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REPUBLIC OF RWANDA
NATIONAL PUBLIC PROSECUTION AUTHORITY
ORGANE NATIONAL DE POURSUITE JUDICIAIRE
UBUSHINJACYAHA BUKURU



1148
JN

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THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr. John Hocking

PROSECUTOR

V.

JEAN UWINKINDI

PUBLIC

**REPUBLIC OF RWANDA'S RESPONSE TO JEAN UWINKINDI'S REQUEST FOR
REVOCATION OF THE REFERRAL ORDER**

Republic of Rwanda	Counsel for Jean Uwinkindi	Office of the Prosecutor
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		James J. Arguin

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1. The Republic of Rwanda is committed to ensuring a fair trial in Uwinkindi's case and all other cases referred by the International Criminal Tribunal for Rwanda (ICTR) pursuant to ICTR Rule 11 *bis*. It has demonstrated this commitment most recently by reinvigorating its legal aid system for indigent accused and adopting a new practice direction relating to the conduct of defence investigations. Both innovations are directly relevant to Uwinkindi's most recent challenges to the referral order.
2. Unlike many national jurisdictions, Rwanda has established a system of free legal aid support exclusively supported by government funding for all cases subject to the Transfer Law.¹ To achieve the appropriate balance between ensuring an effective defence and managing limited public funds, Rwanda has experimented over the past year with different payment structures. It has shifted away from an hourly-rate scheme to a new uniform flat-rate scheme. The *ad hoc* tribunals experienced a similar shift from hourly to flat-rate schemes and Rwanda has benefitted from those experiences.²
3. The new flat-rate program has attracted broad support among members of the Rwandan Bar Association. As noted in the MICT Prosecutor's submission, over 60 qualified counsel, each with more than 10 years of experience, have signed up for the new program.³ This large roster of experienced counsel is available for assignment in all cases subject to Rwanda's Transfer Law. Uwinkindi is one of the many accused who has received and will continue to receive free legal aid paid for by Rwandan taxpayers.
4. Rwanda has introduced other innovations to its justice sector to meet the particular demands raised by cases subject to its Transfer Law. Most recently, the Chief Justice of

¹ Republic of Rwanda, Ministry of Justice Legal Aid Policy, September 2014, Art. 3.1 (b) (V); see Report of the Special Rapporteur on the Independence of Judges and Lawyers, Human Rights Council, 23rd Session, A/HRC/23/43, 15 March 2013, paras. 58-79 (describing the varied approaches to legal aid followed by different countries, including provisions for *pro bono* services).

² Göran Sluiter, Håkan Friman, Suzannah Linton, Sergey Vasiliev, Salvatore Zappalà (editors), *International Criminal Procedure Principles and Rules*, (Oxford University Press, Oxford, UK, 2013) p. 1245.

³ Letter from Isabelle Kalihangabo, Permanent Secretary/Deputy Attorney-General of the Ministry of Justice to the Commissioner General of the Rwanda Correctional Service forwarding a letter dated 31 July 2015 from the President of the Bar Association of Rwanda to the Minister of Justice/Attorney-General containing the list of 66 lawyers whose services can be relied upon when an indigent accused is transferred to Rwanda.

Rwanda adopted a new practice direction relating to the allocation of costs to provide for defence investigations.⁴ This is a novel approach for a civil law jurisdiction like Rwanda. Under Rwandan law, the judicial police are directed to gather evidence for both the prosecution and defence.⁵ Many other civil law jurisdictions follow a similar procedure whereby primary responsibility for conducting defence investigations lies with the police. Nevertheless, as Rwanda previously submitted, the defence is free to seek further investigations conducted by the judicial police, as well as conduct their own independent defence investigations.⁶

5. To codify this practice and address some of the difficulties experienced in Uwinkindi's case (which are detailed in the MICT Prosecutor's response), the Chief Justice of Rwanda adopted the new practice direction. The practice direction specifies how requests for additional funds for defence investigations—beyond those already conducted by the judicial police—should be provided. It also provides guidance on how the funds made available for these defence investigations will be administered.
6. These innovations demonstrate Rwanda's continued commitment to ensuring fair trial rights in all cases subject to the Transfer Law. They also address the primary complaints raised in Uwinkindi's pending request for revocation. Uwinkindi's right to free legal assistance has been respected at all stages of his trial proceedings. Uwinkindi's obstinate and unjustified refusal to accept the counsel appointed to represent him establishes no fair trial violation as the Rwandan judiciary has clearly and correctly held.⁷ Uwinkindi's further complaint about the alleged lack of funding for defence

⁴ Practice Direction by the Chief Justice on Allocation of Means for Further Defense Investigations for Indigent Accused Transferred to Rwanda.

⁵ Rwanda explained the conduct of defence investigations at paras. 27-31 of its Amicus Brief filed on 18 February 2011 in Uwinkindi's referral proceedings.

⁶ Rwanda Amicus Brief, paras. 30-31.


⁷ *Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/12/HCCI, Decision, 6 February 2015; *Uwinkindi v. Public Prosecution*, The Supreme Court Sise at Kigali, Trying Criminal Cases, case no. RPA 0011/15/CS, Decision, 24 April 2015.

investigations is belied by the funds that already have been extended by the government for the conduct of defence investigations in Rwanda and further addressed by the Chief Justice's practice direction.⁸ With respect to the other largely undeveloped issues identified in Uwinkindi's request, Rwanda incorporates and relies upon the arguments contained in the MICT Prosecutor's submission.

7. For all of these reasons, Uwinkindi fails to demonstrate any fundamental violation of his right to a fair trial or any breach of the conditions imposed on the referral of his case to Rwanda. His request for revocation of the referral order should accordingly be denied.
8. Any future challenges that Uwinkindi may seek to raise about the conduct of his proceedings in Rwanda can and should be addressed in the appropriate forum—Rwanda. The MICT should not be called upon to second guess the considered decisions of the responsible Rwandan officials where, as here, no fair trial rights have been impugned.

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Dated and signed this 4th day of September 2015 at Kigali, Rwanda.


Richard MUHUMUZA
Prosecutor General



⁸ Practice Direction by the Chief Justice on Allocation of Means for Further Defense Investigations for Indigent Accused Transferred to Rwanda.