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# **Burundi:** *The Media on Trial*

## **A REPORT ON THE TRIAL OBSERVATION OF THE CRIMINAL PROSECUTION OF:**

Serge NIBIZI (*Editor-in-Chief of Radio Publique Africaine*)

Domitile KIRAMVU (*Presenter at Radio Publique Africaine*)

Mathias MANIRAKIZA (*Director of Radio Isanganiro*)

Corneille NIBARUTA (*Director of Bonesha FM*)

Held before the Tribunal de Grande Instance of Bujumbura  
before Presiding Judge Remy NTACO, on Thursday, 14 December 2006

Appeal held before the Appeal Court of Bujumbura before Presiding Appeal  
Court Judge Marcel NTAKARUTIMANA on Monday, 24 March 2008 adjourned to  
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# **Burundi: *The Media on Trial***

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# 1. Introduction

The principle underpinning the basis of trial observations is the right to a fair and public trial, which can be found in a number of international and regional human rights instruments including Article 10 of the Universal Declaration of Human Rights, Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 35 of the Statute of the International Court of Justice. Burundi has been a state party to the ICCPR since 1990. The right to trial observation is provided for in Article 9(b) of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms adopted by the General Assembly in December 1998. The practice of sending trial observers is well established and accepted within the international community. The International Bar Association's Human Rights Institute (IBAHRI), together with other international, regional and national legal organisations, commonly sends representatives to observe trials. The presence of a trial observer helps to ensure the fair administration of justice, the proper functioning of the court process and that the right to a fair trial is guaranteed.

In December 2006, the IBAHRI became aware of charges being made against four journalists in Burundi for alleged security offences committed during the course of their reporting work. Due to concerns that these charges may have been politically motivated, the IBAHRI arranged for Mr Daniel Leader (a barrister who practices from London and who has legal experience in central and east Africa) to travel to Burundi as an IBAHRI observer to monitor whether the trial complied with international fair trial standards. Due to the short period between charges being laid and the trial being heard, Mr Leader visited Bujumbura immediately after the one-day trial and conducted a fact-finding visit.

The journalists were acquitted on 3 January 2007. The IBAHRI issued a press release welcoming this decision (see Attachment A). However, the acquittal was appealed on 31 January 2007. Due to very short notice periods between each appeal date being set, the IBAHRI was not able to send an observer to the first five appeal hearings. In objection to the continued adjournment of the appeal, on 12 February 2008, the IBAHRI wrote to Ms Clotilde Niragira, the Minister of Justice in Burundi, calling on her to ensure that the appeal hearing moved forward quickly (see Attachment B). On the sixth scheduled appeal hearing on 24 March 2008, the IBAHRI sent another observer, Mr Eugene Ntaganda (an international human rights lawyer based in Rwanda). The appeal hearing was again adjourned until 30 April 2008. The IBAHRI sent Mr Ntaganda to Burundi again for the final appeal hearing which took place on 30 April 2008. On 4 June 2008, the court announced that the acquittal had been upheld.

The IBAHRI is grateful for the funding received from the Open Society Institute which has enabled it to undertake these missions. The IBAHRI would also like to thank both its observers for their participation in these missions.

This report focuses on the trial of the journalists which took place on 14 December 2006, one of the adjourned appeal hearings, which took place on 24 March 2008, and the final appeal hearing, which took place on 30 April. This report sets out the IBAHRI's findings on the fairness of these proceedings.



## 2. Background

The case against the four Burundian journalists can only be understood in the context of recent political developments in Burundi. Following a violent war which cost the lives of hundreds of thousands of people, in September 2005 a new democratically elected government came to power in Burundi; the first since 1993. The current Burundi Government is led by the National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD–FDD), which has a substantial majority in Parliament. International commentators have expressed concern that since the election of this government there has been a significant deterioration in freedom of expression, respect for human rights and toleration of political opposition. A report of the International Crisis Group summarised their view that:

‘the government has arrested critics, moved to muzzle the press, committed human rights abuses and tightened control over the economy. Unless it reverses this authoritarian course, it risks triggering violent unrest and losing the gains of the peace process’.<sup>1</sup>

In July 2006, the government arrested prominent opposition politicians, including former President Domitien Ndayizeye and former Vice President Alphonse-Marie Kadege, on allegations of planning a coup d’etat. In total seven people were arrested and charged with conspiring against the state. The government’s case was based on the witness evidence of Alain Mugabarabona, the leader of a Forces for National Liberation splinter group, and Tharcisse Ndayishimiye, who is alleged to have worked for the security services. However, in a radio telephone interview from prison on 22 August 2006, Mugabarabona subsequently retracted his confession, which he claimed had been extracted under duress, and now claims that the coup plot had been staged by senior government officials. The trial of the alleged coup plotters took place before the Supreme Court while Mr Leader was in Bujumbura. On 15 January 2007, Domitien Ndayizeye and Alphonse-Marie Kadege were acquitted, along with three other defendants, but two others were sentenced to imprisonment.

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<sup>1</sup> ‘Burundi: Democracy and Peace at risk’, IGG Africa Report No 120, 30 November 2006.



### 3. The case against the journalists

The charges against the four journalists concerned the following radio broadcasts on the subject of the alleged coup d'état. Copies of the charges are at Attachment C. The charges alleged:

- (1) On 29 August 2006, three Radio Stations (Radio Publique Africaine (RPA), Radio Isanganiro and Radio Bonesha) broadcast a report claiming that the army was preparing to fake an attack against the residences of the President and the leader of the dominant party, Hussein Rajabu, in order to blame opposition members. The Prosecution claimed that the broadcast endangered public order and State contrary to Articles 10, 11 and 50 of the Law of the Press.
- (2) On 20 November 2006, RPA read and commented on a story which had appeared in the government newspaper *Intumwa* (the messenger) during a broadcast. The paper had reproduced the transcript of a conversation between an army officer and an opposition leader regarding the coup attempt. In addition, on 8 November 2006 the RPA broadcast information which the Prosecutor claimed breached the judicial secrecy laws. The Prosecution alleged that both broadcasts breached Article 11 and 50 of the Law of the Press in that they had diffused information which was confidential at the pre-jurisdictional phase of the inquiry (ie, the investigatory phase).

The presenters of each of the three radio stations were first questioned on 3 October 2006. During the course of this investigation the Prosecutor simply demanded that the journalists reveal the source of their information. The investigation subsequently broadened to the editors-in-chief of the radio stations and then to the directors. According to the Chief Prosecutor of Bujumbura, the journalists were warned after the original broadcasts in August that they were in breach of the press law and that they should be more careful in their reporting. However, after the broadcasts of November 2006, the Prosecution decided to apply the press law. As a result, Serge Nibizi (Editor-in-Chief of RPA) and Domitile Kiramvu (Presenter at RPA) were arrested on 22 November 2006, and Mathias Manirakiza (Director of Radio Isanganiro) was arrested on 29 November 2006. The Director of Radio Bonesha, Corneille Nibaruta, was also summoned by the Prosecutor on 1 December 2006 but failed to appear.

The investigation (l'instruction) was completed on 6 December 2006 and the journalists were formally charged on 7 December 2006. The trial was set down for 14 December 2006. According to the Defence lawyers, sufficient time was provided to prepare their defence and broadly the trial was a fair one (see section 5(e) for a detailed analysis). Since there was no evidential dispute between the parties, the case turned on whether on the agreed facts there was an offence in law, which was dealt with by way of legal submissions. The principal complaint of the Defence lawyers did not relate to the fairness of the proceedings but to the fact that no offence had been made out in law and that the journalists should never have been charged in the first place.



