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Your Excellency Mr. Busingye, Honorable Minister of Justice of Rwanda,

I am writing to you about the case of Victoire Ingabire Umuhuza. I am one of the lawyers who represented her before the African Court of Human and People's Rights.

As you know, the African Court has ruled that some of my client's rights under the African Charter have been violated in the criminal proceedings initiated against her in Rwanda, which led to her wrongful conviction and sentence of fifteen years imprisonment in respect of terrorism against the state, genocide minimization, and inciting insurrection by spreading rumours.<sup>1</sup>

The Court found that Mrs. Ingabire's convictions in Rwanda for minimizing the genocide and inciting insurrection violated her freedom of opinion/expression. The Court also found that various aspects of her right to a defence had been violated. The Court further ordered the Government of Rwanda to take all necessary measures to restore the harm done to Mrs. Ingabire within six months following the judgment.

The judgment was rendered orally on 24th November last year, and the written judgment followed some time later. Meanwhile, on behalf of Mrs. Ingabire Umuhuza Victoire, my Rwandan colleague, Mr. Gatera Gashabana, and myself have submitted a request for reparations on 3<sup>rd</sup> January 2018.<sup>2</sup> The Government of Rwanda was given thirty days to respond.

We regret that, until today, the Government of Rwanda has not responded to our request for reparations, nor shown any sign it intends to abide by the African Court's ruling. The deadline to respond to our request for reparations has already passed, and the deadline to take all necessary measures to restore the harm done to our client, will soon come to an end. In fact, six months have already passed since the Court announced its ruling orally.

It would be highly regrettable if the Government of Rwanda declined to implement this important ruling by the African Court of Human and People's Rights. Days before the hearing, Rwanda withdrew its Special Declaration as per Article 34(6) of the Protocol establishing the African Court – which allows individual applicants to directly file a case with

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<sup>1</sup> African Court, *Ingabire v. Rwanda*, Application No. 003/2014, Judgment on the Merits, 24 November 2017.

<sup>2</sup> A corrigendum has been submitted on 16<sup>th</sup> January 2018.

the Court against the State having made the declaration – and took the position that it no longer needed to engage with the case. However, on 3<sup>rd</sup> June 2016 the Court found that Rwanda’s withdrawal would not affect pending cases, or any case submitted within a year after Rwanda’s announcement of withdrawal and ordered the proceedings to continue.<sup>3</sup> The Government of Rwanda is therefore under an undertaking to respect and implement the judgment of the African Court in the case of Victoire Ingabire.

As the President of Rwanda, His Excellency President Kagame, is the new chair of the African Union, it is of paramount importance that the Government of Rwanda promotes the rule of law in Africa and respects its institutions. It cannot ignore a judgment of a legitimate African Court simply because it disagrees with its outcome. For long, the western world has looked up to Rwanda as an exemplary Nation State in Africa. We therefore encourage your government to live up to these high expectations, and act as a role model for other African States in respecting human rights and in building strong institutions. It is our view that this should be the role of the chair of the African Union.

It is also our very considered view that there is only one option available to give due respect to the judgment of the African Court: to release her at once. We do not see any reasonable alternative at this stage. I will explain why:

The Court has held that reparation should, as far as possible, “*erase the consequences of an unlawful act and restore the state which would have presumably existed if the act had not been committed*”.<sup>4</sup>

The Court held that two out of three convictions (minimization of genocide and inciting insurrection) were contrary to the African Charter on Human and People’s Rights, namely Article 9, as well as Article 19 of the International Covenant on Civil and Political Rights.<sup>5</sup> In finding this, the Court underlined the importance of giving sufficient latitude to political speech; and held that all statements made by Mrs. Ingabire for which she was prosecuted and convicted fall within the type of speech that should be expected and tolerated in a democratic society.<sup>6</sup>

The only available remedy to rectify these violations is to reconsider the findings of guilt, as it is the findings themselves that are in direct violation of the African Charter. For these two convictions, therefore the only option is to withdraw them.

