

MICT-12-25
13-05-2015
(37 - 1/734bis)

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Mechanism for International Criminal Tribunals (MICT)

To: Judge Theodor Meron, President of the Mechanism for International Criminal Tribunals (MICT)

Assisted by: John Hopking, Registrar

Date: 28 December 2014

Jean Uwinkindi, Case No. MICT-12-25

**JEAN UWINKINDI'S REQUEST FOR ANNULMENT OF DECISION
REFERRING CASE NO. MICT-12-25**

INTRODUCTION

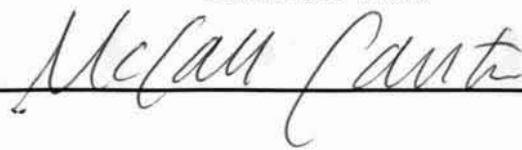
1. On 16 September 2013, we filed a request before Judge Theodor Meron, President [of MICT], to revoke the order referring the case of *The Prosecutor v. Jean Uwinkindi*, currently being tried before the specialized Chamber of the High Court responsible for the prosecution of international crimes (Case file No. RP0002/HCC/2013).
2. By a decision rendered on 12 March 2014, the President denied the request for revocation of the referral order, but without prejudice to the filing of a new request for revocation should circumstances so warrant.
3. Thus, we are filing a new request, and all the more so as it has been established that the difficulties relating to the allocation of investigation funds and remuneration of Counsel, as well as other related problems, all of which have not been properly addressed, can have a serious impact on the trial schedule, the preparation of our defence and even on the appearance of Defence witnesses.¹

¹ Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 12 March 2014, p. 3, 428/BIS, Case No. MICT-12-25.

RM15-0003 (E)

Translation certified by LSS, ICTR

**Received by the Registry
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4. Presently, nine months have just gone by without these questions being resolved, whereas the Defence has always recalled them.
5. Moreover, on 22 December 2014, my lawyers were surprised by the improper and unjust decision ordering termination of the contract enabling them to assist and represent me before the law,² which contract was signed on 1 November 2013 between them and the Kigali Bar in the presence of the Ministry of Justice.
6. According to the Ministry of Justice, the decision was triggered by the refusal of the Accused's lawyers to amend the previous contract.
7. In this regard, I would like to recall that my lawyers refused to sign the contract because the proposed fees were exceedingly low.
8. The other subsequent discussions were the result of the illegal termination, on 22 December 2014, of the agreement which had been signed between the two parties on 1 November 2013 and implemented as such.
9. I cannot understand the reason for the termination as it was a legal agreement consented to by both parties (namely the Kigali Bar and the lawyers of the Accused in the presence of the National Public Prosecution Authority).
10. Besides, when the content of this illegal decision is carefully examined as explained above, it becomes clear that it was taken by an incompetent individual who, moreover, seriously violated our fundamental rights, in particular the right of the Accused to choose his lawyers, with all the consequences that the decision will have on the conduct of the trial, notably regarding the principle that parties to a trial enjoy the same rights and are entitled to present their evidence.
11. On a closer look, the violation of my rights resulting from the unfortunate decision taken by the Ministry of Justice has serious consequences for the smooth conduct of my trial before the Rwandan Courts, particularly regarding the imminent delay in obtaining fresh documents required to carry out investigations, and regaining the momentum of the work accomplished between Defence witnesses and my lawyers. We are essentially basing our argument on this point to request revocation of the

² See in this regard Letter No. 2185/08 MOK/ LSD addressed to the Minister of Justice by the Permanent Secretary, Deputy Attorney General.

referral order so that we may be tried by a court which respects the principles of international law.

12. Furthermore, our new request to revoke the referral order is based on the following legal arguments:

II. The Minister of Justice decided to terminate an agreement to which he was not a party. The decision violates Article 64 of the said agreement and even the fundamental rights of the Accused, namely the right to counsel of his choice.

13. The parties to the said agreement were, on the one hand, the Kigali Bar, represented by Mr Athanase Rutabingwa and, on the other hand, the Defence for Jean Uwinkindi composed of Mr Gatera Gashabana, Lead Counsel, and Mr Jean Baptiste Niyibizi, co-Counsel.³
14. The Ministry of Justice was not a party to the signed agreement. Its role was to oversee the signing of the agreement in its capacity as funder in this partnership.
15. Whatever authority it has, the Ministry of Justice cannot terminate an agreement to which it is not a party. Is this not a violation of the principle [*incomprehensible sentence*]?
16. We request you to have the said decision on the termination of the contract revoked in accordance with the law, failing which it would be an obvious source of injustice.
17. Moreover, Article 18(3) of the Constitution of the Republic of Rwanda provides that the right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision-making organs.
18. These legal provisions in the Constitution further enshrine the inalienable rights of the Defence. The provisions themselves are based on international conventions that Rwanda has ratified, notably Article 14(3) of the International Covenant on Civil and Political Rights,⁴ Article 7 of the African Charter on Human and Peoples' Rights, as

³ See pages 1, 2, and 5 of the agreement on legal representation signed by both parties on 1 November 2013.

⁴ Article 14(3) of the International Covenant on Civil and Political Rights.

well as Article 14 of the Law on the Referral of Cases which uphold the right of the Accused to be assisted by counsel.⁵

19. For having dared to terminate the agreement signed between the Bar and my lawyers, the Permanent Secretary at the Ministry of Justice, at the same time Deputy Attorney-General, violated the legal provisions enshrining the right of every individual to counsel of his choice.
20. Given that there was a violation of fundamental human rights, it is clear that our request is undoubtedly founded.
21. This matter falls within the jurisdiction of the Mechanism for International Criminal Tribunals. In other words, the decision referring my case to Rwanda must be revoked and the Mechanism must request deferral in its favour regarding Case No. MICT-12-25.