## 4. Analysis of the charges and applicable law

The Prosecution alleged that the journalists were in breach of the Law of the Press 2003.<sup>2</sup> The charge sheets (see Attachment C) contained two separate charges in respect of the RPA journalists and one charge in respect of Mathias Manirakiza, director of Radio Isanganiro. The charges against Corneille Nibaruta were not obtained.

### *Broadcast of 29 August 2006*

The Prosecution alleged that the broadcast of 29 August 2006, claiming that the army was planning to mount a fake attack against the residences of the President of Burundi and the President of the dominant party, was in breach of Articles 10, 11 and 50 of the press law. The particulars of the offence on the charge sheet state that the broadcast could have endangered public order and safety ('pouvant porter atteinte a l'ordre et a la sécurité public' Article 10(2)) and that the broadcast related to State and public security ('en rapport avec le secret de la Sûreté de l'Etat et de la sécurité public' Article 11(1)). All four journalists were charged with this offence.

The Defence lawyers pointed out that Articles 10 and 11 are not criminal offences, and are in fact listed under Section 2: The Duties of Journalists ('Des devoirs des journalistes'). The actual criminal offences are listed under Article 50 of the Law of the Press. According to reports, during the trial the Bench asked the Prosecution how the charges were being put given that Articles 10 and 11 do not carry criminal sanctions. The Prosecution then stated that they relied on Article 50(3) which states that criminal sanctions are applicable to publications or broadcasts which are 'defamatory, insulting, offensive to either public figures or private citizens'.

The Bench then asked the Prosecution to specify which acts were alleged to be defamatory at which point the Prosecution stated that they would leave that for the tribunal to decide.

When interviewed by the IBAHRI observer, the Chief Prosecutor of Bujumbura stated that the Prosecution did rely on Articles 10 and 11 but was unable to specify where in the Press Law these Articles were identified as criminal offences. When asked about Article 50 he denied that the Prosecution was brought on the basis of criminal defamation, in contrast with the claims of the prosecution at trial, but was unable to specify which subsection of Article 50 the Prosecution relied upon.

In addition, the Defence lawyers argued that the Prosecution had failed to show that the journalists had intended to endanger state and public security or to breach judicial confidentiality and thus the necessary mental element of the crime, if there was one, had not been made out.

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<sup>2</sup> Loi No 1/025 Du 27 Novembre 2003 Régissant la Presse au Burundi.

## Opinion

Article 14(3)(a) of the ICCPR demands that:

‘In any determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and *in detail* in a language which he understands *of the nature and cause* of the charge against him.’ [emphasis added]

Furthermore, the Human Rights Committee has stated that the information to be given to a person charged with a criminal offence must indicate ‘both the law and the alleged facts on which [the charge] is based’ [Human Rights Committee General Comment 13, para 8].

The concern in this case is that the Prosecution appeared uncertain and contradictory as to which precise criminal offences the journalists were charged with. Articles 10 and 11 are not criminal offences, and it is unclear how the Prosecution relied on Article 50. The Prosecutor at trial stated that he relied on Article 50(3) relating to criminal defamation, however, no investigation was carried out as to whether the journalists’ broadcasts were in fact defamatory and indeed no evidence was presented at trial which sought to establish that the broadcasts were defamatory. Furthermore, the Chief Prosecutor, when interviewed by the IBAHRI observer, flatly contradicted the Trial Prosecutor and denied that the charge was one of criminal defamation.

As a result, it appears that the Prosecution failed to inform the journalists accurately and *in detail* of the nature and cause of the charge against them and to this day are unable to accurately explain the charges. This represents a flagrant breach of Article 14(3)(a) of the ICCPR.

### ***Broadcasts of 20 November 2006 and 8 November 2006***

The Prosecution accused the two RPA journalists of breaching Articles 11 and 50 of the Law of the Press by broadcasting information in breach of the confidentiality of the judicial process at the investigatory stage of the proceedings (‘le secret de l’enquête judiciaire au stade pré-juridictionnel’. Article 11(3)).

The Defence lawyers’ arguments were fourfold:

- (i) As in the case of the broadcast of 29 August 2006, Article 11 is not a criminal offence and the facts of the case do not fall within the definition of Article 50(3) as criminal defamation.
- (ii) The alleged plotters were in fact charged on 17 November 2006, so by 20 November 2006 when the RPA broadcasted the information contained in *Intumwa*, the case was no longer at the investigatory stage (stade pré-juridictionnel) and as a result Article 11 does not apply in any event.
- (iii) The broadcast of 20 November 2006 simply reported a conversation which had already been reported in the pro-government newspaper *Intumwa*. Unlike the RPA report, the

*Intumwa* report came out during the investigation and yet no *Intumwa* journalists were charged with breaching the press law.

- (iv) The Prosecution only added a charge in respect of the broadcasts of 8 November 2006 once they realised that the broadcast of 20 November 2006 would not be caught by Article 11 (because the alleged plotters had been charged by then). At no point did the investigation cover the broadcast of 8 November 2006 and no disclosure was made in respect of allegations arising out of that broadcast.

When the Chief Prosecutor of Bujumbura was interviewed by the IBAHRI observer, he insisted that:

- (i) The broadcast of 20 November 2006 varied significantly from the original *Intumwa* article, in particular the witnesses were identified whereas the newspaper had used aliases.
- (ii) That the investigatory stage had covered the broadcast of 8 November 2006 and that the record of interview would disclose that to be the case. The records of interview are in Kirundi and the IBAHRI observer was unable to verify whether or not this is the case.

### **Opinion**

The IBAHRI was unable to verify whether the Chief Prosecutor's assertions were correct in the absence of translations from the original Kirundi. However, the fundamental concerns in respect of the first charge also apply to this charge. Article 11 does not appear to carry criminal sanction if breached and the facts of the case do not amount to criminal defamation, since the Prosecution's allegations relate to breach of judicial confidentiality alone. As a result, it remains unclear with what criminal offence the journalists were charged with in law in clear breach of Article 14(3)(a) of the ICCPR.



## 5. First observation

### *(a) Persons interviewed*

During the first observation, the IBAHRI observer met with a wide range of individuals, including the Defence lawyers, the Burundi Chief Prosecutor, three of the defendants, the Minister of Information and a number of representatives of the non-government community.

### *(b) The hearing*

As stated above, the hearing took place on the morning of 14 December 2006 at the Tribunal de Grande Instance at Bujumbura. No witness evidence was called by either side. The Prosecutor was asked by the Bench to specify what criminal charges the journalists were accused of under Article 50. He stated that the Prosecution brought its case on the basis of criminal defamation, Article 50(3). However, when asked to specify which acts the Prosecution alleged amounted to criminal defamation he was unable to do so and stated that it was for the tribunal to decide. At the end of his submissions the Prosecutor requested that the tribunal sentence the journalists to three years' imprisonment, a FBU 300,000 fine (US\$290) and an amount of reparation to be determined by the Bench.

### *(c) The judgment*

As mentioned above, on 3 January 2007 the Tribunal de Grande Instance acquitted the journalists on all charges. The judgment is at Attachment D. The court's findings (in summary) were as follows:

- (1) The Prosecution did not adequately prove a violation of Article 10 of the Law of the Press, as they did not show how the information disseminated by the journalist affected public order and security.
- (2) The journalists did not breach Article 11 of the Law of the Press, as they did not broadcast information that threatened state or public security, but only broadcast information on a likely attack. Information about internal security such as a proposed coup by the National Police is not covered under Article 11, which applies only to revealing national secrets to a foreign power. Further, Article 11 does not carry criminal sanctions, and therefore the same applies to Article 10.
- (3) The Prosecution did not specifically charge the journalists with Article 50(3), and therefore the alleged breach of Article 50 is rejected.
- (4) The pre-trial investigation ended on 17 November 2006, so section 11 does not apply to the broadcast of 20 November 2006.

