him to tell lies, the court finds that, even though the MTN report showed that during the period that shortly preceded and followed the date on which he submitted to the High Court the letter clearing Ingabire AA talked several times to Alice Muhirwa who was the FDU-Inkingi party treasurer, a sign that he was so acquainted with the person that he wouldn't ignore her name, it cannot constitute a basis on which to state that it was her who asked him to lie to the court in order to clear Ingabire when for the prosecution there was no other evidence.

[169] The court finds also that even though AA is inconsistent in his statements about what pushed him to testify, one time saying that he heard on BBC news about Ingabire's case and feeling that there were things he could explain to the court, other time saying that he was contacted by M Gatera Gashabana for information, it cannot base on that to state that he asked him to tell lies.

vi. To determine whether the High Court has convicted Ingabire on the basis of contradictory and inconsistent evidence.

Concerning the statements of her co-defendants.

[170] Ingabire says that the High Court has not paid attention to her co-defendants' statements which were frequently contradictory, and that those statements and the e-mails they say they exchanged with her do not match with the elements of proof from DRC and Holland.

[171] She says that Uwumuremyi stated that, on the e-mail which is on C 377, she informed him that Karuta would meet him in Kinshasa on 17/02/2008 at 15h15, but the document of Compagnie Africaine d'Aviation (CAA) which is on C 377 shows that somebody by the name of Bantu Biruba left Kinshasa for Goma on 24/02/2008. This is different from the statements of her co-defendants and is different from the e-mail evidence they use. She adds that Karuta said that he spent only two days in Kinshasa, which means that he would have boarded the plane from Kinshasa to Goma on 19/02/2008, but what he says does not correspond to 24/02/2008 which is written on the CAA document.

[172] She also says that when Nditurende was asked if as a commander of his fellow staff he had ever received any report on the money that she allegedly sent to them, and he answered that Uwumuremyi did not give it to him because they lived in separate areas with no communication, but he later explained to the court that he was with Uwumuremyi from 10/2008 until the time he was captured in 09/2009, but he was not able to show the amount of money she had sent them.

[173] She goes on saying that Uwumuremyi and Nditurende admit that they used to talk with her on the phone when she was still in Europe, but the elements of proof from Holland show it is not true. She adds that they state that in Kinshasa they spent the night in Cristal Hotel but documents from DRC show that there is no record showing that they spent the night there whether using their names or the names they say they used like Muhindo Muhima for Uwumuremyi and Henri Hatali Mulinde for Nditurende even though there is no proof that those were their names as they say.

[174] She also says that Uwumuremyi confirms that they created an armed group called CFD, and that it even had a website when that the group is not known anywhere in the region and its website was never seen anywhere.

[175] Concerning the trip Karuta might have undertaken to Kinshasa, the prosecution says that there is no contradiction in the statements of Ingabire's co-defendants because the fact that Uwumuremyi announced to Ingabire the date for Karuta to reach her does not mean that the date was a strict one because it depended on when the plane booking was confirmed, particularly considering that Karuta and Uwumuremyi explained during their trial that they were not used to travelling by air. They communicated the flight programme to Ingabire before buying a ticket, and when they got it, they found out that the flight schedule had changed and that caused them to arrive late.

[176] Concerning Nditurende's response to the question he was asked about the report on the money that Ingabire used to send, the prosecution says that there is no contradiction in his statement because saying that he and Uwumuremyi lived in separate areas and that they had no communication does not mean that they would never meet because even during the case trial, it became unmistakably clear that Nditurende lived in the Congo forests when Uwumuremyi was in a camp located on the periphery of the town of Goma.

[177] The prosecution says that it is not surprising that when questioned about it the hotel used by Uwumuremyi and Nditurende responded that they had not spent the night there, considering that Uwumuremyi and Nditurende stated in their statement reports that they were received by Colonel Zelote, who is the one who took them to where they had to spend the night, and this could mean that Zelote made a hotel reservation either in his name or other

names given that the persons he was booking for were guerilla fighters and not tourists without any cause for concern.

[178] It also says that the investigation carried out in DRC confirmed that Uwumuremyi and Nditurende really went to Kinshasa because it showed dates and flight tickets they used. It added that Ingabire herself admitted before the court that during that time she was in Kinshasa herself, and that she was also received by Colonel Zelote, which shows that what her co-defendants say that they met with her over there is true.

[179] Concerning the fact that documents from Holland do not prove that Ingabire used to talk on the phone with her co-defendants, it says that the checked telephone numbers are those registered at her home which were only those of her children and her husband, and that she herself knows that she did not have a telephone number registered on her name over there so that it could be checked.

[180] It also says that none of them including she and her co-defendants ever gave their phone numbers for verification, and this cannot discredit the statements of the defendants who admit that they used to talk to her by phone since it is well known that there are several ways people can communicate by telephone, like using the internet line, different sim cards and public telephones, and she does not ignore that given all those means of communication the police could not have achieved anything if it had tried to verify them, given that nobody had requested that her telephone be tapped before she was searched.

[181] Concerning the fact that there is no website showing an armed group called CFD, the prosecution says that Ingabire intentionally distorts Uwumuremyi's statements in order to mislead people, because what she told the prosecution is the following: "we requested that our own website be created and one of the military staff we lived together mentioned that he had a friend in China, they talked about it and it is him who accepted to open it". This statement does not mean she said that the website had existed as Ingabire wants to get the idea across, what rather happened is they talked about creating it and there was even a person who volunteered to make it but it is not written anywhere that it was created.

[182] Concerning the report about the money that Ingabire used to send them with Nditurende saying that the money went through Uwumuremyi who was based in Goma and who would then buy them the things they needed as they lived in the forest, there is no truth in what Ingabire says that there is no way Nditurende would not have been given a report since he also stayed in Goma for several days, considering that he stayed there a short time due to the mission he had, with no bureaucracy there and meeting in secret, particularly in the context of the arrival at that time of Umoja Wetu operation made up of several military staffs who could capture them.

Concerning the e-mails Ingabire's co-defendants say they exchanged with her.

[183] Ingabire says that the High Court has refused to examine the complaint she made showing that the e-mails her co-defendants say they exchanged with her are forgeries. She explains that she proved to the High Court that when she was first questioned by the prosecution, she was not shown the original e-mails right away, but rather copies that were on an A4 sheet, and that up to now there are others which are on C371 bis, 375 bis, 376 bis, 377 bis and 377 ter which haven't been shown to her. She adds that in 2/2010 she was questioned about the e-mail they say she sent to Nditurende on the address bunguce@yahoo.fr but she saw its original in 05/2011 at the beginning of the trial.

[184] She continues saying that it is not understandable how an e-mail comes out on an A4 sheet, and that when you examine the original copy you find that the dates and hours do not correspond and you wonder how they would come from the same place. The concerned e-mails are those on C441-449, C442-450, C445-C451-C452, C446-C448-C448-C451.

[185] She also says that she has pointed out that the top of the e-mail on C441 shows that it came from yahoo.com but its original copy shows that it came from yahoo.fr which shows that they did not originate from the same box.

[186] She says that she has indicated that she was questioned by the prosecution in 02/2010 about the e-mails they say she exchanged with Uwumuremyi and Nditurende before they were questioned, given that Nditurende's case file shows that he was brought before the prosecution for the first time on 24/04/2010, while Uwumuremyi's file shows that he was arrested on 14/10/2010 and the prosecution does not show where they got those e-mails and when they got them.

[187] She also says that she has indicated that on 05/03/2010 the Prosecutor General wrote to the DRC's authorities requesting them to send him the Western Union documents that a Rwandan identifying himself as a Congolese had used to receive money, and they later found out that the person she had mentioned was Uwumuremyi, and this one was arrested six months later on 14/10/2010, which makes it clear that the prosecution had all the information on Uwumuremyi before he was arrested and questioned.

[188] The prosecution says that the court did not in any way disregard to examine the complaint Ingabire made alleging that all the e-mails contents were forgeries, but that until the end of the trial she and her defense counsel had not provided any proof of it and had not shown how they had been produced which shows that their allegations have no basis.

[189]Concerning the fact that at the time of her arrest she was not shown the originals of some of the e-mails which were instead shown to her later, the prosecution says that as the High

Court had explained, it should not constitute an issue since the investigation was still going on, and she admits herself that the original documents were later shown to her, which means that she had time to present her defense on the issue.

[190] Concerning the fact that for some e-mails she was only shown copies, the prosecution says that Ingabire ignores what she knows because as Uwumuremyi explained, she knows very well that they erased those e-mails together after agreeing on it. It also says that Ingabire admitted before the court that she was shown some original e-mails, and therefore it had no reason to show her some and then refuse to show others.

[191] About some e-mails that were produced on an A4 sheet, the prosecution says that it is not abnormal for an e-mail to be printed on an A4 sheet because it depends on what the person who has done the printing has selected, and that is how those that are found on C375 bis, 377 bis, 377 ter, 441, 442, 445, 446, 447 and 448 came out on an A4 sheet because they were selected that way before being printed.

[192] Concerning the dates, the hours and the typography which according to Ingabire do not correspond and which for her shows that those e-mails did not come from the same box, the prosecution says that it is baseless because those e-mails were not printed on the same day or the same hour, some were selected before being printed, others were printed as they were, and they were not even printed on the same machine.

[193] About the e-mail that might have come from yahoo.com but showing on its original that it came from yahoo.fr, the prosecution says that it is not true because the mentioned e-mail came from the box vumuhoza@cs.com and was transferred to bunguce@yahoo.fr, and the "in box of bunguce@yahoo.com" written above is what was added by the person who printed it after selecting it.

[194] Concerning the questioning of Ingabire about an e-mail the prosecution says she exchanged with Nditurende before this one was brought to the prosecution, it says that as it had explained to the High Court, the information came from Nditurende who had been handed over to the Rwandan security organs on 22/09/2009, and he has provided different pieces of information since then as he himself confirmed before the High Court when he was answering questions prepared by Ingabire's defense counsel.

[195] It also says that it explained that the information provided by Nditurende was the one the prosecution based on to make the 05/03/2010 letter or request and the information was not given by Uwumuremyi for the first time as Ingabire wants to indicate even though Uwumuremyi repeated it in his questioning.

[196] It says that there is no law that forbids different security and intelligence organs, be civilian or military to share information collected during their work because for all of them their duty is to ensure the security of the country. The law gives also the prosecution the duty to lead investigation, collect evidence for and against, and to track criminals and their accomplices so that they can be prosecuted. It adds that the investigation and the collection of evidence is done in secret except when there is a different provision by the law, and this implies that it gets all the information it needs all the time, even before a case has been established because the collection of information is done before.

Concerning meetings that Ingabire might have had with her co-defendants in Kinshasa and Brazzaville.

[197] Ingabire says that the High Court has, on the basis of mismatching elements of proof, established that she met Karuta in Kinshasa because e-mail C 377 provided by the prosecution as evidence says only: " that person is coming back on Sunday at 13h15 and will arrive in Kin at 15h15", but the name of the mentioned person is not given.

[198] She goes on saying that though Karuta reaffirms that he boarded a plane from Goma to Kinshasa, and left Kinshasa and came back to Goma, the document from DRC obtained from Compagnie Generale d'Aviation which is on C777 only stipulates that a person called Bantu Biruba left Kinshasa for Goma, it does not show that he left Goma for Kinshasa, and nothing proves that the names are those of Karuta.

[199] She also says that once again, on the basis of mismatching evidence because there is nothing that shows that they met and where they met, the court established that she met with Nditurende and Uwumuremyi in Kinshasa and Brazzaville and they talked about how they could create an armed group affiliated to FDU-Inkingi, and though they admit having been on the same trip of Goma –Kinshasa, documents of Hewa Bora airline which are on cote 778 show only that somebody by the name of Mulinde Hatari flew by its plane from Goma to Kinshasa on 07/10/2008.

[200] She again says that Nditurende reaffirms that she called him and asked him to meet her in Kinshasa and that she sent him money through Western Union, but that documents from Holland and Western Union do not show that there is money she sent to DRC.

[201] She goes on saying that the High Court has established that the fact that Uwumuremyi and Nditurende possess information on the trips she made in DRC and Brazzaville, know Colonel Zelote and were in Kinshasa at the time she was there is taken as related events but disregards that being on trips in different countries to spread information that her party was going to come back to the country and participate in the elections was not a secret because it was on internet from 9/2008 when she announced that she was going to return to the country,

and that during the trial, Nditurende and Uwumuremyi admitted in front of the court that they knew that what she talked about with the leaders of the two Congos were matters related to elections.

[202] Concerning Colonel Zelote, she says that the High Court disregarded that during the trial, Nditurende reaffirmed that he was one of the regular supporters of FDLR, and it wouldn't therefore be surprising that he would have given them information related to her trips.

[203] The prosecution says that what Ingabire says is baseless because she ignores that the provided evidence was based on the statements given by her co-defendants, the e-mails they exchanged, documents on which she sent them money, documents from DRC proving that they went to Kinshasa at the time Ingabire was there, her statement that she was welcomed by Colonel Zelote, and this one is commonly mentioned by her and her co-defendants as being the one who welcomed them all in Kinshasa.

[204] It also says that Ingabire extremely contradicts herself because in this court she says that her trips to different countries were not a secret, but this is different from what she reaffirmed in front of the High Court that her meeting with Kabila, President of DRC and Sassou Ngueso of Congo Brazzaville when she was on her trips in those countries was a secret to the extent that nobody else knew about it.

[205] It goes on saying that in all of their written documents and their statements in front of the High Court, Nditurende and Uwumuremyi admitted that they met with Ingabire in Kinshasa, had a conversation with her and she told them that she had met with those presidents, and this shows that some information is only known by Ingabire and her co-defendants and has never been made public anywhere. It even says that Ingabire was asked about it in the High Court and she couldn't explain how, if they hadn't met in Kinshasa and talked about it, her co-defendants knew that she had meetings with those presidents.

Concerning Ingabire's presumed financial assistance to an armed group.

[206] Ingabire says that the High Court did not consider the fact that the Western Union's documents from DRC and the Netherlands did not provide any evidence that she sent any money to DRC, and that she should not be held accountable for the actions of Turikumana, Dushimirimana and Mujawayezu whose names appear in the Western Union's documents, on the sole ground that she knows them, because criminal liability is personal.

[207] She also says that she had explained before the High Court that some people from the diaspora but who still have relatives in DRC forests often send them money for daily sustenance, and that this is done through FDLR authorities because the latter can easily move around.

[208] She goes on to say that Uwumuremyi himself has explained how some of the money he received was from a person who wanted him to give it to a relative; that even Habumuremyi explained that once, Rusesabagina sent some money to his relatives still in DRC forests through him; that she cannot understand why money sent by Turikumana, Dushimirimana and Mujawayezu cannot be considered as having been sent for the same purpose.

[209] Concerning Mujawayezu's declaration before the Police in the Netherlands, that Ingabire asked her to send money to Goma, Ingabire refutes the allegation, saying that Mujawayezu may have made that declaration just as a means of self defense lest she may lose her residency status or be charged with similar crimes.

[210] She also said that Mujawayezu, in her own identification, affirmed that her husband was an ex-FAR soldier, that they lived in DRC with other ex-FAR soldiers and then, later on sought refuge in Congo. That is why she finds that the Court had reasons to affirm that Mujwayezu and Uwumuremyi did not know each other.

[211] She goes on to say she never asked anyone from FDU-Inkingi to send money into DRC or Rwanda, that when her party announced their intention to come and operate in Rwanda, people who were interested made contributions to support the party officials who were coming to Rwanda to have the party registered; that anyone who sent money to a party member in Rwanda informed her secretary Christine Numuhoza so that she may coordinate all the activities, but this does not in any way mean that what was being done was because she had requested it.

[212] The Prosecutor says that Ingabire's affirmations are baseless because Uwumuremyi clearly explained how he used to receive money from unknown people and that it was Ingabire who provided him with the secret code to withdraw it, simply because she was the one who had sent that money. This is further corroborated by Mrs Speciose Mujawayezu's declaration in Holland on C 346-363 of subsequent files, where she affirms that Ingabire asked her to send money to an unknown person in Congo, and later she refunded her.

