

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	147
Land:	Rwanda
Kilde:	Human Rights Watch
Titel:	Ex-Military Officers Convicted Over Comments
Udgivet:	1. april 2016
Optaget på baggrundsmaterialet:	26. maj 2016



Rwanda: Ex-Military Officers Convicted Over Comments

Publisher [Human Rights Watch](#)

Publication Date 1 April 2016

Cite as Human Rights Watch, *Rwanda: Ex-Military Officers Convicted Over Comments*, 1 April 2016, available at: <http://www.refworld.org/docid/5702125f4.html> [accessed 25 May 2016]

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The conviction of three Rwandan former military officials in a flawed trial is a clear example of the misuse of the justice system to stifle freedom of expression.

On March 31, 2016, the Military High Court of Kanombe sentenced Colonel Tom Byabagamba and retired Brigadier General Frank Rusagara to 21 and 20 years in prison respectively, including for inciting insurrection and tarnishing the government's image. The prosecution had accused them of criticizing the government, alleging state involvement in assassinations of opponents, and complaining about foreign and economic policy. Retired Sergeant François Kabayiza was sentenced to five years for concealing evidence. All three announced they would appeal.

"The Rwandan authorities have the right to prosecute genuine security offenses, but this case is a clear use of criminal proceedings to silence criticism of government actions or policy," said Daniel Bekele, Africa director at Human Rights Watch. "The Rwandan authorities should immediately investigate allegations of torture and witness tampering and bring those responsible to justice."

Kabayiza said in court that military personnel had tortured him in detention, resulting in ongoing health problems, and that he did not have access to adequate health care. The judges did not order an investigation into Kabayiza's allegations, claiming he had no proof that he was tortured.

Human Rights Watch shared its concerns about the trial in writing with the Justice Ministry, but the ministry told Human Rights Watch in an e-mail on March 30 that it could not comment on ongoing court cases.

These convictions are the most recent in a series of trials against former members or supporters of the Rwandan Patriotic Front (RPF), Rwanda's ruling party since the 1994 genocide. They form part of a pattern of government repression, both inside and outside the country, of people critical of the Rwandan government or suspected of having links with opposition groups.

Retired Brigadier General Rusagara was arrested on August 18, 2014. He held several senior positions in the Rwandan Defense Forces, including secretary general of the Defense Ministry and

military attaché in the Rwandan High Commission in the United Kingdom, before retiring in October 2013. His brother-in-law, Colonel Byabagamba, former head of the presidential guard, was arrested on August 23. Retired Sergeant Kabayiza, Rusagara's driver, was arrested on August 24.

According to the prosecution, Byabagamba had alleged Rwandan state involvement in several murders, including of Patrick Karegeya, the former head of Rwanda's external intelligence services, who was found strangled in South Africa on January 1, 2014, and of John Sengati, a retired major and head of a mining company who was found dead in Rwanda in May 2013. The prosecution also accused Byabagamba of alleging the innocence of former presidential bodyguard Joel Mutabazi - who was convicted of terrorism and other offenses - and of criticizing a Rwandan government decision to increase taxes on Tanzanian trucks.

The prosecution claimed that Rusagara had made favorable comments about the Rwanda National Congress (RNC), an opposition group in exile, had criticized President Paul Kagame, and had complained about the lack of freedom of expression and economic progress in Rwanda, allegedly calling Rwanda a "police state" and a "banana republic."

The judges recognized the right to freedom of expression but stated that the defendants' military status limited the application of this right. While it is true that members of armed forces may have to accept some restrictions on their freedom of expression that civilians do not, these restrictions should be specific to the context, prescribed by law, and both necessary and proportionate to achieve a specific aim. To prohibit or criminalize the exchange of personal political commentary in private conversations or e-mail exchanges is not a legitimate restriction on the right, Human Rights Watch said.

The defendants were also convicted of other offenses. Byabagamba and Kabayiza were convicted for allegedly concealing evidence, while Rusagara was convicted of illegal possession of two guns. Kabayiza was acquitted of this charge. Byabagamba was convicted for allegedly not showing respect to the Rwandan flag during a ceremony in South Sudan, where he was serving as a commander in the UN peacekeeping mission. The court ordered Kabayiza to pay a fine of 500,000 Rwandan francs (approximately \$650 US).

A few days before Rusagara's arrest, a senior military official accused him in a private meeting of having links with the RNC and of inciting insurrection. The meeting ended with an argument between the two men. Rusagara said in court that he believed this meeting was linked to his arrest. He also alleged that the senior official had threatened a person who had been at that meeting and became a prosecution witness, and pressured him to distance himself from Rusagara.

Human Rights Watch is concerned that the defendants may not have received a fair trial, in part because of the unreliability of evidence provided by several prosecution witnesses.

