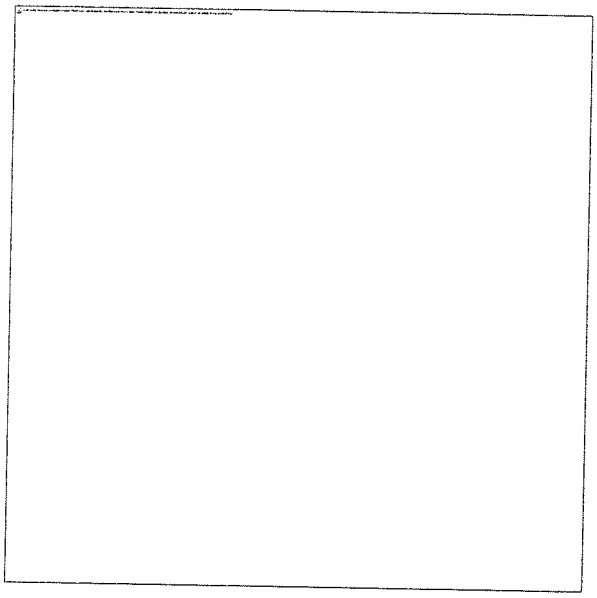
Translated from Norwegian



OSLO DISTRICT COURT

DECISION

Pronounced: 11.07.2011

File no.: 11-050224ENE-OTIR/01

Judge: District Court Judge Axel Slettebøe

The case concerns:

NCIS Norway — Police Prosecutor Marit Formo

vs.

Charles Bandora — Defence Counsel Harald Stabell

DECISION

NCIS Norway, represented by Police Prosecutor Marit Formo, has by endorsement of 17 March 2011 to Oslo District Court submitted an application pursuant to the Extradition Act section 17, cf. chapter 1, that a decision be pronounced that the conditions are met for the extradition of

Charles Bandora, born on 24.08.1954,
currently in custody on remand at Ullersmo prison,

to Rwanda for criminal prosecution, cf. the Extradition Act section 10 no. 2. We refer to the extradition request from Rwanda (police doc. 09) which concerns criminal offences committed during the genocide in Rwanda in 1994. An extradition request has been issued against Charles Bandora on grounds of genocide, crimes against humanity and participation in a criminal group with the intention of harming people and their property. The prosecuting authorities are of the opinion that the conditions for extraditing Mr Bandora to Rwanda have been met with respect to the criminal acts listed in NCIS' Charge Sheet of 15 March 2011. They apply to violations of the Penal Code section 233 first and second subsections for wilfully and under especially aggravating circumstances having caused another person's death.

The basis is the following:
In the period from April to June 1994, during the genocide in Rwanda, he killed or was an accessory to the killing of a considerable number of people from the ethnic group Tutsi at different places in Ngenda municipality, including:

1. *On 7 April 1994, a policeman named Callixte Kayiranga. Callixte Kayiranga was killed with a manchete by persons from the Interahamwe militia and/or soldiers from the army outside Mr Bandora's house in Ruhuha,*
2. *On 7 April 1994, a soldier with an unknown identity. The soldier was killed by persons from the Interahamwe militia and/or soldiers from the army outside or in the vicinity of Mr Bandora's house in Ruhuha,*
3. *Around 7 April 1994, Ezechiel Mugenzi. Ezechiel Mugenzi was killed outside Mr Bandora's house by persons from the Interahamwe militia and/or soldiers from the army,*
4. *Around 7 April 1994, Gracien Murangira and 4 other family members. Gracien Murangira and 4 other family members were killed by persons from the Interahamwe militia and/or soldiers from the army,*
5. *On 13 April 1994, in the city of Ruhuha, approx. 400 persons who had sought refuge in Ruhuha church. The refugees were brought out of the church and killed with manchetes and other weapons on the church premises by a large number of perpetrators, including persons from the Interahamwe militia and soldiers from the army.*

The person charged was in various ways accessory to the killings mentioned above, among other things through:

- *ordering killings*
- *planning, preparation and /or organising the killings,*
- *incitements made in public to kill persons of the ethnic group Tutsi,*
- *training the perpetrators of the killings, including local groups of the Interahamwe militia,*
- *various types of assistance provided to the perpetrators of the killings, including local groups of the Interahamwe militia, among others things by offering the use of his vehicles and supplying weapons and fuel,*
- *participation in the erection of road blocks to locate and identify Tutsis who were to be killed.*

The acts committed by the person charged were premeditated as they were a part of a well-planned strategy and a well-considered decision to exterminate the entire ethnic group Tutsi. There are also especially aggravating circumstances as the person charged, through his acts, participated in a

regime and/or extremist groups consisting of persons from the ethnic group Hutu, who, in cooperation with the Interahamwe and Impuzamugambi militias committed a genocide which resulted in the killing of approx. 800,000 people. These killings were committed to a great extent in a particularly gruesome and painful manner against defenseless people on the run, including a considerable number of pregnant women, children and elderly people.

