

MICT-12-20
17-03-2015
(418 - 398)

418
ZS

UNITED
NATIONS



Mechanism for International Criminal
Tribunals

Case No: MICT-12-20

Date: 17 March 2015

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

BERNARD MUNYAGISHARI

PUBLIC

PROSECUTOR'S OPPOSITION TO
BERNARD MUNYAGISHARI'S THIRD REQUEST FOR
REVOCATION OF REFERRAL ORDER

The Office of the Prosecutor:

Hassan B. Jallow
James J. Arguin
François X. Nsanzuwera
Chelsea Fewkes

Bernard Munyagishari

Natacha Fauveau Ivanovic

Received by the Registry
Mechanism for International Criminal Tribunals
17/03/2015 14:37

A handwritten signature in black ink, appearing to read 'M. G. Carter'.

1. In this third request for revocation of the International Criminal Tribunal for Rwanda's (ICTR) order referring Bernard Munyagishari's indictment to Rwanda for trial, Munyagishari repeats all of the arguments raised in his second request filed on 21 May 2014.¹ The President of the Mechanism for International Criminal Tribunals (MICT) rejected Munyagishari's second request because the matters he raised were "still the focus of ongoing negotiations and may be subject to further review within the Rwandan courts, and [were], accordingly, not ripe for consideration as a basis for revocation pursuant to Article 6(6) of the [MICT] Statute[.]"²

2. Apart from the passage of time between the filing of his second and third requests, the situation has not changed. The matters of which Munyagishari complains remain the subject of ongoing negotiations and are subject to further review by the responsible Rwandan authorities. Accordingly, Munyagishari's third request for revocation should be denied.

I. Revocation is a remedy of last resort.

3. Revocation of a referral order is a "remedy of last resort."³ "Thus, while [revocation] does constitute a safeguard, it is not a panacea" intended to be invoked for any perceived violation of rights in the referral state.⁴ Consideration must necessarily be given to the nature and degree of the alleged violation and whether it amounts to a fundamental deprivation of fair trial rights secured by international law.⁵

4. If a fundamental violation can be established, the Chamber should consider whether the situation is capable of being remedied by means short of revocation, including, for instance, enhanced monitoring efforts or resort to remedies available in the referral state. Before any order of revocation is entered, the Chamber also must

¹ *Requête de Bernard Munyagishari aux fins d'obtenir l'annulation de l'ordonnance de renvoi*, 3 March 2015 ('Third Request'), para. 6.

² *The Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Decision on Second Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 26 June 2014, p. 3 ('Decision on Second Request').

³ *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-R11bis Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 6 June 2012 ('Munyagishari Referral Decision'), para. 216.

⁴ *Munyagishari Referral Decision*, para. 216.

⁵ *The Prosecutor v. Bernard Munyagishari*, Case. No. ICTR-89-AR11bis, Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and Appeals Against the Decision on Referral under Rule 11bis, 3 May 2013, paras.106-107 (noting that conditions imposed on referral must be reasonably related to the objective of securing a fair trial consistent with standards recognized by international law) ('Munyagishari Appeal Decision').

provide the referral state with an opportunity to be heard on whether a violation has been established and, if so, how it plans to remedy the violation.⁶

5. Only when the violation of fair trial rights is fundamental and incapable of being adequately remedied by other means should the Chamber take the drastic step of revoking the referral of a case from a national jurisdiction.⁷ Anything less would render the referral process grossly inefficient and ineffective as every perceived violation of rights—no matter how insubstantial or ephemeral—could be used to trigger revocation and, thus, unravel the often lengthy proceedings leading to the referral order and derail proceedings in the referral state.⁸

II. Munyagishari's claims fail to meet the high threshold for revocation.

6. Munyagishari's claims fail to meet the high threshold required for revocation. As in his second request, Munyagishari claims that his right to a fair trial has been violated because (a) he lacks sufficient legal assistance,⁹ (b) the conditions of the defence are inadequate,¹⁰ and (c) equality of arms between the defence and prosecution has not been respected.¹¹ As shown below, each of these issues are the subject of ongoing negotiations in Rwanda and each is capable of being remedied by the responsible Rwandan authorities or through intervention of the Rwandan courts.