III. The decision taken by the Ministry of Justice violated the right of the Accused to obtain adequate legal assistance for his defence

22. During the referral hearing of this case, the Rwandan authorities and the Kigali Bar, who appeared as *amici curiae* before ICTR, undertook to provide legal assistance and equitable and swift justice to each of the Accused. At the time, the Kigali Bar provided us with two lawyers who represented us before justice as much as possible. But, today, they can no longer continue with their work because the Ministry of Justice has taken the decision that it will no longer provide legal assistance as agreed, a decision characterized by non-compliance with the commitments made by the Rwandan authorities.
23. For the sake of clarity, I must insist on the fact that the Accused has never doubted the competence, professionalism and experience of the lawyers that he chose.
24. Thus, he believes that he will no longer benefit from the services of a competent, professional and experienced lawyer, like the Ministry of Justice had promised.
25. From the foregoing, it is clear that the Republic of Rwanda does not respect its commitments regarding the provision of legal assistance, and that is why we request

⁵ Article 7(C) of the African Charter on Human and Peoples' Rights.

that the decision which terminated the agreement be annulled and that the High Court be declared incompetent to try this case.

a. Rwanda does not respect its commitments regarding the provision of legal assistance to the Accused

26. When the Trial Chamber ordered referral of the case to Rwanda, it was satisfied that my fundamental rights would be respected there.
27. At the time, the Tribunal recalled the obligations of the National Public Prosecution Authority and those of the Kigali Bar. Thus, these two bodies made an absolute commitment to the effect that my right to be assisted by counsel was not only provided for under Rwandan law, but that these authorities themselves would help in providing legal assistance and that the financial means to that end were available and sufficient.
28. It should be recalled that it was the responsibility of the Kigali Bar to monitor and properly implement these measures.
29. The Trial Chamber indicated that it was satisfied that funds allocated for this task were available and sufficient when it stated that legal assistance enabling full defence was a priority. Besides, the Chamber was made to understand that there was already a properly functioning legal assistance programme in Rwanda for indigent persons.
30. However, the Trial Chamber recalled and insisted on the fact that should Rwanda not provide or allocate sufficient funds for this task, to the point where the fundamental rights of the Accused might be affected, the decision referring this case would be revoked pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence.
31. In its turn, the Appeals Chamber held that the Trial Chamber did not err in finding that the assurance given by the Ministry of Justice and even by the General Secretariat of the Supreme Court of Rwanda regarding the funds allocated for this task was credible and that the said funds were available.
32. It is clear from the decision of the ICTR Appeals Chamber that it was quite satisfied that Rwanda had already allocated sufficient funding for the defence of Jean Uwinkindi before the Rwandan Courts.

33. Curiously, it turns out the statements made do not at all reflect reality.
34. On further analysis of the decision by the Ministry of Justice to terminate the agreement which was implemented by the Bar and the Accused's lawyers, it appears that the main reason for that decision, characterized by a lack of professionalism, is that the Ministry realized that it could no longer afford funding for this activity, proof that it could no longer honour its commitments.
35. In its letter on this issue, the Ministry seems to seek to demonstrate that it wanted to harmonize its general policy on legal assistance agreements. By explaining that the decision sought to respect and support the principle of payment of harmonized fees, it thereby intended to harmonize legal assistance, including that given to the Accused in the case at bar.
36. Allow us to insist on the fact that the content of the said letter does not tally at all with the decision of the Trial Chamber of ICTR, which decision was upheld by the Appeals Chamber of the same Tribunal. The decision stipulated that sufficient funds and means had to be allocated for the defence of the Accused.
37. As to the insufficiency of the Ministry's financial means which is no longer at issue as the situation is such that the Accused can no longer be defended by counsel of his choice, the Ministry's decision is manifestly unjust and illegal. That is why we continue to request its annulment and the revocation of the order referring this case.
38. All this confirms the insufficiency of the financial means which had to be allocated for the defence of the Accused. For all the foregoing reasons, it is clear that we have solid grounds for our request to have this decision carefully reconsidered by the parties concerned.

b. The issue of insufficiency of funds to be allocated for the defence of the Accused

39. According to the new agreement drafted by the Ministry of Justice and categorically rejected by the Defence for the Accused, the overall amount allocated in any case is 15,000,000 RWF, i.e. 15,000 Euros for the duration of the entire proceedings, namely preparation of the case file by the National Public Prosecution Authority and conduct of the trial at first and second instances.

40. At this juncture, we would like to demonstrate once again that not only does the draft agreement violate the international principles regarding the right of the Accused to be defended, but also that the allocated funds are insufficient to enable the Accused to defend himself as he ought to, especially against serious charges like genocide and crimes against humanity. On this issue, I am going by the content of the letter of 12 December 2014 that my lawyers sent to the Ministry of Justice, in which they demonstrated that the said draft agreement proposed by the Ministry was inappropriate and illegal.
41. Briefly, we want to emphasize the importance of this issue which has been lingering for almost three years since the Accused was transferred to Rwanda.
42. Moreover, we want to insist on the fact that, even under the terms of the agreement which was previously in force, my lawyers' fees provoked a lot of discussion because the amounts disbursed did not tally with the usual fee schedules allowed in such cases.
43. Briefly, a careful look at the provisions of Article 3 of (*incomprehensible*) will reveal that the central government is responsible for allocating sufficient funds to ensure fair justice for indigent persons and any other person in need of legal assistance.
44. The new draft agreement reveals that the Rwandan authorities intend to amend the amount of funding and means that they had undertaken to provide before ICTR, which clearly demonstrates a deliberate effort on their part to ignore the commitments they made when this case was referred. This is a serious violation of the international principles regarding the defence of an accused, which is why we reiterate our request to revoke the order referring the present case.

c. Excessive interference by the Ministry of Justice in the remit of the Bar

45. According to the referral decision upheld on appeal, the Bar ought to be the main legal assistance monitoring body.
46. We were surprised to note that in its letter of 22 December 2013 [*sic*], the Ministry of Justice trampled on its obligations by not respecting the spirit of the agreement signed on 1 November 2013.

