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04-09-2015  
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Mechanism for International  
Criminal Tribunals

Case No: MICT-12-25-R14.1

Date: 4 September 2015

Original: English

**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***

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**PROSECUTION BRIEF RESPONDING TO  
UWINKINDI'S REVOCATION REQUEST**

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**Office of the Prosecutor:**  
Hassan Bubacar Jallow  
James J. Arguin  
François Nsanzuwera

**Counsel for Jean Uwinkindi:**  
Gatera Gashabana

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## I. INTRODUCTION

1. Uwinkindi's ongoing trial proceedings in Rwanda are being conducted fairly and in full compliance with all international fair trial standards and conditions for referral. Rwanda has respected Uwinkindi's right to free legal representation by ensuring that he is assigned counsel at all times. Uwinkindi's refusal to accept the services of assigned counsel, despite the reasoned decisions of Rwanda's High Court and Supreme Court explaining that he had no right to select his own assigned counsel, establishes no violation of fair trial standards or the conditions for referral. Rwanda also has made available adequate funds for defence investigations—beyond those already conducted by the judicial police—and adopted a new practice direction governing how applications for additional funding may be obtained. Uwinkindi's remaining challenges to his lawful arrest upon transfer to Rwanda, his pretrial detention within Rwanda, the impartiality of Rwandan trial judges, and the adaption of his indictment to comply with Rwandan law are all unsubstantiated and demonstrate no fundamental violation of his fair trial rights. The Trial Chamber should accordingly reject his request for revocation.

## II. FACTUAL BACKGROUND

2. When Uwinkindi was arrested in Rwanda on 19 April 2012, the police immediately informed him of his right to counsel; that notification was recorded in an arrest report signed by the police and by Uwinkindi himself.<sup>1</sup> Four days later, on 23 April 2012, Uwinkindi appeared before the prosecutor of the Intermediate Court of Nyarugenge, who, at Uwinkindi's request, postponed any interrogation until such time as an attorney was appointed to represent him.<sup>2</sup> The Bar Association assigned Gatera Gashabana as Uwinkindi's counsel on 26 April 2012.<sup>3</sup> With the assistance of counsel, Uwinkindi elected not to give a statement to the prosecutor.<sup>4</sup>

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<sup>1</sup> Annex 3, Police Arrest Report.

<sup>2</sup> Annex 4, 23 April 2012 Pro-Justitia.

<sup>3</sup> April 2012 MR, para. 3.

<sup>4</sup> June 2012 MR, para. 17.

3. On 27 April 2012, at Uwinkindi's initial appearance, his attorney requested and obtained a four-month continuance to prepare for the bail hearing, and "a longer period" to prepare for trial.<sup>5</sup> In August that same year, the Intermediate Court denied Uwinkindi's request for bail and dismissal of the case, and in September this ruling was confirmed on appeal.<sup>6</sup> The formal investigation phase of the case concluded on 28 September 2012 when the prosecution forwarded its case file to the High Court; Uwinkindi had been in pretrial detention for five months.<sup>7</sup>

4. Once the proceedings reached the High Court, further delays occurred because Uwinkindi failed to present a timely and sufficiently detailed budget for the investigation of defence witnesses living abroad. In March 2013—eleven months after his attorney was appointed, and only after having been prompted by the High Court—the defence finally presented a budget for investigation of witnesses abroad.<sup>8</sup> And in August 2013—another two months after the court had directed the defence to do so<sup>9</sup>—a budget was finally provided to the Ministry of Justice.<sup>10</sup> In that budget, Uwinkindi's defence proposed that they receive approximately 100 million RWF, or 140,000 USD, for investigating witnesses abroad. This proposed investigation budget was bereft of details: each line item included only the name of a foreign city, the number of witnesses to be contacted in that city, and the number of days the defence wanted to spend there.<sup>11</sup> On its face, the budget was unreasonable: for example, Uwinkindi proposed that both his attorneys spend seven days in New York, at a cost of 10,000 USD, to contact a single witness. Although Uwinkindi's defence

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<sup>5</sup> April 2012 MR, para. 4.

<sup>6</sup> August 2012 MR, paras. 3, 11; September 2012 MR, para. 10.

<sup>7</sup> October-November 2012 MR, para. 3.

<sup>8</sup> March 2013 MR, para. 26.

<sup>9</sup> Annex 5, 16 May 2013 High Court Decision, para. 24.

<sup>10</sup> Annex 6, 5 August 2013 Letter, p. 25.

<sup>11</sup> Annex 6, 5 August 2013 Letter, p. 25.

attorneys knew that the Rwandan authorities considered this budget unacceptable,<sup>12</sup> they never attempted to revise and re-submit it.

5. Uwinkindi’s trial itself began on 14 May 2014, and in the following months the parties presented written and oral submissions on the case.<sup>13</sup> In December 2014, Rwanda adopted a new flat-fee structure for its legal aid program, which was aimed at harmonizing the fees paid to assigned defence counsel in all referred or extradited cases subject to the Transfer Law.<sup>14</sup> The Ministry of Justice offered a new legal aid contract to Uwinkindi’s attorneys, but they rejected it on 8 December 2014.<sup>15</sup> As a consequence, Rwandan authorities exercised their right under defence counsel’s existing legal aid contract<sup>16</sup> to terminate the agreement by providing three months’ advance notice.<sup>17</sup>

6. Uwinkindi’s attorneys could have represented Uwinkindi during the three remaining months of the existing contract, and used that time to continue negotiations on the contract terms—negotiations to which Rwanda was open on all terms apart from the flat fee itself.<sup>18</sup> Instead, Uwinkindi’s attorneys told the High Court, on 31 December 2014, that they could not continue to represent their client, either because they would be using the three months to hand over the file to successor

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<sup>12</sup> January-February 2014 MR, para. 34; Annex 7, Contrat d’Assistance et de Représentation en Justice between the Rwanda Bar Association and Defence Counsel for Uwinkindi, Maître Gatera Gashabana and Maître Jean Baptiste Niyibizi, valid as of 1 November 2013 (specifically requiring case-by-case evaluation of funds necessary to conduct investigations); May 2014 MR, para. 66; September 2013 MR, para. 19; December 2014 Second MR, para. 36.

<sup>13</sup> May 2014 MR, para. 4.

<sup>14</sup> January 2015 MR, para. 33.

<sup>15</sup> Annex 8, 8 December 2014 Letter.

<sup>16</sup> Annex 7, Contrat d’Assistance et de Représentation en Justice between the Rwanda Bar Association and Defence Counsel for Uwinkindi, Maître Gatera Gashabana and Maître Jean Baptiste Niyibizi, Article 7: “Pour des motifs légitimes et surtout compte tenu de la complexité du litige chaque partie se réserve le droit de procéder à sa résiliation, moyennant un préavis de trois mois. Lorsque le contrat est résilié, les Conseils sont tenus de remettre toutes les pièces du dossier aux confrères qui leur succèdent dans la même affaire.”

