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COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

▶ **CASE No. RW/06 - LÉONARD HITIMANA - RWANDA**

**Report of the Committee's delegation on its mission to Rwanda
(12-15 June 2011)**

SUMMARY

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A. ORIGIN AND CONDUCT OF THE MISSION

In June 2003 the Committee on the Human Rights of Parliamentarians declared admissible the case of Mr. Léonard Hitimana, a member of the Transitional National Assembly of Rwanda, who disappeared during the night of 7 to 8 April 2003. The sources fear that it was an enforced disappearance. Given the gravity of the case, involving as it does the right to life and to security of person, the Committee brought it to the attention of the Governing Council on the occasion of the 109th IPU Assembly (September/October 2003).

The fear of an enforced disappearance was later added to by concerns about the situation of Mr. Hitimana's family and father, notably his arrest and indictment for genocide and the possible existence of a link with the disappearance of Mr. Hitimana. Some information on the children and the father of Mr. Hitimana was available but the investigation into the disappearance of Mr. Hitimana seemed to have hardly progressed and the competent authorities were thinking in terms of only one assumption, namely his flight abroad. At its 132nd session (January 2010), the Committee expressed the desire to gather on the spot as much first-hand detailed information as possible on Mr. Hitimana's case and the investigation under way.

By letter dated 23 March 2011, the Speakers of the Chamber of Deputies and the Senate signified their agreement for the mission to go ahead. The Committee asked its Vice-President, Mr. Philippe Mahoux, and his titular member for Africa, Mr. Kassoum Tapo, a member of the National Assembly of Mali, to carry out the mission, accompanied by the Committee's Secretary, Ms. Ingeborg Schwarz. The mission took place from 12 to 15 June 2011.

The mission met the following persons:

- (a) Parliamentary authorities
 - Ms. Rose Mukantabana, Speaker of the Chamber of Deputies
 - Mr. Vincent Biruta, Speaker of the Senate
 - Mr. Evariste Kalisa, Chairperson of the Parliamentary Committee on National Unity, Human Rights and the Fight against Genocide, and the Vice-Chairperson of the Committee

- (b) Governmental and administrative authorities
 - The Minister of Justice
 - The Minister of the Interior
 - The Inspector General of Police and his colleagues
 - The Executive Secretary of the *Gacaca* Courts
 - The Commissioner General of Prisons
 - The Legal Adviser to the Minister of Territorial Administration, accompanied by colleagues
 - The Communication Officer of the National Intelligence Service, accompanied by colleagues

- (c) Judicial authorities
 - The Deputy Prosecutor General

- (d) National Human Rights Commission (NHRC)
 - The Vice-President of the Commission and Mr. Laurent Nkongoli, Commissioner in charge of the Hitimana case file

- (e) Other persons
 - Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR)
 - Mr. Sosthène Gakwuvu at Muhenga Prison
 - Two witnesses wishing to remain anonymous

In remembrance of the victims, the mission went to the genocide memorial and the memorial of the assassination of the 10 Belgian paratroopers.

The mission wishes to thank the host authorities for the welcome extended to it and for their cooperation. Its special thanks go to the parliamentary authorities for facilitating the organization of the mission.

B. OUTLINE OF THE CASE AND CONCERNS OF THE COMMITTEE

1. Mr. Léonard Hitimana, a member of the Transitional National Assembly belonging to the Republican Democratic Movement (MDR), disappeared during the night of 7 to 8 April 2003. The circumstances of his disappearance have never been explained. The authorities constantly affirmed that Mr. Hitimana had fled the country and was abroad. In support of that assertion, they mentioned the fact that his car had been found abandoned near the Ugandan border and that two other persons, also members of the MDR, had fled the country in the same manner.

2. The sources have always expressed strong doubts about this assumption and feared that Mr. Hitimana had been kidnapped by agents of the Rwandan Intelligence Service, and that he had therefore been the victim of an enforced disappearance. They emphasized that Mr. Hitimana had disappeared the day before he was due to defend his party in Parliament. In a report, a parliamentary commission had indeed accused the MDR of pursuing an ideology of genocide, and Mr. Hitimana had himself been mentioned as an apologist of division in that report. Mr. Hitimana had therefore disappeared at a critical juncture for the party. This argument was nevertheless rejected by the authorities, who said that Mr. Hitimana was not a very important political figure and that there was therefore no reason to attack him personally. As the authorities saw it, Mr. Hitimana was abroad and they did not seem to lend credence to any other assumption, particularly that of his kidnapping by Intelligence Service agents and assassination in the Kami military camp. When the Committee told the parliamentary authorities of more detailed allegations in this regard,¹ they cast doubt on its working methods, its sources and its functioning.

3. During the examination of the case, allegations concerning Mr. Hitimana's family were submitted to the Committee: not only did Parliament reportedly suspend the payment of the salary and other benefits of Mr. Hitimana linked to his status immediately after his disappearance, but his children and family friends were allegedly harassed. His father, Mr. Sosthène Gakwuvu, was said to be obliged to attend all the sessions of the *Gacaca* traditional court and to have been arrested several times and then released. After checking those allegations on the spot, the Parliament and the National Human Rights Commission deemed them to be groundless. As to the salary suspension, the parliamentary authorities explained that the pay of a deputy not reporting for work for five consecutive days was suspended, and that the amounts in question were paid retroactively if the disappearance proved not to have been voluntary. Furthermore, the salary did not include any family allowances, which was why the family had not received anything. The Committee was subsequently informed that the father of Mr. Hitimana was to have appeared before a *Gacaca* court on 8 February 2007. The hearing had been adjourned on account of the absence of his accusers. The Committee then learnt that he had been acquitted and released on 26 March 2007, after the intercession of the National Human Rights Commission. He was rearrested, however, and finally sentenced to a 15-year prison term.