A. Rwanda's legal aid scheme is adequate.

7. Munyagishari claims that Rwanda has breached its representation to provide legal aid in all referred cases. He concedes that the Rwandan Bar Association (RBA) has appointed two lawyers to represent him at trial and that he is completely satisfied with the representation appointed counsel have provided.¹²

8. Appointed counsel, however, have not yet reached an agreement with the Ministry of Justice (Ministry) relating to the payment of their fees.¹³ As a result, no formal contract with appointed counsel has been signed; absent a contract establishing the agreed-upon rate of payment, the Ministry will not authorize the release of any public funds.¹⁴

⁶ ICTR Rules, Rule 11bis (F); MICT Rules, Rule 14. While MICT Rule 14 is silent, the Appeals Chamber has recognized that the MICT Rules should be interpreted in manner consistent with the ICTR Rules: *Pheneas Munyarugarama v. Prosecutor*, Case No. MICT-12-09-AR14, Decision on Appeal Against the Referral of Pheneas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, paras. 5-6.

⁷ *Munyagishari Referral Decision*, para. 216.

⁸ *Ibid.*

⁹ Third Request, paras. 8-20.

¹⁰ *Ibid.*, paras. 21-24.

¹¹ *Ibid.*, paras. 25-29.

¹² *Ibid.*, para. 8.

¹³ *Munyagishari Monitoring Report for January 2015*, paras. 7-9.

¹⁴ *Ibid.*

9. Munyagishari concedes that negotiations between his appointed counsel and the Ministry are not yet resolved.¹⁵ To date, Munyagishari's counsel have insisted on being paid the same hourly rate as had initially been paid to appointed counsel in the Jean Uwinkindi case, which the ICTR also referred to Rwanda for trial.¹⁶

10. Based in part on its experiences in connection with the Uwinkindi case, Rwanda adopted a new legal aid policy in January 2014.¹⁷ The new policy was intended to harmonize the payment of defence fees in all cases subject to the Transfer Law.¹⁸ To accomplish this objective, the Ministry adopted a flat-rate fee arrangement whereby a lump sum of 15 million RWF will be paid to appointed counsel in all referred or transferred cases.¹⁹

11. Defence counsel in a case extradited from Norway have accepted the new flat-rate fee arrangement.²⁰ Appointed counsel for Uwinkindi²¹ recently rejected the new fee arrangement and withdrew from representation following the Ministry's notification that their contract would be terminated.²² The RBA was able to promptly appoint successor counsel to represent Uwinkindi.²³

12. There is no reason to believe that, should Munyagishari's current appointed counsel be unable to reach a mutually-satisfactory agreement with the Ministry on the payment of fees, the RBA will be unable to make similar arrangements for the appointment of successor counsel. Merely that Munyagishari might prefer to continue being represented by his current counsel presents no basis for revocation. The right of an indigent accused to effective representation does not entitle him to choose his own counsel.²⁴ That right "applies only to those accused who can financially bear the costs of counsel."²⁵

13. Munyagishari's own submissions demonstrate that there is no fixed international standard governing remuneration for legal aid.²⁶ Rather, the international standard is only that governments provide *sufficient* funding for legal

¹⁵ Third Request, para. 15.

¹⁶ *Munyagishari* Second Monitoring Report for December 2014, para. 12; *Munyagishari* Monitoring Report for June 2014, para.40; Third Request, para. 12.

¹⁷ *Munyagishari* Monitoring Report for January 2015, paras. 6, 8.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, para.12.

²¹ Munyagishari's current lead counsel also served as co-counsel for Uwinkindi.

²² *Uwinkindi* Monitoring Report for January 2015, paras. 36, 50.

²³ See Annex B, Letter from Counsel Athanase Rutabingwa, President of the Rwanda Bar Association to Counsel Gatera Gashabana and Counsel Jean Baptiste Niyibizi, dated 29 January 2015.

²⁴ *Nahimana et al.* Appeal Judgement, para. 265; *Kambanda* Appeal Judgement, para.34 ("The right to free legal assistance by counsel does not confer the right to choose one's counsel").

²⁵ *Akayesu* Appeal Judgement, para. 61.