Background:
Charles Bandora is a national of Rwanda. He was arrested at Oslo Airport Gardermoen on 8 June 2010, on the basis of an Interpol diffusion. After the genocide in Rwanda (April–July 1994) he fled Rwanda, and according to the request, he had been evading Rwandan authorities until he was arrested in Norway. After his arrest, Charles Bandora has been in custody on remand pending the processing of his extradition application. He has made a statement to the Norwegian police where he denies any involvement in the genocide in Rwanda and the acts described in the extradition request. Mr Bandora maintains that the information/facts listed in the extradition request are fictitous/have been made up by Rwandan authorities in their intent to take possession of his money and property in Rwanda. He admits staying in Ngenda in Rwanda during the genocide and that he on 7 April 1994, among other things, met mayor Samuel Hategekimana, who, according to the Rwandan authorities, and a number of witnesses in the case, was a key figure in the organisation of the genocide in Ngenda. According to Mr Bandora, the meeting with the mayor only concerned the fact that his shop had been robbed the same day. We refer to the rendering of the main information from Mr Bandora's statement emerging from the application which, in the Court's opinion, is an adequate summary of his statement to the Norwegian police.

The genocide in Rwanda:
The genocide in Rwanda took place in the period from 6 April to July 1994. Approximately 800, 000 people are said to have been killed during the genocide. According to ICTR's first judgment of 2 September 1998, the *Akayesu Case*, "the estimated total number of victims in the conflict varies from 500,000 to 1,000,000 or more", cf. the reference made to the ICTR judgment on page 10 and 11 in the judgment pronounced by the British High Court of Justice on 8 April 2009. The number of perpetrators who partook has been estimated to approx 500,000 according to the application. The genocide was the result of a prolonged conflict between the two largest ethnic groups – the Hutus and the Tutsis – in Rwanda. The people killed were mainly Tutsis and Hutus sympathizing with the Tutsis. According to the application, extremist Hutus at a high political and military level planned and organized the genocide, while the killings to a large extent were committed by the Interahamwe militia and the Rwandan army. Interahamwe was the youth wing of the MRND party, cf. NCIS report doc. 06,02. MRND was, according to the report, established as a new party in 1975 by Júvenal Habyarimana who seized power in a coup d'état in 1973, and who developed Rwanda into a one-party system. The genocide ranged from isolated killings to massacres of thousands of people who had sought refuge in assembly halls, churches, hospitals and other public buildings. Many people were also killed at road blocks erected throughout Rwanda.

Bringing the perpetrators to justice after the genocide
According to the application, the trials in the aftermath of the genocide have mainly taken place in Rwanda, but also in other countries that have accommodated refugees from Rwanda, refugees who are suspected of having participated in the genocide. Trials have also taken place at the International Criminal Tribunal for Rwanda (ICTR) which has investigated and prosecuted several of the most serious cases.

In Rwanda the criminal cases have been brought both before the ordinary courts and the Gacaca courts, which, according to the application, were established by the Rwandan authorities in in 2002, and which, according to information submitted to the Court, was a reintroduction of a traditional Rwandan people's court passing sentences at a local level in both civil and criminal cases. The gacaca courts were operational from 2002 to 2010.

The criminal case against Charles Bandora in Rwanda
The case against Mr Bandora started according to Rwandan authorities with him being listed in 2001 among the so-called "category 1 perpetrators" (persons suspected of the most aggravated criminal acts during the genocide). The justification for the list was the fact that the prosecuting authorities at various regional levels were asked to collect information about perpetrators in their respective areas, something that happened in the period 1994 to 2001. This information constituted the basis for the list prepared in 2001. According to the application, the list has subsequently been revised as "category 1 perpetrators" have been identified or checked-out.

According to the application, the case against Mr Bandora was heard before the Gacaca court in Mr Bandora's local district Ruhuha, and was initially investigated from 2002 to 2005. The court cases before the Gacaca courts started in 2005. Mr Bandora was charged with several of the killings mentioned in the extradition request, and the case was prosecuted before a first instance court in September 2008, which according to the information submitted ended with the acquittal of Mr Bandora. The judgment was appealed and heard in the Appeal Chamber of the Gacaca court in October 2009. According to the application, the Appeal Chamber convicted Mr Bandora of genocide and sentenced him to life imprisonment. Additionally, a case against Mr Bandora was heard before the Gacaca court in 2008 which concerned compensation following plunder and destruction of property. He was reportedly sentenced to pay compensation to the aggrieved parties amounting to approx 23 million Rwandan francs.

If Mr Bandora is extradited to Rwanda, he will, according to the application and provisions in the Rwandan "transfer law", be entitled to retrial of his case before the ordinary courts, in the first instance in the"High Court". Rwandan authorities have therefore set aside the Gacaca judgment against Mr Bandora. The Rwandan criminal case against Mr Bandora, which will be adjudicated following his possible extradition, will, according to what has been stated, not be in contradiction with the ban on repeated criminal prosecution cf. the ECHR protocol 7 Article 4. This is not contested and thus forms the basis for the Court's decision.

The district court's hearing
The Court received the request from NCIS on 23 March 2011. Defence counsel Harald Stabell applied for an oral hearing in a letter of 25 March 2011 and also argued that he did not have sufficient information to submit a reply to the application as he*"had to go to Rwanda to make further enquiries concerning the "submissionswith respect to fair trial (ECHR Article 6) and the question pertaining to the Extradition Act section 7 and basic humanitarian considerations (ECHR Article 3)". "The main issue will be the possibility of obtaining a satisfactory defence, i.e. the respect for the adverserial principle cf. ECHR Article 6 no. 1 letters b), c) and d)". "As regards the ECHR Article 3, it will be necessary to have a closer look at the prison facilities where Mr Bandora will be held in custody".*
The defence counsel informed the Court that NCIS representatives were going to Rwanda at the end of May and stay for approximately two weeks, and that Harald Stabell in his

capacity as defence lawyer had reserved time to travel together with NCIS during this period. Stabell asked for the Court's approval to go to Rwanda. Following statements from a police prosecutor at NCIS and the National Prosecutor's Office represented by Marit Bakkevig, approval was granted in a letter from the Court dated 26.04.2010. In agreement with the parties, the oral hearing was scheduled for 24 June 2011. Prior to this, NCIS had, by letter of 8 April 2011, stated that *"given the nature of the case oral hearing may be appropriate"*. The importance of an oral hearing was thus not contested.