<sup>17</sup> Annex 9, 6 January 2015 Minutes.

<sup>18</sup> Annex 9, 6 January 2015 Minutes; January 2015 MR, para. 37.

counsel,<sup>19</sup> or because their representation during that time would not be helpful to him.<sup>20</sup> The High Court requested the defence attorneys to continue negotiations with the Ministry of Justice in order to resolve the impasse about fees, and further requested that they inform the Court at the next hearing, on 8 January 2015, whether they would agree to continue representing Uwinkindi.<sup>21</sup>

7. At court hearings held on 8 and 15 January 2015, Uwinkindi’s attorneys did not respond to the High Court’s repeated requests for clarification as to whether they would continue to represent Uwinkindi.<sup>22</sup> They asked instead that the Court grant Uwinkindi’s motion for a stay of proceedings<sup>23</sup> to allow time for counsel’s status to be resolved, but provided no indication as to how this could be achieved.<sup>24</sup>

8. When the High Court rejected the request for stay on 15 January 2015, Uwinkindi’s attorneys requested that the proceedings be suspended pending their appeal of the adverse decision on the stay. When the defence request for suspension pending interlocutory appeal was denied, Uwinkindi’s attorneys abandoned the hearing in an attempt to unilaterally effect a *de facto* stay of proceedings.<sup>25</sup> Uwinkindi was left in the courtroom, unrepresented.<sup>26</sup> Confronted with counsel’s abandonment of their client, the High Court fined defence counsel for intentionally delaying the proceedings and then, finding that the hearing could not continue while Uwinkindi lacked legal assistance, adjourned until 21 January 2015.<sup>27</sup>

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<sup>19</sup> December 2014 Second MR, paras. 50, 54.

<sup>20</sup> December 2014 Second MR, para. 53.

<sup>21</sup> December 2014 Second MR, para. 56.

<sup>22</sup> January 2015 MR, para. 8.

<sup>23</sup> January 2015 MR, para. 6.

<sup>24</sup> January 2015 MR, paras. 9 *et seq.*

<sup>25</sup> January 2015 MR, para. 56 (Gashabana admitted counsel left the hearing in order “not to proceed with the trial”).

<sup>26</sup> January 2015 MR, paras. 8–28.

<sup>27</sup> January 2015 MR, paras. 8–28.

9. The defence attorneys boycotted the 21 January hearing and, once again, Uwinkindi was left to appear in court alone.<sup>28</sup> The High Court, faced with Uwinkindi's assertion that he did not want to proceed without legal assistance and with the defence attorneys' failure to appear, acted immediately to ensure Uwinkindi's continued legal representation by directing the Bar Association to assign replacement counsel.<sup>29</sup> The Bar Association assigned two experienced attorneys, Hishamunda and Ngabonziza,<sup>30</sup> to represent Uwinkindi.<sup>31</sup>

10. Uwinkindi, however, refused to meet with or talk to his newly assigned counsel.<sup>32</sup> Although the new counsel were always available to him, Uwinkindi would not take advantage of the services they offered. Counsel, on their part, declared that they would represent Uwinkindi professionally<sup>33</sup> and asked that he understand their obligations and meet with them to prepare the case.<sup>34</sup> As early as 3 March 2015, Uwinkindi's new defence counsel planned to ask the High Court for additional time to prepare and for a trial *de novo*,<sup>35</sup> but Uwinkindi refused to recognize the validity of their assignment as his counsel.

11. The Supreme Court confirmed Hishamunda's and Ngabonziza's appointment as Uwinkindi's assigned counsel in its 24 April 2015 decision on Uwinkindi's appeal.<sup>36</sup> Shortly thereafter, new counsel requested more time to prepare for trial and for a trial *de novo*.<sup>37</sup> The High Court granted both motions, ordering that the defence would have three additional months to prepare the case, that witnesses from

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<sup>28</sup> January 2015 MR, paras. 44–45.

<sup>29</sup> January 2015 MR, paras. 44–45.

<sup>30</sup> Annex 10, 6 February 2015 High Court Decision, upheld by 24 April 2015 Supreme Court Decision (Annex 11).

<sup>31</sup> Annex 12, 29 January 2015 Letter; Annex 13, New Counsels' CVs; February 2015 MR, *see, e.g.*, para. 14.

<sup>32</sup> *See, e.g.*, February 2015 MR, para. 8; March 2015 MR, paras. 8, 16; May-June 2015 MR, para. 30.

<sup>33</sup> February 2015 MR, para. 14.

<sup>34</sup> May-June 2015 MR, para. 39.

<sup>35</sup> March 2015 MR, para. 35.

<sup>36</sup> Annex 11, 24 April 2015 Supreme Court Decision, para. 67.

<sup>37</sup> May-June 2015 MR, paras. 36, 38.

both sides would be heard again, and that the trial would resume on 10 September 2015.<sup>38</sup>

### III. STANDARD OF REVIEW

12. As the party seeking revocation, Uwinkindi bears the burden of showing that “it is clear that the conditions for referral of the case are no longer met,” and that revocation is necessary to further “interests of justice.”<sup>39</sup>

13. Revocation of a referral order is a “remedy of last resort.”<sup>40</sup> “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.<sup>41</sup> 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.<sup>42</sup>

14. 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 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.<sup>43</sup>

15. 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

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<sup>38</sup> Annex 14, 9 June 2015 High Court Decision, paras. 15, 21–22.

<sup>39</sup> MICT Statute, Article 6(6).

<sup>40</sup> *Uwinkindi* Decision, para. 217, affirmed by *Uwinkindi* Appeal Decision, para. 79.

<sup>41</sup> *Uwinkindi* Decision, para. 217.

<sup>42</sup> *Munyagishari* 3 May 2013 Appeal Decision, 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 under international law).

<sup>43</sup> ICTR Rules, Rule 11*bis* (F); MICT Rules, Rule 14. While Rule 14 is silent, the Appeals Chamber has recognized that the MICT Rules should be interpreted in a manner consistent with the ICTR Rules; *Munyagishari* 25 February 2013 Appeal Decision, paras. 5–6.

step of revoking the referral of a case from a national jurisdiction.<sup>44</sup> 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.

#### IV. ANALYSIS

##### A. *Right to counsel respected*

16. Rwanda has respected Uwinkindi's right to be assigned counsel at no cost, and at all times during the proceedings assigned counsel were available to assist him. Uwinkindi has no right to personally select any specific assigned counsel. Moreover, by refusing to accept assigned counsel who were available to represent him at the hearings in March 2015, Uwinkindi effectively waived his right to representation by counsel at those proceedings. Lastly, Uwinkindi's right to effective representation was ensured because the new counsel assigned to him were duly admitted members of the bar, with ample experience to represent him.