²⁶ Third Request, para.13 (citing the Basic Principles on the Role of Lawyers).

aid.²⁷ The ICTR appeal and referral chambers already have determined that Rwanda satisfies this standard.²⁸

14. Munyagishari's assertion that the new flat-rate fee is insufficient to ensure an effective defence lacks merit.²⁹ As noted above, counsel in two cases subject to the Transfer Law have accepted the new flat-rate fee arrangement and agreed to take on the defence of similar cases. Furthermore, the new rate was established in consultation with the RBA, which agreed that the amount was sufficient.³⁰ Indeed, the proposed rate far exceeds that provided in ordinary domestic cases.³¹

15. To the extent that Munyagishari's current counsel have performed work not covered by the proposed flat-rate contract,³² counsel may continue to negotiate for payment of those fees with the Ministry. Even after Uwinkindi's counsel declined to accept the new flat-rate contract, the Ministry agreed to pay them pursuant to the terms of their old contract until successor counsel were appointed.³³ Similar arrangements for the payment of fees already incurred in connection with Munyagishari's defence could be negotiated here.

16. If those negotiations are unsuccessful, successor counsel can be appointed to represent Munyagishari and, thereby, preserve his right to a fair trial. Any lingering dispute between former counsel and the Ministry concerning the payment of past-due fees would be unrelated to Munyagishari's right to a fair trial so long as successor counsel is appointed.

17. Nor do negotiations relating to the payment of legal aid fees present any conflict of interest with the conduct of Munyagishari's defence.³⁴ If the Ministry proposes rates or other terms that would undermine the conduct of Munyagishari's

²⁷ Basic Principles on the Role of Lawyers, Principle 3. See also *Reid v. Jamaica*, UNHRC Decision of 20 July 1990, UN Doc. CCPR/C/39/D/250/1987, para. 13 (stating that states must make "adequate" provision for legal aid).

²⁸ *Munyagishari* Referral Decision, para. 153 (citing *Uwinkindi* Appeal Decision, para. 71); *Munyagishari* Appeal Decision, para. 84.

²⁹ Third Request, para. 11.

³⁰ *Munyagishari* Monitoring Report for January 2015, paras. 6, 12.

³¹ Under the tariff adopted by the RBA for ordinary domestic cases, an attorney can charge between 75,000 and a maximum of 500,000 RWF for defending a criminal case, including genocide, at first instance and a maximum of 750,000 RWF through appeal, see *The Prosecutor v. Bernard Munyagishari*, Case No. ICTR-2005-89-I, Prosecutor's Request for the Referral of Bernard Munyagishari's Case to Rwanda pursuant to Rule 11bis of the Tribunal's Rules of Procedure and Evidence (Prosecutor's Request for Referral), Annex M (*Amicus Curiae* Brief of the Kigali Bar Association, 26 April 2011, para. 29).

³² Third Request, para. 12.

³³ *Uwinkindi* Monitoring Report for January 2015, para. 36.

³⁴ Third Request, para. 19.

defence, the RBA has stated that it will intervene and take steps to preserve the legal profession's independence.³⁵

18. The RBA has not abandoned its role in the legal aid system, as Munyagishari contends.³⁶ The RBA continues to administer the appointment of counsel in legal aid cases.³⁷ Funding for all legal aid programs, however, is a matter committed to the Ministry, which is responsible for making budget submissions to Parliament.³⁸ The Ministry, thus, must be involved in negotiating the rate of payment for counsel in referred or transferred cases. Once the rate of payment is set and the RBA appoints counsel willing to accept those rates, the conduct of the defence is left to appointed counsel.

19. Equally without merit is Munyagishari's assertion that the RBA's independence has been compromised by the Minister of Justice's admission to its membership.³⁹ The Minister explained that he joined to the RBA to help enhance its capacity, including its capacity to deliver legal aid.⁴⁰ Before being admitted, the Minister was required to take a solemn oath to uphold the independence and dignity of the legal profession.⁴¹ Munyagishari's speculation casts no doubt on the sincerity of the Minister's oath and, as shown below, is further refuted by the RBA's continued advocacy in contract negotiations with the Ministry.⁴²

20. Lastly, while it is true that the protracted negotiations relating to appointed counsels' fees have contributed to some delay in the start of trial,⁴³ most of the delay is attributable to Munyagishari's own requests for more time to prepare his submissions,⁴⁴ the absence of his counsel,⁴⁵ and other matters, including translation of the indictment and witness statements into French.⁴⁶ In all events, the delay

³⁵ *Munyagishari Monitoring Report for January 2015*, para. 13.