#### *(d) Mental and physical condition of the defendants*

The IBAHRI observer interviewed three of the journalists in the Mpimba Central Prison in Bujumbura (the fourth had left the country before the arrests were made). They all stated that their prison conditions were no better and no worse than that of other detainees. Domitile Kiramvu shared a cell with 20 other women. Mathias Manirakiza shared a cell which was 9m x 14m with 163 other detainees. The journalists were initially refused visitors but, after the intervention of Human Rights Watch and Association Burundaise pour la Protection des Droits Humains et des Personnes Détenues (APRODH), visitors were allowed after one and a half weeks. All detainees were provided with food by friends and relatives since they claimed that the prison food was inedible. They stated that they had not been physically ill-treated or abused. Their principal complaint was that they were being closely watched by the prison guards and other inmates who reported back to the governor as to their every movement and conversation.

#### *(e) Evaluation of the fairness of proceedings*

##### **Pre-trial detention**

Article 72 of the Burundian Criminal Procedure Code states that remand prisoners must be brought before a judge within 15 days of arrest. The two RPA journalists were arrested on 22 November 2006 and the Director of Radio Isanganiro was arrested on 29 November 2006. The case was sent for fixture by the Prosecutor on 6 December 2006, the day before the expiry of the 15-day time limit for the two RPA journalists. However, the matter was not brought before a judge, as per Article 72, until 14 December 2006, by which time the RPA journalists' detention on remand had become illegal. According to the Defence lawyers, they tactically decided not to challenge the legality of the journalists' detention since such a technical challenge would inevitably lead to an adjournment of the substantive trial and a delay of several months. As a result, the matter was not raised but it is clear that Article 72 of the Burundian Criminal Procedure Code was not respected.

##### **Right to a public hearing**

The case was heard in public and, in addition, APRODH obtained permission to link up loud speakers so that the substantial crowd outside could listen to the proceedings as they unfolded.

##### **Right to be tried by a competent, independent and impartial tribunal established by law**

The President of the Tribunal de Grande Instance affirmed that the panel of judges were independent and had been allocated to the case by the Court Registrar on the basis of a judicial rota. The Defence lawyers all stated that they were satisfied that the court was an independent one and that the judges had listened carefully to the legal submissions made on behalf of the journalists. Some concern was expressed by Defence lawyers and APRODH that there was a danger of political interference despite the apparent independence of the judges, however, the journalists' subsequent

acquittal has demonstrated that the courts are able to operate independently and impartially.

### **Right to be informed promptly of the nature and cause of the charges**

As stated above, this is the principal concern of the IBAHRI. Whilst all four journalists were formally charged promptly, the precise nature and cause of those charges remain unclear to this day. It is probable that the Prosecutor had failed to appreciate that Articles 10 and 11 of the Law of the Press do not carry criminal sanctions. Furthermore, it is clear that the Prosecutor, when asked by the bench, claimed that the case was one of criminal defamation as per Article 50(3). However, the trial was clearly not one of criminal defamation since no investigation had been carried out or evidence adduced which went to the veracity of what was broadcast by the journalists. The fact that the nature and cause of the charges was and remains unclear and confused represents a breach of international fair trial standards of the highest order.

### **Right to adequate time and facilities to prepare a defence**

The time between arrest and the trial was 22 days. Although the time available to prepare the defence was extremely short, the Defence lawyers did not express any concerns that the period was inadequate. The view expressed by Defence lawyers was that there was no dispute on the facts of the case, thus there was no need for witness evidence or any fact finding exercise by the court. The case, therefore, turned on whether any criminal offence had been committed on the basis of the agreed facts which could be dealt with by way of legal submissions.

Clearly, however, had the case been one of criminal defamation, evidence would have had to have been adduced by both Prosecution and the Defence lawyers in order to establish the veracity or falsehood of what had been stated in the broadcasts. Since the Prosecution did not allege criminal defamation during the investigatory stages of the case or present any evidence of criminal defamation, the Defence lawyers did not prepare the case on that basis.

### **Access to Counsel**

All four journalists were represented by an experienced and able team of defence lawyers and were accompanied by their lawyers at the investigatory stage of the proceedings as well as at the trial itself.

### **Equality of Arms**

According to the Defence lawyers and to the President of the Tribunal de Grande Instance of Bujumbura, disclosure took place as normal. Disclosure in Bujumbura takes place on a fairly rudimentary basis. The Defence lawyers consult the court file at the court registry and are permitted to photocopy relevant sections of the file. This took place in the usual way. The Defence lawyers' sole concern was that there had been no prosecution disclosure or indeed investigation in respect

of the broadcast of 8 November 2006 and that the charge had been unlawfully added on by the Prosecution when the indictments were drawn up. Clearly, if the Prosecution failed to disclose material in relation to the broadcast of 8 November 2006 such a failure would represent a breach of the principle of equality of arms.

In addition, no investigation was carried out or disclosure made in respect of allegations of criminal defamation and, as a result, the Defence lawyers were not prepared on that basis. The fact that the Prosecutor, on the day of trial, then attempted to bring the case on the basis of criminal defamation is, therefore, an unacceptable breach of the principle of equality of arms and the right to adequate time and facilities to prepare a defence.

#### *(f) Interview with the Minister of Information*

At the time of the trial, the then-Minister of Information, Mr Karenga Ramadhani, and the legal advisor to the President of the Republic, Melichiade Nzopfabarushu, both kindly agreed to meet with the IBAHRI observer. The Minister of Information, who is himself a former BBC World Service journalist, expressed the view that journalists in Burundi often behave unprofessionally and produce stories without verifying their sources, often with serious consequences in a country which is in a very delicate political phase of transition. To that effect he was proposing a law whereby journalists will have to seek accreditation from the National Communication Council. The law also provides a clearer definition of the necessary professional qualifications that journalists must fulfil.

The Minister also expressed the view that he wished to review the 2003 Law on the Press and in particular he wishes to review the criminal sanctions applicable to journalists who breach Article 50. He stated that personally he was against sending journalists to prison. He also stated that the government was seeking to apply the Law on the Press which was agreed to by the press corps when it was first drafted.

However, since the initial trial hearing, Ms Hafsa Mossi has been appointed Minister of Information. Ms Mossi has reportedly commenced dialogue between the government and the media. Proposals to restrict the activities of the media examined above which were previously being considered by the Parliament have been withdrawn by Ms Mossi. This climate has reportedly been welcomed by journalists. However, the press law remains in force and the government has indicated that journalists will still be held to account for breaches.

#### *(g) Appeal*

On 31 January 2007, the Prosecution appealed the decision to acquit the journalists. Under Burundi law there is no condition required to appeal; any judicial decision may be appealed. In this case, no new element was identified as grounds for the appeal, nor was it demonstrated that the judges had made unreasonable errors in law. The prosecutor claimed that the first judgment failed to take into account jurisprudence and foreign doctrines which provide authority to support the charges. It should be noted that in the civil law system, jurisprudence is considered an important source of

law. However, the law takes ultimate precedence, followed by custom, jurisprudence and doctrine. Jurisprudence and doctrine are not substitutes for the law unless clarification is required.



## 6. Second observation

The appeal hearing, following many adjournments, was scheduled to take place on 24 March 2008.

