

SURVIT-BANGUKA

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Dr Yves Sahinguvu
First Vice-president
Présidence de la République
B.P.1870
Bujumbura- Burundi

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20 September 2009

Dear First Vice-president,

Concern: Urgent action required for protecting the independence of the Judiciary and upholding the Constitution.

It has come to our knowledge that a number of High Court Judges in the High Court of the capital city of Bujumbura (TGI de Bujumbura) have been transferred to other Courts in the country far from their residence or have been suspended as a result of Courts' rulings, the outcome of which was the release of some prisoners who had been arrested and detained in prison before any judgement was made. The judgment, in criminal proceedings, was necessary either to confirm the detention in prison or to convict them of the charge for which they were detained.

There has been many accounts where judges have been subjected to pressure, harassment, control and influence from the Executive and the CNDD-FDD party to make a judgement, which meets their particular interests. The high watermark of 'this malaise' and interference was the case of one High Court judge who was snatched, kidnapped, blindfolded and tortured just because he was among the three judges who had come to the conclusion that due to a complete lack of evidence to charge Alexis Sinduhije, the President of MSD party they ruled that he should be released from his detention.

The Constitution of Burundi provides in its article 209 that " The Judiciary is impartial and independent from the legislative power and the executive power. In exercising his duty, *the Judge is subject only to the constitutional Act and the law.* The President of the Republic, Head of State, is *the guarantor of the independence of the Judiciary.* He is assisted in this task by the Supreme Council of the Judiciary."

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The article 122 of the same constitution provides as follow: “ In exercising his duties, the President of the Republic *is assisted by two Vice-Presidents*. The Prime Vice-President has the overall coordination of the political and administrative sector”.

I have decided to write to you first, because you have the Constitutional power to assist the President in his duty to be the guarantor of the independence of the Judiciary and secondly, because you have the constitutional power to assist the President in the overall coordination of the political and administrative sector.

Two privileges were drowned from the independence of the judiciary, which is enshrined in the constitution, in order for the judges to carry out their duty independently: the security of tenure and the immunity from prosecution.

The security of tenure shall guarantee the judges from any risk of being removed, suspended, transferred or forced to an early retirement and the immunity shall prevent any risk of being charged of any offences when carrying out their duty.

This set of circumstances where the Justice Minister is regularly interfering with the High Court Judges’ rulings by subjecting them to transfer, suspension, pressure, harassment whenever they rule on issues, which do not necessarily meet the CNDD-FDD party’s particular interests is unlawful and a fundamental breach of the Burundian constitution. It constitutes an extremely dangerous precedent in upholding a key core principle of our constitution: the separation of powers between the executive, the legislative and the judiciary.

I have purposely avoided disclosing any name for the safety of the judges involved because it is commonly known that the CNDD-FDD party has an unlawful practice not only to subject the judges to pressure and interference whilst on duty but also to subject them to torture and to the high risk of being killed.

I would recommend that by virtue of your constitutional duty to uphold the law and to guarantee the independence of the judiciary you investigate these particular cases of all judges involved and instruct that those judges be immediately reinstated in their position. A particular attention should be paid to their safety. If by any means you are not in a position to exercise your constitutional duty, you should seriously reconsider your position after a close overview with the UPRONA party’s direction.

Yours sincerely,

Pacelli Ndikumana, sé

President

CC:

- The Head of the European Commission’s Delegation in Burundi
- Ms Pamela J.H. Slutz, Ambassador of the USA in Burundi
- Hon. Jeremie Ngendakumana, MP President of CNDD-FDD party,
- Hon. Bonaventure Niyoyankana, MP President of Uprona party;
- Hon. Leonce Ngendakumana, MP President of Sahwanya Frodebu party;

Association Internationale pour la Solidarité et la Sécurité des Tutsi du Burundi

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- Hon. Leonard Nyangoma, MP President of CNDD party;