47. According to the principles regarding the Bar's obligations under point 25, the Bars and relevant State authorities work together to ensure that each accused benefits in all equality from legal services and assistance pursuant to the laws and directives governing the legal profession.
48. Therefore, even if the Bar is a party to the agreement, it played no role in the decision taken by the Ministry.
49. Worse still, the Accused pointed out that the Ministry's decision was partial and that the Ministry should not have focused on the management of legal assistance for the Accused, but that its role had to be limited to the disbursement of funds.
50. In reality, there is a conflict of interests between the Ministry of Justice and the lawyers of the Accused.
51. Since the referral of the Accused, the Ministry of Justice has always been trying to considerably reduce fees for the lawyers of the Accused so that they can be replaced in the case, should they refuse the fees that are proposed to them. The letter of 22 December 2014 clearly demonstrates that the Ministry's objective is to deprive us of our right to be defended by counsel of our choice, given that it has refused to apply the internationally recognized fee schedule.
52. Furthermore, we were surprised to note that the Bar, nonetheless a party to the agreement, exercised so little weight over the illegal termination of the agreement.
53. **Let us revisit an argument in the first request filed by my lawyers, and which argument was dismissed.**

III. The principle of equality of arms between the Prosecution and the Defence was not respected

54. Article 14(1) of the Law on the Referral of Cases grants every accused person the right to be heard in a public and fair trial, a principle also provided for in Article 14(1) of the International Covenant on Civil and Political Rights and by the Human Rights Commission which stipulates that all the parties to a trial enjoy the same rights at every stage of the proceedings and that any form of discrimination against any party is prohibited.

55. It is common knowledge that the principle of equality between the parties at trial does not necessarily mean that the Prosecution and the Defence have [*end of sentence incomprehensible*] or the same expertise. However, the disparity between the means available to both parties is such that it is impossible to hold a fair trial.
56. Before being tried in Rwanda, this case was first being tried before ICTR. All investigations were conducted and concluded by the Office of the Prosecutor of this Tribunal before it transferred the case to the competent Rwandan authorities. The Office of the Prosecutor of ICTR provided the National Public Prosecution Authority with all the necessary information and, had the Government of Rwanda so wished, it could have obtained strategic technical assistance. Moreover, the National Public Prosecution Authority has two advisers in the Office of the Prosecutor of ICTR dealing with case referrals.
57. As for the Defence, it has neither the means nor the assistance. Contrary to the practice in international law and in the directives of the Bar Association fixing fee schedules, in the case at bar, the Accused's lawyers have no choice as to their fees. There is no right of negotiation and any failure of approval on their part leads to a summary termination of the agreement.
58. Worse still, the Accused does not have the means enabling him to conduct investigations or pay for the services that he needs. The Law on the Transfer of Cases does not provide for personnel to assist the Accused. In the present case, the disparity between the means available to the Accused and those of the National Public Prosecution Authority is so vast that a fair justice is impossible.
59. In a decision on a preliminary motion rendered on 19 March 2013, the High Court held that it was up to the Accused's lawyers to discuss with the Ministry of Justice about facilitating the allocation of funds that would allow them to contact Defence witnesses living abroad.
60. A draft budget to that effect was transmitted to the Ministry in August 2013, but it has gone unheeded.
61. As explained above, the fact that the Ministry of Justice has not been able to provide the Defence with the necessary funds to conduct investigations may have

consequences on the timing and preparation of the Accused's defence or even on the appearance and examination of Defence witnesses. All that depends on the effectiveness of the strategies being implemented.

62. At this juncture, the issue is no longer to stay proceedings – an issue which may always be reconsidered -, the issue raised has rather to do with the lack of sufficient funds, as the Ministry of Justice has demonstrated little commitment to allocating sufficient funding that would enable the Defence to fulfil its obligations.

V. Relevance of assigning counsel to represent me in proceedings relating to these difficulties

63. The decision taken by the Ministry of Justice to deprive me of my right to counsel violates the fundamental principles laid down in the Constitution and other international conventions cited above.
64. It would be proper to assign a counsel *pro bono* to assist me in conducting these proceedings before the Mechanism.

CONCLUSION

65. Pursuant to Article 6(6) of the Statute and Rule 14(C) of the Rules of Procedure and Evidence, at any time after an order referring a case has been issued and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may revoke the order and make a formal request for deferral.
66. **In the present case, the Rwandan authorities have not respected their commitments and the trial conditions are contrary to those prescribed by ICTR when it ordered referral of this case to Rwanda. Consequently, the grounds justifying referral of the case are moot.**
67. Moreover, the Rwandan authorities do not allow the Accused to have an effective defence as provided for under Article 14(6) of the Law on the Referral of Cases and Article 14(3) of the ICCPR, all of which violate Article 19(2) and (4) of the Statute.
68. For the foregoing reasons, and in the interests of justice, we request revocation of the order referring this case and deferral by the High Court.

The Accused requests the following from the President of MICT:

IN THE MAIN:

- To rule that the request is admissible and complies with formal procedural requirements;
- To find that the legal issues raised in the request filed on 16 September 2013 have not been addressed, and that the situation is rather worsening by the day;
- To assign counsel *pro bono* to represent me before the law on aspects of the proceedings conducted by the Mechanism;
- To revoke the order referring this case to Rwanda;
- To set up an International Trial Chamber to try this case.

IN THE ALTERNATIVE:

- To uphold the Accused's right to be represented by counsel of his choice;
- To annul the decision by the Ministry ordering termination of the agreement signed on 1 November 2013 between the Bar Association and Jean Uwinkindi's lawyers;
- To take measures enabling my lawyers to conduct investigations on witnesses living abroad.

Done at Kigali on 28 December 201[sic]

Jean Uwinkindi

We request the Mechanism to take the necessary measures to restore the parties' equality in every respect by annulling the agreement signed between the Accused's lawyers and the Ministry of Justice.

The Accused's lawyers should be offered the possibility of contacting witnesses living abroad.