### *(a) Persons interviewed*

The IBAHRI observer, Mr Ntaganda, attended the court hearing and later met with the Prosecutor, the presiding judge of the Appeal Court and one of the Defence lawyers.

### *(b) The hearing*

The appeal hearing was very short and resulted in yet another adjournment. Each of the parties presented its submissions in front of a bench of three judges which was presided by Judge Marcel Ntakarutimana.

The President of the court noted that the Defence case was not part of the case file.

The Prosecution, Mr Pierre Claver Rumbete, made brief comments, asserting that the Prosecution's position was unambiguous. He criticised the absence of the Defence case from the case file.

Defence lawyer for Serge Nibizi, Mr Ngendakubwayo stated that the case file had been communicated almost one month previously. The Defence lawyers expressed their concerns about the disappearance of the documents from the case file, which had reportedly been stored in a safe place in the court. They also expressed their concerns about the repeated adjournment of the case. They voiced their suspicions that the government was continuing to maintain pressure on the journalists so as to interfere with their professional activities.

After a few strong exchanges with the Defence lawyers, the presiding judge decided to postpone the hearing until 30 April 2008.



## 7. Third observation

On 30 April 2008, Mr Ntaganda returned to Burundi to observe the final appeal hearing.

### *(a) Persons interviewed*

During his mission, the IBAHRI observer met with the key contacts involved in the case, including the three judges of the Court of Appeal, the Defence lawyers and the Prosecution.

### *(b) The hearing*

Counsel presented their arguments in front of a panel of three judges chaired by Justice Marcel Ntakarutimana. The hearing began around 9.00 and finished around 13.00. Both the Prosecution and Defence were provided with the opportunity to present their arguments.

The Prosecutor announced the charges against the defendants and the reasons for the appeal, claiming that the first judge ignored elements of law presented by the Prosecution.

The Defence lawyers raised doubts about the failure of the prosecution to make out the charges claimed. The Defence lawyers argued that the prosecution had failed to satisfy the objective and subjective elements to the defence, and were incorrect in law. From an objective perspective, the prosecution had failed to prove the charges asserted. From a subjective perspective, the intention to commit the offence was not established. In law, the Defence lawyers noted that the charges made against their clients were not present in the penal code but were contained in the Law on the Press, which does not prescribe penal sanctions under Articles 10, 11 and 50.

### *(c) The judgment*

Following the appeal hearing, on 4 June 2008, the decision to acquit the journalists was announced by the presiding judge. The written judgment has not yet been released, but the reported reasons for the acquittal were that the trial judge was not found to have made any errors of judgments or unreasonable mistakes of fact and that the charges against the journalists were not proved beyond reasonable doubt.

### *(d) Evaluation of the fairness of the proceedings*

Most of the key fair trial issues that were raised above concerning the initial trial were not developed any further on appeal. However, it is worth noting three points.

### **The right to be informed in detail of the nature of the charges**

As highlighted above, the Prosecution failed to clarify the charges and alleged criminal responsibilities of the four journalists. This remained a problem at appeal.

### **The right to be tried by an impartial and independent tribunal**

The IBAHRI concluded that the court was impartial and independent and was not acting under executive or other influence. This is evidenced in particular by the court's decision to uphold the acquittal of the four journalists.

### **The right to be tried without undue delay**

The appeal hearing was delayed through repeated adjournments for over a year. This was partly due to flaws within Burundi's legal system, including ill-equipped infrastructure, a lack of judges, ongoing strikes within the court administration, a climate of insecurity and conflict, and other weaknesses in the judicial sector. Another problem was that the Prosecution repeatedly sought adjournment claiming that it needed additional time to prepare the case. The continued adjournment of the appeal and the threat of conviction were likely to have a very serious effect on the freedom of both the journalists charged and other media actors in Burundi. The continued granting of such adjournments in this way is likely to have breached the internationally-protected right to be tried without undue delay. In objection to the continued adjournment of the appeal, on 12 February 2008, the IBAHRI wrote to Ms Clotilde Niragira, the Minister of Justice in Burundi, calling on her to ensure that the appeal hearing moved forward quickly (see Attachment B). As a state party to the African Charter on Human and People's Rights and the ICCPR, Burundi is bound under Articles 7 and 14 respectively to finalise court processes for criminal cases within a reasonable time.

## 8. Conclusion

Broadly, the IBA considers that the pre-trial and trial proceedings in respect of the four journalists were fair. The fact that all four journalists have now been acquitted, and that this acquittal was upheld on appeal demonstrates that the hearing took place before an independent and impartial tribunal.

However, there remain two very real concerns of the IBAHRI. Firstly, that the nature and cause of the criminal charges against the four journalists were and remain unclear, contradictory and without basis in Burundian law. This represents a breach of international norms of the highest order, the blame for which rests with the office of the Prosecutor of Bujumbura and the Burundian Government. Secondly, the IBAHRI remains concerned that the unacceptably long period of time between the trial and the appeal hearing through numerous adjournments breached international protections requiring that the journalists be tried without undue delay.



# 9. Attachments

## Attachment A



## NEWS RELEASE

### **INTERNATIONAL BAR ASSOCIATION** **the global voice of the legal profession**

[For Immediate Release, Thursday, 11 January 2006]

### **Burundi: Court Acquits Three journalists charged with security offences**

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The **Human Rights Institute** of the **International Bar Association (IBA)** welcomed the decision by the Bujumbura Tribunal de Grande Instance in Burundi to acquit editor Serve Nibizi and journalist Domitile Kiramvu of Radio Publique Africaine, director Matthias Manirakiza of Radio Isanganiro and director Corneille Nibarutu of Radio Bonesha of various offences relating to their reporting of an alleged coup plot.

The journalists had been charged in late November for broadcasting reports that the army was planning to stage a fake coup against the President of Burundi. The Prosecution claimed that the broadcasts endangered public order contrary to Articles 10, 11 and 50 of the Law of the Press. The trial was held on 14 December 2006.

Following concerns that there has been a crackdown on freedom of expression since the election of the new Government in September 2005, and apprehension about the political motivation behind the charges against the journalists, the IBA sent an international observer to Burundi to monitor the progress of the case to determine whether it had been conducted fairly. The observer, Mr Daniel Leader, a barrister practising at the London Bar, met with many people involved in the case, including

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Page 1 of 4

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[www.ibanet.org](http://www.ibanet.org)

the detained journalists, their defence counsel, the Bujumbura Chief Prosecutor and the President of the Tribunal de Grande Instance de Bujumbura.

Mr Leader, who visited Bujumbura between 18 and 21 December 2006 stated, *'While the trial on 14 December 2006 appears to have been conducted fairly, I was extremely concerned about the basis for the charges in law. The prosecution did not bring its case clearly, and the detainees were never clearly and fully informed about what charges they were facing. This is undoubtedly a breach of international law, which guarantees the rights of those charged with a crime to be informed promptly, clearly and in detail of the charges levied against them. I am delighted to hear that the court has acquitted them of all charges'*.

*'We are very pleased to hear that the journalists have been acquitted'* said Mark Ellis, Executive Director of the IBA. *'Freedom of the press is a fundamental right to any system premised on democratic principles and the rule of law.'*

The Open Society Institute funded Mr Leader's mission to Burundi and the resulting report on the case will be released shortly.

**ENDS**

**For further information/expanded commentary, please contact:**

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Press Office**

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#### **Editor's Notes**

Mr Daniel Leader visited Burundi from 18-21 December 2006. The mission was prompted by concerns about the freedom of the press in Burundi, following reports that the Radio Publique journalists had been arrested on 22 November 2006, and the Radio Isanganiro journalist was arrested a week later. The Radio Bonesha journalist

was acquitted *in absentia* after going into hiding after receiving a summons in late November.