Comments to the extradition request were submitted by the defence counsel on return from Rwanda in his letter of 14 June 2011. In this letter, he challenges that the conditions for extradition are met. The main claim/argument is that extradition to Rwanda would imply a real risk for serious violation of the ECHR Article 6, and that extradition therefore could not be granted, see below.

In his comment the defense counsel also applied for a deferment of the court hearing until after the court vacation (after 15 August 2011) to enable professor Peter Erlinder to be present to give a presentation of the court system in Rwanda *"with emphasis on the independence of the courts and the possibilities for respect for the adversarial principle"*. The defence council wanted Erlinder to appear in court in person.

NCIS, represented by police prosecutor Marit Formo, did not consent to a deferment and set out the grounds for her view in detail in her letter of 16 June 2011, which was replied to by the defence counsel in a letter of 20 June 2011. Attached to the defence counsel's most recent letter was e.g. the article "The arrest of ICTR Defense Counsel Peter Erlinder in Rwanda" in "The American Society of International Law, Insights, 11 August 2010, as well as professor Erlinder's article "The UN Security Council Ad. Hoc Rwanda Tribunal: International Justice or Juridically-Constructed "Victors Impunity?" (all read by the Court).

The defence counsel's application for deferment of the court hearing was not granted as the Court found that it had not been documented that a deferment was necessary with respect to obtaining sufficient evidence to try the case. See the Court's letter of 22 June 2011.

An oral hearing was then held on 24 June 2011. Charles Bandora did not appear because he suddenly fell ill. An application for deferment of the court hearing was not submitted, and the court did not find Mr Bandora's presence necessary. We refer to the court record from the court hearing. The parties agreed beforehand that the court hearing should mainly deal with the "fair trial issue", to which the Court had no objections. With respect to presentation of evidence and the conditions for extradition as such, it was sufficient for the parties to refer to the existing documentation in the case as well as to Mr Bandora's statement to NCIS and the submitted written documentation.

During the court hearing, Police Superintendent Kjetil Tunold (lead investigator on the Bandora Case), testified about his report of 23 June 2011presented to the Court (and which the Court stated had been read in advance). Tunold also testified about enquiries made prior to the court hearing with respect to the defence counsels notified submissions in an email of 23 June 2011 that "there is a real risk" that Mr Bandora's case will not come up for trial in many years, risking violation of the ECHR Article 6 and the right to have his case tried within "reasonable time". In this connection, reference was made to the HRW's report "Law and Reality" (attachment 1 to the defence counsel's comment), page 51, 3.

paragraph (concerning Enos Kagaba) and information received by the defence counsel that Kagaba's case had not yet been adjudicated– 6 years after the extradition. This submission was not upheld as it, according to the defence counsel and as the court conceived it, could not be considered sufficiently justified based on Kjetil Tunold's testimony and his enquiries.

The prosecutor upheld the application and her opinion that the conditions for extradition were met. She stated that the ICTRs decision with respect to "The Prosecutor's Request for the referral of the case of Jean-Bosco Uwinkindi to Rwanda pursuant to Rule 11 *Bis*" (presented in the case), was expected in the near future and would be forwarded to the district court as soon as the decision was made. There were no comments to this.

The defence counsel maintained, in line with his written submissions, that the conditions for extradition were not met as the extradition of Charles Bandora to Rwanda would imply a violation of Norway's extra-territorial commitments pursuant to the ECHR Article 6. According to the defence counsel, the Supreme Court has in its Norwegian Supreme Court Report 2007 page 1453 set a requirement which is too strict ("objective indications") as to how immediate the serious violation of ECHR Article 6 must be in order to refuse extradition. The requirement is, however, met given the serious weaknesses with respect to the courts independence and the limited respect for the adverserial principle in Rwanda. However, defence councel argues that the requirement for "objective indications" is not in line with the norm defined by the EHRT in its judgment Soering v. UK and Einhorn v. France. It is sufficient that there is a "real risk of serious violation of Article 6", something which must be taken into account. In comparison, reference is made to the thorough discussion in a judgment passed by the UK High Court of Justice on 08.04.2009 page 15 to 65, in which the British Supreme Court in 2009 concluded that an extradition to Rwanda would constitute a violation of Article 6. However, the Supreme Court in Sweden reached an opposite decision approximately a week later, but an appeal has been submitted to the EHRT against the Swedish Supreme Court judgment of 26.05.2009. According to the defence counsel, an interim measure (ECHR Article 39) was decided. Thus, extradition has not been carried out. According to the defence counsel, emphasis should be on the British judgment given these circumstances, and because the discussions presented in this judgment are far more thorough and detailed. Moreover, there is no "considered discussion" in the Swedish judgment with respect to whether violation of the adversarial principle of the ECHR Article 6.3.d is to be considered "a flagrant denial of justice". Furthermore, the defence counsel has referred to the fact that the ICTR in a number of decisions has refused extradition to Rwanda pursuant to the Rules of Procedure and Evidence Article11 *bis,* which require that the Court *"shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned"*. Although the norm according to ECHR Article 6 is different from the one following from Article 11*bis*, the defence counsel argues that the ICTR's assessments are relevant in respect of the discussions based on the ECHR, given the considerable source material on which the judgments are based concerning the conditions in Rwanda. According to the defence counsel, however, the ICTR's Appeals Chamber has, contrary to the Trial Chambers, concluded that the High Court in Rwanda is better equipped against intervention as the court system is set with three judges, as guaranteed in in Mr Bandora's case, but the ICTR has so far not refused extradition with reference to lack of respect for the adversarial principle. Furthermore, the defence counsel has, with reference to the criticism presented in the British judgment of the ICTR's Appeals Chamber's conclusion that a panel consisting of three judges would be sufficient to guarantee an independent court, argued that a formal composition of the High