[213] The Prosecutor says that when you read the emails on C344-345 pr C268-269 and you compare them 213 with Uwumuremyi's and Speciose Mujawayezu's declarations, you conclude that Ingabire is undoubtedly the person who sent the money.

[214] The Prosecutor further says that they provided evidence for the money sent two times to Uwumuremyi by Turikumana Jean de Dieu who is member of the Executive Committee of FDU in Belgium (C1816 and 1818). As it appears on C1844, Ingabire used the same Turikumana Jean de Dieu to send money to a certain Nsabimana Phocas, and this is corroborated by the email on C404 that shows that Turikumana immediately wrote to Nsabimana Phocas informing him of the transfer number and the question test that would allow him to withdraw $500; and on

C404, there is an email Ingabire wrote to Nsabimna Phocas telling him that she had just sent them $500, the transfer number and the question test that are similar with those that Turikumana Jean de Dieu had sent to Nsabimana Phocas. Ingabire went on to tell Nsabimana Phocas that the money was sent by Turikumana in Bruxelles.

[215] He says that all the above is corroborated by Phocas Nsabimana's declaration before the High Court, where he affirms that Ingabire used to send him money through various people among which, Jean de Dieu Turikumana, Lyn Muyizere and a girl called Raissa Ujeneza. That money was to be used to recruit new party members and to prepare Ingabire's return to Rwanda and to find her accommodation. All this proves beyond doubt, according to the prosecution, that Ingabire used to send money through other people.

The Court position:

[216] Article 119 of Law no 15/2004 of 12/06/2004 relating to evidence and its production, stipulates that 'in criminal cases, evidence is based on all grounds, factual or legal, provided that parties have been given a chance to be present for cross-examination. The courts rule on the validity of the prosecution or defense evidence.'

[217] Article 104 of the same law stipulates that 'Presumptions are inferences that the law or a court makes from a known fact to discern an unknown fact' and article 108 of the same law states that '...The court shall admit only those presumptions if they are important, precise and consistent. '

[218] After analyzing Ingabire's arguments from the court in the first instance up to the appeal, the Court finds that Ingabire's only argument is that the pieces of evidence including the emails and the declarations of her co-accused, have been fabricated by the intelligence service, and to support this claim, she gives examples of contradictions among the elements of evidence or of inconsistencies when you compare them to the evidence from Holland and DRC.

[219] The Court finds that, while one is analyzing the veracity of her claims, one needs to confront the declarations of all the co-accused, their emails and the pieces of evidence from DRC and Holland.

[220] Regarding the declarations made by Ingabire's co-accused, Nditurende declared before the judicial police, the Prosecution and the Court that, in 2007 Uwumuremyi told him that he had been in contact with Ingabire, that Uwumuremyi had received Ingabire's contacts from a woman who is a relative of his, living in Europe and with whom he exchanged emails. That woman had asked him to help her establish an armed force that would operate as a military wing of FDU-Inkingi. Ingabire reiterated the same request when they first got into contact in June 2008, thanks to Uwumuremyi. She told them that FDU has no military means to face the

Rwandan army, but that they can provoke a climate of insecurity in the country by resorting to terrorism; she also asked them to recruit people in the country and take them to DRC forests for training, and in turn, these people would train others.

[222] He also admitted that in October 2008, he went to Kinshasa with Uwumuremyi upon Ingabire's request, because she wanted to meet the President of DRC and the President of Congo. They first met in Kinshasa and later on, they joined her in Brazaville. She explained to them her plans to come and stand for presidential elections. She also told them that the idea of forming an armed force has been discussed by their Political Bureau which decided that the Commander of that force would be appointed by the Executive Committee of the party. She also told them that she was using her own money because the party's money is disbursed when all the committee members have signed.

[223] Concerning the idea of forming a military wing that would take the name of FDU/CFD (Coalition des Forces Démocratiques), he declared that they told Ingabire that they should wait for a while, because they were still fighting with FOCA which seemed to be stronger; and for that reason, they felt that to operate under FDU umbrella would not make it easier for them to convince FOCA to stop attacking them because they were fighting for a common cause. They also knew that Ingabire as FDU Chairperson had disagreements with the party's Executive Secretary, and that some of FDU members were in contact with some people in FOCA; this situation would help them know their plans and then they would prepare to fight them.

[224] He also admitted that he used the pseudonym of Hatari Mulinde Henri, and Uwumuremyi that *of* Muhindo Dieudonné; that Ingabire had sent through intermediaries money to Uwumuremyi at various times, from February 2008 up to January 2009. That money had been used to buy military equipement and as living allowances for their families. He added that Ingabire had high confidence in Uwumuremyi.

[225] Regarding the acts of destabilizing the country, he said that he did not tell anyone else about it except Karuta and Uwumuremyi, but later on, Jack Shan Baraka brought a group of 4 people who wanted assistance so that they could start sensitization. Uwumuremyi took some money from the amount that had been sent to him and gave it to them so that they could buy a moped that was to be used during sensitization.

[226] Concerning the reasons why heim and his colleagues left FOCA, he declared that they left on 19/05/2008 because of a disagreement with a Section Commander Ntawunguka Pacifique aka Omega: they had been replaced by another battalion in a rich area that they had been controlling and when they asked why, they were simply told to shut up; they even tried to kill them but they managed to escape and they started their own armed group.

[227] Uwumuremyi, in his declarations, said that he was in charge of mobilization in Bahama Battlion; he also bought arms and ammunition with the money that he received from people who were in charge of selling items that had been looted; after that, he would send those arms to the rebels in DRC. He affirms that he began correspondence with people living in Europe back in 2007. One woman, a relative of his, gave him Ingabire's email and they started writing to each other in August 2007; they exchanged their telephone numbers; they kept on exchanging emails and phone calls. In January 2008, Ingabire asked him if he could find 'flexible' soldiers among FDLR/FOCA so that they may start an armed wing of FDU-Inkingi. She also told him that even if they did not want to, she was sure that by June 2008, she would have her own army. Uwumuremyi informed Nditurende about Ingabire's plans, he also showed him the emails they wrote to each other. After that, Nditurende got into contact with Ingabire but he also kept in touch with Uwumuremyi and the latter would tell Nditurende about his conversations with Ingabire.

[228] He affirms that Ingabire told them that FDLR/FOCA had no military power to attack Rwanda and overthrow the regime, that what was needed was to destabilize the country in order to oblige the Government to negotiate; for that reason they had to recruit 200 people in every prefecture and these people would be given necessary equipment to carry out those activities.

[229] Concerning the destabilization of the country, Uwumuremyi affirms that there was one person who was in charge of that, i.e., his father-in-law Jackson aka Jacky Chan a.k.a Baraka. The plan was to recruit 10 people per prefecture, they would train them and send them back to Rwanda to train others. He goes on to say that only 4 people managed to come; they asked for communication equipment and transport facilities. They gave them mobile telephones plus $800 to buy a moped that they would use as taxi and they would share the proceeds. However one of them took all the money and the project aborted.

[230] He also affirms that by the end of February 2008, Ingabire asked him to come and meet her in Kinshasa; she sent, for that purpose, ticket money through Western Union. But later, after consulting Nditurende, they agreed to send Karuta instead. When the latter arrived, he found that Ingabire and Mberabahizi who was both the General Secretary and the Spokesperson of FDU-Inkingi, were about to leave because he had arrived a bit late.

[231] Concerning the object of their conversation, he says that they asked him to make a list of their needs so that they could have an idea of how much money they could avail. Assisted by two Congolese nationals, among which Colonel Zélote, Karuta established the list and took it to Rutshuru so that Nditurende and his companions may amend it; then after that they emailed it to Ingabire (via gpascal05yahoo.com).

[232] He also affirms that in May 2008, they wanted to redeploy their battalion against some soldiers' will. Lt Colonel Nditurende called a meeting of all the battalion cadres. In his capacity as a cadre in charge of mobilization, Nditurende gave Uwumuremyi the floor. Uwumuremyi explained to the officers the reason they should not go, that, instead they should leave FDLR because they were not making any progress. The news reached the Division Commander who ordered his arrest but he managed to escape. Lt Colonel Nditurende left FOCA with about 60 soldiers and went into the bush, Uwumuremyi stayed in Goma from where he would buy ammunitions and send them to the break-away group.

[233] He goes on to say that after leaving FOCA, they informed Ingabire, requesting her assistance so that they could face their enemies, i.e, FOCA and CNDP. She told them that they were going to do whatever they could and get them some equipment, but she added that they should not fight with FOCA because that is not their primary goal, that, instead, their target is in Rwanda; she also advised them to find a name for their armed group, adding that on their part, they were also going to sit down and think about a name and then the name that would gain consensus will be adopted. The name that was finally adopted was *Coalition des Forces Démocratiques* (CFD). They also suggested the creation of a website; one of the soldiers discussed the idea with a friend (his name is Olivier) who was studying in China; Olivier agreed to create it and they began to get in contact with him; Olivier and Ingabire even met in Belgium and they began to work together on party-related matters. Olivier even accompanied Ingabire when she came to Rwanda.

[234] He also affirmed that in October 2008, Nditurende and himself went to Kinshasa to meet Ingabire who had come to meet Kabila. They were met by Colonel Zélote who was accompanied by another man; they were taken to Cristal Hotel where they spent the night. The next day, they did not meet Ingabire but she met them the following morning; she asked for their suggestions, they also told her that she should convince Kabila that, instead of staying in Congo, armed operations should be relocated into Rwanda. She left them in the hotel and went to see Kabila; after that meeting, she asked them to join her in Brazzaville. The following day, they went back to Kinshasa, then they came back to Goma.

[235] Concerning the money sent by Ingabire, he affirmed that she sent it at various times through different people like Turikumana Jean de Dieu, Dushimirimana Anastase and Mujawase Spéciose.

[236] Regarding the emails they used in their correspondence, he affirms that when he started writing to Ingabire, he used the following email addresses: muhima2007@yahho.fr and uwumvit2008@yahoo.fr. When he came back to Rwanda and after the 'Solidarity camp

'ingando', he started using the email address: gaspardkalimba@yahoo.fr . After Ingabire's arrival in Rwanda, he used emmanuel.hirwa@yahoo.fr . He also confirmed that Ingabire often used these email addresses: vumuhoza@cs.co and gpascal05@yahoo.com, but during the last months, they also used ndindajean@gmail.com .

[237] He also confirmed that he had deleted some messages when he was with Ingabire because the Judicial Police had started questioning him. The police also showed him emails sent by gpascal05@yahoo.fr and among them, he noticed some that had been sent to muhima2007@yahoo.fr . Uwumuremyi and Ingabire suspected that those emails had been disclosed by Nditurende who had been arrested, and she asked him to erase them immediately because he might be caught too and the police would get hold of their correspondence.

[238] Uwumuremyi affirmed that he continued to be in contact with Ingabire, even after his repatriation by Umoja Wetu Operation, in February 2009. To prove this, he said that Ingabire asked him to go and see if Sibomana Sylvain who is a FDU member could be trusted, because, although they had been in contact, they had never met face to face. Uwumuremyi told Ingabire that Sibomana was a reliable person. Another example is that, in collaboration with other people, Uwumuremyi prepared Ingabire's return, he recruited her a secretary, he also found her an accommodation in Kigali and signed the rent contract; he went to Kibungo to submit a letter of appeal to a Gacaca Court on behalf of a certain Joseph Ntawangundi and a driver called Abdou drove him in Ingabire's car.

[239] Karuta Jean Marie Vianney, on his part, affirmed that Nditurende sent him to Kinshasa in February 2008 to meet Ingabire. He arrived in Kinshasa around 8 o'clock p.m and was received at the airport by Colonel Zelote who showed him a seat, and after a while, Mberabahizi who was the FDU's Executive Secretary arrived; after another brief moment, Colonel Zelote returned with Ingabire, but she said that they could not talk because she had to go. Karuta remained with Mberabahizi who asked him about their needs. Karuta told him what Nditurende had told him, namely military equipment and medicines. Then, Karuta left with Colonel Zelote who showed him where to spend the night. The following morning, he came back to Goma and went to see Nditurende in order to brief him on his mission.

[240] He also confirmed that, after leaving FOCA, Nditurende told them that people he was in contact with had asked him how they would call their new armed group, then he sent them in a telephone message the name of *Coalition des Forces Démocratiques* (CFD). They wanted to discuss about it in a meeting but he told them that that was not necessary.

[240] When the Court confronts Nditurende's, Uwumuremyi's and Karuta's declarations before the Judicial Police and the Prosecutor and before the court, they find the following common points:

- Uwumurenyi and Nditurende had telephone conversations with Ingabire; they also exchanged emails.
- Ingabire asked them to leave FDLR/FOCA in order to start their own armed group affiliated to FDU-Inkingi
- Karuta went to Kinshasa in February 2008 to meet Ingabire in order to finalize their discussions; he found that Ingabire was about to leave and was left to discuss with Mberabahizi and they asked him to make a list of their needs.
- All of the three were met by Colonel Zélote;
- Ingabire used to send them money through intermediaries;
- Both Nditurende and Uwumuremyi went to Kinshasa and Brazzaville in October 2008 to meet Ingabire in order to finalize their plans and to discuss how to they would create an armed wing of FDU-Inkingi
- Ingabire intended to destabilize the country in a bid to force the Government to negotiate.

[242] The Court finds that Ingabire's declarations and those of her co-accused must be confronted with other pieces of evidence in order to establish the veracity of those declarations.

[243] Concerning the emails the defendants alleged to have exchanged with Ingabire, those provided as evidence in this case, are emails written from or to the following address: vumuhoza@cs.com, gpascal05@yahoo.fr, muhima2077@yahoo.fr, uwumvit@yahoo.fr, and

bungucel@yahoo.fr. For some of those emails, their original copies are available, for others, they are not.

[244] Concerning the emails for which the originals have been provided, on page 367, there is an email muhima2077@yahoo.fr that was written to vumuhoza@cs.com on 3rd October 2007 in which they informed her that the sender had seen her project and that he had showed it to different people, and that the idea had been received favorably. In the same email, the sender was telling her that they had given Lt Colonel her address because he wanted to get in touch with her. The same person even gave Ingabire's phone number to Lt Col so that they may communicate.

[245] In an email written on the same day, and which appears on page 367, vumuhoza@cs.com wrote to muhima2077@yahoo.fr. She was telling him that she had spoken with his commander, that the latter had asked some questions to which she replied that she was going to send the answers by email; but she later found that she had not written the email address in her diary, that was the reason why she was asking him to send it to her.

[246] In an email of October 5th, 2007 which is on page 369, muhima2077@yahoo.fr wrote to vumuhoza@cs.com informing her that the colonel told him that he had spoken to her; that he was using a pseudonym of Henri Menge. He also gave her his new phone number.

[]247] In an email of October 8th , 2007 which is on page 368/370, vumuhoza@cs.com wrote to muhima2077@yahoo.fr telling him that she was hoping that they would keep sensitizing people to do whatever they could in order to return to Rwanda, ignoring those who wanted to remain behind in the bush. She also told him she had been in contact with Lt Colonel and had told him that they had political and diplomatic power, but that they lacked military power; that is why she wanted him to tell her how they could join forces. She also told him to look for people who were capable and willing, instead of starting from scratch, because this would delay their plans.

[248] In an email of 30th December 2007 which appears on page 375, vumuhoza@cs.com wrote to muhima2077@yahoo.fr informing him about the meeting that took place on 25th November. She was also telling him that they had political and diplomatic power and that they needed

their forces which in her view, were being misused. She added that, for those who were ready to 'walk' with them, they will 'walk' together; that in her plans, all those forces should have been put together within six months.

[249] In an email of 2nd January 2008 which is on page 376, vumuhoza@cs.com wrote to muhima2077@yahoo.fr informing him that the place to accommodate them with their equipment was ready, that she was there on Christmas Day and that she was about to come back to prepare the route that those who wanted to join them will take; she also asked him to carry on mobilization.

[250] In an email of 12th February 2008 which is on page 377, muhima2077@yahoo.fr wrote to vumuhoza@cs.com telling her that "*the person in question will leave at 1.15 and reach KIN at 3.15*".