One prosecution witness who had served with Rusagara and Byabagamba in South Sudan was also a judge in the pre-trial detention phase of their trial, raising questions about a possible conflict of interest and his independence as a judge and a witness. Another witness said in court that some elements in the statement based on his interrogation at the military prosecutor's office were incorrect. The prosecution admitted that the statement may have contained mistakes. The judges allowed the defense to cross-examine only four of eleven prosecution witnesses.

Another prosecution witnesses, retired captain David Kabuye, stated, during his own trial in a separate case, that he had been forced to testify against Rusagara and Byabagamba. Kabuye was arrested around the same time as Rusagara, Byabagamba and Kabayiza. On December 15, 2015, a civilian court acquitted him of inciting insurrection and subsequently ordered his release.

Rusagara said in court that Kabuye had defended Rusagara's innocence before his arrest, but changed his position, later accusing him of making statements critical of the government.

In several other trials, the prosecution has accused former ruling party members or supporters of links with the RNC or the Democratic Forces for the Liberation of Rwanda (FDLR), a Rwandan armed group active in eastern Congo, some of whose members participated in the 1994 genocide. Several defendants in these trials have said in court that they were tortured or ill-treated, and there have been allegations of interference with witness and other testimony. In the cases Human Rights Watch documented, judges have ignored or dismissed allegations of torture or witness tampering and failed to order investigations into these abuses.

"To ensure a fair trial, it's important that judges fully respect and follow all human rights standards," Bekele said. "All judges should dismiss statements that may have been extracted under torture or other forms of pressure, or as a result of witness tampering."

For details about other cases, please see below.

Other Trials

On February 27, 2015, Kizito Mihigo, a well-known singer and survivor of the 1994 genocide, was sentenced to 10 years in prison for conspiracy against the established government or the president of the republic, forming a criminal gang, and conspiracy to murder. He pled guilty. Two of his co-accused, Cassien Ntamuhanga, a journalist, and Jean-Paul Dukuzumuremyi, a demobilised soldier, were sentenced to 25 years and 30 years respectively. The third, Agnès Niyibizi, was acquitted. All four were accused of collaborating with the RNC and the FDLR. No date has been set for Mihigo's appeal, more than a year after the verdict.

Mihigo was arrested on April 6, 2014. He was detained in an unknown location until April 14, when he was presented to the press. He was brought before a prosecutor the next day. Before and during his incommunicado detention, senior government officials repeatedly questioned him about a religious song he had written in March in which he prayed for victims of the genocide as well as for victims of other violence. They also questioned him about his alleged links with the RNC. Police officers beat him and forced him to confess to the offenses with which he was later charged in court.

In October 2014, a military court found Joel Mutabazi, a former presidential bodyguard, guilty of terrorism, forming an armed group, and other offenses linked to alleged collaboration with the RNC and the FDLR. Mutabazi, who had been forcibly returned from Uganda to Rwanda in October 2013, was accused of planning to kill President Paul Kagame and of coordinating grenade attacks in Kigali in 2013. He was sentenced to life in prison. Thirteen co-defendants received sentences ranging from four months to life, and two were acquitted.

Mutabazi and several co-defendants told the judges they had been tortured and forced to sign statements. The judges did not order any investigation, but the president of the court said at the end of the trial that the court had sentenced several defendants to long prison terms because they had lied about being tortured. Eleven defendants, including Mutabazi, have appealed to the Supreme Court. No date has been announced for the appeal.

When asked about the cases of Mihigo and Mutabazi during a review by the Human Rights Committee (HRC) in Geneva in March 2016, the Rwandan government delegation responded that these are "individuals who are lawfully detained following public trials which complied with all the tenets of due process." It also stated that "any allegation of torture is investigated and if substantiated, individuals accused are brought before competent judicial authorities."

Use of Military Courts

The trial of Rusagara, Byabagamba and Kabayiza was held in a military court, although both Rusagara and Kabayiza have retired from the military. The verdict stripped Byabagamba of his military rank. The same military court tried Mutabazi and 15 co-defendants, although only Mutabazi was a serving military officer. One other defendant had been demobilised. Defendants in both trials asked the court to separate their case files, but the court refused.

While Rwandan law grants military courts jurisdiction over civilians charged with the same offenses as military officers or related offences, under international law the jurisdiction of military courts should be restricted to members of the military, for offenses against military discipline. The African Commission on Human and Peoples' Rights, in interpreting the African Charter on Human and Peoples' Rights, has said that military courts "should not, in any circumstances whatsoever, have jurisdiction over civilians."

During the HRC review, the Rwandan government stated that individuals tried in military courts have the right to counsel, visits, and all other rights that exist in civilian courts. The HRC concluded that Rwanda should prevent military courts from exercising jurisdiction over civilians.

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