

**MANIPULATION AND FALSIFICATION OF ICTR EVIDENCE:
THE ROLE OF THE RWANDAN GOVERNMENT**

(Excerpts from Expert Report, *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I)

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The Rwanda Government and the Fabrication of Evidence

The “denunciation phenomenon” is well known and widely acknowledged in Rwanda. A LIPRODHOR report expressed concern about false testimonies given by both prosecution and defence witnesses.¹ The former Minister of Justice, Faustin Nteziryayo, strongly denounced this phenomenon in an article published after he went into exile.² In a communique dated 10 May 1999, even the RPF accused Ibuka, the organisation of survivors, of fabricating evidence against candidates-deputies: “The RPF advised the Government to punish anyone guilty of making false allegations to serve as an example to others.”³

Many other sources agree: the “Denunciation Union”, formed at national and local levels (ex. The *Association des rescapés du génocide* (ARG) (Association of Genocide Survivors) in Butare), organized the denunciations and false testimonies. Thus, several thousands of Rwandan francs were sometimes paid for prosecution testimonies; the witnesses were sometimes “prepared”; in some cases, defence witnesses testify for the prosecution under threat or refuse to testify.⁴ This information was reliably obtained both within and outside Rwanda. By force of circumstances, they were not published. However, the last report from the American State Department notes that: “During the year there was continuing concern among observers and

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¹ LIPRODHOR, *Proces de génocide au Rwanda. Deux ans après (Dec. 96-dec.98)*, Kigali, 1999, pp. 20-21.

² F. Nteziryayo, “*Enlèvement du système judiciaire et dérive des drafts humains au Rwanda*”, *Dialogue*, No. 213, November- December 1999.

³ FPR, *Itangazo rigenewe abanyamukuru*, Kigali, 10 May 1999.

⁴ That was the case for several witnesses in the “Quatre de Butare” trial in the Court of Assizes in Brussels.

analysts over what was believed to be a sizeable number of cases where persons had provided false testimony, despite the penalties for providing such testimony”.⁵

Even in the absence of a reward or specific or concrete threats, the atmosphere in which witnesses must testify is seen as restrictive: Rwandans are fully aware of “what is expected of them”; besides, they are reminded from time to time (the former *préfet* of Gitarama, Fidele Uwizeye, was arrested after testifying for the Defence in the Akayesu trial before the ICTR). At any rate, it should also be recalled that Rwandans generally testify in a cultural context where communication takes place in a strategic manner.⁶

The *Kanyabashi* file contains examples which prove the extreme caution with which testimonies must be handled. I will give a few examples:

- Witness QA testified about the arrival of a helicopter in Butare before the killings began shortly after hearing Sindikubwabo and Kanyabashi speeches on the radio. The witness testified he heard the sound of this helicopter and saw it the day following *its* landing. He was then allegedly told that the soldiers and *Interahamwe* arrived in the helicopter.⁷ However, it is established that the Presidential Guard and the *Interahamwe* came to Butare by road. The only plane which landed in Butare was a Belgian C-130 on 20 April 1994 and it had come to evacuate a number of expatriates.
- Witness RE testified: “I remember some details about the elements of the Presidential Guard: they wore white belts and red berets”.⁸ However, that was the *gendarmérie*’s uniform.
- I would like to conclude with testimonies relating to the Kabakobwa massacres. They seem like consistent and damning testimonies against Joseph Kanyabashi. However, it is very late that some began to implicate Kanyabashi in the case and the testimonies were very similar and seemed to be based on the same script. Though unable to confirm that this is manipulation I note that Kanyabashi was not implicated in this massacre: neither by Alison Des Forges (pp. 41-42) nor by African Rights (Rwanda. Death, Despair and Defiance, pp. 351-352).

⁵ Rwanda: Country Reports on Human Rights Practices 2006 Released by the Bureau of Democracy, Human Rights and Labor.

⁶ In that regard, see the interesting article by C.M. Overdulve, “*Fonction de la longue et de la communication au Rwanda*”, *Nouvelle revue de science missionnaire*, 1997, No. 4, pp. 271-283.

⁷ T., 18 March 2004, pp. 84-88 and 22 March 2004, pp. 39-44 of the French.

⁸ T., 26 February 2003, pp. 12-13 of the French.

The Rwandan Government's Attitude Toward ICTR Witnesses

The previous paragraph also addresses this aspect. Since the current Government in Rwanda considers that all persons charged in ICTR are guilty and thus seeks their conviction, which all Rwandans know very well, it is difficult and dangerous for them to testify for the Defence, all the more so as they do not really believe in the guarantee of anonymity. Since the Rwandan authorities are assisting⁹ ICTR with the logistics of bringing witnesses from Rwanda, they definitely know the identity of witnesses. The presence of Rwandan criminal investigation officers at hearings by Belgian investigation officers acting under rogatory commissions, calls for serious reservations and a sharp, critical mind when reading testimonies taken by the Belgian justice system. This also applies to witnesses interviewed by ICTR investigators, if only because of the presence of interpreters.

This problem should be viewed in a broader political context. “Tutsization” and “RPF-ization” are phenomena seen at all levels of public life in Rwanda since 1994. Most ambassadors, almost all principal secretaries and senior officials, more than 80% of *bourgmestres*, almost all executive secretaries, the entire command of the army, *gendarmarie* and intelligence services, the vast majority of university teachers and students, most directors of State corporations ... are Tutsi and from RPF. Under Habyarimana, the quota system operated gave Hutu, 90%, and Tutsi, 10%. Today, the real and unofficial quotas operated have more or less reversed the proportion: Tutsi, 90% and Hutu, 10%. Under the previous regime, this was called “ethnic discrimination”. Today, it is called “meritocracy”.¹⁰ The political space, even though President Kagame often makes fun of it publicly, does not exist. The elections, beginning with the 2001 local elections, through the presidential and legislative, to the 2006 local elections, were in reality a parody marked by rigging and intimidations. The regime in power is based on the total control of the territory and its inhabitants.¹¹

⁹ It should be noted that this “assistance” is at the same time a means to exert pressure on the Tribunal. During the incidents which occurred between it and the Government of Rwanda, the latter often engaged in a veritable blackmail as it refused to allow witnesses to travel to Arusha

¹⁰ For further detail, see my political columns in *L’Afrique des grands lacs. Annuaire 1997.2007*, published by *L’Harmattan*, Paris.

¹¹ I summarize facts noted after 10 years of power in F. Reyntjens, *Rwanda, Ten Years On: From Genocide to Dictatorship, African Affairs*, 2004, pp. 177-210.