##### 1. *No right to select specific assigned counsel*

17. In January 2015, after Gatera Gashabana and Jean Baptiste Niyibizi, Uwinkindi's then-assigned counsel, walked out of one on-going court hearing and refused to appear for the next, the High Court reasonably found that they had ceased to represent Uwinkindi.<sup>45</sup> With Uwinkindi standing alone in the courtroom, unrepresented, the High Court took quick and appropriate action by directing the Bar Association to assign two new, experienced counsel, Hishamunda and Ngabonziza, to take over his representation. By that action, the High Court ensured that assigned counsel were always available to Uwinkindi as the trial proceedings continued.

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<sup>44</sup> See *Uwinkindi* Decision, para. 217.

<sup>45</sup> January 2015 MR, para. 50; Annex 15, 21 January 2015 High Court Decision.



18. Article 14 of the ICCPR, which is incorporated into Article 20 of the ICTR Statute, sets the standards for international fair trial rights.<sup>46</sup> These fair trial rights do not give an indigent accused the right to have specific counsel assigned to represent him; nor do they require that indigent accused be allowed to select from a list of several counsel.

19. Under Article 14(3)(d) of the ICCPR,<sup>47</sup> indigent accused have the right to “have legal assistance assigned ... without payment.” The Human Rights Committee, which adjudicates complaints brought under the ICCPR,<sup>48</sup> has consistently held that the right to free counsel does not include the right to choose which counsel is assigned. In *Berry v. Jamaica*, the Human Rights Committee rejected a complaint that a counsel had been assigned without the consent of the indigent accused, holding that “article 14, paragraph 3(d), does not entitle an accused to choose counsel provided to him free of charge.”<sup>49</sup> This principle has been reiterated in a consistent line of Human Rights Committee jurisprudence.<sup>50</sup>

20. Similarly, the right to assigned counsel under ICCPR Article 14(3)(d) does not give an indigent accused the right to select assigned counsel from a list. In *Berry v. Jamaica*, the complainant was not offered a list of counsel to choose from; rather, counsel was assigned to him without his consent and on very short notice.<sup>51</sup>

21. Relying on this established jurisprudence, the Rwandan Supreme Court correctly found that Uwinkindi had no right to pick from a list the counsel assigned to represent him free of charge.<sup>52</sup> Merely that Rwanda had previously provided

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<sup>46</sup> See *Uwinkindi* Decision, paras. 22, 24. Paragraph 22 of the *Uwinkindi* Appeal Decision finds that an accused in a referred case must be “accorded the rights set out in Article 20 of the [ICTR Statute]”. The rights under Article 20 of the ICTR Statute, however, simply incorporate the binding treaty provisions of Article 14 of the ICCPR (Rwanda acceded to the ICCPR on 16 April 1975).

<sup>47</sup> Identical to ICTR Statute Article 20(4)(d).

<sup>48</sup> ICCPR, Article 28.

<sup>49</sup> *Berry v. Jamaica*, para. 11.6.

<sup>50</sup> See, e.g., *Chaplin v. Jamaica*, para. 8.3; *Bennett v. Jamaica*, para. 6.6.

<sup>51</sup> *Berry v. Jamaica*, paras. 3.7, 11.6.

<sup>52</sup> Annex 11, 24 April 2015 Supreme Court Decision, para. 52.

Uwinkindi and other indigent accused in transfer cases with an opportunity to select counsel from a list did not oblige Rwanda to provide a list every time a change in counsel occurred, without regard to the interests of sound judicial administration and efficiency.

22. The circumstances confronting the High Court at Uwinkindi's 21 January 2015 hearing demonstrate this point. After several months of trial preliminaries, witness testimony was ready to be presented. In the midst of trial, defence counsel boycotted the proceedings. To ensure that the case proceeded without further disruption, the High Court acted expeditiously by directing the Bar Association to assign Uwinkindi replacement counsel and, thereby, ensure that there was no gap in his legal representation.

23. Admittedly, the practice at the Tribunals has been to allow the accused to express a preference for assignment from a list of counsel.<sup>53</sup> This practice, however, is not mandated under international fair trial standards, as the consistent jurisprudence of the Human Rights Committee establishes. In following this practice the Tribunals simply elected to go beyond the ICCPR's requirements. And even under the Tribunals' practice, the Registrar is not necessarily bound to accept the accused's choice of counsel from a list, particularly where the interests of justice could be impacted by the choice.<sup>54</sup>

*2. Uwinkindi waived his right to representation by refusing to accept available assigned counsel*

24. At the hearings held on 3–5 and 10–12 March 2015, the High Court described Uwinkindi as not having legal assistance because, although his new assigned counsel were present and available, he refused to accept their services.<sup>55</sup> Uwinkindi's position at these hearings was that he was entitled to decide which counsel would

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<sup>53</sup> *Blagojević and Jokić* Appeal Judgement, para. 17.

<sup>54</sup> *Akayesu* Appeal Judgement, para. 62.

<sup>55</sup> March 2015 MR, paras. 16–17, 38–39, 66–67, 100–101, 139–140.

represent him. He did so even after the High Court<sup>56</sup> (and later the Supreme Court)<sup>57</sup> issued well-reasoned decisions finding that Uwinkindi had no such right. Thus, Uwinkindi's insistence that he wanted assigned counsel—but refused to accept the counsel assigned to him—was simply an attempt to disrupt the trial's orderly progress. The High Court correctly found that by refusing to cooperate with duly assigned counsel Uwinkindi effectively waived his right to representation at the March hearings.<sup>58</sup>

25. Contrary to Uwinkindi's assertion,<sup>59</sup> the MICT President never found that Uwinkindi was without assigned counsel.<sup>60</sup> As discussed above, to the extent that Uwinkindi refused to be represented during the March 2015 hearings, despite the availability and presence of assigned counsel in the courtroom, any lack of representation was a direct result of his own conduct. This constitutes a waiver on his part of the right to representation and establishes no fair trial violation.

26. The record demonstrates that, at all times, assigned counsel was available to represent Uwinkindi, except for the 21 January hearing when predecessor counsel abandoned him by leaving the courtroom. As already shown, predecessor counsel's actions triggered the immediate assignment of replacement counsel.<sup>61</sup>

*3. Newly assigned counsel are experienced and can represent Uwinkindi competently*

27. Uwinkindi's view that no counsel, apart from Gashabana and Niyibizi, can represent him competently, is baseless. His sole complaint against the competence of his newly assigned attorneys is grounded on a faulty premise: while he asserts that the new counsel, Hishamunda and Ngabonziza, only have five years of experience,<sup>62</sup>

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<sup>56</sup> Annex 10, 6 February 2015 High Court Decision.