[251] In an email of 3rd March 2008 which is on page 449, vumuhoza@cs.com wrote to bungucel@yahoo.fr congratulating him on his courageous decision to accept the creation of an armed force aimed at rescuing a population that expected so much from them. She was also saying that, politically and diplomatically, things were going smoothly, that the ball was in their court. She added that "*one of your comrades had met someone in KIN. They had put him in contact with a group of people who would supply the needed materials and that person in KIN would offer some kind of cover; the same person in KIN wanted your comrade to go back again*".

[252] In an email of 6th March 2008 which is on page 451, bungucel@yahoo.fr wrote to vumuhoza@cs.com thanking God because He helped them to meet the person they had sent and who had reached them safely. He added that he had received her message and that, as far as they were concerned, they had made up their mind and that the rest was to live up to their commitment. He added that what was urgently needed was 'the means' that Muhima Dieudonné was waiting for in Goma, and the money they had asked for. He was also telling her that it was no longer necessary to send their messenger back to Kinshasa because they had come to know that the Colonel who received him at the airport had phone contacts with other

people who had different views on how things should change, and these people were still entrenched in ex-FAR's old-fashioned principles.

[253] The court finds that, as it was confirmed by the High Court, the e-mail address vumuhoza@cs.com belongs to Ingabire because it is on her visiting card which has been submitted to the court, and she admitted in court having used it at various times; she does not prove that it was used by other persons without her knowledge, therefore it must be confirmed that all the above mentioned messages written and received at the address vumuhoza@cs.com belong to Ingabire.

[254] Concerning the email addresses muhima2077@yahoo.fr and bungucel@yahoo.fr , the Court finds that, as it has been confirmed by the High Court, the first one belongs to Uwumuremyi and the second to Nditurende, because they admitted having used them in their correspondence with Ingabire; and these addresses are among those that have been used to send messages to the email address vumuhoza@cs.co that Ingabire acknowledges as hers. Therefore, it has to be admitted that all the messages mentioned above, sent to and received at these addresses match with the facts because Ingabire does not prove how the police would have hacked her email address in order to fabricate those messages.

[255] The Court finds that, the fact that the Judicial Police and the Prosecution did not show Ingabire the original copies of those emails from the outset, that she was shown some of them later on, this should not constitute solid grounds upon which one can affirm that those emails Ingabire exchanged with her co-accused, as they acknowledge, have been fabricated by the Judicial Police. This has been explained by the High Court, and Ingabire admits that she was later shown the originals and that she had been given time to comment on them.

[256] The Court finds that, even if there are some emails for which Ingabire did not receive the original copies, that does not prove that they were fabrications as she alleges, because there is no reason why some emails would have been fabricated and others not.

[257] The Court also finds that, the fact that immediately after her arrest she was summoned before the Judicial Police and the Prosecutor to be questioned about the emails she exchanged

with her co-accused while the latter had not yet appeared before those organs, does not mean that those emails are not genuine; instead, it proves that investigations were still going on and there was no need to explain to her how far the investigations were progressing.

[258] Concerning the trips Ingabire's co-accused say they made to Kinshasa and Brazzaville to meet her, there is, in her file, a document from Compagnie Africaine d'Aviation (CAA) showing that a certain Bantu Biruba made a trip aboard their plane on 24th February 2008 from Kinshasa to Goma; there is a document from Hewa Bora Airways showing that a certain Henri Hatali Mulinde travelled on board their plane on 7th October 2008 from Goma to Kinshasa; there is another document from Commpagnie Africaine d'Aviation (CAA) showing that both Henri Hatali Mulinde and Muhido Muhima travelled on board their plane on 12th October 2008 from Kinshasa to Goma.

[259] After analyzing the declarations made by Karuta, Nditurende and Uwumuremyi, the emails mentioned above and the documents provided by the airline companies, and after confronting them with the dates when Ingabire was in Kinshasa, the Court finds, as it has been confirmed by the High Court, that the people who used the names of Bantu Biruba, Henri Hatali Mulinde and Muhindo Muhima in those documents were Karuta, Nditurende and Uwumuremyi.

[260] Concerning the fact that Karuta went to Kinshasa to meet Ingabire in February 2008, the Court finds that it is confirmed by Karuta himself, it is also confirmed by Nditurende who was his Commander and by Uwumuremyi. This also matches with the email Uwumuremyi wrote to Ingabire on 12th February 2008 and with the content of the document from Compagnie Africaine d'Aviation which shows that a certain Bantu Biruba travelled aboard their plane on 24 February 2008 from Kinshasa to Goma. If you look at all these pieces of evidence, they all converge towards one thing: Karuta went to Kinshasa to meet Ingabire, as this has been confirmed by the High Court.

[261] Concerning Nditurende and Uwumuremyi's trip to Kinshasa and Brazzaville to meet Ingabire in October 2008, the High Court finds that their declarations on this matter match with the content of the document from Hewa Bora Airways where it appears that a certain Henri

Hatali Mulinde travelled aboard their plane on 7th October 2008 from Goma to Kinshasa; even the CAA's flight records show that Henri Hatali Mulinde and Muhindo Muhima travelled aboard their plane on 12 October 2008 from Kinshasa to Goma.

[262] When the Supreme Court also compares what has been just said with the fact that Ingabire herself admits having been in Kinshasa and Brazzaville in October 2008, and with the fact that Nditurende and Uwumuremyi were met at the airport by Colonel Zélote, the same colonel who met Karuta in February 2008, and who was in charge of Ingabire's security as she admits herself; and with the fact that Nditurende and Uwumuremyi admit that they met with Ingabire after her meeting with the President of DRC and the President of Congo Brazzaville, and this is confirmed by Ingabire herself; the Court finds that, as it has been confirmed by the High Court, what we have just seen constitute irrefutable pieces of evidence which explain and converge towards the fact Nditurende and Uwumuremyi went to Kinshasa and Brazzaville to meet Ingabire in October 2008.

[263] The Court finds that, the fact that the Prosecution was unable to prove that Nditurende and Uwumuremyi spent the night in Cristal Hotel or show the venue of their meeting with Ingabire does not eliminate the fact that all the elements that have been mentioned converge and show that Nditurende and Uwumuremyi really went to Kinshasa and Brazzaville in order to meet her to carry on the talks started earlier.

[264] Concerning Ingabire's claim that, perhaps, her co-accused already knew Colonel Zélote, and that it is this man who might have informed them about her trips, the Court finds that, basing on the explanations provided above, those claims are unfounded since she did not produce any pieces of evidence to substantiate them.

[265]Concerning the money that Ingabire's co-defendants say she sent to them, there is, among the pieces of evidence from Holland, a statement made by the security office in Holland showing that on 20th May 2008, Mujawayezu Spéciose sent $1.514.74 to Muhindo Dieudonné via Western Union. There is another statement showing that on 13th December 2010, the security office in Holland questioned Mujawayezu Spéciose on whether she had ever sent money to Goma. She first said that she had not, but when the interrogating officer told her that

their investigations had found that in 2008 she had sent money to a certain Muhindo Dieudonné, she admitted having sent €1000 to Goma upon Ingabire's request, but she said she could not remember the person she sent the money to, and that she does not know anyone bearing the name of Muhindo Diudonné.

[266] Among the pieces of evidence from DRC, there are documents from Western Union which show that between 6th February 2008 and 23rd August 2008, Muhindo received money from several people, among which, Mujawayezu Spéciose, Turikumana Jean de Dieu and Dushimirimana Athanase.

[267] Considering that, both Mujawayezu and Uwumuremyi say that they do not know each other, one saying that she had been asked by Ingabire to send money while the other says that the money was sent by Ingabire, and they confirmed this under different circumstances of time and place, the Court finds that all this proves that, as this has been confirmed by the High Court, the money was sent by Ingabire via Mujawayezu.

[268] Concerning the money that Umwumuremyi says Turikumana sent to him, the Supreme Court agrees with the High Court's analysis that goes like this : if you consider that a certain Chrisitine Numuhoza wrote a message to Nsabimana Phocas using the email address cnumuhoza@yahoo.fr and telling him that she had just sent him $500 and informing him that that money was sent by Turikumana Jean de Dieu , plus Nsabimana's declaration before the magistrates that the person he corresponded with via that address is Ingabire, and that it is Ingabire who sent him that money, all this proves that the email address cnumuhoza@yahoo.fr belongs to Ingabire; besides, she often asked for Turikumana Jean de Dieu's assistance to send money.

[269] The Court finds that, as it has been confirmed by the High Court, the fact that Ingabire admits that she knows Turikumana as a member of FDU-Inkingi, and that she used to send money through him, and the fact that, on the other hand, Uwumuremyi says that he does not know him but that the money Turikumana sent him was actually sent by Ingabire, these concurrent facts prove that it is Ingabire who sent the money to Uwumuremyi through Turikumana.

[270] Concerning the money Uwumuremyi received from Dushimirimana Athanase, the Supreme Court did not find any flaws in the High Court's analysis either, where they confirm that, the fact that Ingabire admits knowing him as an FDU-Inkingi member, but that Uwumuremyi says he does not know him, and the fact that Ingabire had been sending money through other people, this is another convergence of events that prove that it is Ingabire who sent money to Uwumuremyi via Dushimirimana.

[271] When the Court analyses the declarations made by Nditurende, Uwumuremyi and Karuta, the emails mentioned above and then, confronts all of this with their trips to Kinshasa and Brazzaville and the money sent to Uwumuremyi, they find that Nditurende and Uwumuremyi's declarations according to which Ingabire urged them to leave FDLR/FOCA in order to create a an armed group affiliated to FDU-Inkingi, are true.

vii. Concerning the Court's failure to prove that she had a specific intent of creating an armed wing of FDU-Inkingi

[272] Ingabire says that the High Court claimed that she wanted to create an armed wing of FDU-Inkingi; that, however, they could not prove it and that no one should not be punished for having an intention.

[273] She also says that in Mushayidi's case, the High Court explained that the crime of conspiracy is expressed in the intent to overthrow the existing regime; they even confirmed that, the intent was expressed in the party's (PDP Imanzi) goal because the founders of the party clearly say that they favor negotiations but, should they fail, they would resort to force.

[274] She goes on to say that, as far as FDU-Inkingi is concerned, the party of which she was the Chairperson, there is no piece of evidence whatsoever proving that they have the intention of creating an armed group in order to overthrow the Government; besides, the party's charter states that their only way to change the regime in the country is through the ballot box.

[275] She also says that, according to the testimony of a former FDU-Inkingi's member, Nsabimna Phocas, who came as the Prosecution's witness, he affirmed that they had explained to him that the party's political agenda was to have the party registered and to submit a

candidate for the presidential elections, that he had not been informed of the idea of taking power through an armed conflict or any other subversive activities; therefore, she finds that the testimony of someone who had been working with FDU-Inkingi since 2008, recruiting new members around the country, proves that the political agenda of her party has nothing to do with harming the regime in place through terrorism and war.

[276] She says that, as the Chairperson of FDU-Inkingi, she could not take the decision of creating an army without the approval of the party's General Assembly; besides, Uwumuremyi with whom they say she was in connivance with, had no capabilities to create an armed wing of FDU-Inkingi because he was not a member of that party.

[277] She goes on to say that there is no evidence of her specific intent to create an armed group that was to overthrow the existing regime; that the Court did not mention her several speeches at different places, that show that she believes more in the ballot than in the bullet.

[278] The Prosecution say that Ingabire's claim that she has been convicted for an act of intent is unfounded, because the High Court has explained that her act of intent has resulted in an act of conspiracy and that this was what she has been convicted for. As to her saying that there is no evidence of FDU-Inkingi's plans to create an armed group aimed at destabilizing the country, the Prosecution replies that this a diversion tactic because she knows well that she has been prosecuted and convicted as an individual, because criminal liability is personal.

[279] Concerning Ingabire's claim that there are different written documents and speeches showing that she believes more in the ballot than in the bullet, the Prosecution replies that this does not prevent her from adopting a different language when she is in private, with a view to creating an armed group that would resort to terrorism and war to seize power; this, instead, shows that what she writes for the public differs from what she says in private (where she talks about acts aimed at destabilizing the country).

[280] Concerning Nsabimana Phocas's testimony, the Prosecution says that Ingabire insists on some elements that she feels would help her case but she disregards other elements of his

testimony that would support other pieces of evidence provided by the Prosecution; for instance, the fact that he admitted that Ingabire, through other people, used to send him money to be used in the party's activities. This proves that Uwumuremyi's and Mujawayazu's declarations regarding the fact that Ingabire used to send money to Congo through intermediaries are true. Besides, the fact that she used different emails in order to disguise herself corroborates what her co-defendants said, i.e., that they used to correspond with her using different email addresses.

The Court position:

[281] The Court finds that Ingabire has not been convicted of her intent to create an armed wing of FDU-Inkingi as she asserts it; instead, she has been convicted of her conspiracy with Uwumuremyi to create an armed wing of FDU-Inkingi.

[282] Concerning that conspiracy, the High Court has shown how Ingabire has encouraged Nditurende and Uwumuremyi to quit FDLR/FOCA and create their own army affiliated to FDU-Inkingi, the messages she sent them via emails, their meetings in Kinshasa and Brazzaville, the money she sent them, and as they declared it, some of this money has been used to buy military equipment and the rest of it was sent to their respective families.

[283] As to whether the High Court did not provide evidence for FDU-Inkingi's plans to create an armed group aimed at destabilizing the country, a decision she could not take alone, the Supreme Court finds that the purpose of the trial is not to determine whether Ingabire was mandated by her party to do what she did, nor to see whether this was a new direction she wanted to give to the party, nor whether she had or not the capacity to do so, but to determine her responsibility in the crimes she has been charged with.

[284] Concerning the fact that Uwumuremyi could not create an armed wing of FDU-Inkingi because he did not belong to that party, the Court finds that, as it has been demonstrated above, Ingabire requested him to recruit 'flexible' soldiers from FDLR/FOCA in order to create an armed group, and his responsibility lies in that he was in connivance with Ingabire to carry out that plan; he also helped Ingabire to involve Nditurende who was the Commander of

Bahama Battalion and who had more means than him, and he and his comrades eventually left FDLR/FOCA in order to form another armed group.

[285] The Court also finds that, if you consider the content of the emails between Uwumuremyi and Ingabire, and Nditurende's declarations before the Judicial Police, where he affirms that Ingabire trusted Uwumuremyi a lot, and if you also consider that after Uwumuremyi's repatriation by Umoja Wetu Operation, he continued to work closely with her, the Court finds that it is not surprising that Ingabire asked him to help to create an armed wing of FDU-Inkingi.

[286] Concerning Nsabiamana Phocas's declaration that he was never informed of FDU-Inkingi plans to seize power by force, and Ingabire's different speeches at various place, where she declared that she believed that the best way to get to power was through peaceful means, i.e, the ballot box, the Court finds that this does not disqualify the other pieces of evidence that prove the contrary.

[287] To conclude on the crime of conspiracy to undermine the State and the Constitution by use of war and terrorism or other violent means, the Court finds unfounded Ingabire's arguments, starting from the court trial in the first instance, that the crimes she is being prosecuted for have been fabricated by the Judicial Police, because of all the reasons that have been explained, and therefore, her conviction, as decided by the High Court, remains.

3. Concerning the crime of downplaying genocide

i. To determine whether the Court violated the law in re-qualifying the charge relating to genocide ideology and in convicting Ingabire of downplaying genocide.

[288] Ingabire says that the Prosecution charged her with genocide ideology, pursuant to articles 2-4 of law no 18/2008 of 23/07/2008 relating to the punishment of the crime of genocide ideology. She explains that during the court hearing, her defense counsel and herself pointed out that if the principle of non retroactivity of the criminal law had been respected, that law would not have been invoked, because the evidence provided by the Prosecution to charge her with that crime is prior to that law.

[289] She added that, after it was proven that their concerns were founded, the Prosecution requested the Court that since the crime of genocide trivialization was punishable since 2003, they apply article 4 of law no 33bis/2003 of 06/09/2003.

[290] She also says that, instead of considering those elements in her defense, the Court has convicted her with downplaying genocide, basing on a law that differs from the one the Prosecution referred to while they were filing their lawsuit. The Judges explain that they did not base their decision on that law after consulting legal experts like Henry Bossy and Damien Vandermeersch.