4. The Committee and the Governing Council had immediate fears that the disappearance of Mr. Hitimana might be linked to the groundless accusations levelled at him in the report of the Parliamentary Commission on the MDR, and they reminded the authorities of their duty to search for him actively. The IPU has since then been constantly concerned about the slowness and lack of tempo of the investigation and expressed its fear – growing over time – that the only plausible explanation of the disappearance of Mr. Hitimana was that he had been "forced to disappear". The IPU has constantly reminded the authorities of their duty to conduct an independent, effective and vigorous investigation not solely taking account of the contention that Mr. Hitimana had fled, which, in its opinion, was becoming less and less probable. It has systematically invited the Parliament to exercise its oversight function and to monitor the investigation. The Committee has also inquired about the situation of the father of Mr. Hitimana, notably when the latter was found guilty of genocide after being initially acquitted, wishing to ensure that his sentencing had nothing to do with the case of his son.

¹ Those allegations concern, *inter alia*, the state in which the car was reportedly found, namely with the cables cut, the ignition key removed, and bloodstains on the seat.

C. INFORMATION GATHERED DURING THE MISSION

1. The personality of Mr. Léonard Hitimana

All the people with whom the mission spoke said that Mr. Hitimana had not been involved in the genocide and that he had never been accused in that respect. On the contrary, Mr. Hitimana was a doctor working at the time of the genocide in Kibuye Hospital. With his German colleague, Dr. Wolfgang Blam, he had treated everyone without any distinction as to ethnic or other status; he had concealed persons and put many others in secure locations. Furthermore, fearing for his own life, he had been obliged to take refuge for three or four months in the Democratic Republic of the Congo (DRC). He had saved the lives of numerous individuals and, in recognition of his action, had received a "Tribute to Courage" from the organization African Rights. He had also testified before the International Criminal Tribunal for Rwanda (ICTR) against persons accused of genocide. Only the Minister of the Interior stated that Mr. Hitimana belonged to the MDR, accused of defending an ideology of genocide, and the Prosecutor General stated that, in the parliamentary report on the MDR, Mr. Hitimana was accused of having taken part in sectarian meetings. But both confirmed that he had not been facing any prosecution.

The mission was told that Mr. Hitimana had been a member of the MDR from 1992 to 2003, the year of his disappearance, and that he was part of the moderate wing (see below). According to the Minister of the Interior, Mr. Hitimana was a young politician not belonging to the circle of rulers of his party but was rather at the start of his career and little-known in politics.

In the Transitional National Assembly, Mr. Hitimana was a member of the Human Rights Committee. He had contacts with the International Federation of Christian Action to Abolish Torture (FIACAT) and wished to set up a similar organization (Action to Abolish Torture) in Rwanda. According to some people met, he was a brave and independent-minded man who feared nobody.

The mission understood that the wife of Mr. Hitimana had died some eight months before her husband's disappearance. She left three children (two sons and one daughter) who, at the time of Mr. Hitimana's disappearance, were minors aged between 14 and eight years. The eldest son is at present in India and another, Patrick Munezero, is studying at the Adventist University in Kigali. He would have liked to embark on studies in France but apparently did not receive the necessary fellowship. The daughter lives with an aunt on the father's side.

2. The Republican Democratic Movement, the parliamentary report and the general context

The mission gathered the following information and observations on the subject:

The MDR, re-established in 1991,² split into two factions in 1993, one which was prepared to move closer to the Rwandan Patriotic Front (FPR), to which Mr. Hitimana belonged, and the other refusing any compromise or negotiation with the FPR.

When the Transitional National Assembly was established, Mr. Hitimana was picked as a deputy by his party. In the run-up to the 2003 elections and at the end of the transition period, pressures on the MDR, which some thought could win the elections, were becoming very strong. The FPR did not wish to leave the transition with the MDR and was seeking to dissolve it. On 23 March 2003, the Head of State said in a public address, *inter alia*, that he was going to dismiss any leaders who were against his policy. Back in December 2002, the Transitional National Assembly had entrusted a group of deputies with examining the divisions within the MDR, together with "the role that the party had played in the divisions which have characterized the history of Rwanda". In its report, the Commission accused some persons by name, including Mr. Hitimana, of advocating division and implicitly recommended the dissolution of the party. It should be noted in this connection that, according to the information supplied by the representatives of the Ministry of

² The MDR-Parmehutu, the main political force after independence in 1962, was abolished by President Juvenal Habyarimana in 1975. It was re-established in 1991 after Habyarimana had agreed to authorize a multiparty system.

Territorial Administration, the MDR had never been dissolved by judicial decision. It was a de facto dissolution, for nobody had registered the party before June 2003. Furthermore, the person in charge of the National Intelligence Service stated that, to the best of his knowledge, the MDR had never represented a danger for the country's security, and even that the present Prime Minister came from that party.

