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### SEPARATE CONCURRING OPINION

I fully support the decision rendered by the Appeals Chamber to deny the request of the convicted person **Eliézer Niyitegeka**. However, considering the importance of the request, I find it necessary to share my opinion on the overall matter of a request for review filed by a **person convicted** by an **international court** who is seeking assistance from a lawyer at the expense of the Mechanism for International Criminal Tribunals.

The Appeals Chamber had the opportunity to broach this question and deemed that there was a possibility of assigning counsel to a convicted person for a limited period.

It recalls that “Figt is only in exceptional circumstances that a convicted person will be granted legal assistance at the expense of the Mechanism after a final judgement has been rendered against him. At the preliminary examination stage of a request for review, legal assistance will be granted only if the Appeals Chamber deems it ‘necessary to ensure the fairness of the proceedings’. This necessity is, to a great extent, assessed in light of the grounds for review put forward by the applicant”.<sup>1</sup>

I do not share this view because it may bring on a “**deluge**” of requests for review. In fact, a **convicted person** serving his sentence could always think that he was poorly assisted or badly represented by his previous counsel and that, in those circumstances, the investigation should be redone with a new attorney who would seek out witnesses to establish the existence of new facts.

This seems to me **very dangerous** for the **legal certainty** of judgements rendered by an international court after lengthy proceedings lasting years in which the evidence leading to the conviction of an accused was presented by the Prosecution and contested by the Defence. We must also add to this picture the evidence put forward by the Defence when it presented its case.

It should be recalled that the proceedings were conducted under the control of the judges who, if there had been any doubts or any questionable evidence, could have asked the parties to supplement their arguments or could have ordered the testimony of witnesses or the admission of new evidence pursuant to Rule 98 of the ICTR Rules of Procedure and Evidence.<sup>2</sup> Considering the professionalism of the judges of the Trial Chamber, it would be surprising if they had not asked themselves the question and concluded that there was no reason to supplement the inculpatory and exculpatory evidence.

I believe that it would be extremely serious to embark on this path: why grant such a request to one convicted person and deny it to another? Similarly, why introduce the

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<sup>1</sup> *François Karera v. The Prosecutor*, MICT-12-24-R, “Decision on Request for Assignment of Counsel”, 4 December 2012, para. 10.

<sup>2</sup> Rule 98 of the ICTR Rules of Procedure and Evidence states the following: “A Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance.”

notion of exceptional circumstances? I think that on the matter of a review of proceedings which is based on new facts, the convicted person, or his attorney or any other volunteer or legal entity acting *pro bono*, must be able to present a file which is sufficient in itself to allow the judges to rule.

On the other hand, I would have a favourable opinion on his transfer to another country. He is now serving his sentence in Mali, a country that is currently in the throes of internal difficulties. In these circumstances, it is very likely that he is not able to benefit from legal assistance and from visits by people who are likely to help in the future with a request for review supported by solid arguments, which is currently not the case; it should be noted that he has already filed five previous requests for review, all of which were denied by the ICTR Appeals Chamber. As stated in paragraph 13 of this decision, this issue comes under the authority of the **President of the Mechanism** and not the Appeals Chamber. The decision to transfer the applicant to another country, if the need arises, will be taken by him, as was done in the case of General **Krstić**.<sup>3</sup>

Done in French and English, the French version being authoritative.

/signed/

Judge Jean-Claude Antonetti

Done this sixth day of November 2014  
At The Hague  
The Netherlands

Seal of the Mechanism



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<sup>3</sup> *The Prosecutor v. Radislav Krstić*, MICT-13-46-ES.1, “Order Designating the State in which Radislav Krstić is to Serve the Remainder of His Sentence”, public, 19 July 2013.