Court with three judges will not be sufficient to ensure an independent trial in Rwanda under the current political climate. The situation today has not improved compared to when the British judgment was pronounced and the description of tangible cases which illustrate interference from the executive power. In this respect, reference is made to Amnesty International's "Annual Report 2011, Rwanda", Amnesty International: "Unsafe to speak out, Restrictions on Freedom of Expression in Rwanda, 2011, Human Rights Watch: "Justice Compromised, The Legacy of Rwanda's Community-Based Gacaca Courts, 2011 (a summary as well as the chapter "External Interference in Decision Making")" and Amnesty International, "Public Statement, 26.11.2010". The defence counsel argues that these reports describe a strong executive power in a country where there is no real democracy and where the opposition is oppressed and are subject to killings, imprisonment and threats. Furthermore, reference is made to the ICTR's discussions in the ICTR's Trial Chamber and the description of the the state of affairs in the judgment passed by the lower court judgment, from which it emerges that the Rwandan authorities denied former prosecuting counsel at the ICTR, Carla del Ponte, access to her own office in Kigali, that witnesses were not allowed to leave Rwanda to go to Arusha to make a statement in the so-called Baglishema Case, that Rwandan authorities have reacted very negatively to the assessments made by international players who have criticised the current authorities, and the fact that the Rwandan Parliament decided to request its prosecuting authorities to charge the Spanish judge Andreu for "denial of the genocide" following the indictment of 40 RPF senior members in the Spanish courts. The defence counsel argues that there is a constant pressure on the courts from the executive powers in Rwanda, which is illustrated by the involvement in court cases at the ICTR. The arrest of professor and lawyer at the ICTR, Peter Erlinder, in Rwanda in March 2010 is an example of this. The defence counsel has further submitted that extradition will be contrary to the ECHR Article 6 based on the limited respect for the adverserial principle in Rwanda. He has referred to the above-mentioned reports, including Amnesty International's Annual Report from which it emerges from the paragraph "Justice System" that "Concerns remained about the willingness of witnesses to testify, given restrictions on freedom of expression through laws on "genocide ideology"" and Amnesty's statement of 26.11.2001: "Problems with the national justice system in Rwanda, in particular witness protection and the potential unwillingness of defence witnesses to testify, given restrictions on freedom of expression, means that barriers to transfer identified by the ICTR may be difficult to address in the short-term". The defence counsel has argued that basic weaknesses with respect to the possibilities of submission of evidence based on the adversarial principle is the reason why the ICTR does not transfer the accused to Rwanda. It was also the main reason why the High Court in Britain reached the same conclusion in 2009. According to the defence counsel, it is well known that defence witnesses called in genocide cases in Rwanda have been killed or subjected to threats, have refused to give a statement or have given statements with reservations, fearing reprisals. In this connection, reference is made to Amnesty International: "Safer to stay silent. The chilling effect of Rwanda's laws on "genocide ideology" and "sectarianism" ", August 2010, which, among other things, refers to the expert witness at the ICTR, Allison Des Forges, who faced allegations of "genocide ideology" following a conference in Kigali i 2008, where she had described the development of the judicial system in Rwanda with respect to the right of fair trial as inadequate. The defence counsel has also referred to the arrest of Peter Erlinder in 2010, who also faced allegations of "genocide ideology" and has submitted that it is not suprising that ordinary citizens are reluctant to give statements in favour of a person charged with genocide when leading scientists and foreign independent defence counsels can be charged with criminal offences for actions which are a normal part of their

professional duties. The defence counsel has also argued that Mr Bandora, based on his knowledge of Rwanda, is sceptical of the possibilities for him to call witnesses in his defence, because they will be afraid to expose themselves to the risks involved. Mr Bandora would therefore prefer that the case be tried in Norway, which will ensure that his opportunity to submit evidence and call witnesses will be on completely different terms than in Rwanda. In Norway witnesses can testify also abroad without fear of repraisals. The defence counsel has submitted an application that the conditions for allowing the extradition of Charles Bandora to Rwanda are not met.