<sup>57</sup> Annex 11, 24 April 2015 Supreme Court Decision.

<sup>58</sup> March 2015 MR, para. 28.

<sup>59</sup> Brief, para. 7.

<sup>60</sup> *Uwinkindi* 13 May 2015 Decision.

<sup>61</sup> Brief, paras. 73, 115.

<sup>62</sup> *See* Brief, para. 161.

in fact their *curricula vitae* establish that they have 13 and 14 years, respectively, of professional legal experience.<sup>63</sup> Hishamunda is a former prosecutor; Ngabonziza is a former judge.<sup>64</sup>

28. Moreover, as members of the Rwandan Bar Association, the replacement counsel are entitled to a presumption of competence.<sup>65</sup> To overcome that presumption, Uwinkindi must demonstrate specific instances of “gross professional misconduct” or “negligence” on the part of the new counsel,<sup>66</sup> which he fails to do.

29. Furthermore, by prevailing before the High Court in their motion for a trial *de novo* and for additional time to prepare, new counsel have already demonstrated that they can and will effectively advocate for Uwinkindi.<sup>67</sup> Even though Uwinkindi refused to acknowledge or cooperate with them, new counsel were able to secure for Uwinkindi additional time to prepare for trial and an order that all witnesses will be re-heard when the trial resumes in September 2015.<sup>68</sup> As a result, any prejudice resulting from Uwinkindi’s refusal to cooperate during the March 2015 hearings will be remedied when the trial resumes in September and the witnesses are recalled for questioning. If, however, Uwinkindi chooses to continue refusing to cooperate with counsel, any resulting prejudice will be a consequence of his own decision and cannot be attributed to a failure of the Rwandan justice system.

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<sup>63</sup> Annex 12, 29 January 2015 Letter; Annex 13, New Counsels’ CVs; February MR 2015, *see, e.g.*, para. 14.

<sup>64</sup> Annex 13, New Counsels’ CVs.

<sup>65</sup> *Bikindi* Appeal Judgement, para. 21; *Nahimana et al.* Appeal Judgement, para. 130; *Akayesu* Appeal Judgement, para. 78; *Krajišnik* Appeal Judgement, para. 42; *Blagojević and Jokić* Appeal Judgement, para. 23.

<sup>66</sup> *Bikindi* Appeal Judgement, para. 21; *Nahimana et al.* Appeal Judgement, para. 130; *Akayesu* Appeal Judgement, paras. 77–78; *Krajišnik* Appeal Judgement, paras. 41–42; *Blagojević and Jokić* Appeal Judgement, para. 23.

<sup>67</sup> *See above*, paras. 10, 29.

<sup>68</sup> Annex 14, 9 June 2015 High Court Decision, paras. 15, 21, 22.

**B. Assigned counsel’s remuneration and contract**

30. Rwanda was justified in requiring Uwinkindi’s counsel to accept the flat-fee structure under the new legal aid system. This flat-fee structure was devised to maximize economy and minimize potential overspending in the disbursement of public funds, which is an obligation for all organizations or entities responsible for administering limited public funds. The *ad hoc* tribunals, for example, are keenly aware of their need to manage scarce financial resources wisely: that was one of the reasons they also have adopted a flat-fee structure for remunerating defence counsel.<sup>69</sup> Ensuring that Uwinkindi’s right to counsel was protected did not require Rwanda to forgo principles of prudent financial management and to effectively write defence counsel a blank check for any amount they demanded.

31. This is particularly true because, as of November 2014, when the trial was still far from completion, Uwinkindi’s defence team had already received almost 83 million RWF (approximately 110,000 USD) in fees. In Uwinkindi’s referral decision, the referral chamber acknowledged and accepted the sufficiency of Rwanda’s “budgetary provision of 100 million Rwandan Francs to fund legal aid for transferred cases.”<sup>70</sup> The almost 83 million RWF that Rwanda paid to date for Uwinkindi’s unfinished trial, therefore, represented almost 83 percent of the entire budget available for *all* referred cases.<sup>71</sup> Rwanda could not sustain the former fee structure without either crippling Rwanda’s legal aid system or tolerating a disproportionate expenditure of limited public resources for a single case.

32. Moreover, while former defence counsel were being paid one million RWF every month that passed, their preparations for trial did not proceed expeditiously.<sup>72</sup> One example of this inefficiency was their investigation of witnesses within Rwanda. On

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<sup>69</sup> ICTR Report, para. 66; *see also* MICT Remuneration Policy.

<sup>70</sup> *Uwinkindi* Decision, para. 141.

<sup>71</sup> January 2015 MR, para. 39.

<sup>72</sup> Annex 7, Contrat d’Assistance et de Représentation en Justice between the Rwanda Bar Association and Defence Counsel for Uwinkindi, Maître Gatera Gashabana and Maître Jean Baptiste Niyibizi, valid as of 1 November 2013, Article 4.

8 October 2013, the defence received funds to investigate witnesses residing in Rwanda.<sup>73</sup> According to the budget they submitted, that investigation would take 26 days total.<sup>74</sup> Six months later, in May 2014, the defence team had only just started to investigate the witnesses who lived in Rwanda.<sup>75</sup>

33. This illustrates why it was reasonable for Rwanda, in January 2015, to reform its legal aid system for the transfer cases. Under the new system, assigned counsel will receive a tax exempt<sup>76</sup> flat fee of 15 million RWF for the whole case, from initial appearance, through trial, and until the completion of appeals.<sup>77</sup> The flat fee does not include expenses for defence investigations;<sup>78</sup> those expenses will be paid separately, as set out in a practice direction.<sup>79</sup> Also, defence counsel do not need to pay for services such as photocopying and telephone calls out of the flat rate, since those services are available to them for free at the Bar Association offices.<sup>80</sup>

34. The new flat fee structure is economically attractive to members of the Rwandan Bar, as demonstrated by the number of practitioners who have subscribed to it: to date, over 60 Rwandan counsel with more than 10 years of experience have indicated their willingness to defend genocide cases under the new legal aid policy.<sup>81</sup> The Bar Association itself, which is mandated to determine lawyers' fees, agreed that the new flat fee was sufficient to handle a transferred case.<sup>82</sup>

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<sup>73</sup> Annex 16, 11 October 2013 High Court Decision, para. 11.

<sup>74</sup> Annex 6, 5 August 2013 Letter, p. 25.

<sup>75</sup> May 2014 MR, para. 73.

<sup>76</sup> Annex 17, Contrat d'Assistance et de Représentation en Justice between the Rwanda Bar Association and the Defence Counsel for Uwinkindi, Maître Joseph Ngabonziza and Maître Issacar Hishamunda, dated 1 May 2015, Article 4 (1°).