In imposing the third conviction, terrorism against the State, Rwanda violated Mrs. Ingabire’s right to a defence under Article 7 of the African Charter and Article 14 and 15 of the ICCPR, which is an element of a fair trial.<sup>7</sup> The main violations related to the seizing of documents during security searches in prison, and the subsequent use of them against my client without

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<sup>3</sup> African Court, *Ingabire Victoire Umuhoza v. Republic of Rwanda*, Application No. 003/2014, Ruling on Jurisdiction, 3 June 2016, with *corrigendum* of 5 September 2016

<sup>4</sup> African Court, *Alex Thomas v. United Republic of Tanzania*, Application No. 001/2017, Judgment for interpretation of judgment of 20 November 2015, 28 September 2017, para. 31.

<sup>5</sup> *Ingabire v. Rwanda*, Judgment on the Merits, para. 173(ix).

<sup>6</sup> *Ibid*, para. 158-161.

<sup>7</sup> *Ibid*, para. 79, 173(viii).

giving the defence an opportunity to examine these documents;<sup>8</sup> and the failure to respect the right of counsel to “*express themselves, consult with their clients and to examine and cross-examine witnesses*”.<sup>9</sup>

In theory, this violation could be remedied in various ways, one of which is her immediate release. Other potential remedies could be: the exclusion of specific evidence that was obtained through these violations, a reduction of the sentence imposed or a re-trial in which she is granted all her rights under the African Charter and other human rights instruments. The Court has held that “*the most appropriate form of remedy for violation of the right to a fair trial is to act in such a way that the victim finds himself or herself in the situation that he or she would have been had the violation found not been committed*”.<sup>10</sup> At this stage, this leaves only one option, and that is her immediate release. None of the other potential remedies would bring her back to the situation preceding the violations.

As she already served eight years in prison, which is more than half her sentence, Mrs. Ingabire has long passed the stage of a reduction of her sentence that could sufficiently compensate the violations of her rights under the African Charter. An adequate reduction of the sentence in light of the African Court’s judgment would be a reduction of at least two-thirds of her time of imprisonment, given that only one of three convictions is remaining.

Exclusion of the evidence is not an option, as these violations were continuing and were not limited to specific evidentiary items but related to the entire process of collecting and presenting the evidence.

For a retrial, it is now too late. For this, I refer to the ruling of *Alex Thomas v. United Republic of Tanzania*, where it was held that a re-trial was no longer available to remedy the harm done because the applicant had already served more than half of this sentence (21 of 30 years), and a fresh judicial procedure could be long.<sup>11</sup>

The same holds true for Victoire Ingabire who has already served eight years in prison, more than half, which is a significantly longer period than could be justified under these circumstances. Any prolongation of this imprisonment or fresh proceedings against her would add to the harm she has already suffered wrongly. This is all the more true in light of the conditions that are imposed on her. Mrs. Ingabire is not well, her health is deteriorating, and her detention is increasingly severe. She is no longer allowed to be in contact with her family, and her regular visitors are themselves all in prison now. This situation is not sustainable, particularly not in light of the African Court’s ruling.

We therefore urge the Government of Rwanda to release her at once, as we consider such measure the only remedy available at this stage. This could enable Rwanda “*to eliminate the effects of the violations established by the Court*”.<sup>12</sup>

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<sup>8</sup> *Ibid*, para. 97.

<sup>9</sup> *Ibid*, para. 98.

<sup>10</sup> *Ibid*, para. 33.

<sup>11</sup> *Ibid*, para. 34, 42.

<sup>12</sup> *Ibid*, para. 35.

I propose we discuss this matter with you in person and engage in a constructive dialogue with the aim of seeking the best way forward in implementing this judgment. We have been informed of a delegation travelling to Europe in June. That may be a good opportunity to meet. Alternatively, we can meet in East Africa in July, or arrange a meeting through Skype.

We hope to hear from you soon and strongly urge you not to let this judgment be swept under the carpet. My direct contact details are provided below.

Yours sincerely,



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