Done at Kigali on 28 December 2014

[signed]

Jean Uwinkindi

REPUBLIC OF RWANDA

/handwritten: Annex A/

/stamped:

Kigali 2 December 2014

No. 2086/6825 MOK/LSD

MINISTRY OF JUSTICE

P.O. Box 160 KIGALI

Tel: (250) 252586561 Fax: (250) 252586509

Email: mjust@minijust.gov.rw

Mr Jean Baptiste NIYIBIZI
Attorney at the Rwanda Bar
Kigali

Subject: Invitation to a meeting at the Ministry of Justice

Mr Niyibizi,

In reference to the contract for legal assistance and representation which you entered into with the Ministry of Justice on 1 November 2013, I have the honour of inviting you to a meeting to discuss a revision of the said contract pursuant to its Article 6 and to the policy of legal aid and judicial assistance in Rwanda.

The meeting will take place at 1500 hours on 4 December 2014 at the Ministry of Justice.

Please find enclosed a draft version of the revised contract.

Best regards,

Isabelle KALIHANGABO

Permanent Secretary/Deputy General Representative

Cc:

- Honourable Minister of Justice/*Garde des Sceaux*
- President of the Bar, Rwanda Bar

Kigali

Website: www.minijust.gov.rw

/handwriting in Kinyarwanda/

/handwritten: Annex 2/

Attorney Gashabana GATERA
Tel: 0788303744
Attorney Jean Baptiste NIYIBIZI
Tel: 0788502007
ATTORNEYS

/stamp:
BAR ASSOCIATION
RECEIPT
Date: 9 December 2014
Signature: /a signature//
/stamp: 9 December 2014 /initials//

Kigali, 8 December 2014
Permanent Secretary/Deputy
General Representative
KIGALI

Subject: Opinions and observations on the draft
contract between MINIJUST and Defence Counsel for Jean Uwinkindi

Dear Madam,

We refer to our meeting of 4 December 2014 and the draft contract that you submitted to us to provide our observations and comments:

First of all, we would like to inform you that the same draft was forwarded to us to examine on 1 November 2013. At the time, we felt that the content of this draft clearly violated the spirit and letter of the judgment rendered by the Appeals Chamber at the International Criminal Tribunal for Rwanda ordering the transfer of the Accused Jean UWINKINDI to Rwandan courts.

In addition, the amounts set out under Article 4 of this contract are the minimum standard norms required to ensure the defence of an accused before international courts.

Lastly, on 1 November 2013, you provided us with a draft contract that repeated the same clauses as the current one, which had been dismissed by mutual agreement, and which is why we had decided to draft a new contract, which is still in force.

Our position remains unchanged and cannot now be revoked.

Please find in the annex, for your information, our humble opinions and observations in this matter.

Yours faithfully,
Mr Gashabana Gatera
Attorney-at-Law
/stamp illegible/ /signed/

Mr Jean Baptiste NIYIBIZI,
Attorney-at-Law
/signed/

Copies for information:

- Minister of Justice
- President of the Bar Association of Rwanda
- Presiding Judge in the case
RP0002/12/HCCI: ONPJ v/UWINKINDI JEAN

Opinions and Observations on the Draft Contract for Legal Assistance and Representation

1. Having legal aid as one of its prerogatives, the Bar Association must be involved in this contract. The legal obligations in its responsibility include legal aid to indigent persons (Article 59 of Law no. 83/2013 of 11 September 2013 establishing the Rwandan Bar Association and determining its organisation and operation).
2. Furthermore, with regard to the *Amicus Curiae* signed by the Kigali Bar, represented by the President of the Bar on 23 January 2012 in the case of The Prosecutor v. Jean Uwinkindi, Case No. ICTR-2005-89-R11 *bis*, in particular paragraph 25 (page 9), it specifically stipulates that legal aid funding provided by the Kigali Bar is supplied in essence from Government subsidies.
3. In his Affidavit signed in the Munyagishari case on 15 February 2011, the Minister of Justice reiterated that his Ministry would provide support to the Bar's legal aid programme for indigent accused in cases referred to Rwanda.
4. With regard to the Decision of 6 June 2012 in Case No. ICTR-2005-89-R11 *bis* (para. 141) in the case of The Prosecutor v. Jean Uwinkindi, the ICTR Trial Chamber decided on a referral based on the allegations raised by the Prosecutor and the Kigali Bar, who confirmed that the right to legal representation was provided for in Rwandan legislation and guaranteed by a legal aid system whose funding is fairly sound.
5. Relying on the aforementioned arguments, the ICTR judges deemed that the factual claims of the Defence do not refute the statements written under oath by the Minister of Justice and the General Secretary of the Supreme Court, and found that the assurances that sufficient funds will be allocated were given in good faith (para. 153 of the aforementioned case).
6. ICTR judges also upheld the fundamental right of the Defence in the following terms: "Should Jean Uwinkindi's defence be prevented from carrying out its work effectively, the Order for Referral shall be quashed in accordance with Rule 11 *bis*" (para. 170 in the aforementioned case).
7. It follows that the financial contributions of the Government in terms of legal aid for the Bar Association must go through the Bar's accounts and not of the attorneys, which is why the Bar must be involved in the procedure of concluding a new contract.
8. More specifically, with regard to legal aid, the decision of the ICTR Appeals Chamber in this case (para. 84) cannot be clearer when stating

- that if Rwanda did not allocate sufficient funds, violating the right of the Accused to a fair trial, the referral order shall be repealed.
9. The draft contract that was forwarded to us for evaluation includes some ambiguities on the number of attorneys assigned in an international trial: Lead Counsel and Co-Counsel. Thus, Article 3.1 mentions the Defence team, while the signature lines reserved for the parties and the signatories of the contract show only one defence attorney. Consequently, the question arises: how can one attorney possibly take on binding commitments for others? (Article 64 of Law no. 45/2011 of 25 November 2011 governing contracts).
 10. The sum of 15,000,000 Rwandan francs envisaged for the fees for all legal proceedings in Article 4 of this draft agreement was rejected by the parties, including the Ministry of Justice. Why come back now to this amount, which is obviously a paltry and derisory figure.

1. The average length of international court proceedings is five years.

In this option, the two assigned attorneys, Lead Counsel and Co-Counsel, would offer their services to the detriment of the management of their respective law firms with the serious consequence of becoming insolvent.