## **About the International Bar Association**

### **- the global voice of the legal profession**

In its role as a dual membership organisation, comprising 30,000 lawyer members and over 195 bar associations and law societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Law Society of Zimbabwe and the Mexican Bar Association.

Grouped into two Divisions – the Legal Practice Division and the Public and Professional Interest Division – the Association covers all practice areas and professional interests. It provides members with access to leading experts and up-to-date information as well as top-level professional development and network-building opportunities through high quality publications and world-class conferences. The IBA's Bar Issues Commission provides its Member Organisations with substantive programmes and social activities in and between meetings and the IBA's Human Rights Institute works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

### **Aims and Objectives**

The principal aims and objectives of the IBA are:

- To promote an exchange of information between legal associations worldwide.
- To support the independence of the judiciary and the right of lawyers to practise their profession without interference.
- The support of human rights for lawyers worldwide through its Human Rights Institute.

### **International Bar Association**

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### **About the Human Rights Institute**

In 1995, the International Bar Association (IBA) established the Human Rights Institute (HRI) under the Honorary Presidency of Nelson Mandela. The HRI is now a leading voice in the promotion of the rule of law worldwide.

The HRI works across the IBA, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

The HRI:

- undertakes fact-finding missions leading to long-term technical assistance programmes;
- develops capacity-building programmes to assist bar associations and law societies;
- sends trial observers to monitor the extent to which trials adhere to regional and international fair trial standards;
- organises human rights training for lawyers and judges;
- liaises closely with international and regional human rights organisations; and
- produces newsletters and other publications.

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*Attachment B*

Madame Clotilde Niragira  
Ministre de la Justice et Garde des Sceaux  
Chaussée Prince Rwagasore  
BP 1880  
Bujumbura  
Burundi



the global voice of  
the legal profession

12 February 2008

Dear Minister,

We are writing on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern about continued delays to the appeal hearing against the acquittal of journalists Serge Nibizi, Domitile Kiramvu, Mathias Manirakiza and Corneille Nibaruta.

In its role as a dual membership organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organisations cover all continents. The IBAHRI works across the association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

As you are aware, in January 2007 Serge Nibizi, Domitile Kiramvu, Mathias Manirakiza and Corneille Nibaruta were acquitted of security offences by the Bujumbura Tribunal de Grande Instance. The IBAHRI had been monitoring the trial. In February 2007, the acquittal was appealed. The IBAHRI delayed the publication of its report on the trial in order to await the results of the appeal hearing.

We understand that the appeal has since been delayed at least three times, the most recent occurring on 4 February 2008 when the hearing was delayed until 24 March 2008, apparently due to claims by the Ministre Publique that additional time was necessary for his preparations.

The internationally protected right to a fair trial includes the right to be tried within a reasonable time. As a state party to the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights, Burundi is bound under Articles 7 and 14 respectively to finalise court processes for criminal cases within a reasonable time.

We are concerned that the appeal hearing has been adjourned so many times and for such an extended period, and in particular that these extensions appear to be based on a failure by the Appellant preparing its case within the long delay already provided. We call on you to ensure that the appeal is heard as soon as possible in order for the four journalists to receive a fair hearing.

Yours sincerely,

Ambassador Emilio Cárdenas  
Human Rights Institute Council Chair

Justice Richard J. Goldstone  
Human Rights Institute Council Chair



*Attachment C*

REPUBLIC OF BURUNDI  
MINISTRY OF JUSTICE  
TRIBUNAL DE GRANDE INSTANCE  
[approx. Crown Court]  
OF THE CITY HALL OF BUJUMBURA

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R.P. 15.605

R.M.P. 120 908 /ML/NPC

SUMMONS TO ACCUSED

In the year two thousand six, on December 7

At the request of the Officer of the office of the Director of Public Prosecutions with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura.

I the undersigned Spès CIZA, Bailiff with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura

Have summoned and given a copy to Domitille KIRAMVU, daughter of KIRAMVU and SIMBAJIJE, born in 1963 in VYUMA, municipality of NDAVA, province of MURAMVYA, journalist, held preventively since 22/11/2006,  
Residing at \_\_\_\_\_, being in Mpimba and speaking to her, to appear before the Tribunal de Grande Instance at the City Hall of BUJUMBURA, sitting in criminal matters on 14/12/2006 at 8:00 a.m. for:

Having, in Bujumbura on 29/08/2006 as co-perpetrators according to one of the criminal involvement methods provided for by Articles 67 et seq. of the C.P.L.I, broadcast on their respective radio stations information that can potentially compromise law and order and security and regarding secrecy concerning State Security and Public safety (Articles 10, 11 and 50, the Press Act);

In BUJUMBURA on 20/11/2006 and 08/11/2006, also as perpetrator and accomplice as specified by Article 46 of the Press Act, having disseminated documents related to the secrecy of the judicial enquiry at the pre-court stage (Articles 11 and 50, "The Press Act");

To present there her statements and means of defence and hear the acts she is accused of ruled on and the coming judgment pronounced.

COPY RECEIVED ON 07/12/06

[stamp]

REPUBLIC OF BURUNDI  
MINISTRY OF JUSTICE  
TRIBUNAL DE GRANDE INSTANCE  
[approx. Crown Court]  
OF THE CITY HALL OF BUJUMBURA

---

R.P. 15.605

R.M.P. 120 908 /ML/NPC

SUMMONS TO ACCUSED

In the year two thousand six, on December 7

At the request of the Officer of the office of the Director of Public Prosecutions with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura.

I the undersigned Spès CIZA, Bailiff with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura

Have summoned and given a copy to Serges NIBIZI, son of BIBONIMANA and NKENYEREYE, born in 1977 in KASEREGE, municipality of MURUTA, Province of KAYANZA, journalist, held preventively since 22/11/2006, Residing at , being in Mpimba and speaking to him, to appear before the Tribunal de Grande Instance at the City Hall of BUJUMBURA, sitting in criminal matters on 14/12/2006 at 8:00 a.m. for:

Having, in Bujumbura on 29/08/2006 as co-perpetrators according to one of the criminal involvement methods provided for by Articles 67 et seq. of the C.P.L.I, broadcast on their respective radio stations information that can potentially compromise law and order and security and regarding secrecy concerning State Security and Public safety (Articles 10, 11 and 50, The Press Act);

In BUJUMBURA on 20/11/2006 and 08/11/2006, also as perpetrator and accomplice as specified by Article 46 of the Press Act, having disseminated documents related to the secrecy of the judicial enquiry at the pre-court stage (Articles 11 and 50, The Press Act);

To present there his statements and means of defence and hear the acts he is accused of ruled on and the coming judgment pronounced.

COPY RECEIVED ON 07/12/06

[stamp]

REPUBLIC OF BURUNDI  
MINISTRY OF JUSTICE  
TRIBUNAL DE GRANDE INSTANCE  
[approx. Crown Court]  
OF THE CITY HALL OF BUJUMBURA

---

R.P. 15.605

R.M.P. 120 908 /ML/NPC

SUMMONS TO ACCUSED

In the year two thousand six, on December 7

At the request of the Officer of the office of the Director of Public Prosecutions with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura.

