

## PSC stands with Rwanda on universal jurisdiction

10 July 2015



A meeting of the Peace and Security Council (PSC) on 26 June 2015 and its subsequent communiqué on universal jurisdiction have sparked controversy over the legal interpretation of the case against Rwandan intelligence chief Lieutenant-General Karenzi Karake.

The PSC strongly condemned the arrest of Karake in London last month and called it 'an attack on Africa as a whole'.

Just days after the arrest of Karake – the director of Rwanda's national intelligence services who was in London to meet his British counterpart – the PSC of the African Union (AU) held an emergency meeting in Addis Ababa to discuss the issue.

The meeting was called at the behest of Rwanda, and arranged with unprecedented speed.

'Africa is unanimous on this issue, that's why the PSC was able to convene so quickly,' Phillip Karenzi, charge d'affaires at the Rwandan Embassy in Ethiopia, told the PSC Report.

### An extraordinary meeting

This PSC meeting was unusual in several respects.

First, Kenyan Attorney-General Githu Muigai was allowed to participate in the meeting as a friend of Rwanda. Kenya is not currently a PSC member state. This is significant because of Kenya's recent history of involvement in issues pertaining to international justice. Symbolically, at least, Muigai's participation provided a link between Rwanda's issues with universal jurisdiction and Kenya's issues with the International Criminal Court.

Second, members of the media were invited to listen to Rwandan Foreign Minister

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Louise Mushikiwabo's opening address to the PSC (the foreign ministers of Ethiopia and Uganda were also present). This was a break with tradition and the subject of some debate prior to the start of the meeting. But as one delegate observed: 'This is an extraordinary meeting, requiring extraordinary measures.'

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The third unusual factor was that the issue was even up for discussion at the PSC level at all. On the surface, the problem appeared to be a strictly bilateral issue between Rwanda on the one hand, and Britain and Spain (as the author of the arrest warrant) on the other. However, in discussing the matter, the PSC turned it into a continental issue, throwing the full weight of the AU behind Rwanda in the process. At the same time, the PSC heeded Mushikiwabo's insistence that this was a political rather than a judicial question (it is unclear whether the PSC sought advice beforehand from the AU's legal department).

'Trust me, there is nothing judicial about these sham indictments on Rwandan officials by individual judges from France, Spain or from any other country, particularly in Europe. These are political manoeuvres and they can't be called any other name,' said Mushikiwabo in her opening address.

### **PSC calls for Karake's release**

After a little over an hour of discussion, the PSC wrapped up its deliberations and issued its conclusions in a communiqué that called for the immediate release of Karake; condemned his arrest as an abuse of the principle of universal jurisdiction; and reiterated the AU's concerns regarding the application of universal jurisdiction in general. The Commissioner for Peace and Security Smail Chergui was tasked with delivering the communiqué to various stakeholders, including the governments of Britain and Spain (as yet there has been no official response).

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'We've had a very successful session with the PSC just now,' Mushikiwabo told journalists at the conclusion of the meeting.

Given the tone of the meeting and the evident support for the Rwandan position, the PSC's conclusions did not come as a

surprise. More surprising was the stern language used in the communiqué, which was clearly designed to send the strongest possible message to both Britain and Spain. The PSC 'considers [Karake's arrest] as not only an attack on a Rwandan national, but on Africa as a whole', it said; and '[e]xpresses concern at the continued support by certain quarters of the international community to groups that perpetrated genocide and continue to vehicle its toxic ideology, as well as [the] attempt to absolve those who committed genocide in Rwanda and, in this respect, stresses that extremist groups should in no way be sanitized'.

### **Strongly worded communiqué shocks diplomats**

The communiqué also called into question the validity of the arrest warrant itself, echoing Rwanda's claim that it had been overturned by another Spanish court earlier this year. Notably, at no point in the communiqué did the PSC comment on the innocence or otherwise of Karake in terms of the specific charges.

The strongly worded communiqué shocked Western diplomats in Addis Ababa, who worry that it is premised on two fundamental misunderstandings.

The first apparent misunderstanding is that the issue has anything to do with universal jurisdiction at all. According to the International Justice Resource Centre, 'the term "universal jurisdiction" refers to the idea that a national court may prosecute individuals for any serious crime against international law – such as crimes against humanity, war crimes, genocide, and torture – based on the principle that such crimes harm the international community or international order itself, which individual states may act to protect.'

Do the charges against Karake, which stem from the killing of three Spanish medics in the aftermath of the Rwandan genocide, fit this definition? The involvement of Spanish nationals may give its courts direct jurisdiction over the crime without needing to invoke the

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doctrine of universal jurisdiction. In other words, it is not about accountability to the international order, but justice for Spanish nationals. Thus the PSC's position on the abuse of universal jurisdiction – and the invocation of the AU's position on the same – may not apply in the first place.

'A country can assert its jurisdiction over anyone if the victims are citizens of that country. So if Spain is looking specifically into the Spanish victims, [it does] not need to invoke universal jurisdiction,' said Otilia Maunganidze, a senior researcher at the Institute for Security Studies.

The second alleged misunderstanding is that either the British or the Spanish government is in any position to circumvent the judicial process and release Karake. To do so would be political suicide for any European leader, and no number of demands – no matter how harshly worded – can change this. (Instructive in this context is the vehement public reaction South Africa's government faced in the wake of its failure to obey a court order preventing Sudanese President Omar al-Bashir from leaving the country after the June AU Summit in Johannesburg.)

In other words: Even if Karake's arrest was politically motivated, as Rwanda claims, now that Karake is in the European judicial system, his defence will have to be legal rather than political.

### **Karake's hearing postponed**

The result of all of this is something of a stalemate, which will likely last until the hearing on whether Karake should be extradited to Spain. Following a request by his lawyers for more time to prepare his defence, this will only be on 29 October (Karake is out on bail until then, but not permitted to leave the United Kingdom). The real test of the PSC's position will come if the British judge does

rule that Karake must be extradited. In such a case, what actions can the PSC take to reinforce its hard line?

So far, both the PSC and the Rwandans have remained tight-lipped on what might come next. However, when the PSC Report put this question to Mushikiwabo, she offered a hint: 'Should Africans in the area of justice, African judiciaries, consider an African warrant for Western leaders who are guilty – because that's important, you don't go after people who aren't guilty – and my response is, why not?'