The monthly fees allocated to each of them would be:

From 15,000,000 Rwandan francs = 125,000 Rwf
 $2 \times 12 \times 5$

The amount estimated in this way would not cover the monthly running expenses of one attorney's law firm.

2. The option of a procedure involving a confession and a guilty plea is not envisaged by MINIJUST, which could release the same sum of 15,000,000 Rwandan francs to attorneys who offered their services for a period not exceeding one month.

3. However, there are, of course, some credible points of reference, in particular:

- The ICTR and the Mechanism have provided in their attorney pay scales between 80 and 100 US dollars net per hour for the service offered by Counsel (*see* document in annex, pp. 14-15). All fees and expenses are to be borne by these Institutions.

- The ICC's scale also envisages for each attorney fees of between 80 and 100 US dollars net per hour. It must also be noted that all the attorneys' expenses during their work are entirely borne by the ICC.

- In the related file RP0002/12/HCCI, in the case of the ONPJ /National Public Prosecution Authority/ v. Jean UWINKINDI, the contract on legal assistance and representation signed on 1 November 2013 provides in its Article 4 fees of 1,000,000 Rwf net per month, per attorney.

- The new scale of the Bar Association fixed the hourly rate between 150,000 and 300,000 Rwf gross per hour for the services of an attorney, with the possibility of a 30 % increase in such complex cases as genocide (Articles 35 and 36).

11. With these practical data and reliable references, and also being aware of our country's economic realities, we humbly submit that the governing rules, such as the scale of the Bar Association, be rigorously applied in the matter of hourly rates, or to make use of the precedent in the case of *The Prosecutor v. Jean Uwinkindi*.
12. The draft contract stipulates in Article 4, line 3, that the amount of 15,000,000 Rwf includes all the costs incurred by the attorney in the country. This provision is not explicit about the costs of investigations within the country.
How can we fix a priori an amount for investigation costs which are not planned, in locations not yet known, and not specified?
13. Travel within the country would not be to the same places or for the same length of time in different cases.
14. Consequently, the cost of investigations within the country will vary from one case to the next.
15. Defence investigations that need to be conducted within the country and abroad must also find funding that will be suitable for the task. In addition, it should be emphasised that all the potential witnesses for Mr Jean Uwinkindi live in (see para. 153 of the aforementioned Decision of 6 June 2012, Case No. ICTR-2005-89-R11 *bis*).
16. With respect to investigations, it should be mentioned that, for example, the ICTR and the Mechanism reserve a budget of 100,000 US dollars net for attorneys' fees, not including transport and accommodation expenses (see document in annex, p. 11).
17. In our humble opinion, the costs of investigations should be released in accordance with the official applicable scale of the Rwandan Administration. This demonstrates to what extent the Defence is scrupulous and averse to excessive claims.
18. To close the matter of fees, it should be emphasised that the payment should be made from legal aid funds managed by the Rwandan Bar Association or from the account of the Bar responsible for allocating it to the appropriate party (see also items 1-4 of the present document).
19. Article 3, 1(b) includes terms that are likely to affect the independence of the profession of attorney guaranteed by Article 48, line 1, of Law no. 83/2013 of 11 September 2013 on establishing the Bar Association and determining its organisation and functioning and are therefore not appropriate.

The content of this disposition is furthermore repeated in logical terms in item C of the same article.

20. Article 3.2 of this draft contract grants the Ministry of Justice the responsibility for monitoring and assessing the activities of attorneys who are legally assigned to the Rwandan Bar Association (Article 59 of the aforementioned law on the Bar) and must ipso facto be removed.
21. Article 6, line 2, of this draft contract contains items that are vague, to say the least, and constitute a flagrant violation of the sacrosanct principle of an attorney's independence (Article 48, line 1, of the aforementioned law on the Bar), of the constitutional principles on the presumption of

innocence (Article 19) and the fundamental freedom of expression (Article 34) and should therefore be removed.

22. Lastly, we believe that the draft proposed to us does not address the concerns of Defence Counsel presented at our meeting of 4 December 2014.

We remain at your disposal for any further information that you may deem useful and thank you for taking the time to consider our letter.

Done in Kigali, 8 December 2014

Mr Gashabana Gatera,
Attorney-at-Law
/signed/

Mr Jean Baptiste Niyibizi,
Attorney-at-Law
/signed/

/stamped/

/handwritten: Annex 3/

REPUBLIC OF RWANDA

CONTRACT FOR LEGAL ASSISTANCE AND REPRESENTATION

BETWEEN

THE MINISTRY OF JUSTICE

AND

**DEFENCE COUNSEL FOR
Jean UWINKINDI**

CONTRACT No.

BETWEEN THE UNDERSIGNED:

The **Ministry of Justice**, hereinafter "**The Ministry**", represented by the Permanent Secretary/Deputy General Representative:

AND

Defence Counsel for **Jean UWINKINDI**:

1. Mr GATERA GASHABANA, attorney-at-law, acting as Lead Counsel
2. Mr Jean Baptiste NIYIBIZI, attorney-at-law, acting as Co-Counsel, hereinafter COUNSEL.

PREAMBLE

Considering the need for legal assistance before tribunals for persons prosecuted for having participated in the commission of the crime of Genocide against the Tutsis and other related crimes, transferred to Rwanda under international judicial cooperation, who do not have financial means to remunerate an Attorney;

Considering the wishes of the Ministry of Justice to promote access to justice for all,

IT WAS ACKNOWLEDGED AND AGREED AS FOLLOWS:

Article 1: Subject of the Contract

The present contract concerns Legal Assistance /illegible/ prosecuted for having participated in the commission of the crime of /?Genocide/ and other related crimes, /?transferred/ to Rwanda under international /illegible/ and does not have financial means to /illegible/ Counsel.

Article 2: Duration of Contract

The present Contract shall last for the duration of the case.