³⁶ Third Request, paras. 17-18.

³⁷ *Munyagishari Monitoring Report for January 2015*, paras. 11, 13.

³⁸ *Munyagishari Monitoring Report for January 2015*, para. 11; 'Prosecutor's Request for Referral', Annex J (*Amicus Curiae* Brief of Rwanda in Support of the Prosecutor's Application for Referral pursuant to Rule 11bis, 18 February 2011, para. 21) and Annex M (*Amicus Curiae* Brief of the Kigali Bar Association, 26 April 2011, para. 27).

³⁹ Third Request, para. 20.

⁴⁰ Third Request, Annex 2.

⁴¹ See Article 14 of Law N. 83/2013 of 11/09/2013 Establishing the Bar Association in Rwanda and Determining its Organization and Functioning (requiring advocates seeking admission to the Rwandan Bar to take an oath before the Supreme Court at the request of the President of the Bar Association to defend and to counsel with dignity, conscience, independence and humanity).

⁴² *Infra*, para.22.

⁴³ Third Request, para. 10.

⁴⁴ *Munyagishari Monitoring Report for November 2014*, para. 5 (defence requests more time to make submissions, citing ongoing fee dispute with Ministry, notwithstanding the deadline established by the High Court); *Munyagishari Monitoring Report for June 2014*, paras. 21-22.

⁴⁵ *Munyagishari Second Monitoring Report for December 2014*, paras. 6-9.

⁴⁶ *Munyagishari Monitoring Report for June 2014*, paras. 6-21.

experienced in the start of Munyagishari's case in Rwanda is far less than the delay experienced in the start of many of the ICTR's own trials.⁴⁷

B. The conditions of the defence are adequate.

21. Munyagishari next seizes on a single provision in the Ministry's draft contract for legal aid to suggest that the conditions for the conduct of his defence are inadequate.⁴⁸ The draft contract, however, has not yet been executed and is still under negotiation.⁴⁹ Furthermore, the Ministry has indicated that, while it will not reconsider its adoption of a flat-rate fee structure for legal aid, it is willing to negotiate other terms.⁵⁰

22. The RBA has likewise affirmed its commitment to ensuring that the independence of the legal profession will not be compromised in the course of those negotiations.⁵¹ In fact, the RBA recently objected to the very provision Munyagishari cites and, as a result of its intervention, the Ministry removed the objectionable language.⁵² Under these circumstances, Munyagishari's concerns are moot and provide no basis for revocation.⁵³

23. Munyagishari's argument is not reinforced by the press report concerning the payment of legal aid fees for Uwinkindi's defence.⁵⁴ Contrary to Munyagishari's claim the report does not vilify defence counsel. Rather, it merely refuted Uwinkindi's false contention that his counsel had not been paid when, in fact, the Ministry reportedly paid them more than 82 million RWF to date for Uwinkindi's defence.⁵⁵

C. Equality of arms is maintained.

24. The principle of equality of arms does not require "material equality between the parties in terms of financial or human resources."⁵⁶ Thus, merely that the prosecution may have had a larger team of lawyers or more resources to investigate the charges against Munyagishari than the defence establishes no violation.⁵⁷

⁴⁷ See *Renzaho* Appeal Judgement, paras. 237-242 (7-year delay from arrest to judgement).

⁴⁸ Third Request, paras.21-22 (citing Article 6 of the draft contract).

⁴⁹ Third Request, paras.6, 7, 15.

⁵⁰ *Uwinkindi* Monitoring Report for January 2015, para. 37.

⁵¹ *Munyagishari* Monitoring Report for January 2015, para. 13.

⁵² See Annex A, Affidavit of Athanase Rutabingwa, President of the Rwanda Bar Association, 13 March 2015 attaching the revised contract.

⁵³ Decision on Second Request, p. 3.

⁵⁴ Third Request, para.23 and Annex 3.

⁵⁵ *Ibid*; *Uwinkindi* Monitoring Report for January 2015, para. 41.