I the undersigned Spès CIZA, Bailiff with the Tribunal de Grande Instance [approx. Crown Court] at the City Hall of Bujumbura

Have summoned and given a copy to Mathias MANIRAKIZA, son of NDITIJE and NYOBEWE, born in 1971 in RURAMBIRA, municipality of VUGIZO, Province of MAKAMBA, journalist held preventively since 29/11/2006;  
Residing at , being in Mpimba and speaking to him, to appear before the Tribunal de Grande Instance at the City Hall of BUJUMBURA, sitting in criminal matters on 14/12/2006 at 8:00 a.m. for:

Having, in Bujumbura on 29/08/2006 as co-perpetrators according to one of the criminal involvement methods provided for by Articles 67 et seq. of the C.P.L.I, broadcast on their respective radio stations information that can potentially compromise law and order and security and regarding secrecy concerning State Security and Public safety (Articles 10, 11 and 50, The Press Act);

To present there his statements and means of defence and hear the acts he is accused of ruled on and the coming judgment pronounced.

COPY RECEIVED ON 07/12/06

[stamp]

[signature]



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THE *TRIBUNAL DE GRANDE INSTANCE* [APPROX. CROWN COURT] AT THE CITY HALL OF BUJUMBURA SITTING IN BUJUMBURA AND RULING ON FIRST-DEGREE ORDINARY CRIMINAL MATTERS HANDED DOWN THE FOLLOWING JUDGMENT AT A PUBLIC HEARING DATED 03/01/2007

Case before the court:

Office of the Director of Public Prosecutions

vs.:

- The accused:
1. Serges NIBIZI, son of BIBONIMANA and NKENYEREYE, born in 1977 in KASEREGE, municipality of MUHUTA, Province of KAYANZA, journalist, single, currently residing in ROHERO, avenue de la Révolution No. 34, held preventively since 22/11/2006, Burundese;
  2. Domitille KIRAMVU, son of NDITIJE and NYOBEWE, born in 1971 in RURAMBIRA, municipality of VUGIZO, Province of MAKAMBA, journalist, married, Burundese, currently residing in MUTANGA-NORTH, held preventively since 22/11/2006;
  3. Mathias MANIRAKIZA, son of NDITIJE and NYOBEWE, born in 1971 in RURAMBIRA, municipality of VUGIZO, Province of MAKAMBA, married, Burundese, journalist, currently residing in NGAGARA, quartier 5, avenue MWOGO No. 441, held preventively since 29/11/2006;
  4. Corneille NIBARUTA, son of MUYABAGA and BAYAGANAKAND, born in 1967 in NGAGARA, City Hall of BUJUMBURA, currently residing in KININDO, currently in KININDO, currently a fugitive.

Imprisonment on suspicion:

1. Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA are charged with the following:
  - In BUJUMBURA on 29/08/2006, as co-perpetrators according to one of the criminal involvement methods provided for by Articles 67 and 5 of the C.P.L.I, having broadcast on their respective radio stations information that may potentially compromise law and order and security and regarding secrecy concerning State Security and Public safety (Articles 10, 11 and 50, the Press Act);
2. Serges NIBIZI and Domitille KIRAMVU are charged with the following:
  - In BUJUMBURA on 20/11/2006 and 08/11/2006, also as perpetrator and accomplice as specified by Article 46 of the Press Act, having disseminated documents related to the secrecy of the judicial enquiry at the pre-court stage (Articles 11 and 50, "the Press Act");

Having regard to letter No. 552/111/1780/2006 from the Public Prosecutor of the Republic at the City Hall of BUJUMBURA sent to the Presiding Judge of this Court

concerning transferring, in order to establish it before this court, case No. RMP190.908/N.M.T./M.L./N.P.C. being brought by the Director of Public Prosecutions vs. the accused Serges NIBIZI, Domitille KIRAMVU, Mathias MANIRAKIZA and Corneille NIBARUTA;

Having regard to the registration of the case by this Court on the ordinary docket of criminal cases under No. R.P. 15.605;

Having regard to the summons to accused, drawn up by Spès CIZA, Bailiff with this Court, summon Serges NIBIZI, Domitille KIRAMVU, Mathias MANIRAKIZA and Corneille NIBARUTA to appear at the public hearing of 14/12/2006 and to provide their signatures acknowledging receipt;

Having regard to the appeal of the case in a public hearing of 14/12/2006 where the accused Serges NIBIZI, Domitille KIRAMVU, Mathias MANIRAKIZA appeared with their respective counsel, while Corneille NIBARUTA was absent; the Court heard them plead, after which it deliberated the case, and ruled as follows:

Whereas the office of the Director of Public Prosecutions states that it all began on 29/08/2006 when three radio stations, namely R.P.A., Radio ISANGANIRO and Radio BONESHA F.M. simultaneously disseminated a newspaper reporting an imminent attack on the Palace of the President of the Republic and the Residence of the Honourable HUSSEIN RADJABU in order to physically eliminate them, an attack allegedly prepared by the members of the National Police of Burundi and certain demobilised officers;

And considering that the same newspaper reports that these police and demobilised officers were prepared for the attack to allow the current Government to prove to both national and international opinion the actual existence of a plot against the State;

And considering that this newspaper also mentions that informed observers said the new action would be suicidal in that it could result in the occasion to arrest any opponent of the regime, the persecution or physical elimination of the same opponents, and thereby cause fear among the population, not to mention disagreement among Burundese;

Whereas the office of the Director of Public Prosecutions notes that in this situation, law and order and security are threatened, and it accuses the managers of the R.P.A., ISANGANIRO and BONESHA media of having violated the provisions of Article 10, 2<sup>nd</sup> dash and Article 11 of the Press Act in BURUNDI, which stipulate respectively that: "any journalist is obligated to abstain from publishing, in a newspaper or in any other publication, information that can potentially compromise law and order and security" and that "The right to disseminate or publish documents cannot be cited if these documents are related to the secrecy of the judicial enquiry in the pre-court stage";

Whereas the office of the Director of Public Prosecutions, by stating that after the information was disseminated it called together the journalists who had read the implicated

newspaper so they could reveal to him the perpetrators of the imminent attack out of concern for preventing this crime and reinforcing the protection of the eminent personalities concerned;

And considering that the journalist Alice HAKIZIMANA of the radio station BONESHA stated that she had not had access to sources, referring rather to her Director Corneille NIBARUTA who, in turn refused to reveal the sources, all the while specifying that they were held by the Director of R.P.A. [African Public Radios], a fugitive since the information was disseminated.

And considering that Raymond ZIRAMPAYE from R.P.A. did not hesitate to say that the implicated newspaper wasn't even discussed in the editors' meeting, indicating that the information had been provided by the Director and that he gave it to the chief editor to be presented;

And considering that as for Mathias MANIRAKIZA, he stated that the information had been provided by Alexis SIND?HIJE, Director of the R.P.A. and then brought to the knowledge of the three radio stations;

Whereas the office of the Director of Public Prosecutions questioned whether the three radio stations had worked in concert to cover the attack on the Presidential Palace and on the residence of the Honourable Hussein RADJABU;

Whereas the office of the Director of Public Prosecutions also accuses R.P.A., regarding the putsch case, of having acted pre-emptively in assuming the right to publish the information whereas the case was still being examined;

And considering that this information reported evidence that the Public Prosecutor of the Republic intended to present to the Court, to establish the guilt of the parties accused in this case and which are the hymn, the flag and the plan for securing the neighbourhoods where their loyalists live;

Whereas the office of the Director of Public Prosecutions, referring to French legal doctrine, questioned how someone can publicly declare that he knows the perpetrators of a crime or a misdemeanour and refuse to answer the questions he is asked by the examining magistrate; and considering that in this case he cannot hide behind professional secrecy;