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The ICTR Referral Chamber's decision of 28 June 2011
On 28 June 2011 the International Criminal Tribunal for Rwanda (ICTR) published its decision in the Uwinkindi Case, as notified in advance by the prosecuting counsel (see above). The judgment was forwarded to the Court the very same day as an attachment to an email with copy to the defence counsel. It emerges from the decision that the ICTRs Referral Chamber (designated under Rule 11 *bis*) concluded that the Uwinkindi Case would be transferred to the Rwandan authorities for prosecution *"before the competent national court for charges brought against him by the Prosecutor in the Indictment"*. The forwarding of the ICTR's decision has not brought about any further remarks from the defence counsel.

The Court's assessment
The Court finds that the conditions for the extradition of Charles Bandora to Rwanda pursuant to the Extradition Act section 17, cf. chapter 1 for further prosecution cf. the Extradition Act, section 10 no. 2, are met. The Court agrees with the arguments on the various requirements presented by NCIS in its application.

Under the Extradition Act section 3 no. 1, extradition can only be effectuated when the act or an act of a similar nature that constitutes the basis for the application is punishable by imprisonment for more than 1 year under Norwegian law. It is not contested that this requirement is met. An application for the extradition of Charles Bandora has been presented based on criminal acts which according to Rwandan legislation are categorised as genocide (including being accessory to genocide, and conspiracy (enterprise to commit genocide), crimes against humanity (including murder and extermination) and participation in a criminal group with the intention to harm people and their property. As argued by NCIS, with reference to the book "Extradition for punishable offences" by Gjermund Mathiesen, page 226, it is of no importance whether the criminal act is categorized or classified similarly or differently in Norwegian and Rwandan criminal law. The main issue, however, is whether the acts to which the application relates, are also punishable in Norway, something which is beyond doubt given the seriousness of the charges brought by NCIS. The charges are also representative of the acts to which the extradition request pertains, and they are punishable under Norwegian law. The requirement for a maximum penalty (of more than 1 year) is indisputably met. This is not contested.

Reasonable grounds for suspicion
In the Court's opinion, the requirement "reasonable grounds for suspicion" under the Extradition Act section 10 no. 2 second sentence has also been met, as stated and thoroughly explained in the application. This requirement is of the same nature as the one set for "reasonable grounds for suspicion" under the Criminal Procedure Act section 171 as a requirement for remanding a suspect in custody (cf. Norwegian Supreme Court Reports 1995 page 1228 and LB-2007-97441). This is not contested. The issue at hand is whether

there is a preponderance of evidence to support the charges against him or not. In rulings following previous remand hearings in the case, Oslo District Court has found that there is a preponderance of evidence to suspect Mr Bandora of having committed or being an accessory to the acts described in extradition application. The Court refers to previous rulings, most recently to Oslo District Court's ruling of 23 May 2011. Neither party has submitted any information or presented any argument that could cause the Court to differ from the District Court's assessment on this point.

A number of witnesses (see interviews submitted in doc 11) link Charles Bandora to the MRND and to the organisation and planning of the genocide, including organising the meeting on 7 April 1994, which, according to witnesses, was held on premises owned by Mr Bandora, and at which the decision to start the genocide on the Tutsis in the area reportedly was made. Furthermore, witnesses (doc 11) have stated that Mr Bandora in different settings issued so-called "hate propaganda" against the Tutsis, both before and during the genocide, and that he issued orders to the Interahamwe and also assisted them in various ways. According to witnesses, he provided the Interahamwe with weapons, uniforms, vehicles, fuel and drink before and after the killing raids, and he ordered them to set up road blocks. That the MRND was key in the planning, organising and execution of the genocide in Rwanda is not disputed. Mr Bandora has admitted that he for a brief period in 1992 was the leader of the MRND branch in Ngenda. He has also admitted that he supplied food, drink and fuel to the army in the area. However, witness statements (included in doc 11) and information that Mr Bandora played a more active role in MRND and in the Interahamwe before and during the genocide, indicate that he also played a more central role in the genocide in the municipality of Ngenda and his home town of Ruhua than he has been willing to admit. Charles Bandora's statement that he witnessed no killings in Ngenda during the genocide and that he during the genocide drove back and forth between Ngenda and Nyamata, and that he was only occupied with running his business, does not appear credible in the light of the scale and extent of the genocide, which included erection of road blocks all over the country at which persons with the stamp "Tutsi" in their ID card and so-called "moderate" Hutus were stopped and, to a large extent, killed. Very many Tutsis were killed in the area where Mr Bandora was staying.

Only in Nyamata Church and the surrounding areas approx. 41,000 Tutsis were killed in the course of a few weeks. That Mr Bandora during these weeks was only occupied with the running of his business and did not witness any killings, appears unlikely. In addition to this, the witness statements link him to the individual charges, as stated in the application. For example with respect to the Charge Sheet item 3, the murder of Ezechiel Mugenzi, the witnesses Paul Karekezi (doc 11.03) and Vianney Matabaro (doc 11.11), who were both members of the Interahamwe, and according to the information submitted have confessed to and have been convicted of the murder, have stated that the murder was ordered by Mr Bandora. Charles Manirakiza (doc 11.24), who according to the information submitted has also been convicted of the murder, has stated that Mr Bandora stayed in the centre of Ruhuha where his business was located and where the soldiers protected him. From there they sent members of the Interahamwe to kill Tutsis. With respect to the Charge Sheet item 4, the murder of Gracien Murangira and four other members of his family, the witness Paul Karekezi, who according to the information submitted has been convicted of the murder of Gracien Murangira and his family, stated that Mr Bandora ordered them to go and rob and murder Murangira and his/her family. With respect to the other charges, the Court refers to the application and the witness statements that link Mr Bandora to the killings as an accessory, including the statements

made by Cyprien Kayitare and Chantal Mukanurenzi, who were two of the very few who survived the massacre of 400 people in Ruhuha Church on 13 April 1994, and who have stated that that Mr Bandora took part in the attack on the church. Chantal Mukanurenzi believed that Mr Bandora was one of the local leaders of the Interahamwe, and according to the witness Mr Bandora pronounced statements that contributed to starting the slaughter.