<sup>77</sup> January 2015 MR, para. 33.

<sup>78</sup> January 2015 MR, paras. 44–45.

<sup>79</sup> Annex 18, Rwandan Practice Direction on Defence Investigations.

<sup>80</sup> October-November 2012 MR, para. 22.

<sup>81</sup> Annex 19, Letter and Roster of Lawyers.

<sup>82</sup> January 2015 MR, para. 33.

35. The rate adopted also compares favorably with the salaries of Rwandan national prosecutors.<sup>83</sup> The 15 million RWF flat fee received by defence counsel in transferred cases is equivalent to the salary that a Rwandan national prosecutor, who is paid roughly 700,000 RWF after taxes, would earn over a period of 21 months.<sup>84</sup> Moreover, national prosecutors have only one source of income—their salaries. By contrast, the flat fee earned from assignment to a genocide case is not the only source of revenue for defence counsel, as they routinely handle several cases at the same time for which they will receive fees that contribute to their overall income. In fact, Gashabana himself has clients other than Uwinkindi.<sup>85</sup>

36. Rwanda was therefore reasonable and justified in asking counsel Gashabana and Niyibizi to accept, for the rest of the Uwinkindi litigation, the flat fee of 15 million RWF. Since at the time they were offered the flat fee they had already received 82.6 million RWF for the case, their total fees from representing Uwinkindi would have amounted to 97.6 million RWF, or approximately 134,000 USD. In light of this, Uwinkindi's claim that the remuneration offered to his counsel was insufficient is baseless.<sup>86</sup>

37. While Uwinkindi also complains of a provision in the proposed December 2014 contract that would have prevented his counsel from criticizing the Rwandan government,<sup>87</sup> that provision, like all the contract terms except those governing the new fee structure, was always negotiable.<sup>88</sup> Indeed, following objections from the

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<sup>83</sup> *International Criminal Procedure*, p. 1245.

<sup>84</sup> Annex 20, 2015 National Public Prosecution Pay Slips.

<sup>85</sup> May-June MR 2015, para. 24.

<sup>86</sup> Brief, paras. 122–137.

<sup>87</sup> Brief, para. 132; December 2014 Second MR, para. 44.

<sup>88</sup> January 2015 MR, paras. 33, 37.

Bar Association, the clause he takes issue with was removed from the contract signed by his new counsel.<sup>89</sup>

**C. *Ability and resources to conduct defence investigations***

38. Uwinkindi faced no legal obstacles in carrying out defence investigations, and he had at his disposal two alternatives for collecting exculpatory evidence to use in his case: the Rwandan judicial police and the services of his own two defence counsel. He chose not to ask the judicial police to obtain evidence in his favor, and, as to investigations of witnesses living abroad, he failed to act diligently and reasonably in seeking the necessary funds to enable his counsel to carry out that work themselves.

39. The principle of equality of arms, on which Uwinkindi attempts to rely,<sup>90</sup> does not entitle an accused to the same resources as the prosecution,<sup>91</sup> but rather to equal procedural rights.<sup>92</sup> Thus the Rwandan authorities violated none of his fundamental rights by refusing to assign investigators and support staff (“personnel d’appui”) to his team,<sup>93</sup> as neither the Transfer Law nor international fair trial standards required them to do so. Uwinkindi’s contrary claim is not referenced or developed.<sup>94</sup> Nor does Uwinkindi explain how a lack of state-funded investigators or support personnel prejudiced him or hindered the preparation of his defence.

40. Uwinkindi’s principal complaint concerning defence investigations—that he could not locate and investigate witnesses abroad because he was not provided with the financial resources to do so—is baseless.<sup>95</sup> First, as noted above, under Rwandan

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<sup>89</sup> Annex 21, Affidavit of Athanase Rutabingwa; *see also*, Annex 17, Contrat d’Assistance et de Représentation en Justice between the Rwanda Bar Association and the Defence Counsel for Uwinkindi, Maître Joseph Ngabonziza and Maître Issacar Hishamunda, dated 1 May 2015.

<sup>90</sup> Brief, paras. 80–86.

<sup>91</sup> *Kayishema and Ruzindana* Appeal Judgement, para. 69; *Stakić* Appeal Judgement, para. 149.

<sup>92</sup> General Comment, para. 13.

<sup>93</sup> Brief, paras. 27, 40–41.

<sup>94</sup> Brief, para. 27.

<sup>95</sup> Brief, paras. 93–116.



law, specifically Article 20 of the Rwandan Code of Criminal Procedure, investigations for the defence are carried out by the judicial police.<sup>96</sup> The judicial police are available to carry out any investigations that Uwinkindi might request, including investigations abroad<sup>97</sup>—but he has not requested them to do so.

41. Second, the High Court found that Uwinkindi and his counsel were free to conduct their own investigations, and that they should address their requests for funding investigations to the Ministry of Justice and the Bar Association.<sup>98</sup> But the only budget that Uwinkindi ever submitted to the Ministry for investigations abroad was belated and lacked appropriate detail. That budget, which Uwinkindi sent to the Ministry of Justice three months after he had been directed to do so by the High Court, requested over 100 million RWF (140,000 USD). It included line items for visiting various cities in Africa, Europe, and America, together with the number of witnesses counsel hoped to contact in each city and the number of days they intended to stay there.<sup>99</sup> For example, the budget proposed spending 10,000 USD so that both defence counsel could travel to New York and stay there for seven days to meet with a single witness. No other information or justification for these extraordinary expenditures was given, and the proposal as a whole was *prima facie* unreasonable.<sup>100</sup>

42. Rwandan authorities noted repeatedly that the budget Uwinkindi proposed for international investigations was insufficiently supported.<sup>101</sup> In addition, the contract signed by defence counsel in early 2014 specifically required a case-by-case evaluation of funds necessary to conduct investigations.<sup>102</sup> Thus Uwinkindi and his

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<sup>96</sup> Annex 22, Rwandan 2013 Criminal Procedure Code, Article 20; Rwandan 2004 Criminal Procedure Code, Articles 18–19.

<sup>97</sup> September 2012 MR, para. 13; March 2013 MR, para. 20.

<sup>98</sup> Annex 5, 16 May 2013 High Court Decision, paras. 24, 39.

<sup>99</sup> Annex 6, 5 August 2013 Letter, p. 25.

<sup>100</sup> *See above*, para. 4.

<sup>101</sup> December 2014 Second MR, para. 36; September 2013 MR, para. 19.

<sup>102</sup> January-February 2014 MR, para. 34.

counsel were aware that the vague budget they had submitted in August 2013, which on its face appeared inflated, could not be approved without further amendments or justifications.<sup>103</sup> Yet they never took any steps to address the authorities' concerns by re-submitting or attempting to negotiate a different proposal.