⁵⁶ *Kalimanzira* Appeal Judgement, para. 34 (citing *Nahimana et al.* Appeal Judgement, para. 220).

⁵⁷ Third Request, paras. 27-28; *Kalimanzira* Appeal Judgement, paras. 34, 36-37; *Nahimana et al.* Appeal Judgement, para. 220; *Kayishema and Ruzindana* Appeal Judgement, para. 69.

25. Furthermore, as already noted, the issue of payment of counsel's fees remains under discussion. If counsel declines to accept the new flat-rate fee, other counsel can and will be appointed.

26. The new flat-rate fee excludes the payment of reasonable defence investigation costs.⁵⁸ Thus, if the defence believes an investigation—beyond that already conducted by the judicial police—is required, they need only submit a sufficiently detailed request for funding for investigation and travel to the Ministry.⁵⁹ If the Ministry denies funding, Munyagishari can seek appropriate relief from the High Court.

27. Munyagishari also claims that he has been unable to contact his former ICTR counsel, who put together a case file that may be useful to his defence. This assertion is difficult to credit given that one of his former ICTR counsel has assisted him in connection with his last two revocation requests.

28. Former ICTR counsel, in all events, are under a professional obligation to facilitate the smooth transition of representation, including any evidence collected, to Munyagishari's new defence team.⁶⁰ If counsel fail to fulfil this obligation, Munyagishari may bring it to the MICT's attention and seek an order compelling their cooperation. Standing alone, however, it fails to demonstrate any inequality of arms, particularly given that Munyagishari has access to the entire dossier, including witness statements obtained by both ICTR and Rwandan prosecutors, relevant to his case.

29. Furthermore, even if an inequality of arms situation were to arise, there has been no showing that it could not be fully remedied within the Rwandan courts. Revocation is a "remedy of last resort";⁶¹ it cannot be used as a substitute for available remedies under the laws and procedures of the referral state.

III. Revocation should be denied.

30. Because all of Munyagishari's complaints are still under review by Rwanda and capable of being resolved through resort to Rwandan procedures and laws, the drastic remedy of revocation is not warranted. Accordingly, Munyagishari's third request for revocation should be denied.

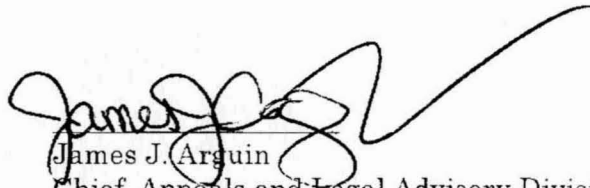
⁵⁸ *Munyagishari* Monitoring Report for January 2015, para. 6; *Uwinkindi* Monitoring Report for January 2015, para. 33.

⁵⁹ *Uwinkindi* Monitoring Report for January 2015, para. 33; *Munyagishari* Second Monitoring Report for December 2014, para. 31.

⁶⁰ *Munyagishari* Appeal Decision, para. 85 (The Appeals Chamber recalled that counsel representing Munyagishari before the ICTR are subject to clear professional obligations in that respect, something which Munyagishari also recognized).

⁶¹ *Munyagishari* Referral Decision, para. 217.

Word count: 2988

A handwritten signature in black ink, appearing to read 'James J. Arquin', with a long, sweeping flourish extending to the right.

James J. Arquin
Chief, Appeals and Legal Advisory Division
(Pursuant to the MICT Prosecutor's 26 July 2012
Interim Designation)

Dated this 17 day of March, 2015
at Arusha, Tanzania

Annex A

Mechanism for International Criminal Tribunals

Before: Judge Theodor Meron, President

Registrar: John Hocking

THE PROSECUTOR

v.