Based on the above, the Court finds that this, as a whole, constitutes reasonable grounds for suspecting Charles Bandora of being involved in the acts that he is charged with. The condition set by the Extradition Act section 10 no. 2 second sentence is therefore met.

The conditions set out in the Extradition Act sections 1, 2, 4, 5 and 6
Furthermore, the Court finds, as stated in the application, that these provisions do not prevent extradition. Charles Bandora is currently staying in Norway, he has been charged with genocide in Rwanda, he is not a Norwegian national, and the acts mentioned in the extradition request are punishable pursuant to the Norwegian Penal Code and are not of a political nature. There is no reason to believe that there is any danger that Charles Bandora, if he is extradited to Rwanda, will suffer persecution based on race, religion, nationality, political opinions or other political circumstances directed against his life or liberty or otherwise of a serious nature. Extradition will therefore not be in conflict with the Extradition Act section 6. For the Court to deny extradition pursuant to this provision, as stated in the application, there must be objective indications of such violations in the event of a possible extradition. Because the Court cannot find any evidence that such objective proof is present [in this case], the Court finds that the application cannot be refused on this basis.

Concerning the European Convention on Human Rights (ECHR) Article 6 and the fair trial requirement
"The Extradition Act must be interpreted and applied under the limitations that follow from the Human Rights Act, cf. sections 1 and 3 of the Act," re. Gjermund Mathisen "Extradition for punishable offences" page 323: "With this Act, two core pieces of Human Rights Legislation relating to fair trial – ECHR Article 6 and ICCPR Article 14 – are included."

The ECHR Article 6 reads:

> 1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
>
> 2 *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
> 3 *Everyone charged with a criminal offence has the following minimum rights:*
>
> a *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
> b *to have adequate time and facilities for the preparation of his defence;*

> c *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
> d *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
> e *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

The International Convention on Civil and Political Rights (with protocols) Article 14 contains similar provisions.

As argued in the application, and with reference to Norwegian Supreme Court Reports 2007 page 1453, in order to deny an extradition application there must be objective indications supporting the assumption that the country to which a person is to be extradited will fail to comply with international legislation designed to protect the individual's right to due process. The Court cannot ground its ruling on an argument, as claimed by the defense councel, that the Supreme Court has misconstrued or misunderstood the norm that follows from the European Court of Human Rights's case law and has established too strict criteria for the immediacy of the seriousness of the violation to ECHR Article 6. In any case, the Court is bound by the norm that the Supreme Court bases its decisions on. Also, it follows from "Soering vs. the UK" that the ECHR Article 6 only in exceptional cases can protect the person charged from extradition: *"The Court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of fair trial in the requesting country"*. This criterion is, as Gjermund Mathisen writes in"Extradition for punishable offences" page 324: strictly worded, and*"the consequence is that it will take a lot for an extradition in any given case to represent a breach of ECHR Article 6"*. According to Gjermund Mathisen, recent case law is based*"on the same premise, that the criterion is "a flagrant denial of a fair trial"*, or *"a flagrant denial of justice"*. Based on the above, the Court finds that the requirement for "objective indications" is not in conflict with the norm established by the European Court of Human Rights as a condition for denying extradition with respect to the fair trial requirement.

Furthermore, it follows from the case law established by the ECHT that it is the person charged who *"carries the burden of proving that the violation of his right to a fair trial that he has been the victim of, or risks becoming the victim of, is "flagrant"*, cf. Gjermund Mathisen, page 326, and the references in note 17.
Similarly, the Swedish Supreme Court referred to *Einhorn vs. France* and other decisions made by the European Court of Human Rights in its decision, see page 13, last paragraph. I.e. the burden of proof lies with the person charged if he wishes to claim absence of fair trial in his home country as grounds for refusing extradition.

Based on the changes that Rwanda has made to its legal system during the last few years, as described in the application, the Court finds that Mr Bandora has not submitted sufficient proof to support his claim that the application be rejected. The changes have been made in order to satisfy the requirements for a fair trial that are set out in international conventions, which before the changes were made prevented extradition to Rwanda.

The defense counsel does not dispute that Rwanda has adopted laws that comply with the requirements of a fair trial or that Rwanda has improved its legal system. However, the defense counsel doubts how well these laws will be implemented and followed up in

practice given the current realities in Rwanda, in which the requirement for independent courts and respect for the adversarial principle in reality have not been met.