Article 3: Joint Mutual Obligations

3.1. Defence Counsel

Defence Counsel commit to:

- a) Assist the Accused Jean UWINKINDI before all /?levels of the court system/ and all stages of the proceedings;
- b) File reports to the Ministry of Justice of all /illegible/ their respective services;
- c) Send monthly progress reports on the case to the Bar and the Ministry of Justice until a decision /illegible/ is rendered;

3.2. Ministry of Justice

The Ministry of Justice commits to:

- a) Ensure the monitoring and /illegible/ of the activities of /?Counsel/;
- b) Provide funds for legal aid;
- c) Facilitate communication between Counsel and legal /illegible/;
- d) Pay fees according to the payment schedule /illegible/ of the present contract.

Article 4: Remuneration

Defence counsel, regardless of /illegible/ number /illegible/ fees in the form of a flat rate of 15 million Rwandan francs for all levels of the court system, payable as follows:

- a) Three million five-hundred thousand Rwandan francs (3, 500,000 /illegible/ contract:
- b) Four million Rwandan francs (4,000,000 Rwf) at the /illegible/ of a first-instance judgement:
- c) Two million five-hundred Rwandan francs (2,500,000 Rwf) /illegible/ on appeal
- d) Five million Rwandan francs (5,000,000 Rwf) at the presentation of a judgement on appeal.

Another contract will be negotiated for all the other channels of appeal for the accused. However, fees must not exceed /illegible/ Rwandan /?francs/ (3,000, 000 Rwf).

The amount of fifteen million Rwandan francs /illegible/ taxes payable to the Rwanda /rest illegible/.

Should the tribunal order an Attorney to travel /?abroad/ /illegible/ will be negotiated.

All the payments shall be made to account number.....

..... Bank in the name of

In case Counsel wish to change the account /illegible/ thirty (30) calendar days before the payment of /illegible/ invoices.

Article 5: Revision of the Contract

By mutual agreement, the parties may, /?as needed/ /illegible/. However, this revision must in no way affect the /illegible/ unchanged for the duration of the contract.

Article 6: Termination of the Contract

For legitimate reasons, and bearing in mind the /illegible/ reserves the right to unilaterally terminate the contract /illegible/ three (3) months.

The Ministry reserves the right to terminate the contract by giving advance notice in the following instances:

- a) if Counsel violates the ethnical rules of the Bar
- b) in case of fraud or corruption

- c) if Counsel commits any act for which it is liable
- d) if Counsel conducts itself inappropriately at the Tribunal so as to delay or obstruct the natural course of proceedings
- e) if Counsel makes statements of a nature to discredit the /?Government/ in the press and during the /?trial/.

Without prejudice to the /illegible/ sub-paragraph of the present article /illegible/ of the termination of the present contract /illegible/ the Law annexed to the present contract.

When the contract has been terminated, Counsel are required /illegible/ to their fellow colleagues who will succeed them in the same case and a final calculation of the sum /?to be reimbursed/ or the payment of fees due by one or the other side must cover the remaining fees in the case.

Article 7: Address and Communication

All communication /several words illegible/ the following address:

**Permanent Secretary/Deputy General Representative
Ministry of Justice
P.O. Box 160
Kigali, RWANDA**

Counsel for Jean UWINKINDI:

Mr GATERA GASHABANA, attorney-at-law
Mr Jean Baptiste KIYIBIZI, attorney-at-law

Article 8: Law Governing the Contract

The present Contract is regulated and interpreted according to the laws of Rwanda.

Article 9: Rules on Disagreement

In case of an objection to an interpretation or /illegible/ parties shall favour an amicable resolution. Should this not prove successful, the case /illegible/ relevant national courts.

Article 10: Entry into Force

The present contract shall enter into force on

For the Ministry of Justice

Counsel for /illegible/

**Isabelle KALIHANGABO
Permanent Secretary/Deputy General
Representative**

- 1. Attorney /illegible/
- 2. /illegible/

/handwritten: Annex 4/

CONTRACT FOR LEGAL ASSISTANCE AND REPRESENTATION

BETWEEN

THE RWANDA BAR

AND

**DEFENCE COUNSEL
FOR JEAN UWINKINDI**

IN THE PRESENCE OF

THE MINISTRY OF JUSTICE

CONTRACT no.....

BETWEEN THE UNDERSIGNED

- The Rwanda Bar, with its Head Office in Kigali, Kicukiro District, represented by **Attorney Athanase Rutabingwa**, President of the Bar Association, hereinafter **PRESIDENT**.

AND

- Defence Counsel for Jean Uwinkindi
1. Attorney Gatera Gashabana, acting for the present as Lead Counsel
2. Attorney Jean Baptiste Nyibizi, acting for the present as Co-counsel, hereinafter **COUNSEL**

IN THE PRESENCE OF

The Ministry of Justice, duly represented by the Permanent Secretary/Deputy General Representative; hereinafter the **MINISTRY**.

PREAMBLE

Considering the need for legal assistance before tribunals for persons prosecuted for having participated in the commission of the crime of Genocide against the Tutsis and other related crimes, transferred to Rwanda under international judicial cooperation, who do not have financial means to remunerate an Attorney;

Considering the wishes of both the Rwanda Bar and the Ministry of Justice to promote access to justice for all,

IT WAS ACKNOWLEDGED AND AGREED AS FOLLOWS:

Article 1: Subject of the Contract

The present contract concerns legal assistance for Jean Uwinkindi, prosecuted for having participated in the commission of the crime of genocide against the Tutsi and other related crimes, transferred to Rwanda under international judicial cooperation, and who does not have financial means to remunerate Counsel.

Article 2: Duration of the Contract

The present Contract shall last for the duration of the case.

Article 3: JOINT AND MUTUAL OBLIGATIONS

3.1. Defence Counsel

Defence Counsel commit to:

- Assist the accused Jean UWINKINDI before all levels of Rwandan courts and all stages of the proceedings;

- File reports to the Bar and the Ministry of Justice of all measures taken in the execution of their respective services;
- Send monthly progress reports on the case to the Bar and the Ministry of Justice until a final decision is rendered.