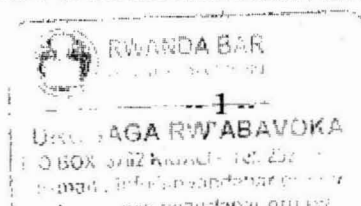
Bernard MUNYAGISHARI

Case No. MICT-12-20

AFFIDAVIT OF ATHANASE RUTABINGWA

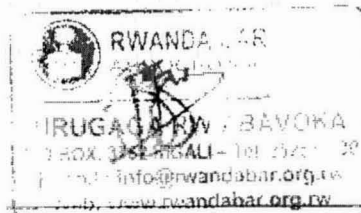
I, Athanase Rutabingwa, hereby depose and state as follows:

1. I am the current President of the Rwanda Bar Association.
2. The Rwanda Bar Association is responsible for assigning counsel to represent indigent accused in accordance with the Bar rules and regulations on legal aid.
3. In this capacity, the Rwanda Bar Association was consulted by the Ministry of Justice during its review of Rwanda's Legal Aid Policy and adoption of a proposed draft contract for the provision of legal assistance and representation in transferred indigent people in Rwanda.
4. After reviewing the proposed draft contract on legal assistance and representation, the Rwanda Bar Association objected to certain provisions contained in Article 6 of the draft because the provisions could be seen as intruding on the independence of the legal profession and the conduct of the defense.
5. Based on the Rwanda Bar Association's objections, the Ministry of Justice revised the draft contract and removed the challenged provisions.



6. Attached is a copy of the revised draft contract received from the Ministry of Justice, which no longer includes the disputed provisions.

Signed under the pains and penalties of perjury this 13th day of March 2015.



Athanase Rutabingwa
President
Rwanda Bar Association



REPUBLIQUE DU RWANDA

CONTRAT D'ASSISTANCE ET DE REPRESENTATION EN JUSTICE

ENTRE

LE MINISTERE DE LA JUSTICE

ET

LES CONSEILS DE LA DEFENSE

DE.....

CONTRAT N°

ENTRE LES SOUSSIGNES:

Le Ministère de la Justice, ci-après dénommé « **Le Ministère** », représenté par le Secrétaire Permanent/Mandataire Général Adjoint, d'une part ;

ET

Les Conseils de la Défense de.....:

1. Maîtreagissant en qualité de Conseil principal, d'autre part.
2. Maîtreagissant en qualité de Co-Conseil,
ci-après dénommés les CONSEILS.

PREAMBULE

Considérant la nécessité d'une assistance en justice devant les tribunaux en faveur des prévenus poursuivis d'avoir participé à la commission du crime de Génocide contre les Tutsis et autres infractions connexes, transférés au Rwanda dans le cadre de la coopération judiciaire internationale ne disposant pas des moyens financiers pour assurer la rémunération d'un Avocat ;

Considérant la volonté du Ministère de la Justice de promouvoir l'accès à la justice pour tous ;

IL A ETE CONVENU ET ARRETE CE QUI SUIT:**Article premier: De l'objet du contrat**

Le présent contrat concerne l'Assistance judiciaire au bénéfice de..... poursuivi pour avoir participé à la commission du crime de génocide contre les Tutsis et autres infractions connexes, transféré au Rwanda dans le cadre de la coopération judiciaire internationale et ne disposant pas des moyens financiers pour assurer la rémunération d'un Conseil.

Article 2: De la durée du Contrat

Le présent Contrat est conclu pour toute la durée de l'affaire.

Article 3: Des obligations communes réciproques**3.1 Des Conseils de la Défense**

Les Conseils de la Défense s'engagent à :

- a) Assister le prévenu.....devant les juridictions rwandaises à tous les degrés et à toutes les étapes de la procédure;
- b) Rendre compte au Ministère de la Justice de tous les actes accomplis en exécution de leurs prestations respectives ;
- c) Transmettre mensuellement au Barreau et au Ministère de la justice des rapports sur l'état d'avancement du dossier jusqu'à ce qu'une décision non susceptible d'appel soit rendue.

3.2. Du Ministère de la Justice

Le Ministère de la Justice s'engage à:

- a) Assurer le suivi et l'évaluation des activités des Conseils ;
- b) Pourvoir au financement de l'aide légale ;
- c) Faciliter la communication entre les Conseils de la Défense et les instances judiciaires ;
- d) Payer les honoraires selon le calendrier de paiement tel que prescrit à l'article 4 du présent contrat.