All the persons the mission met mentioned in one way or another the context in which Mr. Hitimana's disappearance had taken place. Thus practically all the authorities recalled that Brigadier Emmanuel Habyarimana³ and Lieutenant-Colonel Balthazar Ndengeyinka³ had disappeared in the same period, if not the same day, as Mr. Hitimana⁴ and that they had also been mentioned in the parliamentary report. Both reappeared later abroad. Furthermore, the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR) had published on 12 April 2003 a "Declaration on the recent arrests and enforced disappearances". The fate of Lieutenant-Colonel Augustin Cyiza,⁵ who disappeared on 23 April 2003 in practically the same circumstances as Mr. Hitimana, was also mentioned in that context.

3. The disappearance of Mr. Hitimana and the conjectures surrounding it

3.1. The eventuality that Mr. Hitimana chose to flee the country and go into exile

Mr. Hitimana disappeared during the night of 7 to 8 April 2003. Most of the authorities expressed their conviction that Mr. Hitimana had voluntarily left the country. The police, the Minister of the Interior, and the National Human Rights Commission stated in that connection that his car had been found near the Ugandan border, in a mountainous area called Kaniga. The NHRC observed that at that location the border was no more than 5 m from the road and that it was not a veritable border. It was in view of the fact that his vehicle had been found near the border and other persons had chosen the same route, in the morning of the same day (namely General Habyarimana and Colonel Ndengeyinka), to leave Rwanda and that those persons belonged to the same party, that it was reasonable to suppose that, like them, Mr. Hitimana was abroad.⁶

The Minister of the Interior stated that Mr. Hitimana might have joined the rebellion, in which case he had to keep quiet about it. However, the Minister said that he had no information on the subject. Furthermore, the Minister said that Mr. Hitimana could also have changed names and died abroad, for example in a road accident or clashes with the rebellion, or he could have been eaten by a crocodile. Furthermore, the Minister and the Deputy Prosecutor General observed that Mr. Hitimana had reason to flee the country because of the accusations laid against him in the parliamentary report on the MDR.

The Inspector General of Police voiced his convictions that Mr. Hitimana must have crossed the border. He noted in that respect that some persons who had disappeared for four or five years had then reappeared. He mentioned the example of a former Minister of the Interior, Théobald Rwaka. According to him, he had disappeared in 2004 and had very recently spoken on the Voice of America. In that case too, reports had spoken of his death.⁷

³ General Habyarimana had been Minister of Defence until November 2002; Lieutenant-Colonel Ndengeyinka was one of the army representatives in the Transitional National Assembly.

⁴ Both left Rwanda on 30 March 2003.

⁵ Lieutenant-Colonel Cyiza was an officer demobilized from the Rwandan army; he had been President of the Court of Cassation and Vice-President of the Supreme Court; his fate has not to date been elucidated; according to some allegations, he was also assassinated in the Kami military camp.

⁶ It should be noted that, on 30 June 2004, the Rwandan Ministry of Foreign Affairs and Cooperation dispatched to the Apostolic Nunciature and the diplomatic missions accredited in Rwanda a report outlining the status of the investigations set up in June 2004 on the disappearances of persons announced in 2003. It states, inter alia, the following on the subject of Mr. Hitimana: "On 8 April 2003, his vehicle Suzuki Grand Vitara carrying the number plate 5962 RR C was found abandoned at the border between Rwanda and Uganda in the district of Kaniga. According to information provided by the Rukomo police checkpoint, the vehicle in question approached the checkpoint and its occupants, brandishing firearms, refused to stop and continued at high speed towards Gatuna. Efforts made by the Byumba police to intercept the vehicle and its occupants were unavailing. The vehicle in fact avoided the main border post and made for Kaniga. [...] His case is similar to that of Brigadier Emmanuel Habyarimana and Colonel Balthazar Ndengeyinka, both implicated in the aforesaid parliamentary report and who both crossed the border at Gatuna, leaving behind them a Mercedes Benz vehicle [...]"

⁷ It must nevertheless be noted that, according to the Response of July 2002 of the Republic of Rwanda to the 2001 Country Report of the United States State Department on Rwanda, Mr. Rwaka had decided to leave the country after his dismissal from the Government and stayed some time in Uganda before travelling to the United States.

Furthermore, the Speaker of the Chamber of Deputies spoke of the existence of witnesses claiming to have seen people crossing the border at the time in question.

The Speaker of the Senate provided a further argument, suggesting that Mr. Hitimana had left the country: he had not put himself down as a speaker on the first list (which gives parliamentarians the floor for 10 minutes) to take part in the debate of 8 April. The Speaker explained that people normally put themselves down on the list the previous day and Mr. Hitimana had not (yet) done so. The same point was also raised by the Minister of the Interior.

3.2. The possibility that Mr. Hitimana was assassinated in a military camp in Rwanda

3.2.1. Allegations concerning the circumstances of Mr. Hitimana's disappearance

It should first be recalled that Mr. Hitimana disappeared on the eve of the discussion in Parliament of the report of the parliamentary commission of inquiry on the subject of the MDR. In addition, according to the information given the mission during its meeting with the Minister of Justice, Mr. Hitimana and other members of the MDR were due to meet the Prime Minister on 8 April. The Prosecutor General thus said that on 8 April Mr. Hitimana had been expected at the Prime Minister's Office but failed to appear. His vehicle had then been discovered and it was thought that he had fled because he had reason to do so: in the report of the parliamentary commission on the MDR he was accused of having taken part in sectarian meetings.