43. To clarify the procedure and requirements for the submission of proposed defence investigation budgets, the Supreme Court issued, on 6 August 2015, a new practice direction. The practice direction provides further guidance on what should be included in support of future requests for defence investigations and clarifies the types of funding that are available to defence teams.<sup>104</sup> Uwinkindi's new counsel will be able to rely on this practice direction and the procedures it sets out to obtain appropriate and reasonable funding for any further defence investigations they may seek.

#### **D. Arrest and pretrial issues**

##### *1. Arrest and right to counsel during questioning*

44. Rwanda observed all international fair trial rights and requirements of domestic law in relation to Uwinkindi's arrest on 19 April 2012. The arrest report of 19 April 2012, which Uwinkindi signed, states that the applicable Rwandan law regarding arrests was observed.<sup>105</sup> The 2004 Rwandan Code of Criminal Procedure specifically authorized the arrest and detention of persons accused of a felony.<sup>106</sup> Article 9(1) of the ICCPR requires that the detention of persons follow procedures established by law—which, in Uwinkindi's case, was done. While Uwinkindi vaguely claims that “the laws in force” were violated in the course of his arrest and

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<sup>103</sup> January-February 2014 MR, para. 34; Annex 7, Contrat d'Assistance et de Représentation en Justice between the Rwanda Bar Association and Defence Counsel for Uwinkindi, Maître Gatera Gashabana and Maître Jean Baptiste Niyibizi, valid as of 1 November 2013 (specifically requiring case-by-case evaluation of funds necessary to conduct investigations); May 2014 MR, para. 66; September 2013 MR, paras. 18–19; December 2014 Second MR, paras. 35–37.

<sup>104</sup> Annex 18, Rwandan Practice Direction on Defence Investigations.

<sup>105</sup> Annex 3, Police Arrest Report.

<sup>106</sup> Annex 23, Rwandan 2004 Criminal Procedure Code, Article 37.

detention,<sup>107</sup> he does not identify either the specific law in question or the substance of the alleged violation.

45. Uwinkindi's claims that he was interrogated on 21 and 23 April without counsel being present<sup>108</sup> are similarly without merit. While he references court minutes (*procès verbal d'audition*) for 21 and 23 April 2012 in support of his allegation,<sup>109</sup> no court minutes exist for 21 April 2012, and according to the minutes for 23 April 2012, Uwinkindi was not interviewed that day because he did not want to give a statement until he had met with his counsel. Honoring this request, the prosecutor postponed any interrogation until counsel could be assigned,<sup>110</sup> and no matters relating to Uwinkindi's guilt or innocence were discussed.<sup>111</sup> Although Gashabana was assigned as Uwinkindi's counsel on 26 April,<sup>112</sup> the record shows that Uwinkindi never agreed to give a statement to prosecutors.<sup>113</sup> The dossier of his case, therefore, does not contain any exculpatory statement provided by Uwinkindi in his own defence. Rwanda respected his right to not provide such a statement.

## 2. Length of pretrial detention

46. Uwinkindi's pretrial detention in Rwanda, the period between his arrival on 19 April 2012 and the transmission of his case file to the High Court on 28 September 2012, lasted for little more than five months.<sup>114</sup> Most of the length of this pretrial detention is attributable to Uwinkindi himself, as his counsel Gashabana requested four months to prepare for the bail hearing and "a longer period" to prepare for

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<sup>107</sup> Brief, para. 28.

<sup>108</sup> Brief, para. 29.

<sup>109</sup> Brief, fn. 22.

<sup>110</sup> Annex 4, 23 April 2012 Pro-Justitia.

<sup>111</sup> Annex 4, 23 April 2012 Pro-Justitia.

<sup>112</sup> April 2012 MR, para. 3.

<sup>113</sup> June 2012 MR, para. 17.

<sup>114</sup> Annex 3, Police Arrest Report; October-November 2012 MR, para. 3.

trial.<sup>115</sup> Pretrial detention of up to one year was permissible under the 2004 Rwandan Code of Criminal Procedure, and Uwinkindi's five months of detention was well under that limit.<sup>116</sup>

47. Uwinkindi appears to argue, without providing support, that the Rwandan authorities should have included the time that Uwinkindi spent in custody at the ICTR in determining the length of his pretrial detention for purposes of calculating the one year time limit prescribed by Article 100 of the 2004 Rwandan Criminal Procedure Code.<sup>117</sup> But any detention at the ICTR was solely under the control of the Tribunal, and cannot be attributed to Rwanda.

48. Furthermore, whether the length of his detention at the ICTR, which lasted approximately 22 months, was undue must be assessed under ICTR law, not Rwandan law. ICTR jurisprudence holds that whether the length of detention is undue depends on a variety of factors, such as the complexity of the case.<sup>118</sup> In *Renzaho*, the ICTR Appeals Chamber found that an accused's pretrial detention of over four years was not unduly long.<sup>119</sup> The extensive litigation in Uwinkindi's case before the ICTR, which involved both the request for referral and the amendment of the Indictment, demonstrates that his case was sufficiently complex to justify pretrial detention of 22 months. Uwinkindi offers no support for a contrary argument.

49. In any event, the issue now before the Trial Chamber is whether Uwinkindi's Rwandan proceedings were fundamentally unfair, not whether his detention at the ICTR, before his transfer to and arrest in Rwanda, was unduly long. Therefore, it is not necessary to consider alleged issues concerning the ICTR detention period.

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<sup>115</sup> April 2012 MR, para. 4.

<sup>116</sup> Annex 23, Rwandan 2004 Criminal Procedure Code, Article 100.

<sup>117</sup> Brief, para. 31.

<sup>118</sup> *Renzaho* Appeal Judgement, para. 238.

<sup>119</sup> *Renzaho* Appeal Judgement, paras. 237, 242–243.

***E. Judicial impartiality***

50. The judges of the High Court demonstrated, throughout Uwinkindi's proceedings, the patience, dignity, respect, and impartiality required of their office, and Uwinkindi's accusations of bias are wholly without merit. Of the specific instances of conduct that he claims reflect partiality,<sup>120</sup> two were lawful actions taken to maintain order and decorum in the courtroom, and the remainder, even assuming they are accurately characterized by Uwinkindi, do not meet the threshold for establishing bias.