The Court, however, is of the opinion that given the changes that Rwanda has made to its laws and legal system, and the guarantee that Rwanda has provided that Mr Bandora will be given a fair trial if he is extradited to Rwanda, there are no longer any grounds for rejecting the application. This is in line with previous cases decided by the ICTR and in the judgment passed by the British High Court of Justice on 8 April 2009. Among other things, Rwandan authorities have emphasised that Mr Bandora will be tried by the ordinary courts, i.e. by the High Court in the first instance "by three or more judges", that he will receive an open and fair hearing by a competent and impartial court, that he will be considered innocent until proven guilty, that he will have the right to a lawyer of his own choice, that he will be allowed to call witnesses in his defence in the same manner that witnesses will be called to testify against him, that he has the right not to incriminate himself, and the right to appeal. Furthermore, a witness protection scheme has been established under the supervision of the prosecuting authority that, according to what is stated by the prosecution, is described as practical and efficient with respect to reacting to possible threats before or during the investigation and/or trial. Witnesses receive protection and can, among other things, choose to testify via videolink. These rights equally apply to witnesses for the prosecution and the defence, and no one can be punished for statements said or actions taken related to a trial. Rwandan authorities refer to the Transfer Law Article 13, which provides that "no persons shall be criminally liable for anything said or done in the course of a trial" (except for "contempt of court and prejury"). This is also true with respect to the "Genocide ideology" law. Rwandan authorities also state that observers will have permission to follow Mr Bandora's trial, and that the trial itself will be public.

Based on the above, the Court must base its decision on the assumption that Mr Bandora will be given a fair trial in Rwanda, and that there are at least no "objective indications" or any real risk of this not being the case. The Court assumes, in accordance with the statements and guarantees provided by Rwandan authorities, that the court which will try Mr Bandora will be an independent court made up of three (or more) competent judges and that he will enjoy full rights under the adversarial principle.

The Court also supports itself on the information provided in Police Superintendent Kjetil Tunold's report of 23 June 2009 (sic!) based on a total of 10 trips to Rwanda to interview witnesses that the National Criminal Investigation Service (NCIS) has carried out from 24 September 2009 until today. In all, NCIS has interviewed 149 witnesses in four different cases during these trips. According to Tunold's report, at no time have the NCIS representatives had the impression or received any indication that any of its witnesses *"have been influenced or instructed to testify in a particular direction. The general impression is rather that the witnesses appear unprepared to testify to the Norwegian police and also about what case/person they will be asked to testify about". "No witness has ever expressed any fear of the authorities in connection with the interview"*. With respect to defense witnesses that NCIS has interviewed, not one of the witnesses have been reluctant to testify to the Norwegian police, and: *"Nor do we have the impression that they are afraid to testify for any reason, and we have never heard of any threats, reprisals, etc. that has influenced the testimony in any direction"*. This information indicates that Mr Bandora's fear that witnesses will be unwilling to testify if the trial is held in Rwanda is without sufficient grounds, particularly due to the changes that Rwanda has made to its laws and legal system during the last few years, including the establishment of a witness

protection scheme, independent courts and the alternative ways witnesses can be allowed to testify.

This assessment is supported by the the Swedish Supreme Court decision of 26 May 2009, and the ICTR's decision to transfer 55 investigated cases to Rwanda for adjudication based on the positive developments in the country, cf. the press release dated 8 June 2010 which presents the reasons behind the transfer.

Also, the Court relies on a recent decision made by the ICTR (Referral Chamber) dated 28 June 2011, in accordance with advance notice given during the hearing, a copy of which has been forwarded to the Court, to allow the prosecutor's application to transfer the trial of Jean Uwinkinid (whom the prosecuting authority had filed charges against) to Rwanda. In the judgment, the ICTR Referral Chamber discussed and assessed similar objections to those presented by the defense counsel, Advocate Stabell, in Mr Bandora's favour concerning the courts' independence, application of the adverserial principle, including objections linked to the arrest of Professor Peter Erlinder in May 2010, and came to the conclusion that extradition could be allowed. From paragraph 88 of the decision (page 25) it is evident that the ICTR considers defense witnesses' fear of being "falsely" accused of genocide "premature" taking into account the changes that have been made to Article 13 of the Transfer Law, which gives witnesses immunity with respect to their testimonies. From paragraph 90 of the decision it is evident that the ICTR Referral Chamber is of the opinion that the immunity and protection provided to the witnesses in accordance with the Transfer Law is satisfactory with respect to ensuring the person charged a fair trial at the High Court in Rwanda. From paragraph 99 of the decision it is evident that the ICTR Referral Chamber's reservation with respect to witness security in Rwanda has been allayed by the changes made to Rwandan law during the last two years. The Court refers to paragraph 101 and the discussion of the establishment of, among other things, the Witness Protection Unit (WPU) under the Judiciary. This also applies to witnesses outside Rwanda. The Court refers to paragraphs 128–132, Discussion, which concludes: *"the potential reluctance of witnesses to avail the services of WPU is speculative at this time. The Chamber is of the opinion that the issue of protective measures for Defence witness is prima facie guaranteed ensuring a likely fair trial of the Accused"*. With respect to the independence of the courts', it is apparent from paragraph 186 that the *"legal framework"* in Rwanda, in the ICTR Referral Chamber's opinion, guarantees independence of the courts in cases that are tried at the High Court, among others, which is the court that will try Mr Bandora's case. The ICTR Referral Chamber found that extradition could be allowed because the court, in pursuance of Rule 11 bis, had *"satisfi(ed) itself that the accused will receive a fair trial in the courts of the State concerned"*. It is true that the decision makes the premise that extradition can take place on the condition that *"after receiving assurances that a robust monitoring mechanism provided by the ACHPR* (African Commission on Human and Peoples' Rights) *will ensure that any material violation of the fair trial rights ... will be brought to the attention of the President of the Tribunal"* and that the court, in accordance with Rule 11 bis (E), can *"revoke the order"*. *"The revocation mechanism"* is, however, a remedy that the Referral Chamber, according to paragraph 217 of the decision, only will consider as *"a remedy of last resort"*. Apart from the above, the ICTR Referral Chamber notes in its conclusion, see page 56, paragraph 222 onwards, that the decision taken contradicts decisions made two years previously when cases were not transferred, but that Rwanda in the meantime *"has made material changes in its laws and has indicated its capacity and willingness to prosecute cases referred by this Tribunal."* This assured the

Referral Chamber that the case would be tried in accordance with the requirements of a fair trial.