The mission was informed that 7 April 2003 was not an ordinary day since Mr. Celestin Kabanda, an MDR member and until then member of the Government, had just been dismissed and placed under house arrest. There were few MDR parliamentarians who remained and could or were willing, for various reasons, to assume the defence of the MDR within the Transitional National Assembly. It was therefore Mr. Hitimana, incidentally a friend of Mr. Kabanda, who was entrusted with the task of doing so. According to an official met by the mission and wishing to remain anonymous for security reasons, in order to prepare his defence, Mr. Hitimana was due to meet two persons belonging to the MDR. Mr. Hitimana met one of them at about 5 p.m. on 7 April near his home to decide on the defence strategy and reflect on the replacement of Mr. Kabanda. Between 6 and 7 p.m., Mr. Hitimana left that place to go to the home of the other party colleague and finalize the document, after which he was due to return home. He arrived neither at the home of his party colleague nor at his own home. The next day at about 8 a.m., those persons found that they could no longer contact Mr. Hitimana. His mobile telephone was no longer ringing. At about 8 or 9 a.m., one of the persons whom Mr. Hitimana had met the day before was questioned by Police Inspector Egide Ruzigamanzi⁸ about Mr. Hitimana, which suggested that the police already knew that they had been together the previous day. That person reportedly told him that Mr. Hitimana was not a man to take flight and that he had no problem which would have caused him to flee, and the person voiced fear to the police that Mr. Hitimana had been arrested or assassinated. Mr. Kabanda reportedly learnt two days later that Mr. Hitimana's car had been found near the Ugandan border.

The mission was told that eyewitnesses of Mr. Hitimana's assassination existed. In that respect, it was able to gather the following information, enlarging on information already supplied to the Committee:

At the time of Mr. Hitimana's disappearance, the village people were doing night rounds between 7 p.m. and 6 a.m. During the night of the disappearance, an inhabitant of Byumba, a village lying on the route that Mr. Hitimana reportedly took, had seen two vehicles travelling towards the border but only one returning. Furthermore, with respect to the eyewitness whose existence the mission had learnt, that person worked at the time for the intelligence services. The person worked in the Directorate of Military Intelligence (DMI)⁹ and knew Mr. Hitimana. According to that person, Mr. Hitimana was kidnapped and taken to the camp of Kami, where a certain Captain (Colonel) John Karangwa was keeping watch over him in his cell. It was in that camp that the witness saw Mr. Hitimana. On 20 May

⁸ According to the information supplied, Mr. Egide Ruzigamanzi is at present commander of the Rwandan peacekeeping forces in Haiti.

⁹ According to information reaching the mission after its return, the DMI at the time played a preponderant role compared with that of the National Intelligence Service; hence perhaps a certain confusion between the National Intelligence Service and the DMI.

2003, the witness saw a Pajero vehicle into which a body was being put and recognized it to be that of Mr. Hitimana. The doors of the vehicle were closed and it left. It was then that the witness realized that Mr. Hitimana was dead. That witness left the DMI shortly afterwards on account of the disappearances. That testimony was not given until last year. The mission was also informed that there may have been hesitations before the decision to eliminate Mr. Hitimana. It is not known whether the eyewitness is still in Rwanda or has left the country.

3.2.2. What the authorities have to say about the assassination eventuality

The Speaker of the Chamber of Deputies first said that the authorities had been unaware of the hypothesis of an assassination by the intelligence services. It was information that had reached them through the Committee on the Human Rights of Parliamentarians. The Speaker of the Senate observed that the information about Colonel Karangwa had come late and that nothing could be done at present.

According to the Inspector General of Police, the disappearance of Mr. Hitimana inside Rwanda was not a plausible assumption. The police had also explored that possibility through their "community policing" practices, involving very close contact with the local populations; and no information suggesting that eventuality had reached them. The Speaker of the Chamber of Deputies said that the police had also conducted searches in dungeons, but nobody had come forward to say that Mr. Hitimana had been assassinated.

With respect to the hypothesis of his abduction and assassination in the camp of Kami, the Speaker of the Senate said he found it strange that a parliamentarian, enjoying parliamentary immunity, should be arrested by persons having no authority to take such action. The parliamentary status of Mr. Hitimana did not permit such an act and those who might have committed it would have taken a big risk and would certainly have taken precautions. Regarding his possible assassination in the camp of Kami, the Minister of the Interior said that Kami was a very crowded camp and if one wanted to kill someone it could not be done secretly there. "It would be like doing it on TV", he said. Furthermore, if one had wanted to kill Mr. Hitimana, one would have killed him and "why would one have hidden his body? To conduct a physiological experiment?" As to the NHRC, the mission was told that a Commissioner had gone to visit the camp and had been able to observe that there was not a single civilian in the camp, which served rather as an interrogation centre for the military, who were all detained together in rooms. There was a military prison a little further on. The ICRC had visited the camp of Kami, even in 2003. Kami was therefore a camp exclusively reserved for the military, and that had been so since the time of Minister Habyarimana.

On the police side, the mission was told by the Inspector General that no report on the subject had been received and that they had no idea regarding it. He explained that when the police received information, it was examined but nothing had been received on the subject; it could well be a matter of rumours.