3.2. The Bar

- Monitor the activities related to the management of the Jean Uwinkindi case;
- Seek opinions from defence counsel on all possible options to ensure that the accused receives an irreproachable defence;
- Monitor jointly with the Minister of Justice the progress of the proceedings;
- Issue observations or recommendations on the reports received to improve future activities related to legal aid.

3.3 Ministry of Justice

- Ensure together with the Bar the monitoring and evaluation of the activities of Counsel;
- Provide funds for legal aid;
- Facilitate communication between Defence Counsel and the judicial bodies (Supreme Court, ONPJ /National Public Prosecution Authority/ and the Prisons);
- Pay fees according to the payment schedule provided for in Article 4 of the present contract.

Article 4: Remuneration

Defence Counsel shall be paid a flat monthly rate upon presentation of an invoice and a report on the progress of the case:

The flat rate payment per Attorney shall be set to one million Rwandan francs net (1,000,000 Rwf) to be paid monthly.

Article 5: Investigation Fees

Expenses related to investigations shall be negotiated between the contractual parties and dealt with on a case-by-case basis.

Article 6: Revision of Contract

By mutual agreement and if the need arises, the parties may revise the terms of the present contract within six months.

Article 7: Termination of the Contract

For legitimate reasons and mainly bearing in mind the complexity of the case, each party reserves the right to terminate the contract and must give at least three months advance notice.

Once the contract has been terminated, Counsel are required to return all case exhibits to the colleagues who will succeed them in the same case.

Article 8: Rules on Disagreement

In case of an objection to an interpretation or execution of the present contract, the parties shall favour an amicable resolution.

Article 10: Entry into Force

The present contract shall enter into force on the first of November 2013.

DEFENCE COUNSEL

**Mr Gatera Gashabana, Attorney-at-Law /signed/
Mr Jean Baptiste Niyibizi, Attorney-at-Law /signed/**

RWANDA BAR

**Represented by Mr Rutabingwa Athanase, Attorney-at-Law
President of the Bar /Rwanda Bar Association incoming stamp/**

MINISTRY OF JUSTICE

**Represented by Mr Pascal Ruganintwali
Permanent Secretary, Deputy General Representative / signed/**

/Annex 5 in Kinnyarwanda/

ANNEXE B

CONTRACT BETWEEN THE BAR

AND COUNSEL FOR JEAN UWINKINDI

The Bar, represented by **Mr Athanase Rutabingwa**, on the one hand;

AND

Counsel for Mr Jean Uwinkindi, **Messrs Gatera Gashabana** and

Jean Baptiste Niyibizi, on the other hand:

Introduction

Mindful of Organic Law No. 03/2009/OL of 26 May 2009 modifying and complementing Organic Law No. 11/2007 of 16 March 2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States, especially Article 2 thereof, points 1 and 6 and Article 3 thereof;

Mindful of the legal aid agreement signed on 3 August 2012 between the Ministry of Justice and the Bar, especially Articles 1, 2, 3, 4, 8 thereof point 1, and Article 10 thereof point 2;

Mindful of the conclusions of the meeting of 8 October 2012 held between the Ministry of Justice and the Bar to fix the fees to be paid to Counsel for Mr Jean Uwinkindi;

It has been agreed as follows:

Article 1: Assignment of Counsel for Mr Jean Uwinkindi

Messrs Gatera Gashabana and Jean Baptiste Niyibizi have been assigned to provide legal assistance to Mr Jean Uwinkindi before the courts until the conclusion of his case.

To enable Messrs Gatera Gashabana and Jean Baptiste Niyibizi to prepare the case, the authorities concerned shall facilitate their visits to the client.

Article 2: Payment

Messrs Gatera Gashabana and Jean Baptiste Niyibizi shall be paid on the basis of the Bar Fees Schedule, namely 30,000 RWF per hour. However, the provision of their services shall not exceed six hours per day.

Article 3: Paid hearing days, visits paid to the Accused in prison and preparation of the case file

Counsel may file a claim for hearing days as scheduled by the Court, regardless of whether there was a hearing or not.

Regarding visits paid to their client, Counsel shall fill out a form which shall be drafted by the Ministry of Justice and which they shall then forward to the director of the prison. The form shall state the days and hours of visits and shall be kept by the director of the prison where the Accused is held in custody.

The time spent on preparing the case file shall be fixed at four hours per day and shall not exceed two days per week during the first three months following the performance of the present contract. However, the three-month period may be extended by mutual agreement between the parties to the contract.

Article 4: Mode of payment of fees

Messrs Gatera Gashabana and Jean Baptiste Niyibizi shall send their monthly bill to the Bar which shall then forward it to the Ministry of Justice, the authority responsible for paying the fees of Counsel for Mr Jean Uwinkindi.

The Ministry of Justice shall pay the bill forwarded to it by the Bar within a period of 10 days.

Article 5: Revision of the present contract

Three months following the performance of the present contract, the two parties may decide to revise it in order to resolve any potential difficulty arising from its performance.

Articles 6: Disputes

Any potential dispute arising from the performance of the present contract or from its termination shall be resolved in accordance with the provisions of the legal aid agreement signed on 3 August 2012 between the Ministry of Justice and the Bar.

Article 7: Entry into force

The present contract shall enter into force on the day it is signed by the parties.

Services provided by Messrs Gatera Gashabana and Jean Baptiste Niyibizi prior to this contract shall be paid on the basis of the Fees Schedule used by the Bar and which Schedule is referred to in Article 2 of the present contract.

Done at Kigali on 31 October 2012

[Signed]

Mr Athanase Rutabingwa President of the Bar Association

[Signed]

Mr Gatera Gashabana

Counsel for Mr Jean Uwinkindi

[Signed]

Mr Jean Baptiste Niyibizi Counsel for Mr Jean Uwinkindi

Seen and approved by:

Mr Pascal Bizimana Ruganintwali

Permanent Secretary/Deputy Keeper of the Seals

Responsible for the enforcement of the present contract

/handwritten: Annex 6/

CONTRACT FOR LEGAL ASSISTANCE AND REPRESENTATION

BETWEEN

THE RWANDA BAR

AND

**DEFENCE COUNSEL
FOR JEAN UWINKINDI**

IN THE PRESENCE OF

THE MINISTRY OF JUSTICE

CONTRACT no.....