[291] The Prosecution say that Ingabire's claims are unfounded because, as they have explained, this crime was punishable since 2003, that nothing prevents the judge from reformulating (re-qualifying) the charge and applying a different law, because the Prosecution provides the elements of a crime and the judges gives to the charge a formulation which he/she deems appropriate.

The Court position

[292] Basing on the explanations provided above relating to the Court's competence to re-qualify the charge brought before them[8], the charges against Ingabire were acts that aimed at denying or trivializing genocide in a subtle way; those acts have not changed, instead, what the Court did was to give them an appropriate qualification and relate them to law no 33bis/2003 of 06/09/2003 that punishes such crimes in its article 4, while law no 18/2008 of 23/07/2008 came to reinforce it.

[293] Therefore, the fact that the qualification of the crime and the law that punishes that crime have been changing as the case file passed through different instances, but that the acts under prosecution have not changed, until the Court that provides a final qualification, this does not violate any laws; therefore, this Court finds that the High Court did not commit any breach of law in re-qualifying the charge.

[8] Refer to the explanation given above on the crime of treason with intent to undermine the existing authorities and the constitution.

i. **To determine whether convicting Ingabire of the crime of trivializing genocide while the law punishing it is not clear, violates the international conventions that the Government has signed.**

As to whether the law punishing genocide ideology is not clear

[294] Ingabire says that during the court hearing in the first instance, she expressed her concerns over the law that punishes the crime of genocide ideology or the trivialization of genocide; the magistrates told her that they could not do anything about it, that she had filed a complaint with the Supreme Court over article 4 of law no 33bis/2003 which is in contradiction with the Constitution, the High Court replied that her complaint could not be received because the law in question had been abrogated.

[295] She says that, even if that law has been abrogated, the High Court has used that law to convict her of the crime of trivializing genocide, because it was in force at the time she was expressing her views on the calamity that had befallen the country.

[296] She also says that in determining the penalties for the trivialization of genocide, the Court based on article 116 in the new penal code; this article includes the flaws that were in article 4 of law no 33bis/2003. Some of those flaws are that the law does not give a clear qualification of the crime, and that there is no the basis upon which one can affirm that there is intent to downplay genocide. Therefore, she requests the Court that both article 4 of law no33/bis/2003 and article 116 of organic law no 1/2012 that were modified be not applied to the crime of trivializing genocide of which the Court convicted her.

[297] The Prosecution argues that this element of Ingabire's appeal is baseless because the Supreme Court has decided on that matter, while Ingabire wants the same court to examine it again and take a decision. This would be in contradiction with article 1 of Organic Law no 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.

<u>The Court position:</u>

[298] Concerning the crime of trivializing genocide, after the trial was suspended, but before the verdict was pronounced, the Parliament adopted law N° 84/2013 of 11/09/2013 on the crime of genocide ideology and other related offences and this law came into force on 28/10/2013.

[299] Article 5 of the same law states that negation of genocide is any deliberate act, committed in public, aiming at:

1° stating or explaining that genocide is not genocide;

2° deliberately misconstruing the facts about genocide for the purpose of misleading the public;

3° supporting a double genocide theory in Rwanda;

4° stating or explaining that genocide committed against the Tutsi was not planned.

The same article goes on to say that any person who commits an act provided for by the preceding paragraph commits an offence of negation of genocide.

[300] Article genocide 6 of the same law relating to the minimization of genocide stipulates that minimizing genocide shall be any deliberate act, committed in public, aiming at:
1° downplaying the gravity or consequences of genocide;

2° downplaying the methods through which genocide was committed.

The same article says that 'any person who commits an act provided for by the preceding paragraph commits an offence of minimization of genocide'.

[301] Therefore , one can see that the new law aims at clarifying already existing crimes, specifically the crime of genocide ideology and related crimes, namely the crime of denying or minimizing genocide. However, the penalties for these two crimes have not changed.

[302] The copy of the judgment of the case in appeal shows that the basis for prosecuting Ingabire for the crime of minimizing genocide are her ideas containing genocide ideology and

misconstruction of facts on genocide with a view to minimizing it by use of various mass media; the essence of her message being to demonstrate that there has been a double genocide in Rwanda, i.e., one committed against the Tutsi and another against the Hutu.

[303] The fact that the act of supporting the theory of a double genocide in Rwanda was considered as crime of minimizing genocide, in reference to article 4 of the new law no 33bis/2003 of 06/09/2003, and the fact that in the new law that act constitutes a crime of genocide denial, the Court finds that this does not constitute a serious reason to modify the law and the article that the High Court referred to in making their decision, because they were applicable at the time of the crime, except that, as we have just said, the acts under prosecution remain unchanged in the new law nº84/2013 of 11/09/2013.

[304] The Court finds that, even if the qualification of the crime has changed, its nature has remained the same, since the charge under consideration was the minimization of genocide, which was considered as denying it.

As to determine whether Ingabire's conviction by the High Court for the crime of minimizing genocide violates article 19 of ICCPR[9] and other international principles.

[305] Ingabire and her lawyer Me Ian Edwards claim that the court which convicted Ingabire of the crime of minimizing genocide violated the principle of the freedom of expression as prescribed by article 19 of the International Covenant on Civil and Political Rights and by article 9 (2) of the African convention on Human and People's Rights, and by article 34 of the Constitution of Rwanda.

[306] They go on saying that, since the Government of Rwanda is signatory of the International Covenant on Civil and Political Rights, they are bound to adhere to international principles. They add that, even if they agree that the right of self expression is not absolute, pursuant to paragraph 3 of article 19 already referred to, and to article 20 of the International Covenant on Civil and Political Rights, that right should be restricted only when necessary.

[307] They add that the Court, however, did not take this into consideration, because the crime Ingabire was convicted of is prescribed by and is punishable under article 4 no 33bis of 06/09/2003 punishing the crime of genocide, war crimes and crimes against humanity. In their view, that article punishes the crime of genocide without restrictions, which is in contradiction with article 19 (3) referred to above which provides that restrictions 'shall only be such as are provided by law and are necessary'.

[308] The Prosecution Officer replied that the claim that the High Court violated article 19 of the International Covenant on Civil and Political Rights is not founded, because Ingabire herself admitted that the article in its paragraph 9 allows Governments to make laws that are

[9] International Covenant on Civil and Political Rights was adopted by the UN General Assemby held on 16 December 1966, and went into force in Rwanda on 23 March 1976.

safeguards in the exercise of the right to express one's opinions; that Ingabire and her counsel accept that this Convention has provided clear restrictions and that the provisions of article 19,3 are in conformity with paragraph 2 of article 34 of the Constitution of Rwanda.

[309] The Officer also finds that the claim by Ingabire's counsel according to which the restriction to the freedom of expression is done only when necessary, although he does not substantiate these claims, has to be disqualified; Ingabire's lawyers did not either prove how the High Court made overgeneralizations in their analysis of the law punishing genocide minimization. Therefore, the reasons for appeal on that matter are not founded.

The Court position:

[310] Article 19 of the International Covenant on Civil and Political Rights stipulates that everyone has the right to hold opinions without interference, but paragraph 3 of the same article explains that the right carries with it special duties and responsibilities, that the right can be subject to certain restrictions, but these shall only be such as are provided by law when it is clear that those restrictions are necessary.

[311] The Court finds that, article 19 that has just been referred to, article 9 (2) of the African Convention on Human and People's Rights and articles 33,1 and 34,1 of the Constitution of the Republic of Rwanda, emphasize unequivocally the freedom of expression. However, as Ingabire and her counsel admit, paragraph 3 of article 19 mentioned above and articles 33, 2º and 4,2º of the Constitution of the Republic of Rwanda, stipulate that that freedom is subject to certain conditions.

[312] The Court finds, therefore, that, in accordance with the articles just mentioned, even if the freedom of expression is guaranteed by international and African conventions that were ratified by the Government of Rwanda, these instruments have provided safeguards to that right because, even if everyone is free to express one's opinion without interference, no one has the right to say anything in any manner that would result in harmful effects such as the non respect of the rights and the reputations of others, threat to the social order or to the national security, etc.

[313] Moreover, in accordance with article 13, paragraph 2 of the Constitution of the Republic of Rwanda, which stipulates that denying and minimizing genocide is punishable by the law, it is evident that the Constitution prescribes that the crime of denying genocide must be punished by the law.

[314] As it has also been explained in case RS/INCOST/PEN0002/12/C[10p] , punishing the crime of denying genocide is not specific to Rwanda, because different countries around the world

[10] Judgement rendered by the Supreme Court on 18/10/2012 on the complaint lodged by Ingabire Umuhoza Victoire who filed a petition to repeal article from 2 to 9 of law nº 18/2008 of 23/07/2008 punishing the crime of genocide ideology and article 4 of law nº33bis/2003 of 06/09/2003 punishing the crime of genocide, war crimes

have put in place specific laws that punish those who minimize the genocide against the Jews or genocide in general; they even bring them before the courts. Therefore, it is quite evident that for a country that endured the genocide against the Tutsi and is still grappling with its aftermath, it is not surprising that the Government of Rwanda has put in place a specific law that punishes the crime of minimizing genocide, with restrictions forpeopie who would like to abuse their rights guaranteed by the law in order to trivialize genocide.

[315] The Court also finds that the most important thing is that, when there is a law prescribing restrictions on the freedom of expression, as provided in paragraph 3 of article 9 referred to above, those restrictions must be clearly expressed and necessary, with a view, as it has been explained before, to deterring those who would like to abuse the freedom of expression.

[316] There is one more thing that needs to be clearly understood with regard to the crime of genocide: experts explain that genocide denial is one of the strategies some people use to deny it. Those experts affirm that to deny or to minimize genocide follow the act of genocide and cannot be dissociated with it; genocide denial and minimization may also herald a genocide in preparation. They also explain that those acts start before the act of genocide itself, they continue during and after its execution. One of the purposes of these acts is to try to protect the genocide perpetrators from prosecution or from other consequences of their crime.

[317] They explain it this way:

- "We can distinguish several forms of denial: rationalization, relativisation and trivialization (...). Relativisation is a direct consequence of the rationalization process. Relativisation, as a form of denial paves the way to comparative trivialization..."[11]
- " Denial is the eighth stage that always follows a genocide. It is among the surest indicators of further genocidal massacres (...) they deny that they committed any crimes, and often blame what happened on the victims. They block investigations of the crimes, and continue to govern until driven from power by force, when they flee into exile. There they remain with impunity...."[12]
- " The denial of genocide occurs during and following the perpetration of the act (...) when scholars and others refer to the denial of genocide, they generally mean that perpetrators, their descendants, successive governments, and/or individuals who sense an affiliation with perpetrators, all deny that a genocide was ever perpetrated in the first place".[13]

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and crimes against humanity because it is in contradiction with article 20, 33 and 34 of the Constitution of the Republic of Rwanda of 04/06/2003 as amended to date.

[11] For more details, see Barabara Levebvre, "*Réflexion sur le négationisme du Génocide des Tutsis au Rwanda*" in: Dossiers Controverses, nº6, Novembre 2007, p.30

[12] Gregory H.Stanton, "The Eighth Stages of Genocide" in Samuel Totten &Paul.Bartrop (ed.), *The Genocide Studies Reader*, New York: Routledge, 2009, pp.127-129.
See also www.genocidewatch.org/aboutgenocide/8stagesofgenocide.html, last checked on 16/09/2013.

[13] Samuel Totten&Paul R.Bartrop (ed.), op.cit., p.517

[318] In line with the explanations above, genocide analysts, especially the genocide against the Jews, also affirm the following:

> "Denial is not a perverse version of the history of Nazism, it is Nazism itself, always active (...). Denial is a chapter in the history of the Holocaust. It is to be treated and understood as such. (illegible phrase), but to understand its political motives and its murderous intentions. (Whole sentence not legible)"[14]

[319] Experts explain that genocide deniers often do it using many tricks, under the guise that they want to present their own version of what happened, a version which differs from the established facts, or that they want to help the world community to have a better understanding of the real history of genocide; however, these people know well that their claims are fallacious, and that their real motives are to present a distorted version of history by denying or trivializing the genocide that happened.

[320] Referring to the explanations above that show the strategies and the motives of those who deny or minimize genocide, the Court finds that, especially with regard to the crime of minimizing genocide in a country in which a genocide was perpetrated and has been recognized by the international community, in conformity with article 13, paragraph 2 of the Constitution of the Republic of Rwanda, it was necessary to adopt a law that punishes those who minimize it.

[321] The fact that the High Court, basing on that law and, after analyzing the pieces of evidence provided, and after the defendant's counterclaims, has found that the charges against the defendant constitute a crime of genocide denial, and this does not violate article 19 of the International Covenant on Civil and Political Rights nor other laws, as it has already been stated.

[322] Moreover, as it has been explained before, Ingabire and her counsel Me Iain Edwards failed to prove how the law that punishes genocide minimization provides unnecessary restrictions on the freedom of expression, or that the Court interpreted the restrictions in the law in a broad way.

i. As to whether the pieces of evidence upon which the Court based their judgment to convict Ingabire for the crime of minimizing genocide should be declared invalid.

[323] Ingabire and Me Iain Edwards claim that the High Court that convicted her of the crime of minimizing genocide did not interpret adequately that crime, because the Court argued that, to say that there has been two genocides constitutes a crime of denying genocide. They also challenge the pieces of evidence upon which the Court based its judgment, namely: article 5 of FDU-Inkingi Charter and some elements of her speech of 16/01/2010 that Ingabire delivered at Gisozi Genocide Memorial, plus her letter to the *New Times*.

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[14] Revue de l'histoire de la Shoah, le monde juif, "Négationnisme: le genocide continue", nº166, Mai-Aout 1999, Centre de Documentation Juive Contemporaine, p.5.

[324] Concerning the Court's interpretation of the "two genocides theory", Ingabire's counsel says that his criticism against the Court is that in their analysis of the crime of genocide minimization, they consulted Wikipedia website, while, in his opinion this site is not recommendable for research, even if some people use it in their researches, because most of the times, this site publishes amateur and occasional papers from unknown people who cannot be trusted. Moreover, that site often warns its users to be careful about what they read on it because some of the information is not accurate, may be incomplete or biased.

[325] He also argues that the Court failed to inform Ingabire in advance about the documents they intended to use during the proceedings so that she may comment on them. He adds that even the expert the Court referred to, Yves Ternon, whose book on genocide minimization " *La problématique du genocide*" which has been instrumental in making their judgment, cannot be recommended because he is not a legal professional or an expert of any kind.

[326] Ingabire's lawyer, Me Iain Edwards, also argues that Yves Ternon's writing does not show his education nor his references so that they may be cross-checked. He says, however, that there is another website www.imprescriptible.fr/parutions/guerres_genocide which confirms that he carried out research on crimes against humanity and crimes of genocide against the Jews, Armenians and Rwandans. He says that there is no evidence that Yves Ternon's writings have been validated by legal experts before publication, and for that reason, even if he is a history expert, his writings should be taken as personal opinions.

[327] Ingabire and her lawyer add that, as regards the evidence of the crime of denying genocide, they are not happy with the court's decision to convict her with that crime basing on article 5 of FDU-Inkingi Charter because they misinterpreted that article since, in her view, that article recognizes the genocide against the Tutsi and condemns it. They also say that when the article talks about "Genocide against Rwandans perpetrated by the warring parties since 1990", this could be understood differently because, a document of this kind is written in a pithy style, since it is a compilation of principles and procedures about the beliefs, the code of conduct of the party members, and the institution of the party organs and their responsibilities.

[328] They explain that, should anyone need more explanations on the content of the Charter, they can give them, especially during party members' meeting. They add that, as Ingabire said it before the High Court, article 5 mentioned above refers to the genocide against the Tutsi in Rwanda and against the Hutu in Congo.

[329] Me Iain Edwards also finds that, the fact that article 5 of FDU-Inkingi Charter mentions "Genocide against the Rwandans" should not be considered as an act of minimizing genocide because that was the words that were used in the Constitution of the Republic of Rwanda before it was modified; therefore, basing on the explanations provided by his client and himself, they find that Ingabire should not be convicted of the crime of denying genocide.