The Communication Officer of the National Intelligence Service said that he knew about the disappearance of Mr. Hitimana but explained that the Service was not competent to investigate the matter. Its mandate differed from that of the police. While the latter constituted a law enforcement agency, the National Intelligence Service was entrusted with collecting information on factors that might represent threats to the country's security in a very broad sense and to notify the Government accordingly. The Service therefore lacked any power to arrest and detain individuals and had no prisons or special forces. Collaboration with the police was undertaken at the bidding of the Ministry responsible for the police in the event of certain information being needed or should the Service request an individual's arrest.

Furthermore, the National Intelligence Service also concerned itself with matters of emigration and immigration. The officials observed in this respect that the border was difficult to monitor and that it was easy to leave the country without being seen. Finally, the Communication Officer noted that the Service did not know about the allegations that Intelligence Service agents had kidnapped Mr. Hitimana. There was often, he noted, some confusion with the intelligence departments of the Ministry of Defence and Internal Security.

4. Are the fears of any witnesses justified?

The mission came up against the virtual impossibility of contacting any witnesses, either indirect or eyewitnesses, because of the fear of reprisals. The mission raised this matter with the authorities. The Speaker of the Chamber of Deputies said that she thought there was no reason for people to be afraid and that she had confidence in the justice system. The police had a good reputation and nobody was above the law; and nobody was prosecuted for denouncing a murder. It was only people giving false testimony who might be prosecuted. The Chairperson of the Committee on National Unity, Human Rights and the Fight against Genocide (formerly the Human Rights and National Unity Committee) mentioned in this connection the *Gacaca* courts before which people had testified openly, and the fact that after the genocide people spoke out. He also mentioned the existence of a witness protection bill. The Minister of the Interior, for his part, mentioned that he had himself been accused of involvement in the genocide on account of a false testimony. If one could accuse a minister in that manner without getting into trouble, how could someone accusing just a member of the military, for example, go in fear of reprisals?¹⁰

Furthermore, he gave assurances that any witness living abroad and wishing to testify could return to Rwanda to do so, and that he or she would enjoy every guarantee of being able subsequently to leave the country.

5. The investigation, including examination of Mr. Hitimana's vehicle

5.1. It should be noted that all the authorities insisted on the need to establish the truth and to continue the investigation so long as Mr. Hitimana had not been found, alive or dead. The Speaker of the Chamber of Deputies observed that Parliament was concerned over the fact that a parliamentarian could disappear without leaving any trace. The police and the Ministers of the Interior and of Justice affirmed in this respect that all information received would be examined. All the authorities also affirmed their desire to cooperate with the Committee.

5.2. The Minister of the Interior explained that the investigation, carried out by the police, was supervised by the Public Prosecution Authority and that it was the Prosecutor General who referred the matter to the court once the investigation had been completed. According to the Minister, the police had done their work but had found no trace of Mr. Hitimana. The police worked hand-in-hand with the Prosecutor General and, where investigation was concerned, the police came under the authority of the Public Prosecution Authority and not of the Ministry of the Interior.

5.3. The Inspector General of Police, after explaining to the mission the mandate of the police, which was chiefly to ensure the security of the population, affirmed that the police had searched for Mr. Hitimana throughout the country. The police had then found his vehicle at Kaniga and returned it to his family. The police had also cooperated with the family and the local administrations. They had further contacted the Ugandan police, for Mr. Hitimana could have been in Uganda. Their efforts had not stopped there, and the police had also referred the case to Interpol in the search for Mr. Hitimana. According to the Inspector General, disappearances were a common phenomenon and, to date, the police had no fresh information on Mr. Hitimana's disappearance. He clearly voiced his opinion that Mr. Hitimana had crossed the border. As to the establishment of records of any interrogations, the Inspector General said that interrogations had been conducted at the outset by the Criminal Investigation Department (CID), which was keeping track of the case. The public prosecution service was therefore the entity to be applied to regarding the matter.

The Deputy Prosecutor General added to this that the Prosecution Authority had been involved in the search for Mr. Hitimana. He noted that on 8 April, when Mr. Hitimana should have reported to the Office of the Prime Minister, his absence had been noted and so it was that the searches had begun. The police then asked the family of Mr. Hitimana whether he had spent the night of 7 to 8 April at home and the family replied that he had not. The Prosecutor said that the persons who had been with Mr. Hitimana before his disappearance had been questioned and had confirmed his presence.

¹⁰ The mission was later told that those false witnesses were persons serving prison terms.

5.4. With regard to the examination of Mr. Hitimana's car, an almost new Suzuki Grand Vitara, the Inspector of Police said that nobody, not even the family, had reported the existence of bloodstains¹¹ in the vehicle. The police had certainly examined the vehicle and, not having found anything, returned it to the family. The police had no idea where the vehicle was at present.¹² The Minister of the Interior said that it was the first time he had heard of any bloodstains in the car. If it could be proved that Mr. Hitimana had received threats, the fact could serve as a basis but, according to him, all that was nothing but fabrications, "for there could not have been blood in the car in the event of aggression unless Hitimana was armed". Furthermore, in 2003, there were no laboratories to carry out DNA tests. During the meeting with the Minister of Justice, it turned out that the memorandum of discovery of the vehicle contained nothing about the state in which it had been found. The Minister of Justice said in this connection that between 1994 and 2005 the Rwandan police force had not been what it was at present, and that there were still many shortcomings in some respects. At the time, a major case like that of Mr. Hitimana could be treated as a minor one.