51. The High Court judges had an obligation to require that parties follow the applicable rules of procedure and that they respect judicial directions. Therefore, when Uwinkindi's counsel showed contemptuous behavior by leaving an ongoing hearing in an attempt to stall the proceedings, the High Court properly imposed a fine on them.<sup>121</sup> Similarly, during the 15 January 2015 hearing, the High Court judges stopped Uwinkindi's counsel when he began to argue the merits of an appeal because, as they correctly observed, that appeal had to be argued before the Supreme Court, not the High Court.<sup>122</sup> Uwinkindi is therefore wrong to assert that the High Court violated his right to be heard.<sup>123</sup>

52. The remaining incidents Uwinkindi cites concern hearings on 5 September 2013 and 8 January 2015, during which he takes issue with language used by the prosecutor during oral arguments before the court, and he appears to argue that the High Court should have intervened.<sup>124</sup> But he did not request intervention at the time. Moreover, even if he had requested intervention, the behavior described is insufficient to firmly establish a reasonable apprehension of bias, which is the

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<sup>120</sup> Brief, paras. 51–53, 96–98.

<sup>121</sup> *See above*, para. 7.

<sup>122</sup> January 2015 MR, para. 22.

<sup>123</sup> Brief, para. 53.

<sup>124</sup> Brief, paras. 50–51, 96–97.

standard required by the applicable jurisprudence.<sup>125</sup> The Uwinkindi case monitor does not report any objectionable language being used during the 5 September 2013 hearing, nor does the monitor indicate that Uwinkindi made any contemporaneous request for the High Court's intervention.<sup>126</sup> As to the 8 January 2015 hearing, the monitoring report reflects that while Uwinkindi argued that the prosecutor's statements showed that he and his counsel were "subject to threats and intimidation," he did not ask the High Court to admonish or impose any sanction on the prosecutor.<sup>127</sup>

53. Finally, Uwinkindi's claim that the presiding High Court judge gave the prosecution more time to speak than him, or prevented him from speaking,<sup>128</sup> and thus showed bias, was considered and found to be unsubstantiated by the separate bench that reviewed his motion for disqualification.<sup>129</sup> Uwinkindi has not shown how or why this decision violated his fundamental fair trial rights.<sup>130</sup> Absent such a showing, there is no basis for this Chamber to second guess the reasoned decision of Rwanda's judiciary.

#### **F. *Non bis in idem***

54. Article 14(7) of the ICCPR states that no one can be tried for an offence for which he has already been finally convicted or acquitted. Likewise, the Appeals Chamber in *Munyagishari* found that "the *non bis in idem* principle aims to protect a person who has been finally convicted or acquitted from being tried for the same offence again."<sup>131</sup> Uwinkindi has not been finally convicted or acquitted for complicit-

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<sup>125</sup> *Šainović et al.* Appeal Judgement, para. 181.

<sup>126</sup> September 2013 MR, para. 4.

<sup>127</sup> January 2015 MR, para. 10.

<sup>128</sup> Brief, paras. 60–61.

<sup>129</sup> Annex 24, 16 February 2015 High Court Decision, paras. 5–6.

<sup>130</sup> Brief, paras. 58–61.

<sup>131</sup> *Munyagishari* 3 May 2013 Appeal Decision, para. 65.


ity in genocide. Indeed, Uwinkindi merely points to a decision that refused to confirm a charge of complicity in the indictment because of lack of detail.<sup>132</sup> For this reason, the principle of *non bis in idem* does not apply here.

## V. CONCLUSION

55. None of Uwinkindi's claims demonstrate any defect in Rwandan trial proceedings—let alone a fundamental violation of any international fair trial standards. Uwinkindi was represented at all hearings when his guilt or innocence was discussed; his counsel received and continue to receive sufficient remuneration; and he is able to request funds for any defence investigations he may reasonably require. The remainder of his complaints are similarly meritless. Uwinkindi's request for revocation should accordingly be denied.

Word Count: 6768

Dated and signed this 4th day of September 2015 at Arusha, Tanzania.



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

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<sup>132</sup> *Uwinkindi* Confirmation of Indictment, para. 7.

# **ANNEX 1**

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# ANNEX 2

## GLOSSARY

## GLOSSARY

### A. DEFINED TERMS AND ABBREVIATIONS

Bar Association	Rwandan Bar Association
Brief	Mémoire A L'Appui De La Requête D'Uwinkindi Jean En Annulation De L'Ordonnance De Renvoi, MICT-12-25-R14.1, 2 August 2015 (Confidential)
ICCPR	International Covenant on Civil and Political Rights, 16 December 1966, UN Doc. A/6316 (1966), 999 U.N.T.S. 171
ICTR or Tribunal	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994
ICTR Report	Report of the International Criminal Tribunal for Rwanda, U.N. Doc. A/64/206–S/2009/396, 31 July 2009
ICTR Rules	Rules of Procedure and Evidence, International Criminal Tribunal for Rwanda, 29 June 1995, as amended on 10 April 2013
ICTY	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
MICT	International Residual Mechanism for Criminal Tribunals
MICT Remuneration Policy	Remuneration Policy for Persons Representing Indigent Accused in Appeals Proceedings before the Mechanism for International Criminal Tribunals, 4 March 2013

MICT Rules	Rules of Procedure and Evidence, International Residual Mechanism for Criminal Tribunals, 8 June 2012
MICT Statute	Statute of the International Residual Mechanism for Criminal Tribunals, S/RES/1966 (2010), 22 December 2010
p.	Page
para.	Paragraph
Rwandan 2004 Criminal Procedure Code	Law N° 13/2004 Relating to the Code of Criminal Procedure, 17 May 2004
Rwandan 2013 Criminal Procedure Code	Law N° 30/2013 of 24/5/2013 Relating to the Code of Criminal Procedure
Rwandan Practice Direction on Defence Investigations	Practice Direction by the Chief Justice on Allocation of Means for Further Defense Investigations for Indigent Accused Transferred to Rwanda, 2015
RWF	Rwandan Franc
USD	US Dollars

## B. AUTHORITIES

### 1. ICTR Jurisprudence

#### *Akayesu*

*Prosecutor v. Jean-Paul Akayesu*, case no. ICTR-96-4-A, Judgement, 1 June 2001 (*Akayesu* Appeal Judgement).

#### *Bikindi*

*Simon Bikindi v. Prosecutor*, case no. ICTR-01-72-A, Judgement, 18 March 2010 (*Bikindi* Appeal Judgment).

### ***Kayishema and Ruzindana***

*Prosecutor v. Clément Kayishema and Obed Ruzindana*, case no. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 (*Kayishema and Ruzindana Appeal Judgement*).

### ***Munyagishari***

*Bernard Munyagishari v. Prosecutor*, case no. ICTR-05-89-AR11bis, Decision on Bernard Munyagishari's First and Second Motions for Admission of Additional Evidence, 25 February 2013 (*Munyagishari 25 February 2013 Appeal Decision*).

*Bernard Munyagishari v. Prosecutor*, case no. ICTR-05-89-AR11bis, Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and on the Appeals Against the Decision on Referral Under Rule 11 BIS, 3 May 2013 (*Munyagishari 3 May 2013 Appeal Decision*).