And considering that as regards the time when the protection of secrecy of the judicial enquiry in pre-court phase ceases, French legal doctrine and jurisprudence are clear and deserve to be followed;

And considering that in effect, they confirm the ban on publishing records of proceedings, indictments or AONFI, summons and depositions of witnesses or all other depositions in the proceeding before reading at the public hearing (Corrections Court of Seine, 8 April 1899; GAZ. Pal. 99, 1, 672) out of concern for preventing outside influence and public opinion pressure from coming to weigh on the proceedings and disrupt the course of justice;

And considering that it is also a matter of preventing press comments from creating prejudices or biases in the judges, hence the publicising of these documents or the eventual criticism thereof should not precede the hearing; this in the interest of the defence and the accusing party;

And considering that this is how the indictment was prohibited;  
Corrections Court of Seine 7 June 1951 as well as the summons: Criminal Cassation Court 6 March 1984;

Whereas the office of the Director of Public Prosecutions thus specifies that R.P.A., taking Domitille KIRAMVU's side, got ahead of the office of the Director of Public Prosecutions and presented the evidence against the accused parties, of the attempted putsch before the first hearing took place;

That this behaviour only seeks to disturb the course of Justice and create outside influence, causing pressure to weigh on the proceedings;

That when questioned about the source of this information, the journalist Domitille KIRAMVU stated that she had drawn them from the summons of the accused parties, whereas at the time of their dissemination, she had not quoted any source;

Whereas the office of the Director of Public Prosecutions states that even more prominently, the same radio station, still taking Domitille KIRAMVU's side, provided the content of the hearing that the Public Prosecutor of the Republic had just prepared by confronting the accused parties Alphonse Marie KADEGE and Tharcisse NDAYISHIMIYE alias MACONCO as regards the places where the meetings were held such as RESHA, KININDO with the help of KADEGE and Léonard NYANGOMA;

That it consequently violated Article 11 of the Press Act which protects the secrecy of the pre-court examination.

Whereas the office of the Director of Public Prosecutions ends its accusation seeking 3 years of primary penal servitude combined with a fine of FBU 300,000 for the four accused for having violated the provisions of Articles 10, 11, 46 and 50 of the Press Act;

Whereas the accused parties Serges NIBIZI, Domitille KIRAMVU and Mathias MANIRAKIZA appeared at the public hearing of 14/12/2006 to explain themselves regarding the facts they are accused of;

Whereas, concerning the charges against Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA of having broadcast on their respective radio stations information apt to compromise law and order and security and related to the secrecy of State Security and public safety, acts provided for by Articles 10, 11 and 50 of the Press Act, the accused Mathias MANIRAKIZA stated that they brought this information to the knowledge of the public to save the nation so that it would not fall back into the terrible tragedy it experienced in 1993;

Whereas he continued, saying that the information was balanced because they let the national police service speak to express itself on this subject;

That far from creating insecurity and disrupting law and order, the information was rather saving insofar as it dissuaded the perpetrators from putting their ignoble plans into action and that for this reason they should be rewarded for this;

Whereas the accused Serges NIBIZI explained himself by stating that they disseminated the information to prevent the country from sliding once again into drama, and he also maintains that the information was balanced since they allowed the concerned department to speak;

Whereas counsel for the accused Mathias MANIRAKIZA, Maître Raphael GAHUNG, stated that his client is being prosecuted for having violated Article 10 of the Press Act, a provision that does not specify a sentence and consequently specifies that the purpose of the Press Act is not to punish; that for this reason, the body authorised to punish such a violation is the counsel of the press;

Whereas the same counsel continued, stating that in 1993, an Army officer revealed the preparation of a *coup d'etat* and that the information was ignored, hence the drama that followed;

Whereas counsel for the accused Serges NIBIZI, Maître NYAMOYA, emphasises that the office of the Director of Public Prosecutions did not wish to verify the information as to its veracity, rather it is prosecuting the accused parties for not having revealed the source to him and that in this regard, Articles 3 and 8 of the Press Act protect the journalist as regards the secrecy owed to his sources of information; that there is no crime in this action;

Whereas the second counsel of the accused Serges NIBIZI, Maître Jean-Bosco NGENDAKUBWAYO, cites that the office of the Director of Public Prosecutions sought a sentence of 3 years of and a fine of FBU 300,000 for violating Articles 10 and 11 of the Press Act and that it is thus surprising to apply the sentences specified in Article 50 of the Press Act of the same law to the two provisions which do not specify a sentence;

Whereas Maître NYAMOYA specifies that the facts as described in the first imprisonment on suspicion are included in the provisions of Articles 10 and 11 of the Press Act, that he does not understand that the provision of Article 50, 3<sup>rd</sup> dash, of the same law, which provision talks of briefs or words that are defamatory, injurious, offensive with regard to public or private parties, so much so for him that the office of the Director of Public Prosecutions should bring the case before another court;

Whereas, concerning the second imprisonment on suspicion chosen by the office of the Director of Public Prosecutions against the accused parties Serges NIBIZI and Domitille KIRAMVU accusing them of having, in BUJUMBURA on 20/11/2006 and on 08/11/2006, still as perpetrator and accomplice under Article 46 of the Press Act, disseminated documents related to the secrecy of the judicial enquiry in the pre-court stage (Articles 11 and 50 of the Press Act), the former does not deny that his station broadcast information on 20/11/2006 connected with the

evidence of the existence of an attempt to overthrow the [State] Institutions but specifies that they had been drawn from the summons for the accused putschists and that he believes that at this stage there is no reason to talk of any pre-court phase since this case had already been brought before the Supreme Court on 17/11/2006;

Whereas the same accused continued, stating that as regards the information broadcast on his station on 08/11/2006 in connection with the hearing, in the law practice of the Public Prosecutor of the Republic, of the accused Alphonse Marie KADEGE and Tharcisse NDAYISHIMIYE, it was drawn from the journal "INTUMWA" by Willy NYAMTWE;

Whereas, also, the accused Domitille KIRAMVU accepted that she had disseminated this information, citing the same sources and specifying that she used the conditional mode;

Whereas both accused parties say they are surprised that the examining magistrate had not asked them any questions concerning the information disseminated on 08/11/2006 during the questioning sessions but that they subsequently noted that that was among the imprisonments on suspicion included in the summons;

Whereas their counsel, Maître Francois NYAMOYA, stated in this regard that the office of the Director of Public Prosecutions must have realised the weakness of the prosecution based on the information of 20/11/2006 and used the information of 08/11/2006 there; that otherwise the office of the Director of Public Prosecutions, by stating that it was the national police of BURUNDI which requested the prosecution of his clients, and he doesn't see how the matter of hearing KADEGE and MACONCO together causes a problem for the national police;

Whereas the same counsel adds that R.P.A. cited the newspaper INTUMWA, which provided this information in the pre-court phase of the ongoing putsch case and that the newspaper was prosecuted for violating Article 11 of the Press Act;

Whereas, finally, Maître Francois NYAMOYA stated that when the office of the Director of Public Prosecutions strives to search in legal doctrine and in jurisprudence to be able to establish the pre-court phase, this neglects that if the law is present, legal doctrine and jurisprudence have no authority;

Whereas the other counsel of these two accused persons, Maître Jean-Bosco NGENDAKUBWAYO, emphasises that the office of the Director of Public Prosecutions deliberately removes Articles 102 and 103 of the Code of Criminal Procedure; that on 17 November 2006, the Office of the Public Prosecutor of the Republic brought the matter before the Supreme Court and for it, the pre-court phase had ended;