Article 4: Des honoraires

Les Conseils de la défense, quel que soit le nombre des Avocats, reçoivent en tout des honoraires sous forme d'un forfait de quinze millions de francs rwandais (15.000.000 Frw) pour tous les degrés de juridiction, payables de la façon suivante :

- a) Trois millions cinq cent mille francs rwandais (3.500.000 Frw) à la signature du contrat ;

- b) Quatre millions de francs rwandais (4.000.000 Frw) à la présentation de la copie du jugement au premier degré ;
- c) Deux millions cinq cent mille francs rwandais (2.500.000 Frw) après l'introduction de l'appel ;
- d) Cinq millions de francs rwandais (5.000.000 Frw) à la présentation de la copie du jugement en appel.

Un autre contrat sera négocié pour toutes les autres voies de recours extraordinaires faites par le prévenu. Mais le montant des honoraires ne peut pas dépasser trois millions de francs rwandais (3.000.000 Frw).

Le montant de quinze millions de francs rwandais (15.000.000 Frw) comprend tous taxes et impôts payables au Rwanda ainsi que tous les frais de l'Avocat à l'intérieur du pays.

Si le tribunal ordonne un déplacement de l'Avocat à l'extérieur du pays, un contrat séparé sera négocié.

Tous les paiements seront effectués sur le compte n° ouvert à la Banque aux noms de

Au cas où les Conseils voudront changer de compte, ils le feront par correspondance écrite trente (30) jours calendrier avant le paiement de factures pendantes.

Article 5: De la révision du contrat

De commun accord, les parties peuvent, si besoin en est, réviser les termes du présent contrat. Cependant, cette révision ne pourra en aucun cas porter sur les honoraires qui resteront inchangés durant tout le terme du contrat.

Article 6: De la résiliation du contrat

Pour des motifs légitimes et surtout compte tenu de la complexité du litige, chaque partie se réserve le droit de procéder à sa résiliation unilatérale du contrat, moyennant un préavis de trois (3) mois.

Le Ministère se réserve le droit de résilier le contrat moyennant un préavis de trente (30) jours dans les cas suivants:

- a) si les Conseils violent les règles d'éthique du Barreau;
- b) en cas de fraude ou corruption ;
- c) si le Conseil commet un acte quelconque engageant sa responsabilité pénale ;

Sans préjudice de l'alinéa premier du présent article, est considéré notamment comme cause de résiliation du présent contrat, le non respect par le prévenu, des instructions du Ministère de la Justice relatives à la procédure de demande d'aide légale annexées au présent contrat.

Lorsque le contrat est résilié, les Conseils sont tenus de remettre toutes les pièces du dossier aux confrères qui succèdent dans la même affaire et un décompte final sera effectué pour le remboursement ou le paiement des honoraires dus par l'une ou l'autre partie. L'Avocat entrant doit toucher les honoraires restant pour le dossier.

Articles 7: Adresse et communication

Toute communication d'une partie à l'autre en vertu du présent contrat est adressée par écrit à l'adresse suivante :

**Le Secrétaire Permanent /Mandataire Général Adjoint
Ministère de la Justice
B.P 160
Kigali, RWANDA.**

Les Conseils de

Maître

Maître

Articles 8: Loi régissant le contrat

Le présent Contrat est régi et interprété selon les lois du Rwanda.

Articles 9: Du Règlement de différends

En cas de contestation relative à l'interprétation ou à l'exécution du présent contrat, les parties privilégient un règlement à l'amiable. En cas d'échec, l'affaire est soumise devant les juridictions nationales compétentes.

Articles 10: De l'Entrée en vigueur

Le présent contrat prend effet à compter du

Pour le Ministère de la Justice

Les Conseils de la défense

**KALIHANGABO Isabelle
Secrétaire Permanent/ Mandataire Général
Adjoint**

1.

Annex B

N/Réf.: Let. 040/Bât./RA/01/2015

Kigali; ku wa 29 Mutarama 2015

Pour réception MINIJUST
Date 3/02/2015

Me GATERA Gashabana;
Me NIYIBIZI Jean Baptiste
KIGALI

Impamvu: Kumenyeshwa ko UWINKINDI Jean yagenewe abandi bunganizi

Bagenzi banjye dusangiye umwuga;