[330] He added (alternatively) that article 5 of FDU-Inkingi was written in April 2006, basing on the information available at the time, for instance, in the reports of the UN Security Council. He goes on to say that he disagrees with the High Court's judgment that Gersony report should not constitute a reliable piece of evidence because it was never published, because its content was well known since March 1999 and the same report was mentioned in Alison Desforges' book *Leave None to Tell the Story*.

[331] He also says that he disagrees with the Court's judgment that the reports Ingabire has been using say that only the Tutsi killed the Hutu, or committed against them crimes against humanity, that those reports never say that the Tutsi committed genocide against the Hutu either in Rwanda or in Congo, because the authors of those reports mention that a genocide may have been committed against the Hutu. Ingabire adds that she submitted a document to the High Court from "*Centre International des droits de la personne et du développement démocratique-Droits et Démocratie*" which said that the killing of the Hutu refugees in Congo constitutes an act of genocide; however the Court did not comment on it.

[332] Me Iain Edwards goes on to say that, nowhere in Ingabire's declarations nor in FDU-Inkingi Charter was it said that the Tutsi who lost their loved ones during genocide are the same who perpetrated genocide against the Hutu; that instead, what has been emphasized all along is that Rwandan Patriotic Front (RPF) as a political party, committed war crimes and crimes against humanity against Hutu refugees in DRC.

[333] Me Iain Edwards also requests the Court that, even if they find in FDU-Inkingi's Charter indirect evidence that two genocides were committed in Rwanda, they have to rule that this does not constitute an intent to minimize genocide because the fundamental principles enshrined in that Charter are about peace, security, democracy, rule of law and equality for all.

[334] In addition to that, Ingabire and her lawyer also are dissatisfied with the Court for failing to interpret properly Ingabire's speech at Gisozi Genocide Memorial; that speech is in Kinyarwanda and it can be heard on 'video' that the Court was able to listen to. Instead of taking the speech as a whole and considering the context- because she was speaking off the cuff, only a few words were singled out and the Court convicted her of the crime of denying genocide.

[335] They also add that Ingabire was not happy with the fact the Court based on her article written in English to the *New Times* on 18/01/2012 as a reply to their story on her speech at Gisozi, whereas in her speech she never said that another genocide has been committed against the Hutu or that the Hutu are not commemorated at Gisozi Genocide Memorial. The Court says, instead, that Ingabire insisted on the fact that the Hutu were also victims of crimes against humanity but were not remembered.

[336] Me Iain Edwards goes on to say that even if Ingabire had committed mistakes in her letter and wrote down words she did not pronounce at Gisozi, this is to be understood in the sense

that her command of English is not good; therefore, in light of all the explanations provided above, they request that Ingabire be cleared of the charge that she has been convicted of.

[337] The Prosecution replies that the fact that the first judge used documents written by experts when he/she was analyzing the crime of denying genocide does not constitute a fault because no law prohibits it or prohibits him from referring to other cases whose judgment have been rendered elsewhere, even if the law is clear.

[338] They add that Me Iain Edwards who finds fault with the High Court for having used Yves Ternon's article "*La problématique du négationnisme*" published by Wikipedia, wants to mislead the Court because he intentionally fails to point out that even if that article can be found on that website, it was published in other papers well before, in 2003, like in *Revue de l'Arche* and at www.imperscriptiblr.fr, as Wikipedia explains it.

[339] They also say that the writing the High Court based on their decision was indeed written by Yves Ternon in 2003 after the research he carried out on the genocides perpetrated against the Jews, the Armenians and the Tutsi. They carry on saying that, even if Me Iain Edwards in his conclusions says that he does not know Yves Ternon, he, on the other hand, talks about his education and his professional experience, because he affirms that he has a Bachelor's degree in History and that he conducted research on the Armenians genocide. This shows that he is contradicting himself.

[340] As to Ingabire's lawyer's criticism against the High Court that they did not inform his client of the documents they were going to use during the trial, the Prosecution representative replied that the Court did not violate any law, that there is no provision in the law that when the magistrates are in deliberation and they use a law or documents from experts to support what has been said during the proceedings or the laws related to the case under way, have to first inform the parties.

[341] He explains that those documents from experts do not constitute new elements of evidence that would call for another court hearing and, therefore, when the trial is over and the judges go for deliberations, there is no provision that they will have to inform the parties about other courts' decisions or the experts' articles that they will use, because the Court may not know them before the trial.

[342] He added that, regarding FDU-Inkingi Charter, the Prosecution's aim was to show that the issue lies not in using the terminology 'Genocide against the Rwandans' instead of 'genocide against the Tutsi', or to deny genocide or condemn it, because FDU's Charter recognizes it, since you cannot deny a genocide which never took place.

[343] He goes on to explain that the real issue and which constitutes the crime, are the words that minimize the genocide against the Tutsi that are found in that Charter that Ingabire has endorsed. Those words show that, even if Ingabire and her party fellows accept the genocide against the Tutsi, they, on the other hand affirm that two genocides took place in Rwanda and

were perpetrated by the warring parties since 1990, and it is well known that from 1990 onward, the Government army (FAR) were at war against the RPF Inkotanyi.

[344] He adds that to accept that a genocide took place does not mean that you cannot minimize it, considering that Ingabire and her lawyer do not clearly explain how the FAR perpetrated genocide and who were the victims, nor how RPF perpetrated genocide and who were the victims, so that those two genocides perpetrated by the warring parties may be clearly distinguished.

[345] He goes on to say that, the High Court, in their decision, explained the reasons why Ingabire's declarations that two genocides happened in Rwanda, show in plain language the crime Ingabire has been convicted of, i.e., minimizing genocide. The Prosecution finds those explanations quite clear.

[346] Concerning Ingabire's lawyer's explanations on the sources of reference for FDU-Inkingi Charter, the Prosecution finds that these explanations are not founded because he himself points out the flaws that would not permit his client to affirm that a genocide has been perpetrated against the Hutu, because he says that people who provided that information just say that a genocide may have been perpetrated against the Hutu, and this shows that their sources of information are not entirely trustworthy nor that that information has been confirmed by a competent body.

[347] They also say that, the fact that Ingabire's lawyer admits that after the drafting of FDU-Inkingi Charter in 2006, the issue regarding the genocide against the Hutu was still unclear; and that the document he submitted to the Court is not Gersony's real report but just a summary of it; that he also admits that, although that report came out, it was not officially published, this shows that the content of the Charter is not credible due to the flaws that have been just mentioned.

[348] He goes on to say that when Ingabire's lawyer affirms that when she was talking about a genocide against the Hutu she meant that that genocide has been committed by RPF as a party, he wants to knowingly mislead the Court because he knows well that in her various declarations and writings, Ingabire has affirmed that the RPF army has been committing genocide up to now, that they have also committed war crimes and crimes against humanity , that that army is composed of Tutsi as it appears in her declarations on " cotes 1669, 1671, 1677 and 1680 in the High Court; that , therefore, Ingabire and her counsel's claim that she never talked about a genocide against the Hutu committed by the Tutsi is groundless.

[349] The Prosecution representative also finds that Ingabire's declarations at Gisozi Genocide Memorial and her letter to the New Times can help to understand better her declarations that, "the memorial is only for the Tutsi genocide, but, there are massacres that have been perpetrated against the Hutu", or that, ", the Hutu are not remembered at Gisozi Genocide Memorial". This shows that Ingabire's declarations at Gisozi are not different from what she wrote to the *New Times*, and both constitute a crime of minimizing genocide because, when

you compare the crime of genocide and war crimes and crimes against humanity and you treat them on an equal footing, whereas they are different in nature and effect, what you are doing is simply denying genocide.

[350] He also says that, as the Prosecution has explained in the first instance, the fact that Ingabire requests that those who may have been killed in killings other than genocide should be remembered at the same site as the victims of genocide, this means that she affirms that they also are genocide victims; and this shows that she supports the theory of two genocides: one committed against the Tutsi that, who, in her view are remembered, and another one against the Hutu who are not honored at Gisozi, even if she uses diversion tactics, hoping that they will never be discovered, by saying that the Hutu who are not remembered at Gisozi are victims of war crimes and crimes against humanity, even if she knows that these crimes do not single out a particular ethnic group.

[351] The Prosecution Officer adds that the argument according to which the Court did not consider Ingabire's entire speech , its nature and its intentions, is not founded because the amount of good words pronounced does not erase at all the bad ones that one slips into his/her sentences. Moreover, a single criminal word in a sentence is subject to prosecution and if the person who uttered is found guilty, he must be punished for it.

[352] He also finds that the High Court did not violate the law when they were analyzing some of the words in Ingabire's speech, because she was given the opportunity to comment on them, and the Court has examined them and found them reprehensible. He adds that it would have been problematic if the judge had invented new words and had said they were Ingabire's. But, this is not what happened because Ingabire confirmed that the words examined are indeed hers.

[353] He goes on to explain that the fact that Ingabire delivered her speech off –the- cuff ,as her counsel admits, does not exonerate her from prosecution for the deplorable words she uttered, since Ingabire and her counsel admit that she really uttered them. Instead, here are questions that Ingabire's counsel does not understand or intentionally ignores, and this amounts to diversion tactics in view of minimizing genocide:

- Why does Ingabire come to the Tutsi genocide memorial to talk about crimes against humanity that she says were committed against the Hutu?
- Why does she finds equally grave the crime of genocide and the crime against humanity that she says was perpetrated against the Hutu while she knows well that those crimes do not carry the same weight.

The Court position:

Concerning the High Court's analysis of the 'two genocides theory":

[354] The Court finds that, the fact that the High Court consulted Wikipedia website on Yves Ternon's article does not constitute a flaw that would disqualify what has been published on it, because, as one can see on p. 106 on the judgment rendered by the High Court, that website provided the sources of that article. Therefore, the particular flaws that Ingabire's counsel finds on that website are not founded because the article in question has been published in another well known place.

[355] In their analysis of the "two genocides theory", the High Court based on Yves Ternon's article which shows that denying genocide is grounded on fallacious allegations and on self-defense tactics, and that it is done in a malicious way. He says, "genocide denial is a lie and a defense mechanism (...) ; it is not based on a genuine questioning of facts, nor on an interpretation of texts that would help to review an established truth, but on a malicious manipulation of facts".

[356] The Court finds that the High Court did not violate any law that would entail the annulment of its decision, since Yves Ternon's article is genuine, and even Ingabire's lawyer, in his conclusions, admits that even if Yves Ternon's CV and researches do not appear on Wikipedia, the author is knowledgeable about history; he also acknowledges that Yves Ternon carried out research on crimes against humanity and on the crimes of genocide perpetrated against the Jews, the Armenians and the Rwandans, as one can see it on the website www.imprescriptible.fr/parutions/guerre_genocide from which Wikipedia took that article.

[357] In light of the above remarks, Ingabire's counsel should have proved that Yves Ternon does not have the necessary competence to make quality analysis on the issue of denying genocide; he should have proved that Yves Ternon's article does not tell the truth, and thus provide the Court with elements for examination. Since Ingabire's counsel failed to prove those flaws, this is a serious reason for the Court to disqualify his explanations.

[358] Moreover, it is to be noted that analyzing genocide or acts related to denying it is not the preserve of legal professionals alone. Yves Ternon is not the only expert who is not a legal professional who did investigations on that issue, because other people with different educational backgrounds support and corroborate his findings[15].

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[15] Here are some examples:
Josias Semujanga and Jean Luc Galabert, *Faire face au négationnism du genocide des Tutsi*, Saint-Jean, ed' Izuba, 2013, p.415
Samuel Totten & Paul Bartrop (ed.), "*The Genocide Studies Reader*, New York, Routledge, 1st ed., 2009, p.552.
Pierr Vidal-Naquet, " *Les assassins de la mémoire. Un Eichmann de papier et autres essays sur le révisionnisme*", Editions La Découverte, 1987, p.226.
Marie Fierens,: *"Le négationnisme des Tutsi au Rwanda"* Villeurbanne cedx, Editions Golias, 2009, p.195.
Tnstitut de Recherche et de Dialogue pour la Paix (IRDP), "*Le négationnisime du genocide des Tutsi: evolution, expressions, mechanismes de lute*", Kigali, Décembre 2008, p105

[359] The Supreme Court also finds that the fact that Ingabire and her counsel were not notified by the High Court of the documents from experts they relied on in rendering a judgment should not constitute a ground for appeal because, Ingabire, as a defendant, was given ample time to comment on the various elements of evidence of the crime under prosecution; after that, the Court has examined the charges against her and her arguments of defense, the provisions of the law related thereof, the experts' analysis, and then passed a judgment.

[360] The Supreme Court considers that the High Court's procedure in passing the judgment did not violate the defendant's rights, because that is the normal procedure in rendering court's judgments: judges often use documents or experts' testimonies on an issue that requires specific expertise.

Concerning the proofs of the crime of minimizing genocide

On article 5 of FDU-Inkingi Charter

[361] Article 5 of FDU-Inkingi Charter stipulates, among other things, that anyone who wants to join that party must adhere to its Charter, and one of its principles says that you have to "acknowledge and condemn unequivocally the crime of genocide perpetrated against the Rwandans by the warring parties since 1990".

[362] The High Court has examined the content of that article and has found that it implies that one genocide was committed by the ex-FAR army and another by RPA. What this means is that two genocides were committed in Rwanda, while it is well known that only one genocide took place: the genocide against the Tutsi.

[363] The same court also finds that Ingabire's claims that the reports she consulted have acknowledged the existence of a genocide against the Hutu are fallacious because those reports only say that the Hutu were victims of crimes against humanity, which are not the same as genocide; even when they talk about a genocide that may have been committed against the Hutu, they do not affirm this with certainty.

[364] The Supreme Court finds that they could not make any objections to the High Court's analysis, because article 5 of FDU-Inkingi Charter, which Ingabire admits that she is one of those who drafted it-she acknowledges its content even if she gives it a different interpretation, clearly states that one of the fundamental principles of the party is the acknowledgement of the existence of a genocide committed by the warring parties in Rwanda since 1990: the genocide committed by the ex-FAR and affiliated militia[16] and the genocide committed by RPA. As the High Court has explained, this implies that there were two genocides in Rwanda while it

[16] Cfr Case nºICTR-97-23-S of 4/09/1998: Prosecutorv.Kambanda Jean: In his guilty plea, Kambanda explained that genocide has been committed by the ex-FAR assisted by interahamwe and CDR militia.

is well known that only one genocide happened: the genocide against the Tutsi and this genocide was committed by the Government soldiers (ex-FAR) and their allies.

[365] The Supreme Court also finds unfounded Ingabire's arguments of defense according to which article 5 of FDU-Inkingi Charter refers to the genocide committed against the Tutsi and to the other one committed against the Hutu in DRC, because, and as the High Court has explained, her declarations differ from the content of that article; instead, it implies that the genocide has been committed by the two warring parties since 1990, which means that another genocide also took place in Rwanda.

[366] Moreover, Ingabire failed to prove that a genocide against the Hutu really happened, and her arguments of defense according to which FDU-Inkingi Charter is written in a pithy style, because it is just a compilation of the party's guiding principles, is not substantiated because the content of that article is quite clear as this has been previously explained.

[367] The Supreme Court also finds that the reports Ingabire has referred to admit that the Hutu were also victims of genocide, except that her counsel explained that they have been mentioned just as 'alternatives', which means that they did not constitute her main basis for argument to prove that two genocide happened in Rwanda; those very reports should not be referred to to prove that a genocide against the Hutu took place, since nothing proves that they meet the criteria of a genocide as stipulated in article 2 of the International Convention on the prevention and punishment of genocide[17].

[368] Besides, as several experts on the crime of genocide explain, people tend to call genocide all forms of mass murder, but this is not the case; and they often do so as an attempt to minimize genocide[18].

[369] Since, therefore, Ingabire and her fellow members of FDU Inkingi support their party's principles according to which there has been two genocides in Rwanda since 1990, what they aim at is simply to falsify the truth on a genocide internationally acknowledged as the genocide against the Tutsi. When one examines article 5 mentioned above, one finds that its author wanted to lessen the gravity of the crime of the genocide against the Tutsi, since those who perpetrated it have also been victims of another genocide. As experts on genocide and genocide related acts point it out, any person who admits that genocide perpetrators are also victims of another genocide, aims at creating confusion and thus lessening the gravity and the impact of genocide[19] , or else, at simply downplaying it because another portion of the population has gone through the same fate.