Whereas counsel for the accused parties closed their arguments requesting the court to study, at the same time as the merits, the issue of the irregular holding of their clients;

Whereas the question of the irregular holding is no longer of interest at the current stage of the lawsuit because once the Court examines the merits, it will have no choice but to decide either to convict or acquit;

Whereas office of the Director of Public Prosecutions is directing the first charges against the accused parties Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA of having disseminated on their respective radio stations, on 29/08/2006, information apt to compromise law and order and security and related to the secrecy of State Security and public safety , citing the provisions of Articles 10, 11 and 50 of the Press Act;

Whereas this information was effectively broadcast on the said radio stations;

Whereas the accused parties state that they wanted to prevent danger;

Whereas the office of the Director of Public Prosecutions was not able to show, in accordance with Article 10 of the Press Act, how the information disseminated on the said radio stations could compromise law and order and public safety, stating that the provisions that were used by the departments in charge of maintaining law and order and public safety to fend off any attacks, without which law and order and public safety would be involved thereby;

Whereas, in addition, the office of the Director of Public Prosecutions specified that the prosecution was launched based on the complaint brought by the national police;

Whereas, in this complaint, the police had simply cited that these journalists attributed to the administration of the national police acts likely to compromise its reputation and thereby expose it to the scorn of the public it serves;

Whereas, finally, it was more than a month after the dissemination of this information apt to compromise law and order and public safety when the office of the Director of Public Prosecutions – as it mentions in the indictment, moreover – called together the journalists who had read the implicated newspaper to have them reveal to it the perpetrators of this imminent attack, out of concern for preventing this crime and reinforcing the protection of the eminent personalities concerned"; since the initial prosecution was started on 02/10/2006 whereas in addition, the national police had submitted its complaint to it on 03/09/2006;

Whereas the violation of Article 10 of the Press Act by the journalists Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA was thus not sufficiently proven by the office of the Director of Public Prosecutions;

Whereas he then accused the same accused parties of violating Article 11 of the Press Act as regards the dissemination of documents related to the secrecy of State Security and public safety;

Whereas on the one hand, the journalists Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA did not disseminate any document as a secret of State Security and Public Safety but only broadcast the news of a probable attack against the Presidential Palace and the residence of the Honourable Hussein RADJABU by the elements of the national police;

Whereas, on the other hand, there is no reason to talk of disseminating secrets concerning State Security and security regarding the provisions of the criminal code concerning compromises of the exterior security of the State insofar as they involve the providing to a foreign power of things that must be kept secret in the interest of national defence (Article 396 OPL II) whereas the information disclosed was purely internal because it reported an attack that would be perpetrated by the elements of the national police;

Whereas, also, the violation of Article 11 of the Press Act by the journalists Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA is not established;

Whereas, finally, in the first imprisonment on suspicion against the accused parties Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA, the office of the Director of Public Prosecutions accused them of violating Article 50, 3<sup>rd</sup> dash, of the Press Act, which concerns the publication of briefs or words that are defamatory, injurious, offensive with regard to public or private parties;

Whereas the office of the Director of Public Prosecutions did not reproduce in its indictment the complaint of the national police which exactly reported this imprisonment on suspicion;

Whereas the Court only has the indictment of the office of the Director of Public Prosecutions the Court brought before it and consequently dismisses the violation of Article 50 of the Press Act by the accused parties Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA;

Whereas the second charges against the journalists Serges NIBIZI and Domitille KIRAMVU as perpetrator and accomplice with regard to Article 46 of the Press Act, concern the dissemination of documents on 20/11/2006 and 08/11/2006 related to the secrecy of the judicial enquiry in the pre-court phase, thus invoking the violation of Articles 11 and 50 of the Press Act;

Whereas the source for R.P.A.'s dissemination on 20/11/2006 of the "famous evidence" that the Public Prosecutor of the Republic was going to present to the Supreme Court at the appropriate time is the summons to accused dated 17/11/2006, as the Court notes;

Whereas, when the law is clear, there is no need to go scrutinise in doctrine and jurisprudence to apply it;

Whereas the office of the Director of Public Prosecutions deems that its inquiries are finished, it is removing itself from the case and moving it to the competent court, thus closing the pre-court phase;

Whereas in this regard, Article 103 of the Code of Criminal Procedure states that "the ruling court has the case brought before it by direct summons given to the accused, and eventually to the civilly liable person, at the request of the officer of the office of the Director of Public Prosecutions or the injured party";

Whereas the Court thus deems that the pre-court phase had ended on 17/11/2006, the day when the summons to accused were prepared and the accused parties Serges NIBIZI and Domitille KIRAMVU cannot be convicted for information they broadcast on 20/11/2006 and that consequently, in this regard there is no violation of secrecy of the judicial enquiry in the pre-court phase;

Whereas the office of the Director of Public Prosecutions is also prosecuting the same accused parties for violating Article 50 of the Press Act;

Whereas under its last list point, this article talks of the ban on publishing "reports of the legal proceedings in-camera ...";

Whereas this accusation should not be considered because the ordinary legal proceedings had not even started;

Whereas, as regards the information disseminated by R.P.A. on 08/11/2006, the journalists accepted that they had provided it but state that they had drawn the information from Willy NYAMTWE's newspaper "INTUMWA";

Whereas, on 08/11/2006 the case of the suspected plotters against the Institutions of the Republic was still being examined since the case was only brought before the Court on 17/11/2006;

Whereas in this regard, the office of the Director of Public Prosecutions cites the violation of Article 11 of the Press Act;

Whereas this provision does not specify any penalty (sentence) and it is not an offence in the Criminal Law meaning;

Whereas the office of the Director of Public Prosecutions maintained that the violation of both Article 10 and Article 11 of the Press Act is punished in Article 50 of the same law;

Whereas this statement is unfounded since Article 50 has its own list points that have nothing to do with the provisions of Articles 10 and 11 of the Press Act;

Whereas, consequently, offenders of Article 11 of the Press Act do not incur criminal convictions;

ON ALL THESE GROUNDS:

The Court, ruling publicly and in the presence of both parties;

Having regard to Law No. 1/010 of 18/033/2005 concerning the founding of the Republic of BURUNDI ;

Having regard to Law No. 1/008 of 17/03/2005 concerning the code of organisation and of judicial competences;

Having regard to the Law of 29/06/1962 concerning keeping in force certain legislative and regulatory acts enacted under the tutelary authority;

Having regard to Law No. 1/025 of 27 November 2003 governing the Press in BURUNDI;

Having regard to the criminal code and the code of criminal procedure;

After deliberating in accordance with the law ;

DECIDES AS FOLLOWS:

1. Admits the action as moved by the office of the Director of Public Prosecutions but declares it unfounded;
2. States that the violations of the law governing the Press are not established;
3. Consequently acquits the accused parties Serges NIBIZI, Mathias MANIRAKIZA and Corneille NIBARUTA and Domitille KIRAMVU;
4. States that court costs will be borne by the Treasury.
5. Makes the office of the Director of Public Prosecutions responsible for enforcing the present judgment.

Thus judged and pronounced in BUJUMBURA in the public hearing of 03/01/2007, where the following sat: Rémy NTACO, Presiding Judge, Claudine NIYONKURU and Jean Marie KARITUNZE, members of the court, assisted by Pierre Claver NDIKUBUKIRA, Officer of office of the Director of Public Prosecutions and Célestin SIBOMANA, Court Clerk.

PRESIDING JUDGE

Rémy NTACO

JUDGES

Claudine NIYONKURU  
Jean Marie KARITUNZE

COURT CLERK

Célestin SIBOMANA