5.5. As to the Minister of Justice, he spoke of the separation of powers and the fact that the three institutions – the Ministry, the Prosecution Authority and the police – were separate institutions. The police were responsible for the investigation and submitted reports to the Prosecution Authority; the latter was completely independent of the investigation and followed a criminal case without the Ministry's intervention. That was why he had not followed the Hitimana case. In criminal cases, the Minister was not authorized to make known his ideas to the Prosecution Authority, which enjoyed administrative, financial and professional independence; however, it was not out of the question for the Minister, by means of a written intervention with the reasons stated, to request information of the police and the Prosecution Authority about a particular case. That was what he had done in the case in question, having found the following information: on 8 April 2003, Mr. Hitimana was reported missing. His car was found on 8 April and returned to the family.¹³ The police had conducted an investigation and thought that Mr. Hitimana had had reason to flee the country. He could be in the region or elsewhere. Searches were continuing with the help of Interpol. However, the Minister noted that he had no file at his disposal and had doubts about how to manage the case logically, as was appropriate in any judicial case. Means had to be found of closing the investigation and publishing the result. The Minister then drew the following conclusions:

- (a) The investigation had been conducted by the national police, but no conclusion had as yet been reached. The investigation was still under way and the case still open. The police were still willing to check all allegations relating to the disappearance. The allegations would all be examined in order to bring the case to a satisfactory conclusion.
- (b) The case must be closed professionally, namely by investigating even rumours, writing up reports, and arriving at a clear and logical conclusion.

The Minister therefore asked the Prosecution Authority "to get to work" to bring the case "to a satisfactory conclusion within a reasonable length of time". In that spirit, he proposed that the Prosecution Authority ensure that all aspects of the case and all rumours were the subject of an investigation and that this be done by the end of the year. It was, he emphasized, an investigation about a life and not a piece of property. To a question from a member of the mission, he said that, even if the investigations ahead produced no result, the case would not be closed. At the most, it would be shelved "to give us the time to get on with other things".

6. The investigation conducted by the National Human Rights Commission

After explaining to the mission that in Rwanda, by virtue of Article 180 of the Constitution, international treaties outranked national laws, the Vice-President of the Commission said that the Commission was very concerned about the Hitimana case since it was a violation of the right to life, and which, together with violence against children and conjugal violence, constituted one of

¹¹ According to information reaching the Committee after its return, there were traces of blood and mud inside the car, as though there had been a struggle there.

¹² According to information received by the Committee, the family sold the car to an NGO called COFORWA.

¹³ On its return, the mission was provided with a copy of the memorandum of return of Mr. Hitimana's car, which shows that it was restored to the family on 1 August 2003. The family had to go and recover it from the Public Prosecution Authority in Kigali.

the Commission's priority subjects. On learning of Mr. Hitimana's disappearance, the Commission had immediately contacted the police and the Commission had itself been contacted by Parliament.

The Commission indicated that it was for the police to follow the case since they had the means to do so. The Commission did not have specialists but monitoring such cases was part of its work, and the Commission had followed the work of the police up to the time that Parliament had referred the matter to it. Commissioner Nkongoli said that he had gone to see the police two or three times. As to Mr. Rutihunza, who initially had also disappeared, his statements had not been of much assistance. The Commissioner told the mission that he had himself visited the family and that he had remained with it on the hill for a whole day. With respect to the allegation that Mr. Hitimana had been assassinated in the Kami camp, the Commissioner said that a Commission member had gone there and noted that there was not a single civilian there, just military. He also mentioned that the ICRC had visited the camp, including in 2003.

The Commission found that there was a consensus: it mattered little how long the investigation would take and the case should not be closed; there was a need to continue seeking the truth. Finally, the Commission observed that it was important to know the personality of Mr. Hitimana and, in this respect, raised the issue of the need to seek information on the technical aspects of the investigation, to ensure that international law was scrupulously respected, and to think about how the family should be informed of the results of the investigation.

Commissioner Nkongoli made allusions to the private life of Mr. Hitimana that the delegation did not fully understand (whether Mr. Hitimana's wife was dead and, if so, how she had died, and whether he had a second wife; and what he had done during the week before his disappearance). He then suggested that it was important to know the personality of Mr. Hitimana and that those matters should be explored in order to shed more light on his disappearance.

7. Follow-up by Parliament

The Chairperson of the Parliamentary Committee on National Unity, Human Rights and the Fight against Genocide told the mission of all it had done to contribute to shedding light on the disappearance of Mr. Hitimana and to help his family.

Regarding the circumstances of the disappearance of Mr. Hitimana and the ensuing investigation, the Chairperson said that, once the Parliamentary Committee on Human Rights of the Transitional National Assembly (to which Mr. Hitimana belonged) realized that he would not be coming, it informed the Speaker of the Assembly, Mr. Biruta at the time. The latter then informed other entities. The Parliamentary Committee subsequently visited the Minister of the Interior. That was at the time when the police had not yet found his car. In 2004 the Parliamentary Committee paid a visit on the ground to call on the family of Mr. Hitimana and his children. In 2006 the Parliamentary Committee again visited the Minister of the Interior and then, with the establishment of the National Human Rights Commission, it was decided to submit the case to that Commission since it would have been difficult to go beyond what Parliament and its committee had already done. The Chairperson observed in this respect that the National Commission was reporting to Parliament.

The Chairperson explained that, more recently, the Parliamentary Committee had convened the National Commission to obtain updated information on this case. It had met the Vice-President, who told it that the Commission was still following the case. The police had also stated that they were pursuing the case but that even referral of the matter to Interpol had so far not resulted in any fresh information.