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[17] International convention on the prevention and punishment of genocide, Resolution 260A (III) of 9 December 1948 of the UN General Assembly. Art2: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group..."

[18] For more explanations, see appendix

[19] Ibid.

[370] Considering all the remarks above, to release the content of article 5 of FDU-Inkingi's Charter constitutes a crime of minimizing genocide punishable under article 4 of law nº33 bis/2003 already referred to and as the High Court has confirmed it.

Ingabire's speech at Gisozi Genocide Memorial and her letter to "The New Times"

[371] As to Ingabire's speech at Gisozi Genocide Memorial , after listening to it on video, the Court has noted down the following words, "**... the path to reconciliation is still very long indeed, if you consider the number of people who have been killed in this country. This is something that cannot be achieved overnight (...) For instance, this memorial has been dedicated to people who were killed during the genocide against the Tutsi, however there is another side of genocide: the one committed against the Hutu. They have also suffered; they lost relatives and they are also asking, "When is our time?" In order to achieve reconciliation, we need to show empathy for every victim. The Hutu who killed the Tutsi should understand this and face the consequence of their act; and those who may have killed the Hutu, they also must understand they cannot get away with it...**"

[372] After this speech, in a letter Ingabire wrote to the *New Times* requesting for rectification of their story on her speech at Gisozi Genocide Memorial, she says that her actual words were, "**...we are here to pay respect to the Tutsi who were killed during the genocide; there are also some Hutu who were also victims of crimes against humanity and war crimes, but they are not remembered here. The Hutu have also suffered and they are wondering when they will have the opportunity to remember their loved ones**".[20]

[373] The Supreme Court finds that, although the words on video that Ingabire requested to listen to are a bit different from what she wrote to *the New Times*, her main contention is that the road to reconciliation is still too long, the proof being Gisozi Genocide Memorial which honors the Tutsi alone; and then she goes on to talk about the Hutu's plight because their loved ones were also victims of war crimes and crimes against humanity, but they are not remembered at this memorial.

[374] Concerning the crime of denying genocide, it is necessary to examine the provisions of the law on such a crime and her words on video that Ingabire acknowledges as hers; one has also to examine the content of her letter to *The New Times*.

[375] Pursuant to article 2 of the Convention on the prevention and punishment of the crime of genocide, what is specific about that crime is the intent to destroy a group of people, in whole or in part, as it has been confirmed by court's judgments on the crime of genocide, and by various experts: they all agree that the specificity of genocide, and what sets it apart from other crimes of mass murder, especially war crimes and crimes against humanity, is that genocide specific intent is to destroy a national, ethnical, racial or religious group.

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[376] It is explained as follows, "The form of intent that is a necessary element of the crime (of genocide) that of intending to destroy a group, marks it out from all other international crimes. This explains why genocide is regarded as having a particular seriousness, and has been referred to as the crime of crimes". (ICTR, Kambanda case, Ch.4.9, 1998 para.16)[21].

[377] The above considerations agree with the experts' views that the specificity of genocide is that its perpetrators intend to destroy once and for all a group of the population, that is why genocide is called 'the crime of crimes'. This marks it out from crimes against humanity because, people are killed depending on the area they are in, those who commit those other crimes do not intend to destroy the whole population in that area.
This is how they explain it,
"Whereas for genocide, the scope of the intent of the perpetrator includes the destruction of the group, for prosecution as a crime against humanity, the perpetrator selects their victims because they belong to a specific community, but does not seek to destroy the community as such. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which means that the victim of the crime is the group itself and not only an individual"[22].
"The drafters of the crime of genocide wanted to emphasize the particular gravity of targeting members of a specific group, with a view to their intentional physical or biological extermination. Emphasis is therefore on the destruction of the group, whereas the victimization of the group members in their individual capacities takes second place (...). The ICTR in the Akayesu case authoritatively determined that genocide against Tutsi did, in fact take place in Rwanda in 1994. The Judicial assessment of the *dolus specialis* by *ad hoc* tribunals begins by first examining the existence of a genocidal intent of the accused, which is distinct but yet interrelated to that of the underlying plan (...). The Jelisic judgment opined that genocidal intent may manifest itself through a desire to exterminate a very large number of the group members,

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[21] In an original copy of a letter written in English and which has the following title: 'Right of rectification and reply to libels', published in Sunday Times on 17th January 2010 and the New Times of 18th January 2010, Ingabire says that she pronounced the following words: '...For example, we are honouring at this Memorial the Tutsi victims of Genocide; there are also Hutu who were victims of crimes against humanity and war crimes, not remembere or honoured here. Hutu are also suffering. They are wondering when their time will come to remember their people".

[22] Anne-Marie L.M.de Brouwer, "Supranational Criminal Prosecution of Sexual Violence-The ICC and the Practice of ICTY and the ICTR", Intersentia, School of Human Rights Research Series, Volume 20, p.72:ICTY, Case nºIT-96-10:Prosecutor v. Jelsic, Ch.19.12.1999 par.79. She also mentions the following cases: Prosecutor v. Akayesu (Case nºICTR-96-4-T: 2 September 1998), par.720-732; Prosecutor v. Kayishema & Ruzindan (Case nº ICTR-95-1: par.531-533);
Cfr also Hassan B. Jallow, "The Contribution of the UNICTR to the development of international criminal law" in Phil Clark and Zachary D. Kaifman (EDS), " After Genocide Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond", Hurst & Company, London, 2008, p.271: "...As a result of the judgment of 2 September 1998 (Akayesu case), the ICTY looked afresh at what had occurred within its jurisdiction, and in 2001 convicted Radislav Kristic (Prosecutor v. Radislav Kristic, IT-98-33, par.598) of genocide, concluding that the intent to kill all Bosnian Muslim men of military age in Srebrenica constituted an intent to destroy in part the Bosnian Muslim group and therefore qualified as act of genocide.

or by killing a more limited of persons selected for the impact their disappearance or extermination will have upon the survival of the group as such" (par.82)[23].

[378] Besides, the analysts of the crime of genocide show that those who deny and minimize it resort to various strategies, namely to put genocide and other crimes of mass murder at the same level, especially those that have been committed during war times. They say that this is done in such a subtle way that one cannot easily understand that their aim it to deny and minimize genocide, to intentionally falsify the truth and create confusion about the genocide that took place, so that people come to feel that the genocide is no longer a grave crime, because there is another group of people who have also been victims of a genocide.

[379] As regard the remarks above, Israel Charny in his analysis, explains:
"...Over time, the intellectual argumentation employed by deniers has become more and more sophisticated. The deniers attempt to employ various devices of rationalization and deconstruction of meaning that seek to avoid placing the deniers themselves in obviously bad lights as intellectual hooligans or bigots (...). What is common to all elaborated definitions is that (...) a generic classification of genocide is presented which treats all cases of mass murder as genocide (...) so that differences between cases are not at all lost, but at the same time, all cases of mass murder are honored as belonging to an overarching world of genocidal events..."[24]

[380] These explanations concur with the analyses on the genocide that took place in Rwanda: for instance, as regard the act of minimizing genocide, the advocates of a two-genocide theory purportedly do so for the sake of reconciliation, however, such tactics are simply malicious, and their real intention is to lessen the impact of the Tutsi genocide, because they try to show that both warring parties have played a role in the genocide; and the ultimate goal is to absolve the genocide perpetrators and to treat the crime of genocide just as any other form of killing.

[381] J-P Chrétien fully agrees with the above:
"The two-genocide theory, which is sometimes presented as a sure way to the reconciliation process, is simply deceptive. It aims, instead, at having genocide shrouded in other forms of indiscriminate killings".[25]

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[23] Ilias Bantekas & Susan Nash, " International Criminal Law", 3rd ed., Routledge Cavendish, London and New York, 2007, p.143-144: Nota: The trial Chamber initially acquitted the accused of genocide on the ground that the prosecutor has failed to prove his genocidal intent beyond beyond reasonable doubt but the appeal Chamber disagreed with the evaluation of the evidence, finding instead that genocidal intent clearly existed, but did not see it in the interest of justice to order a retrial and thus declined to reverse the acquittal. ICTY has been reluctant to convict lower-ranking personnel of genocide, despite the large number of victims in particular cases.

[24] Israel Charny (1994) in Samuel Totten & Paul R. Bartrop (ed.), op.cit., p.531.
Cfr also Valérie Igounet, " Une tradition extremist: le négationnisme", in Revue de l'histoire de la Shoah, op.cit, p.9: "D'emblée, l'inversion discursive caractérise le négationnisme: inversion des responsabilitées (...) et inversion victimaire".

[25] JP Chrétien's article: 'Le génocide du Rwanda-un négationnisme structurel': available on http//www.ldh.toulon.net/spip.pho/article 398.

[382] Barbara Lefebvre also explains the tactics employed by the genocide deniers and by those who minimize it: they generally focus on war times during which genocide occurred and they treat all those killed during the war as victims of genocide, whereas this is not the case. She goes on to explain that the strategy of 'putting all the war victims in the same basket' makes genocide lose its specificity, whereas what sets genocide apart is that it has been planned and the aim of its perpetrators is to destroy a group of people. She puts it as follows,
"The genocidal policy is seen primarily in the context of war, where the war dead are compared to genocide victims. The peculiarity of the crime of genocide makes room for a broader view on the heinous crimes perpetrated during war by including all the civilians killed and not a particular group (...). This is where genocide denial originates, because it denies the specific aspects of the crime of genocide, i.e., the planning and the intent to exterminate one group of the population"[26].

[483] In the same line as the remarks above, Josias Semujanga and Jean-Luc Galabert explain that genocide denial is based on lies and the distortion of history. They also show that genocide deniers take all crimes, especially those committed during war times, as genocide. They also refuse to accept the reality of facts, they refute the findings of history experts, they reduce the number of the victims; they look for scapegoats; they provide fallacious explanations on what happen, etc.

[384] They explain it as follows,
"...Using the word 'genocide', that decisive word, aims at winning the battle of words; to describe a war in terms of genocide deprives that word of its meaning and the victims of their freedom of speech. If all crimes can be called genocide, they will have equal status (...). Anyone studying the phenomenon of genocide denial enters 'a baffling land of lies', a land of impostors (...). The lie consists in denying an established truth. It hides behind a legitimate vision of this truth (...) and the object of that lie is genocide. That kind of deceptive approach is called genocide denial (...). Their tactics are: negation of the proofs and analyses by historians, reduction of the number of the victims, accusing the victims of having also committed genocide, falsification of facts..."[27].

[385] These explanations by various people who studied the genocide phenomenon agree with law nº 84/2013 of 11/09/2013 relating to genocide ideology and related offences. According to this law which came into effect on 28/10/2013, all acts of denying or minimizing genocide plus other offences mentioned under that law, belong to the category of genocide ideology related crimes.

[386] Regarding the case of Rwanda, referring to the explanations above, genocide analysts have demonstrated that the proponents of a "two-genocide theory" aim at showing that all ethnic groups have equally suffered, that this attitude reflects an attempt to deny and minimize

[26] Barbara Lefebvre, "Refléctions sur le négationnisme du génocide des Tutsi au Rwanda", in *Dossiers Controverses*, nº6, November 2007.
[27] Josias Semujanga et Jean-Luc Galabert, op.cit., pp20, 107-1114.

the genocide against the Tutsi who were simply killed because of their ethnic group, and that their killers' objective was to kill them all, while for the Hutu who were victims of crimes, this was not the case.

[387] Concerning Ingabire's speech at Gisozi Genocide Memorial, as everyone knows, this memorial site, like other genocide memorials around the world, one of their raison d'être is to preserve the memory of genocide, and this is a token of respect for the victims; it aims at providing the visitors of the site with the opportunity to reflect on horrendous nature of the crime of genocide and on its consequences, so that they may take appropriate action to combat and prevent it. More specifically, at Gisozi genocide memorial are laid to rest the remains of the Tutsi genocide victims.

[388] The Supreme Court finds that, for a political figure like Ingabire who heads FDU-Inkingi- a political party that supports that two genocides were committed in Rwanda, to visit Gisozi Genocide memorial where she knows well that the victims of the Tutsi genocide are buried and to deliver a speech that has been mentioned above, and , in addition to that, to stress her remarks in a letter to the New Times, where she says that the Hutu who were victims of genocide are not remembered and honored at that memorial site, this proves that she puts in the same category the Tutsi genocide and other crimes she says may have been committed against the Hutu, while she knows pretty well that those crimes cannot be equated with genocide, because they are different in terms of nature and impact.

[389] The same Court also finds that, the fact that in her speech at Gisozi Genocide Memorial site, Ingabire affirms that the Tutsi genocide was perpetrated by the Hutu, but on the other hand, she complains that the Hutu are not remembered at that site, shows that her visit's main purpose was not to pay respect to the Tutsi victims buried under that site, but to deliver a message, i.e, no reconciliation is possible as long as the Hutu victims of crimes against humanity are not remembered alongside the Tutsi victims of genocide.

[390] The Court finds that, the fact that Ingabire declared publicly that the Hutu victims of war crimes and crimes against humanity are not remembered at the Tutsi genocide memorial, while she admits in that speech, that those Tutsi were killed by the Hutu, this also supports a 'two-genocide theory', as the High Court has explained.

[391] The Supreme Court finds, therefore, that Ingabire's arguments that she never denied the Tutsi genocide, that she said, instead, that the Hutu who were victims of crimes against humanity are not remembered –although this does not match with what the content of her letter to the *New Times*, does not absolve her of the charge that has been explained above. This also is in contradiction with the elements of her defense and her conclusions, where she explains that her fellow party members and herself share the view that two genocides took place: one against the Tutsi and another against the Hutu refugees in DRC. These views support the theory of double genocide as that has been explained before.

[392] The Supreme Court finds that, even the argument that she delivered a speech off the cuff does not alter the gravity of the offence since , as the video produced in court reveals, she was addressing journalists whom she knew would disseminate her speech to people from all walks of life. This constitutes another proof that she was well aware of the message she wanted to put across.

[393] Moreover, the fact that after her speech at Gisozi she wrote a letter to be published in a newspaper, where she lamented that the Hutu are not remembered at that memorial site, while she admitted, at the same time, that they were victims of crimes against humanity and which are different from the crime of genocide as stated earlier, this proves that she puts under the same category those two but different types of crime. This constitutes, by itself, the crime of minimizing genocide as the High Court confirmed it pursuant to law nº33 bis of 06/09/2003 that was in force when Ingabire was uttering the words she is being prosecuted for.

[394] Considering the explanations provided, this Court finds Ingabire guilty of the crime of minimizing genocide and she has therefore to be punished for it.

B. ON THE APPEAL PETITION BY THE PROSECUTION

1. **On whether all the accused are guilty of the crime of creating an armed group.**

[395] Concerning Lt Col. Habiyaremye, the Prosecution say that he was in contact with Paul Rusesabagina who was the Chairperson of PDR-Ihumure, an opposition party that operates outside Rwanda. They explain that Rusesabagina requested him to find fighters from FDLR and sensitize them to break away and create an armed wing of PDR-Ihumure in order to attack Rwanda. They say that Habiyaremye accepted that proposal and started to sensitize some of his fellow senior officers, but he did not complete his mission because he was arrested before the armed group was created and he was arrested while he was involved in activities that aimed at creating that armed group.

[396] Concerning Ingabire, Lt.Col. Nditurende, Major Uwumuremyi and Captain Karuta, the Prosecution says that these people created an armed group called "Coalition des Forces Démocratiques (CDF) affiliated to FDU-Inkingi, in a view of destabilizing the country in an attempt to force the Government of Rwanda to negotiate.

[397] The Prosecution, basing on those elements, charged them with the crime of creating an armed group and of preparing an attack on Rwanda. This crime is punishable under article 163 of decree-law nº21/77 of 18/08/1977 governing the penal code. However, the High Court has ruled that the activities the defendants are charged with do not fall under article 163 referred to above because it deals with crimes against the external security of the country, which means that these are crimes that would make the country fall under foreign rule, and the activities under prosecution did not aim at that.