BETWEEN THE UNDERSIGNED

- The Rwanda Bar, with its Head Office in Kigali, Kicukiro District, represented by **Attorney Athanase Rutabingwa**, President of the Bar Association, hereinafter PRESIDENT.

AND

- Defence Counsel for Jean Uwinkindi
1. Attorney Gatera Gashabana, acting for the present as Lead Counsel
2. Attorney Jean Baptiste Nyibizi, acting for the present as Co-counsel, hereinafter COUNSEL

IN THE PRESENCE OF

The Ministry of Justice, duly represented by the Permanent Secretary/Deputy General Representative; hereinafter the MINISTRY.

PREAMBLE

Considering the need for legal assistance before tribunals for persons prosecuted for having participated in the commission of the crime of Genocide against the Tutsis and other related crimes, transferred to Rwanda under international judicial cooperation, who do not have financial means to remunerate an Attorney;

Considering the wishes of both the Rwanda Bar and the Ministry of Justice to promote access to justice for all,

IT WAS ACKNOWLEDGED AND AGREED AS FOLLOWS:

Article 1: Subject of the Contract

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The present Contract shall last for the duration of the case.

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3.1. Defence Counsel

Defence Counsel commit to:

- Assist the accused Jean UWINKINDI before all levels of Rwandan courts and all stages of the proceedings;

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- Send monthly progress reports on the case to the Bar and the Ministry of Justice until a final decision is rendered.

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- Monitor jointly with the Minister of Justice the progress of the proceedings;
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3.3 Ministry of Justice

- Ensure together with the Bar the monitoring and evaluation of the activities of Counsel;
- Provide funds for legal aid;
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Article 5: Investigation Fees

Expenses related to investigations shall be negotiated between the contractual parties and dealt with on a case-by-case basis.

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By mutual agreement and if the need arises, the parties may revise the terms of the present contract within six months.

Article 7: Termination of the Contract

For legitimate reasons and mainly bearing in mind the complexity of the case, each party reserves the right to terminate the contract and must give at least three months advance notice.

Once the contract has been terminated, Counsel are required to return all case exhibits to the colleagues who will succeed them in the same case.

Article 8: Rules on Disagreement

In case of an objection to an interpretation or execution of the present contract, the parties shall favour an amicable resolution.

Article 10: Entry into Force

The present contract shall enter into force on the first of November 2013.

DEFENCE COUNSEL

Mr Gatera Gashabana, Attorney-at-Law /signed/

Mr Jean Baptiste Niyibizi, Attorney-at-Law /signed/

RWANDA BAR

Represented by Mr Rutabingwa Athanase, Attorney-at-Law

President of the Bar /Rwanda Bar Association incoming stamp/

MINISTRY OF JUSTICE

Represented by Mr Pascal Ruganintwali

Permanent Secretary, Deputy General Representative /signed/

/Letter in Kinyarwanda/

Mr Gatera Gashabana

Mr Jean Baptiste Niyibizi

Advocates

Kigali, 28 December 2014

To the President of the Chamber trying Case No. RP0001/12/HCCI/Kigali

Subject: Request for adjournment of the hearing of 30 December 2014 in Case No. RP0002/12/HCCI, *NPPA v. Jean Uwinkindi*

Dear Sir,

We have the honour to request you, in your capacity as President of the Chamber trying the above-mentioned case, to adjourn the hearing scheduled for 30 December 2014.

We request adjournment of the hearing because the Ministry of Justice has terminated the legal aid contract concluded between us, the Ministry of Justice and the Bar (see Annexe).

While waiting to hand over the case file to the new counsel who will replace us, we will take care of procedural matters but will no longer be able to deal with the substantive issues in the case. We request adjournment of the trial in order to consult with the officials of the Bar who assigned us and to prepare our client.

We thank you in advance for considering this request and wish you a Merry Christmas and a Happy New Year 2015.

For Jean Uwinkindi:

[Signed]

Mr Gatera Gashabana, Counsel

[Signed]

Mr Jean Baptiste Niyibizi, Counsel

[Seal of the Bar Association dated 30 December 2014 + signature]

cc:

- The Prosecutor-General
- The President of the Bar Association

REPUBLIC OF RWANDA

/handwritten: Annex 7/

Kigali /22 December 2014/
No. 2185/080 MOK/LSD

MINISTRY OF JUSTICE

P.O. Box 160 KIGALI

Tel: (250) 252586561 Fax: (250) 252586509

Email: mjust@minijust.gov.rw

Mr GATERA GASHABANA

Attorney at the Rwanda Bar

KIGALI

Subject: Termination of Contract with Prior Notice

Dear Mr GATERA,

In reference to the contract for legal assistance and representation of 1 November 2013 signed between the Ministry of Justice and counsel for the accused Jean UWINKINDI, Attorney Jean Baptiste NIYIBIZI and yourself, and following the meeting of 4 December 2014 where the Ministry of Justice proposed a new contract to replace the previous one and explained the reasons why, and in relation to your letter of 8 December 2014 in which you provided your opinion and observations on this new draft contract and refused to accept the changes to the contract in effect;

As there has been no agreement on this subject despite the clear explanations given during the above meeting as to the reasons for the proposal, namely the need to bring the contract in line with the existing policy of legal aid, to harmonize legal aid contracts for similar cases and to ensure respect for the principle of equal treatment by drafting a model contract that is more or less standard;

I regret to inform you that your contract has been terminated with prior notice of three months as provided for under Article 7. The months shall be counted from the day of receipt of the present letter. During the period of prior notice, you will of course continue duly to assist and represent the beneficiary and claim the corresponding fees.

Isabelle KALIHANGABO

Permanent Secretary/Deputy General Representative

/signed/

/illegible stamp/

Cc:

- His Excellency the President of the Supreme Court
- Minister of Justice/*Garde des Sceaux*
- Public Prosecutor of the Republic
- President of the High Court
- President of the Rwanda Bar

KIGALI