

# Why we're prosecuting Peter Erlinder

Martin Ngoga

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**Rwanda's prosecutor general, Martin Ngoga, argues that the genocide-denial case against defence lawyer Peter Erlinder is no threat to immunity of counsel**



Peter Erlinder speaks after being given bail following his detention accused of minimizing Rwanda's 1994 genocide. Photograph: Sayyid Azim/AP

As Amanda Pinto wrote on 30 June 2010, Peter Erlinder was arrested in Rwanda and accused of genocide denial, genocide ideology and of being a threat to national security. He was not, as Pinto suggests, arrested for submissions made during proceedings of an international criminal tribunal for Rwanda case in which he was acting as a defence lawyer. Nor

was he arrested for entering Rwanda to help in the defence of Victoire Ingabire – official records show that Erlinder never registered as her lawyer.

Erlinder came to Rwanda in the full knowledge that he had broken the law. He has, for many years, propagated his own, false theory about the genocide and worked hard to build an international network of genocide deniers to amplify its diffusion. Erlinder's theory is based on the selective use of conclusions of an ICTR ruling which acquitted four prominent senior military officers of one count of conspiracy to commit genocide. Out of court, Erlinder generalises this specific ruling to the whole genocide and argues that there was no conspiracy or planning in Rwanda, and therefore no genocide. He says it was a spontaneous and uncoordinated act of panic and anger following the shooting down of the president's plane.

In February 2008, Erlinder himself wrote: "Under the laws of Rwanda, I too am a criminal 'negationist' for writing this essay." The grounds for Erlinder's arrest were based on his writing of essays like this, claims made during appearances on television and radio

and the organisation of conferences which convened the who's who of Rwanda genocide deniers.

These were not the actions of a lawyer, and thus not protected by immunity of counsel. Immunity of counsel does not grant lawyers free rein to say whatever they wish, whenever they wish, so long as they once defended someone who also held these views. Erlinder's defence of an individual accused of genocide no more entitles him to moonlight as a genocide denier than a lawyer's representation of a child molester gives him license to traffic in child pornography.

Nevertheless, some still cite concerns for Erlinder's rights to freedom of speech as a human being, questioning the justification of Rwanda's strict anti-genocide laws which make it an offence to deny, minimise, attempt to justify or trivialise the events of April 1994. If the facts of the past aren't made clear, they risk being repeated in the future. This risk is not hypothetical, it is very real: in November 2009, a UN report showed that the FDLR and other terrorist militarised groups in the Democratic Republic of the Congo depend more and more on political and material support from extremist and genocide deniers' networks established in the West.

What's more, Rwanda's laws do not differ significantly from laws in place in 11 European countries regarding the denial of the

Jewish holocaust; nor does the way in which they are enforced. In Germany, prosecutions are made under holocaust denial laws some 65 years after the events, without any suggestion that this constitutes denial of human rights. Why, just 16 years after Rwanda's genocide, should its laws be viewed any differently?

Erlinder was released from Rwanda not because of international pressures, or because Rwanda did not have faith in the robustness of its laws; he was released on medical bail. The charges against him still stand and the prosecution against him will continue in order to ensure justice and security for the people of Rwanda.

No one should fear for the strength and integrity of the ICTR based on the arrest of Peter Erlinder. Even while Erlinder was in custody in Rwanda, the ICTR transferred 25 cases to Rwanda's Office of the Prosecutor for further investigation and issued a statement commending the Rwandan government for the improvements it has made to its judicial infrastructure and capacity. Should there be a different interpretation of the extent of functional immunities for lawyers from the ICTR, that is a grey area we are ready to argue legally and there is no standing jurisprudence to that effect.

Martin Ngoga is the prosecutor general of Rwanda