When questioned on the 2009/2010 report of the National Commission, the Chairperson said that it did not mention the Hitimana case. But the Parliamentary Committee still put questions to the National Commission should Mr. Hitimana's name not be mentioned in its report.

The Chairperson of the Parliamentary Committee then confirmed that Parliament intended to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, but that the relevant bill had not yet been submitted.

8. Financial obligations of Parliament in the event of the death of a member and legal provisions with respect to persons absent or reported missing

8.1. The Speaker of the Chamber of Deputies said that, according to the rules in force, Parliament assumed the funeral costs and paid six months' parliamentary salary to the family of the deceased. However, the Speaker said that such were the present rules and that, in any event, they applied only to deceased persons. In the case of Mr. Hitimana, the situation was blocked since he had not been found and he had not been declared dead.

8.2. The Minister of the Interior said that, for the authorities, Mr. Hitimana was absent since the disappearance procedure had not yet been initiated by the justice system. There was a presumption of life until proof of the contrary. Therefore, "failing any significant acts showing him to be outside and not inside the country," Mr. Hitimana was considered to be absent. However, the persons concerned, in particular the family, could apply for a declaration of disappearance, which opened the way to the declaration of death.

On this subject, the Speaker of the Chamber of Deputies, with whom the mission also raised this matter, supplied it with the provisions relating to absence, contained in the Civil Code, Book I, Articles 25 to 56. Article 25 stipulates that: "Where a person goes missing in his/her residence or domicile without leaving behind a general representative in charge of his/her property and there is no news about his/her whereabouts, this person shall be presumed to be alive for two years starting from the date when they last heard about him/her. Where he/she leaves a general representative in charge of the property, he/she is presumed to be alive for five years." Article 26 states that the presumption of life thus established ceases where the probability of death can be deduced from the circumstances. In such cases, the parties concerned can take the case to the court of first instance of the last domicile or last residence of the disappeared person to have the absence declared. Article 28 stipulates that the presumption of life (as defined in the Code) ceases when seven more years have elapsed without any certain news of the life of the absentee; death is presumed and, at the request of the persons concerned or of the Public Prosecution Authority, the court of the last domicile or residence of the absentee declares the death.

9. The visit paid to the father of Mr. Hitimana in prison

On Wednesday, 15 June 2011, the mission was able to meet Mr. Sosthène Gakwuvu, the father of Mr. Léonard Hitimana in the prison of Muhenga (Gitega). It is a prison where, on the day of the mission's visit, more than 7,800 prisoners were held, over 5,100 of whom had been found guilty of genocide, including Mr. Gakwuvu, or awaiting final sentencing, the others being persons found guilty of ordinary crimes (or awaiting judgement).

On the day of the mission's visit, the Commissioner General of Prisons was also visiting the prison, for purposes of supervising and checking the list of prisoners over 70 years of age or suffering from ailments that could not be treated in prison. Those prisoners were due to be released shortly. The delegation was able to ensure that Mr. Gakwuvu's name was on the list.

The delegation conversed with Mr. Gakwuvu in a small room adjacent to the office of the prison director, who was absent during the conversation. Another prisoner, awaiting final sentencing, chosen by Mr. Gakwuvu served as interpreter. The mission authorized the presence during the meeting of the parliamentary official accompanying it during its stay. Mr. Gakwuvu was 94 years old at the time of the visit and the mission was able to observe his very fragile state of health. Despite an eye operation, Mr. Gakwuvu had become almost blind. Despite his age and poor health, Mr. Gakwuvu understood the main questions of the mission and was able to answer them.

M. Gakwuvu explained that he lived in Karundi, in the east of the country, and that he had learnt of his son's disappearance on the radio. He explained the difficulties, above all financial, that the family had been faced with then, saying that some persons had helped the family.

When the delegation asked him if he knew why he was in prison, Mr. Gakwuvu replied that it was because of a conflict with his neighbour, a certain Dorothee Uzabumwana. Dorothee's brother, who was his friend, had been assassinated and Dorothee blamed him for it. He denied that and told the mission that one day, on returning from the field, he had met a group of young people. According to him, they were the persons who had killed the brother of Dorothee. However, Dorothee recounted that he had been the one inciting the group to kill her brother.

M. Gakwuvu challenged the first *Gacaca* judge on the grounds that he knew Dorothee. The delegation understood that the judge had nevertheless handed down a judgement sentencing him to 15 years in prison. Mr. Gakwuvu appealed to another *Gacaca* court, which upheld the judgement, and he is at present serving his sentence. With respect to the 15-year prison sentence, the mission learnt in the course of its meeting with the Executive Secretary of the *Gacaca* Courts that, for anyone pleading not guilty, the minimum prison sentence was 15 years.

When asked whether he thought that the proceedings against him had anything to do with the disappearance of his son, Mr. Gakwuvu recalled that his son had had a dispute with Dorothee when they were both in exile in the Democratic Republic of the Congo. He thinks that it is because of that that Dorothee accused him, but he knew nothing about the substance of the matter. He confirmed that he had had no news of his son and that he was convinced that he was dead.

Should he be released, the family will take care of him.