[398] They also said that the explanatory notes of the Penal Code say that the armed group referred to in article 163 are mercenaries, and the charges against the defendants are not the creation of mercenaries.

[399] The High Court has found that the activities the defendants are being prosecuted for, namely the creation of an armed group, should be examined under articles 164, 165 and 169 of the law referred to earlier; these articles deal with crimes that threat the national security and they punish any crime that aims at the undermining the State security and the Constitution of the Republic by way of terrorism, war or other violent means.

[400] The Prosecution, in their petition for appeal, admit that the activities for which they prosecute Ingabire, Nditurende, Karuta, Uwumuremyi and Habiyaremye constitute a crime of conspiracy to undermine the State security through terrorism and war; but they do not accept that these activities do not constitute a crime of creating an armed group referred to or punishable under article 163 of the law referred to earlier; thus, they find that the High Court did not properly interpret that article.

[401] The Prosecution says that the judge gave a wrong interpretation of article 163 where he/she says that, since that article deals with the categories of crimes that aim at threatening national security and the security of other countries, this means that, these are crimes committed in a view to making the country fall under foreign rule; yet, this is not the crime the article is about, because, the judge's explanations are instead, provided in article 151 of the law that has been referred to, and this is not what the Prosecution's lawsuit was based on. That is why they find that there is no reason why the crimes punishable under article 151 should be applied to all articles, because each article clearly states the acts it is concerned with, their criminal nature and the penalties.

[402] They also say that nowhere, either in title one, chapter one or section one of the Penal Code Volume 2 , is said that the crimes referred to under article 163 will be punished when they will have caused the country to fall under foreign rule.

[403] They also say that the word 'mercenary' is nowhere mentioned in the explanatory notes, that contradicts article 163, because, even in everyday life, mercenaries constitute an armed group that does not belong to a country's regular army.

[404] They conclude by saying that a judge refers to doctrine, jurisprudence or explanatory notes only when an article of the law is not clear, and the provisions of article 163 are clear.

[405] Ingabire and her counsel say that during Mushayidi's trial, the High Court explained that the charges of creating an armed group that he was accused of could not be examined under article 163 which is concerned with undermining external security, and the Prosecution never lodged a complaint. This implies that they agreed with the Court's judgment as regard that article, and this judgment has remained unchanged because, in appeal, the Supreme Court endorsed the High Court's decisions.

[406] Nditurende's, Uwumuremyi's, Habiyaremye's and Karuta's lawyers say that the first judge has clearly explained why he ruled that the activities under prosecution do not fall under the provisions of article 163.

The Court position

[407] The Supreme Court finds that the way the High Court interpreted article 163 earlier mentioned during Mushayidi's trial was not examined in appeal by the Supreme Court because no one among the parties raised it as an issue, and they find that there is no reason why that would prevent this court to examine it and rule on it.

[408] Article 163 earlier mentioned deals with first category crimes that are committed against the State. In this category, you have crimes that threaten the national external security, in the second category are included crimes that undermine the national security.

[409] The crimes mentioned in those categories are not the same. The crimes that threaten the external security of a country aim at endangering the independence and national sovereignty, the country's relations with other countries and its vital interests; while the crimes that threaten national security aim at endangering peace and harmony within the country and the destabilizing public order and institutions.

[410] The Supreme Court finds, therefore, as the High Court has confirmed it, that the activities that constitute the charges under prosecution, namely the creation of an armed group in view to destabilize the country, are not crimes of threatening the country's external security; instead, they aim at undermining existing institutions in a bid to seize power by force, or to force the regime in place to negotiate. Therefore, the Prosecution's petition of appeal according to which the High Court did not properly interpret article 163 is unfounded.

[411]As to know whether the activities for which Habiyaremye, Ingabire and their co-defendants are prosecuted, pursuant to article 163, can be examined pursuant articles 164, 165 and 169 of the same law, the Supreme Court finds that, on the one hand, the Prosecution admit that the charges against them constitute a crime of conspiracy to threaten the existing institutions through acts of terrorism and war (even though they do not admit that these charges do not constitute the crime of creating an armed group, which is punishable under article 163, but on the other hand, the Prosecution say that their appeal does not seek to have the defendants convicted of the crime of conspiracy, because they did not file that complaint in the first instance. The Prosecution also say that the Supreme Court can provide an appropriate qualification of the crime, as the High Court did, and rule that it is conspiracy to commit a crime, attempt to commit a crime, or simply a crime.

[412] The Supreme Court finds that, if the High Court ruled that Habiyremye, Nditurende, and Karuta are not guilty of the crime of conspiracy against the Government because they never did not endorse the project of creating an armed group, and the Prosecution did not appeal against

this ruling although they were entitled to do so, there is no ground upon which the Supreme Court would examine whether the High Court interpreted properly the proofs relating to the creation of an armed group, pursuant to articles 164,165,and 169 referred to earlier.

As to whether, when Ingabire was cleared of the charges of spreading rumors aimed at exciting the population against established Government, the High Court disregarded the proofs and laws provided by the Prosecution

[413] The Prosecution says that Ingabire, at various times, wrote and uttered words for public consumption and through various forms of media of communication. They say that those written and verbal declarations contain rumors that aim at inciting the population against the Government, and they find that this was aimed at causing trouble on the national territory of the Republic of Rwanda.

[414] The Prosecution's charges are based on the following pieces of evidence:
-The document entitled, "*Résolution du 3ème Congrès ordinaire du Rassemblement pour le retour des réfugiés et la démocratie au Rwanda*" written on 19/08/2000.
-The document entitled "*Umurage w'amateka*" written in July 2000.
-The document "*La justice international face à la crise rwandaise: une justice equitable est la seule base d'une reconciliation effective*" published in 2002.
-Her speech in Brussels on 26/09/2009 on the 48th commemoration of Kamarampaka
-Her speech at Kanombe Airport on 16/01/2010.
-Her interview with a journalist of Voice of Africa on 21/01/2010;
-Her interview with a journalist at her house
-Her interview with a journalist at Serena Hotel;
-Her speech to FDU fellow members wishing them a happy new year 2008.

[415] The High Court, pursuant to article 83 of organic law nº01/2012/2012 of 02/05/2012 instituting the Penal Code, relating to real concurrence, ruled that every written or verbal declarations upon which the Prosecution bases its charges against Ingabire of intentionally spreading rumors constitute separate acts that were carried out at different times and thus, constitute different crimes that have to be examined separately.

[416] The High Court, referring to the remarks above, ruled that Ingabire's interview at Voice of Africa, her interview with a journalist at her home and her interview at Serena Hotel, constitute new charges because the Prosecution presented them for the first time during the court hearing held on 19/09/2011, and that, therefore, pursuant to article 119 relating to the Code of criminal procedure, these charges should not be examined.

[417] Concerning other interviews or written pieces of evidence, the High Court has examined each act separately; for some, they ruled that the prescriptive period of a criminal action has expired; for others, they ruled that they contained elements of rumor and that they also spread a negative image of the Government, but the Prosecution failed to prove that Ingabire's

motives were the incitement of the population against the established Government or to cause trouble on the national territory and thus, the Court cleared her of those charges.

[418] The Prosecution say, in their appeal, that the High Court did not interpret the laws correctly because they ruled that the interviews and the documents provided as proofs for the charges against Ingabire constitute separate acts that need to be examined separately. They also say that the High Court misinterpreted the documents and the interviews provided, and these are the issues that have to be addressed.

As to know whether the High Court misinterpreted the laws

[419] The Prosecution say that they disagree with the High Court on their treatment of every document or every speech as acts that constitute different offences that were to be examined separately.

[420] They go on explaining that they charged Ingabire with the crime of spreading rumors intended to incite the population against the established Government, that the documents and the speeches they submitted to the court are pieces of evidence proving her responsibility in one of the charges against her, and this can be related to the intent to commit the same crime. The Prosecution does not understand the motives which brought the Court to rule that the documents and speeches that Ingabire made public at different times could bring about unrelated offences; the Court's argument being that those charges should have been treated separately in the Prosecution initial investigation instead treating them in bulk.

[421] They say that the Court interpretation of article 83 of the reviewed Penal Code and the way they relate it with the charges against Ingabire of knowingly spreading rumors to incite the population against the established Government, is not correct because they confuse **concurrent offences** and **collective offences**.

[422] They conclude by requesting the Supreme Court to re-examine together all the proofs included in the file on the charge of spreading rumors with the intent to incite the population against the established Government; this will rectify the lapse in judgment that led the High Court not to examine the pieces of evidence on Ingabire's interview with Voice of America, with another interview with a journalist at her home and her interview with a journalist at Serena Hotel.

[423] Me Gatera Gashabana, on his part, says that the High Court did not commit any error of judgment whatsoever in ruling that the charges against Ingabire are composed of different acts.

<u>The Court position</u>

[424] The Supreme Court finds that the charge against Ingabire of knowingly spreading rumors with the intent to incite the population against the established Government is an aggregate of

different acts that are based on written and verbal declarations that she made public through various means of communication at different times.

[425] The Court finds that, even if these acts arise from a common criminal intent, a complaint should have been filed for each act in accordance with the law, pursuant to article 119 of law nº13/2004 of 17/05/2004 relating to the Code of criminal procedure that was in force at the time of trial before the High Court; the said article explains that the court is seized when the Prosecution has transmitted a complete criminal case file to a court of competent Jurisdiction.

[426] Article 119 earlier mentioned has been modified by article 124, 1º of law nº30/2013 of 24/05/2013 relating to the Code of criminal procedure, so that the defendant may appear in court with full knowledge of all the charges against him/her and the qualification of the crime (even if that qualification may change with a view to relating it with the facts).

[427] Since these rights are absolute, the Court finds that the Prosecution's petition that this court examines Ingabire's interview with Voice of America, her interview with a journalist at her home and her interview with a journalist at Serena Hotel is unfounded, because, as it has been explained by the High Court, Ingabire was never questioned on those interviews, either before the Judicial Police or before the Prosecution; besides, this is not mentioned in the lawsuit file, she first heard of them in court and thus, she cannot be prosecuted for acts of which the court has not been seized.

ii. As to know whether the Court misinterpreted the writings and speeches provided by the Prosecution.

[428] Concerning the document entitled "*Une justice equitable est la seulle base d'une reconciliation effective*", the Prosecution argue that the document contains rumors that tarnish the image of established institutions, that Ingabire wrote it with the intent of inciting the population against the established Government and of inciting citizens against each other. This is what she wrote,

- Some Rwandans are treated like second-zone citizens;
- Rwanda is ruled by a clique that seized power, changed the Constitution and other laws for their selfish interests; the judicial system is not independent, it acts on the instructions from the military officials; Rwanda is ruled by a secretive group led by General Kagame and his stooges, especially the DMI and a militia known as the local defense force; that clique has changed the Government and the Judiciary, kidnappings and killings of people have reached the tipping point.
- The Gacaca Courts that were put in place to try those who committed genocide in Rwanda are supervised by RPF cadres and RPF's terrorist groups; that it will not surprise anyone if the Gacaca judges that she calls 'plebian judges' make decisions contrary to RPF instructions, they will be severely punished: they may be dismissed, face imprisonment or, for some, disappearance.

[429] Concerning the speech Ingabire delivered in Bruxelles on 26/09/2009 on the 48th commemoration of Kamarampaka, the Prosecution argue that the speech contains the

following words that constitute an offense: "(...) people are killed on a regular basis, they are starved, they are kept in ignorance, they work like slaves in forced labor (TIG), they languish in prisons or in foreign land. What crime have they committed?"

[430] Concerning her speech at Kanombe Airport on 16/01/2010, the Prosecution argue that Ingabire pronounced the following words that constitute the offence under prosecution: "The kind of tyranny I am coming to fight is: fear above all, poverty, hunger, dictatorship, slavery, corruption, biased Gacaca Courts, injustice, forced labor, exile for many which leads to the destruction of the family, social inequality, discrimination, confiscation of people's property, homelessness, and walking around with a guilt complex and 'akandoyi'. She goes on saying that those she left behind know better the sharp pain of 'akandoyi', that she understands what they are going through.

[431] They continue saying that the Court in the first instance noticed that the content of those writings and speeches are just rumors that damage the reputation of the State, but they ruled that she could not be convicted for it because the elements of the crime of spreading rumors are not enough, and that there is no clear intent of inciting her audience against the authorities in place.

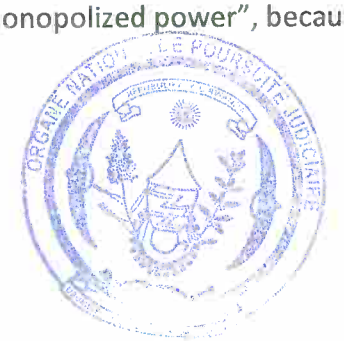
[432] Concerning the High Court's decision that the elements of the crime are not enough, the Prosecution finds it unjustified because Ingabire:

- Pronounced speeches that constitute the offence of spreading rumors, as it has been admitted by the judge himself (*actus reus*);
- She delivered those speeches on purpose, not under duress, knowing well that they were rumors, because she well knew that her speeches were baseless and untrue.

[433]The Prosecution say that the High Court's request to prove that Ingabire's intention was an incitement of the population against the established Government or an attempt to alarm the population with intent to cause trouble, is not justified because it is not prescribed by article 166 of the modified Penal Code, neither by article 463 of the Penal Code in force today.

[434] They explain that, regarding that offence, the fact that one's intentions did not materialize does not mean that the crime of spreading rumors never happened, because that article even punishes anyone who makes such an attempt. They add that Ingabire's speeches do not need special analysis to find that their intention was to incite the population against the State.

[435] Ingabire says that there is no reason why the Prosecution should bring up the words, "There are Rwandans who are being treated like slaves" which she allegedly wrote in, "*Une justice equitable est la seule base d'une reconciliation effective*" because they are simply not there; and these words, "a group of Tutsi from Uganda have monopolized power", because they are neither written anywhere in that document.



[436] She also says that, as the judges have rightly noticed, the Prosecution did not prove the *mens rea* so that all the elements of the offence she is being accused of may be complete. She adds that the Prosecution also failed to prove that she knowingly spread rumours with the intent to incite the population against the existing authorities.

[437] She also says that the documents that the Prosecution submitted to the Court are the writings of an opposition political leader, that they may reflect the issues aired by the population or expressed in different reports that the Prosecution did not object to, or prove that the overriding motive was to incite the population against their leaders.

[438] Her Defense Counsel also argues that the different acts upon which the Prosecution based their charges do not show the *actus reus* and the *mens rea* as prescribed by article 166 of the Penal Code in force at the time of the court hearing, and this is the reason why the High Court did not convict her of that crime; they add that those writings and speeches reflect her opinions as a politician on various issues, that, whenever a politician expresses his/her views in accordance with articles 33 and 34 of the Constitution, this should not be considered as rumors.

[439] More specifically, Me Iain Edwards explains that Ingabire returned to Rwanda with the intention of taking part in the presidential elections in 2010 and, in her capacity as FDU-Inkingi Chairperson, of running for the Office of President; that she wanted to solve different problems in the country, namely, lack of democracy and violation of human rights. She wanted to use peaceful means, without shedding blood, and as a person in opposition to the existing government, she wanted to hear the population's feedback on her opinions, and this, in his view, does not constitute an offense.

The Court position:

[440] Article 166 of the Penal Code in force at the time Ingabire made public the writings and speeches for which she is being prosecuted, stipulates,

> "Anybody, who through his speeches made in meetings or in public gatherings, through all kinds of printed material, pictures or signs of all kinds, hanging, passed on as handouts, bought or sold or simply made accessible to the public, intentionally spreading rumors leading or attempting to lead people into disobedience, discrediting the country's authorities, triggering or attempting to trigger riot among the people, mounting one against the other, spreading chaos among the people to cause insecurity in the Republic, will be given a pain ranging between two and ten years and a monetary fine ranging between two thousand and 100 thousands, or just one of these pains so long as it is not in conflict with other more stringent pains given by other laws in this criminal law book."

