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COMMITTEE

**RDR**

Rassemblement Républicain pour la Démocratie au Rwanda  
Republican Rally for Democracy in Rwanda  
Ihuriro Rishingiye kuri Repubulika Lihanira Demokarasi mu Rwanda

Pour un Peuple Reconcilié dans un Etat de droit - For a Reconciled People in a Rule of Law  
Duhararire Ubwiyunge bw'Abanyarwanda mu Gihugu cyubahiriza Amategeko

PRESS RELEASE NO. 8/2004

## INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: JUSTICE BIASED BY DISCRIMINATION IN PROSECUTION

Many UN officials, and some western politicians, lawyers, journalists, academics and human rights activists view the Arusha-based International Criminal Tribunal for Rwanda ( hereafter ICTR) as a manifestation of the triumph of international law and justice. They argue that those who perpetrated genocide, grave violations of the international humanitarian law and the laws of war can't no longer invoke and hide behind the concept of state sovereignty. However, this doesn't reflect what it is really going on at the ICTR. The office of the Chief Prosecutor of the ICTR has been targeting only suspected Rwandan Hutu criminals while leaving free suspected Rwandan Tutsi criminals. This discrimination in prosecution has biased justice delivered by the ICTR. On behalf of hundred thousands victims of atrocities perpetrated in 1994 by the current ruling Tutsi-dominated Rwandese Patriotic Front (RPF), the Republican Rally for Democracy in Rwanda (RDR) calls on the Chief Prosecutor of the ICTR to end discrimination in prosecution. Identical crimes must be similarly punished. Politically driven prosecution violates the principle of equality before the law enshrined in article 7 of the Universal Declaration of Human Rights.

The ICTR was created by U.N. Security Council's resolution 955 of 8 November 1994, following report S/1994/1157, annex I and annex II, of the Special Rapporteur for Rwanda of the U.N. Commission on Human Rights and the preliminary report S/1994/1125 of the impartial U.N. Commission of Experts established pursuant to resolution 935 (1994). The Commission of Experts concluded in its preliminary and final reports (S/1994/1125 and S/1994/1405) that

*a) " Individuals from both sides to the armed conflict in Rwanda during the period from 6 April 1994 to 15 July 1994 perpetrated serious breaches of international humanitarian law, in particular of obligations set forth in Article 3 common to the four Geneva Conventions and relating to the protection of victims of non-international armed conflicts of 8 June 1977;*

*b) Individuals from both sides to the armed conflict perpetrated crimes against humanity;*

*c) Acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodical way. These acts of mass extermination against the Tutsi group as such constitute genocide within the meaning of article II of the Convention on the Prevention and Punishment of the Crime of Genocide."*

The two belligerents in Rwanda in 1994 were the then Government of Rwanda and the rebel RPF. For the responsibility of the atrocities, the Special Rapporteur on Rwanda of the UN Commission on Human Rights, in his the report S/1994/1157, named the following authorities or organs:

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- a) *The Rwandese State authorities and, in particular, senior political figures, such as a number of ministers, various elements of the government security forces such as the Presidential Guard, the Rwandese Armed Forces and the gendarmerie, and certain local authorities, prefects and mayors ;*
- b) *RPF organs, particularly those in charge of military activities ;*
- c) *Private individuals such as members of the militias, leaders of extremist political parties (National Republican Movement for Development and Democracy (MRND) and Coalition for the Defence of the Republic (CDR)), and the founders and broadcasters of RTLM*
- d) *Certain foreign States, in the light of their interference in Rwandese politics, which remains to be clarified ;*
- e) *The international community and, in particular, the United Nations, whose response to the urgent need of the population, especially with regard to security and humanitarian assistance, should also be clarified.*

The ICTR has the mandate of prosecuting the persons responsible for genocide and other serious violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states between 1 January 1994 and 31 December 1994. So, its mandate includes, along with genocide, war crimes and crimes against humanity. The above two reports accuse the RPF of war crimes and crimes against humanity.

The current Rwandan ruler and RPF's military chief in 1994, Mr. Paul Kagame, falsely reduces all crimes committed in Rwanda in 1994 to genocide only. He claims that his army killed only persons responsible of the Tutsi genocide and stopped the genocide. So, according to him, it is nonsense for the ICTR to investigate and prosecute those who allegedly stopped the genocide. However, for the ICTR to be impartial, neutral and independent, it has to prosecute not only the vanquished but also the victors.

The three earlier chief prosecutors for the ICTR, i.e. Richard Goldstone from South Africa, Louise Arbour from Canada, and Carla Del Ponte from Switzerland, had all insisted on the right to pursue investigations into the alleged war crimes and crimes against humanity perpetrated by the RPF in 1994. However, they all left office without issuing indictments against RPF war crimes suspects. The ICTR depends on the willingness and the cooperation of the RPF-led Kigali government for the free movement of prosecution witnesses and effective work of its investigators inside Rwanda. So, for the ICTR's success in prosecuting defeated suspected Hutu criminals, impunity has been implicitly granted to war crimes suspects within the ruling RPF. This makes the ICTR appear to the Rwandan people as a victor's tribunal. It has a long way to go to establish a formal objectivity by prosecuting also RPF war crimes suspects, -- just as the International Criminal Tribunal for former Yugoslavia (ICTY) did by issuing indictments not only against Serbs but also against Muslims and Croats who committed atrocities. The UN Secretary-General and members of the UN Security Council should take all necessary measures to ensure that the ICTR delivers non-biased justice to the people of Rwanda. RPF war crimes suspects have continued to engage in aggression wars and massive massacres of civilians in the African Great Lakes region. The impunity is the root cause of cycles of violence in the region.

Done at Montreal on 16 May 2004  
For the RDR  
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Vice-President and Spokesman