The Court is of the opinion that this recent decision by the ICTR must be given great weight in so far as the threshold for the ICTR to allow a transfer is higher than in Norway (the ICTR must "satisfy itself that the accused will receive a fair trial" where transfer from Norway to Rwanda in accordance with ECHR Article 6 can only be denied if there are "objective indications" of violation(s) of the fair trial requirement for which the person charged carries the burden of proof), and because of the ICTR's "sources" (which the defense counsel has referred to) and closeness with respect to the conditions in Rwanda.

Based on the above, the Court finds that extradition cannot be denied based on the ECHR and the fair trial requirement. Based on the prosecution's arguments, which, among other things, are supported by the ICTR Referral Chamber's decision of 28 June 2011, Mr Bandora has not succeeded in convincing the Court that there are "objective indications" that Rwanda will not comply with international standards for a fair trial if he is extradited to Rwanda. Extradition can therefore not be denied on this basis.

The Extradition Act section 7 and the ECHR Article 3
The Court bases it decision on the opinion that extradition will not violate basic humanitarian considerations, cf. the Extradition Act section 7 and the ECHR Article 3. The Court refers, as before, to the application. Current case law and legal theory set the bar at a high level for denying extradition on this basis, cf. Gjermund Mathisen, "Extradition for punishable offences", page 336 onwards. That extradition will have "serious consequences" for the person charged, is not sufficient to deny extradition. The provision guards against cases in which extradition would have "disproportionately serious consequences". This implies that the Court must assess the proportionality of an extradition case. This assessment must include the severity of the criminal acts involved.

According to Ullevål University Hospital, Mr Bandora suffers from gout and diabetes type 2. He is on medication for these illnesses and for high blood pressure. There is no information indicating that Mr Bandora will receive inadequate treatment if he is extradited to Rwanda. The Court refers to a letter from Rwandan authorities dated 7 March 2011 and a police report from a vist to Mpanga Prison and the medical facilities at the prison, information that has not been contested by the defense counsel after he, according to information submitted to the Court, visited the prison himself.

> The court finds that the conditions in Mpanga Prison and the special wing built for extradited prisoners satisfy international standards, and that Mr Bandora's health problems are not serious enough to justify denying the application. The conditions in the said wing of Mpanga prison have, according to the information submitted to the Court, been found satisfactory by the ICTR, among others. In the Court's opinion, the conditions in Mpanga Prison are good and Mr Bandora can expect to receive necessary medical treatment. He will also be allowed regular vists by his family in Rwanda.

Based on the above, the Court finds that extradition of Mr Bandora to Rwanda does not violate basic humanitarian considerations or the ECHR Article 3.

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The Extradition Act section 8 does not prevent extradition. In this respect, we refer to the fact that the prosecuting authority, according to the information they have submitted, is not aware of any circumstances preventing the extradition of Charles Bandora. Nor have Mr Bandora or his defence councel, Harald Stabell, argued that there are any circumstances as set out in the Extradition Act section 8 that would prevent extradition.

The Extradition Act section 9 (relating to the period of prescription) does not prevent extradition. The period of prescription with respect to the criminal acts listed in the Charge Sheet of 15 March 2011 is 25 years, to be counted from 1994. Thus, the statutory limit for prosecution of the criminal acts has not expired. This has not been contested by the defence counsel.

Extradition may be effectuated when a court order has been issued for Mr Bandora's arrest or a remand order has been pronounced against him pursuant to Rwandan legislation cf. the Extradition Act section 10, 2. sentence. The same applies to decisions carrying the same effect, based on an assessment of whether Bandora is guilty of the said criminal acts. The Court finds that the necessary requirements for extradition have been met as argued in the application and with reference to the submitted international arrest warrant (doc. 09.02.02) issued by the director of Public Prosecutions/Prosecutor General Martin Ngoga, who is competent to issue an arrest warrant under Rwandan legislation. This has not been contested by the defence counsel.

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Based on the above the Courts finds that the requirements for extraditing Charles Bandora to Rwanda are met with respect to the criminal acts mentioned in the Charge Sheet of 15 March 2011.

CONCLUSION

The requirements for the extradition of Charles Bandora, born on 24.08.1954, to Rwanda are met with respect to the criminal offences listed in the Charge Sheet of 15 March 2011.

The Court rises (end of the Court session)

Axel Slettebøe

The prosecuting counsel, Police Prosecutor Marit Formo, is given the task of serving the decision on Mr Bandora in prison and inform him about his right to appeal against the decision, the deadline for lodging an appeal and the procedure. The time limit for appealing against the decision is 3 days cf. the Extradition Act section 17 no. 3. A copy of the decision will also be forwarded to his defence counsel by fax and as an attachment to this email.