10. Meeting with the Executive Secretary of the *Gacaca* Courts

The Executive Secretary of the *Gacaca* Courts explained to the mission the task of her institution, which was essentially one of coordination, the training of judges, the distribution of logistic facilities, and assistance in case analysis. At present, the *Gacaca* courts having ceased to function, her team was concerning itself with archiving all the files.

The Executive Secretary explained in detail the functioning of the *Gacaca* courts and their all-important role with regard to reconciliation, reconstitution of the social fabric, rehabilitation and the provision of a space for dialogue. In that context, she mentioned that the persons who had refused to plead guilty were made up mainly of women, intellectuals and the elderly.

The Executive Secretary provided the mission with a summary of the trial of Mr. Gakwuvu, according to which not only the neighbour had been killed but also his wife, his two children and two other children. While several persons accused Mr. Gakwuvu of having ordered the assassination of his neighbour and friend, he himself gave no information on the death of his neighbour and friend and of his two children (Annex 1).

D. GENERAL OBSERVATIONS

1. The mission is aware of the genocide context, which has to be taken into consideration in this case. It recalls that it is of the utmost importance to shed full light on the disappearance of a member of parliament, an essential element of democratic life. It therefore greatly appreciates that all its interlocutors share that conviction.

2. The mission notes that Mr. Hitimana was undoubtedly free of blame and was not the subject of any proceedings before a *Gacaca* or other court. On the contrary, given his humanitarian commitment as a doctor during the genocide, he enjoyed the reputation of a just man.

3. It seems indisputable to the mission that, having been entrusted with defending the MDR following the accusations levelled at that party in the parliamentary report and having prepared that defence, Mr. Hitimana had a politically very important part to play in the light of the electoral context of the time and of the consequent tensions. His absence from the parliamentary debate of 8 April 2003 was therefore fraught with consequences.

4. The mission notes that all of the authorities insisted on the importance of shedding light on what happened to Mr. Hitimana and establishing the truth, and they stated that the investigation would be conducted until that purpose was achieved. The mission emphasizes that this is also necessary in order to settle the matters of succession and other financial questions concerning the family. It welcomes, moreover, the intention of the authorities to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and hopes that they will do so in the near future.

5. The mission considers the hypothesis of Mr. Hitimana's flight abroad to be highly improbable and illogical. It is indeed hard to believe that Mr. Hitimana would have agreed to ensure the defence of the MDR in Parliament on 8 April and left the previous day, and that he would further have knowingly abandoned his three young children for whom he was responsible. Furthermore, the arguments advanced in support of that eventuality can no longer be justified eight years after Mr. Hitimana's disappearance. All the persons who left or fled the country at that time showed up or were since found abroad. There is no reason why Mr. Hitimana would have been an exception. The mission further considers it highly improbable that the national security and intelligence services and those of the neighbouring countries, particularly Uganda, and Interpol would not have found him in the course of those eight years, even if he had changed his name or suffered a road accident. It also considers any idea that he joined the rebellion to be entirely groundless.

6. The mission observes that the investigation conducted thus far is very inadequate and incomplete. It sees as evidence of this the fact, *inter alia*, that Mr. Hitimana's car was not subjected to any proper examination and, in addition, the lack of consistent information on the circumstances in which the car was found and returned to the family. The mission therefore greatly appreciates the pledge of the Minister of Justice to ensure that a thoroughgoing investigation is conducted that also covers the possibility that Mr. Hitimana was assassinated in the country.

7. The mission acknowledges that the absence of testimony does not facilitate the work of the police. However, it is greatly worried in this respect that any witnesses, especially eyewitnesses, but even indirect witnesses, refrain from coming forward and testifying for fear of reprisals. It considers that that should sound alarm bells for the authorities, particularly the parliamentary authorities. Although the mission recognizes that, in the *Gacaca* court system, many things are said freely, it nevertheless considers that such testimonies were given in a context very different from that of the disappearance of Mr. Hitimana. It notes in this respect the planned adoption of a witness protection law and, above all, the assurance given by the Minister of the Interior concerning the protection that would be afforded any witnesses of the disappearance of Mr. Hitimana living abroad should they agree to return to Rwanda to testify. It observes in this connection that there exists the possibility of hearing any witnesses living abroad in their countries of residence, in particular by means of videoconferencing.

8. The mission was saddened at the sight of Mr. Sosthène Gakwuvu, Mr. Hitimana's father. It considers that, notwithstanding his conviction, his age and his state of health amply justify his release. It therefore earnestly hopes that he has indeed been released as announced to it by the Commissioner General of Prisons.

Geneva, 27 July 2011

E. OBSERVATIONS SUPPLIED BY THE AUTHORITIES

- **Observations to the Committee's mission report submitted by Ms. Rose Mukantabana, Speaker of the Chamber of Deputies (14 October 2011)**

[...]

We acknowledge receipt of your letters of 31 July and 10 October 2011 concerning the report of the mission of the Committee on the Human Rights of Parliamentarians which visited Rwanda from 12 to 15 June 2011, on the subject of the Léonard Hitimana case.

As we have always emphasized, the Parliament of Rwanda remains concerned at the case of this parliamentarian of whom there has been no news since 2003. However, we have no development to report such as might enlighten the Committee about his fate. The search is being continued by the services concerned that the mission met.

As to Mr. Sosthène Gakwavu, Mr. Hitimana's father, the authorities of the Rwanda Correctional Service have confirmed to us that his name appears on the list of prisoners proposed for release on account of advanced age, transmitted to the competent authority for a decision.

[...]