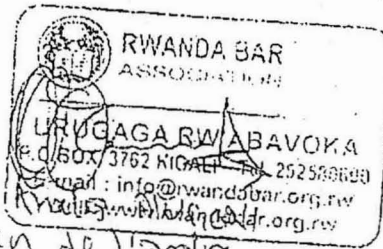
Dushingiye ku ibaruwa Réf.N°: 001/PHCIC/02/2015 yo ku wa 26/01/2015 twandikiwe na Perezida w'Urugereko Rwihariye rw'Urukiko Rukuru ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi n'ibaruwa N°: 152/08.25 MOK/LSD yo ku wa 27/01/2015 twandikiwe na Minisiteri y'Ubutabera zose zidusaba kugenera Bwana UWINKINDI Jean umwunganizi;

Dushingiye kandi ku ibaruwa y'Umunyamabanga Uhoraho muri Minisiteri y'Ubutabera n° 2185/0825 MOK/LSD yo ku wa 22/12/2014 isesa amasezerano mwari mufitanye arebana no kunganira Uwinkindi Jean ndetse no ku cyemezo cy'Urukiko Rukuru, Urugereko ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi cyivuga ko Urukiko Rwemeje ko Uwinkindi Jean nta bwunganizi afite, kandi rugategeka ko inzego zibishinzwe zimufasha kubona ubwunganizi;

Ndabamenyesha ko Urugaga rw'Abavoka rugenye Me HISHAMUNDA Isacar na Me NGABONZIZA Joseph ngo bunganire UWINKINDI Jean mu mategeko. Ndabasaba ko mwaborohereza mu gihe baba bategura Urubanza mubaha dossier ya UWINKINDI Jean kugira ngo bashobore kumwunganira uko bikwiye.

Mugire amahoro.

Me RUTABINGWA Athanase
Umukuru w'Urugaga



Buyen de l'ordre

Bimenyeshejwe

- Bwana Perezida w'Urugereko Rwihariye rw'Urukiko Rukuru/HCIC
 - ✓ Madamu Umunyamabanga Uhoraho/Intumwa Nkuru ya Leta Yungirije/MINIJUST
 - Me HISHAMUNDA Isacar
 - Me NGABONZIZA Joseph
 - Bwana UWINKINDI Jean
- KIGALI**

OTP-UNCERTIFIED TRANSLATION

RWANDA BAR ASSOCIATION

Ref /N°. Let.040/Bât./RA/01/2015

Kigali, 29 January 2015

To: **Counsel GATERA GASHABANA**
Counsel JEAN BAPTISTE NIYIBIZI
KIGALI

Subject: Appointment of new Counsels for Jean Uwinkindi

Dear colleagues,

Considering the letter Ref /N°: 001/PHCIC/02/2015 of 26/01/2015 from the President of the High Court's Specialized Chamber for international and cross border crimes and referring to the letter N°: 152/08.25 MOK/LSD of 27/01/2015 from the Ministry of Justice, whereby both letters addressed to me are requesting the appoint of counsels for Jean Uwinkindi;

Further considering the letter N°: 2185/0825 MOK/LSD of 22/12/2014 from the Permanent Secretary of the Ministry of Justice **revoking the Agreement you had concluded with them** [Ministry of Justice] concerning legal assistance for Jean Uwinkindi, and also considering the Decision of the High Court' Specialized Chamber for international and cross border crimes, in which **the Court acknowledged that Jean Uwinkindi did not have legal assistance and ordered the relevant institutions to help him find legal assistance;**

I am hereby informing you that the Bar Association has appointed Counsels Isacar Hishamunda and Joseph Ngabonziza to provide Jean Uwinkindi with legal assistance. While they are preparing for the case, I am requesting your cooperation in handing over the case file of Jean Uwinkindi to them so that they can fully defend him.

Thank you.

Counsel Athanase Rutabingwa

President of the Bar

(Signed for by Counsel Anita Mugeni, Dean of the Roll and stamped)

CC:

- The President of the High Court' Specialized Chamber/ HCIC
- The Permanent Secretary of the Ministry of Justice and Deputy Attorney General/ MINUJUST
- Counsel Isacar Hishamunda
- Counsel Joseph Ngabonziza
- Mr. Jean Uwinkindi

Kigali

P.o. Box 3762 Kigali, Tel: 252580600; Hotline: 2425; Email:
info@rwandabar.org.rw/barreaudurwanda1997@gmail.com; Website:www.rwandabar.org.rw