[441] Concerning the right to express freely one's opinions without interference, the High Court finds that, as it has been explained above, that right is prescribed and protected by article 13 of the International covenant on civil and political rights and the Constitution of the Republic of Rwanda in its articles 33 and 34. These articles also provide restrictions to that freedom,

irrespective of the people's status, including politicians, and this has been explained by the Supreme Court in Mushayidi's case (Case no RPA 0298/10/CS).

[442] In reference to those remarks, the Court has to examine whether the charges against Ingabire are her political views or whether her writings and speeches constitute an offence punishable under the law, of knowingly spreading rumors aimed at inciting the population against the ruling regime.

[443] After the analysis of the writings and speeches that Ingabire made public at different times, one can clearly see that she affirms that in Rwanda there is a group of second-zone citizens, that there is a powerful group of people that has monopolized power, changed the Constitution and other laws for their selfish interests, has undermined the judicial system to the extent that the culture of impunity has become a way of life, the judiciary has become subservient to RPA, that Kagame and his stooges wield secretive powers, especially the notorious DMI-a paramilitary group that is more powerful than the Government and the judiciary, that people are being kidnapped, are disappearing and being killed at enormous proportions.

[444] She also affirms that Gacaca Courts that were established to try genocide perpetrators are supervised by RPF cadres and RPF militias, that it will not surprise anyone if, as that happened in the past, the 'inyangamugayo' or people with integrity that she calls 'plebian judges', who will render a judgment contrary to RPF's instructions will be severely punished: they will be either dismissed, imprisoned or they will simply disappear (Cfr The document entitled "*La justice internationale face à la crise Rwandaise: une justice équitable est la seule base d'une réconciliation effective*").

[445] She also affirms that people are being killed on a regular basis, that they are being starved to death, held in ignorance or condemned to exile or imprisoned (her speech on the 48th commemoration of Kamaramanka); she does not either provide evidence for her allegations that Rwandans live under the yoke of dictatorship, hunger, poverty, slave-like conditions, corruption, unfair trials by Gacaca Courts, injustice, forced labour and exile, homelessness, etc. (her speech at Kanombe Airport on 16/01/2010).

[446] The Supreme Court finds that the above speeches do not reflect a normal politician's views that seek to promote harmonious coexistence among the population or to criticize the Government, as Ingabire and her Counsel argue; instead, they are aimed at inciting to revolt and to discredit the ruling regime to the Rwandan citizens.

[447] The Court finds that, as long as Ingabire cannot prove the sources of her allegations so that they may be examined and/or challenged, but that instead, she insists on inciting people to revolt and defaming the Government; there is no other qualification for such acts except "rumors" as already confirmed by the High Court.

[448] Concerning Ingabire's intentions, the Court finds that telling people the words above aims at only inciting them to revolt against the authorities and this may cause trouble among the population. Therefore, her conviction for spreading rumors with the intent of inciting the population against the established Government remains.

2. As to whether Ingabire's reduction of penalty was unduly motivated.

[449] After being convicted of the crime of conspiracy to undermine the existing authorities and the Constitution, of the crime of downplaying genocide, the High Court sentenced Ingabire to 8 years, with a reduction, considering that she had spent a long period outside the country and did not have accurate information.

[450] The High Court also considered the letter submitted by the Prosecution, a letter that Ingabire wrote to the President on 06/11/2011 providing clarifications on her writings and speeches, and asking forgiveness to all those she might have been offended, and requesting to be released.

[451] The Prosecution says that there is no reason that would motivate Ingabire's reduction of penalty because she never requested for mercy during her trial so that the court may base their decision on that request; they also argue that the only acceptable guilty plea is made before the court, thus the court's decision should not have been based on that letter.

[452] They add that the fact that Ingabire did not request for mercy during her trial does not mean that she is innocent, she simply did not tell the truth. That is why, in the letter mentioned above, she admits and confesses her crimes and asks for mercy and to be released.

[453] The Prosecution says that, put aside the above, the gravity of the crimes she's been convicted of by the court in the first instance, cannot allow the reduction of penalty; more especially, the conspiracy to threaten the existing institutions entails grave consequences, since even those who were prosecuted for it and committed it in the same manner like Mushayidi, have been severely punished; and for this reason, nothing can justify why Ingabire would receive a different penalty.

[454] Concerning the penalties, the Prosecutions requested a 10-year sentence for Ingabire, a fine of RwF 100.000 for spreading rumors aimed at inciting the population against the ruling regime, a 25-year sentence for conspiracy to undermine the State through war or other violent means, and a 9-year sentence for trivializing genocide.

[456] The Prosecution requested the Court that, in reference to article 83 and 84 of organic law nº 01/2012/OL of 02/05/2012 instituting the Penal Code, they confirm that the charges Ingabire is being prosecuted for constitute real concurrence on all the charges against her, and thus she be sentenced to a 25-year imprisonment.

[456] Concerning the letter Ingabire wrote to the President, Me Iain Edwards says that his client did not have time to explain it before the judges because the Prosecution brought it in the court when Ingabire had already decided to withdraw from the trial.

[457] He goes on to say that his client did not write the letter seeking mercy, instead she was clarifying her writings and speeches that led to her prosecution, because she had realized that they had been misinterpreted, she did not intend to undermine the existing Government, incite the population against each other or against the State. He goes on saying that in her letter, she has asked for forgiveness to anyone whom her writings and speeches might have offended, and when she decided to return to Rwanda, she wanted to have her party registered and contribute to the development of the country and the promotion of democracy.

[458] He also says that there is no reason why the Prosecution should linger over that letter because it does not constitute evidence of a guilty plea as it wants to get it across since it was not meant for the court, but nothing can prevent the court from basing on it if its content is found to help it reach a conclusion.

[459] Concerning the Prosecution's request that Ingabire be given the same penalty as the one given to Mushayidi Deogratias, M Iain Edwards says that those two cases are different because they concern different persons with particular offences and the offenders had different objectives since Mushayidi's aim was to unleash war in the country without being concerned by its consequences, whereas for Ingabire, what she wanted was to put pressure on the government so that it accepts participation of the opposition in the country's politics and governance, and that had to be resorted to when all the other avenues had failed.

[460] M Iain Edwards also says that he was surprised that the Prosecution appealed against the penalty Ingabire received without appealing against those given to her co-accused, in particular Uwumuremyi with whom there is an offence they had together been indicted and convicted of, and if the Prosecution wants her to be punished like Mushayidi, it should request the same penalty for Uwumuremyi. He adds that even in the case the court gives different penalties, they should not be very much dissimilar.

[461] He continues saying that he finds Ingabire not guilty of all the offences she is accused of, but in case the court finds that there is an offence she is found guilty of, it should not increase the penalty as the Prosecution has requested, because for him there is no reason to increase it, but that it should rather use as a reference the case of Uwimana Nkusi and Mukakibibi Saidati in reducing her penalty and should also take into account the following mitigating circumstances:

- the fact that she is detained far from her family and in seclusion;

- her stay abroad for several years prevented her from carefully assessing the sensitive nature of certain words that were likely to hurt some people;

- the fact that her speech at Gisozi Genocide Memorial was not given in a carefully prepared written form but rather as a spontaneous speech;

- the fact that she never harbored the intention to offend genocide survivors and to infringe on anyone's rights.

The court position:

[462] Article 765 of organic law no 01/2012/OL of 02/05/2012 instituting the penal code currently in force, says in its second paragraph that an offence committed before the promulgation of the present law in the official gazette, shall be punished under the law that prescribed it, save for the case the present organic law provides for a lower penalty.

[463] As it was explained in the previous paragraphs, Ingabire is convicted of the crime of treason with intent to undermine the existing government and the constitution, the crime of spreading rumors with intent to incite the population against the current regime by discrediting it and the crime of minimizing genocide.

[464] The crime of conspiracy with intent to undermine the current leadership was prescribed under article 165, paragraph 1, of decree-law no 21/77 of 18/08/1977 instituting the Rwandan penal code in force at the time the crime was committed, and it was punished by life imprisonment. Concerning the penalty to be given, it has however to be based on article 462, paragraph 1, of organic law no 01/2012/OL of 02/05/2012 instituting the penal code currently in force because it provides for lower penalties ranging from 20 to 25 years of imprisonment.

[465] The crime of spreading rumor with intent to incite the population against the existing authorities by discrediting them was prescribed under article 166 of decree no 21/77 of 18/08/1977 instituting the penal code in force at the time of the acts under prosecution. It is that article that should be based on in determining the penalty, because it is the one that provides for lower penalties of imprisonment ranging from 2 to 10 years and a 100,000 Rwf fine or one of them, against article 463 of organic law no 01/2012/OL of 02/05/2012 it replaced, which provides for a penalty of 10 to 15 years of imprisonment.

[466] The crime of minimizing genocide was prescribed under article 4 of law no 33bis/2003 of 06/09/2003 repressing the crime of genocide, crimes against humanity and war crimes which was in force at the time of the crime, but determining penalty has to base on article 12 of law no 84/2013 of 11/09/2013 on genocide ideology and other related crimes which stipulates that penalty is determined on the basis of the provision of organic law no 01/2012 of 02/05/2012 instituting the new penal code.

[467] Concerning this case, the basis should be article 116 of that new penal code because it provides for a lower penalty ranging from 5 to 9 years of imprisonment against article 4 of law no 33bis/2003 of 06/09/2003 which provided for a penalty of 10 to 20 years of imprisonment.

[468] Basing on article 83 of organic law no 01/2012 of 02/05/2012 instituting the penal code which provides that there is concurrence of offences when different acts themselves have been committed consecutively and have resulted in unrelated offences, it finds that the offences Ingabire is convicted of constitute a concurrence of offences because they are different and were committed at different times.

[469] Article 84 of organic law says in its first paragraph that: " *if an offender would receive several penalties of imprisonment or fine, the judge shall apply the most severe penalty and increase its duration or the amount depending on the circumstances of the offences but not exceeding half (1/2) in addition to the maximum of the most severe penalty,* whereas in its second paragraph it stipulates that "*any additional penalty shall be applied even if it is only provided for one of the concurrent offences.*"

[470] Concerning factors taken into account by the judge in determining a penalty, article 71 of organic law no 02/05/2012 of 02/05/2012 instituting the penal code says that: "*the judge shall determine a penalty according to the gravity of the offence taking into account offender's motives, history and background, circumstances surrounding the commission of the offence and individual circumstances.*"

[471] The Supreme Court has found that, as it was ruled in Mushahidi's case (Case RPA 029/10/CS of 24/02/2012), the crime of conspiracy to undermine the existing Government entails serious consequences, either to the country and its the population, so that all this has to be taken into account while pronouncing the sentence. However, mitigating circumstances, if any, can also be considered.

[472] Considering that, as regards the crime of conspiracy, Ingabire should receive a similar sentence as Uwumuremyi because of their complicity in the crime, the Court finds that, although both have been found guilty, their degree of responsibility is different, as it has already been pointed out: Ingabire is the one who initiated the plot. Furthermore, as the High Court has explained, Uwumuremyi has pleaded guilty from the outset, pleaded for mercy and has been cooperative with the judiciary, while Ingabire never pleaded guilty nor asked for mercy for the crimes she has been convicted of.

[473] Considering the letter that Ingabire wrote to the President of the Republic, and which caused the High Court to reduce her sentence, the Supreme Court finds that Ingabire herself does not refer to it in her defense, because she even declared not to understand how it was brought up, considering that the letter was not meant for the court. She adds that that letter should not be taken as a form of guilty plea and therefore no judgment should be based on it.

[474] Considering the mitigating circumstances that were motivated by the fact that Ingabire had spent a long time abroad and thus, did not have reliable information on the country, and by the fact that her speech at Gisozi Genocide Memorial was delivered off-the-cuff , and that she did not intend to offend the genocide survivors or violate anyone's rights, the Supreme Court observes that Ingabire affirmed herself that Gisozi Genocide Memorial was the first place she wanted to visit, which means that she had necessary information and solid reasons to go there. Moreover, she delivered her speech in her capacity as FDU-Inkingi Leader, and that speech was addressed to people from all walks of life among whom the journalists who would disseminate her message. This also proves that her speech had been prepared well in advance, as well as the message she wanted to convey.

[475] As regards the reduction of the sentence because Ingabire's family is not in Rwanda, the Supreme Court, in reference to article 77 of law nº02/05/2012 of 20/05/2012 instituting the Penal Code, which stipulates that the judge may reduce penalties due to mitigating circumstances that occurred before, during or after the offence commission , finds that this may be a motivating factor because to serve one's sentence away from one's family weighs more heavily on the person serving a sentence.

[476] The Supreme Court also finds that, even if Ingabire has been found guilty of serious offences, the purpose of a penalty is, among others, to correct the offender and to provide justice to the person offended. However, there are also provisions to offer the culprit the chance to resume a normal life, as this has been earlier explained by the High Court.

[477] The Court also finds that, since this is the first known case in which Ingabire has been prosecuted for a crime, this also should be given due consideration, and, as it has been ruled by the High Court, may constitute a mitigating factor.

[478] Concerning the penalties, pursuant to article 71, 77, 82, 83 and 84 of law no 20/05/2012 of 02/05/2012 instituting the Penal Code, Ingabire has to serve a 15-year sentence for the crime of conspiracy to undermine the existing regime and the Constitution, a 9-year sentence for downplaying genocide, a 3-year sentence for spreading rumours with the intent to incite the population against the Government. However, since the crimes she has been convicted of constitutes real concurrence, and the fact that there are concurrent aggravating and mitigating circumstances, she is sentenced to 15 years in prison for all the crimes she's been convicted of.

C. CONCERNING UWUMUREMYI VITAL'S APPEAL

[479] Uwumuremyi says he lodged an appeal for a reduction of the sentence because he has pleaded guilty and requested for mercy in all instances and the Court approved his request. However, he says he was not happy with his sentence which he finds heavier than that of his co-defendants. For this reason, he is pleading that the sentence may be reduced, even suspended, so that he may resume a normal life.

[480] The Prosecution finds that Uwumuremyi's requests have already been granted by the High Court due to the attenuating circumstances that have been explained; he was even granted a suspension of penalty because he was sentenced to a 4-year and half imprisonment, but the Court decided that he should be sentenced to a 3-year and half imprisonment, the remaining one-year sentence will be suspended for two years.

[481] The Supreme Court finds that Umwumuremyi's request that he should receive the same sentence as Nditurende, Habiyaremye and Karuta, is not founded because, in addition to being convicted of the same crime, Umwumuremyi has also been found guilty of conspiracy to create an armed wing of FDU-Inkingi.

[482] The Supreme Court finds that the High Court has reduced Uwumuremyi's sentence, basing on some mitigating circumstances, and sentenced him to a 4-year and 6 month imprisonment. For this reason no further sentence reduction is needed.

[483] The Court also finds that the sentence suspension has already been granted by the High Court; therefore, his request for a sentence suspension is unfounded.

III. THE COURT DECISION

The Supreme Court has decided:

[484] That the Prosecution's appeal is valid on some grounds;

[485] That ingabire's appeal is only valid on matters relating to evidence A, D and E from Holland, and that those pieces of evidence should not be used in this case.

[486] That Uwumuremyi Vital's appeal is not founded;

[487] That Ingabire has been found guilty of conspiracy to undermine the Government and the Constitution, through acts of terrorism, war or other violent means; of downplaying genocide and of spreading rumours with the intent to incite the population against the existing authorities;

[488] The Supreme Court has sentenced Ingabire to 15 years imprisonment;

[489] The Supreme Court has ordered that the High Court decisions remain unchanged as regards the crimes Nditurende Tharcisse, Habiyaremye Noel, Uwumuremyi Vital and Karuta Jean Marie Vianney have been convicted of, as well as the sentences attached thereto,

WE HAVE MADE THIS DECISION AND THE DECISION WAS READ IN PUBLIC TODAY ON 13/12/2013

Nyirinkwaya Immaculee: Presiding Judge, [Signed] Havugiyaremye julien: Judge, [Signed]

Mukamulisa M.Therese: Judge, [Signed]

Munyandamutsa Jean Pierre: Secretary, [Signed]

Translated by: Tharcisse NTUKANYAGWE,

Translator.