### ***Nahimana et al.***

*Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. Prosecutor*, case no. ICTR-99-52-A, Judgement, 28 November 2007 (*Nahimana et al. Appeal Judgement*).

### ***Renzaho***

*Tharcisse Renzaho v. Prosecutor*, case no. ICTR-97-31-A, Judgement, 1 April 2011 (*Renzaho Appeal Judgement*).

### ***Uwinkindi***

*Prosecutor v. Jean-Bosco Uwinkindi*, case no. ICTR-2001-75-I, Confirmation of Indictment, 31 August 2001 (*Uwinkindi Confirmation of Indictment*).

*Prosecutor v. Jean Uwinkindi*, case no. ICTR-2001-75-Rule 11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011 (*Uwinkindi Decision*).

*Jean Uwinkindi v. Prosecutor*, case no. ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal against the Referral of his Case to Rwanda and Related Motions, 16 December 2011 (*Uwinkindi Appeal Decision*).

## 2. ICTY Jurisprudence

### *Blagojević & Jokić*

*Prosecutor v. Vidoje Blagojević and Dragan Jokić*, case no. IT-02-60-A, Judgement, 9 May 2007 (*Blagojević and Jokić Appeal Judgement*).

### *Krajišnik*

*Prosecutor v. Momčilo Krajišnik*, case no. IT-00-39-A, Judgement, 17 March 2009 (*Krajišnik Appeal Judgement*).

### *Šainović et al.*

*Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, and Streten Lukić*, case no. IT-05-87-A, Judgement, 23 January 2014 (*Šainović et al. Appeal Judgement*).

### *Stakić*

*Prosecutor v. Milomir Stakić*, case no. IT-97-24-A, Judgement, 22 March 2006 (*Stakić Appeal Judgement*).

## 3. MICT Jurisprudence

### *Uwinkindi*

*Prosecutor v. Jean Uwinkindi*, case no. MICT-12-25-R14.1, Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda and Assigning a Trial Chamber, 13 May 2015 (*Uwinkindi 13 May 2015 Decision*).

## 4. Human Rights Committee Jurisprudence

### *Berry*

*Albert Berry v. Jamaica*, Communication no. 330/1988, U.N. Doc. CCPR/C/50/D/330/1988 (1994) (*Berry v. Jamaica*).



### ***Chaplin***

*Dennie Chaplin v. Jamaica*, Communication no. 596/1994, U.N. Doc. CCPR/C/55/D/596/1994 (1995) (*Chaplin v. Jamaica*).

### ***Bennett***

*Trevor Bennett (represented by the London law firm of Clifford Chance) v. Jamaica*, Communication no. 590/1994, U.N. Doc. CCPR/C/65/D/590/1994 (10 May 1999) (*Bennet v. Jamaica*).

### ***General Comment No. 32***

Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, 23 August 2007 (General Comment).

### **5. Rwandan Court Record in the *Uwinkindi* Case (listed chronologically)**

Statement of the Rwandan Police: Arrest Report, file no. EKS/JP/KGL/2012, dated 19 April 2012 (Police Arrest Report).

Pro-Justitia of 23 April 2012, Questioning of Jean Uwinkindi before the Prosecutor of Nyarugenge (23 April 2012 Pro-Justitia).

*Public Prosecution v. Uwinkindi*, The High Court, The Special Chamber Trying International and Trans-Border Crimes, case no. RP 0002/12/HCCI, Decision, 16 May 2013 (16 May 2013 High Court Decision).

*Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/12/HCCI, Decision, 11 October 2013 (11 October 2013 High Court Decision).

Minutes of a meeting on the agreement for the defence of Uwinkindi Jean between the Minister of Justice, Attorney General, President of the Rwandan Bar Association, and the Permanent Secretary/Deputy Attorney General, dated 6 January 2015 (6 January 2015 Minutes).

*Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/12/HCCI, Decision, 21 January 2015 (21 January 2015 High Court Decision).

*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 (6 February 2015 High Court Decision).

*Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/15/HCCI, Decision, 16 February 2015 (16 February 2015 High Court Decision).

*Uwinkindi v. Public Prosecution*, The Supreme Court Sise at Kigali, Trying Criminal Cases, case no. RPA 0011/15/CS, Decision, 24 April 2015 (24 April 2015 Supreme Court Decision).

*Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/12/HCCI, Decision, 9 June 2015 (9 June 2015 High Court Decision).

### **C. MICT MONITORING REPORTS**

First Report of Interim Monitoring Mechanism—Uwinkindi, 30 April 2012 (confidential) (April 2012 MR).

Public Report of the Court Monitor for the Uwinkindi Case: June 2012, 4 July 2012 (June 2012 MR).

Report of the Court Monitor for the Uwinkindi Case (August 2012), 10 September 2012 (August 2012 MR).

Report of the Court Monitor for the Uwinkindi Case (September 2012), 4 October 2012 (September 2012 MR).

Report of the Court Monitor for the Uwinkindi Case (October-November 2012), 30 November 2012 (October-November 2012 MR).

Report of the Court Monitor for the Uwinkindi Case (1 to 31 March 2013), 12 April 2013 (March 2013 MR).

Monitoring Report for the Uwinkindi Case (September 2013), 28 October 2013 (September 2013 MR).

Monitoring Report for the Uwinkindi Case (January and February 2014), 7 March 2014 (January-February 2014 MR).

Public Monitoring Report for May 2014, 4 July 2014 (May 2014 MR).

Public Second Monitoring Report for December 2014, 27 January 2015 (December 2014 Second MR).

Public Monitoring Report for January 2015, 26 February 2015 (January 2015 MR).

Public Monitoring Report for February 2015, 17 March 2015 (February 2015 MR).

Public Monitoring Report for March 2015, 30 April 2015 (March 2015 MR).

Public Joint Monitoring Report for May and June 2015, 7 August 2015 (May-June 2015 MR).

#### **D. CORRESPONDENCE**

Letter from Athanase Rutabingwa, President of the Rwandan Bar Association, to the Permanent Secretary/Deputy Attorney General of the Ministry of Justice, dated 5 August 2013, submitting notes of legal fees for Uwinkindi's defence team (5 August 2013 Letter).

Letter from Gatera Gashabana and Jean Baptiste Niyibizi to the Permanent Secretary/Deputy Attorney General of the Ministry of Justice, dated 8 December 2014, including opinions and comments on the draft contract (8 December 2014 Letter).

Letter from Athanase Rutabingwa, President of the Rwandan Bar Association, to Isacaar Hishamunda and Joseph Ngabonziza, dated 29 January 2015, regarding legal representation for Uwinkindi (29 January 2015 Letter).

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 Rwandan Bar Association 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 (Letter and Roster of Lawyers).

#### **E. TREATISE**

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

**F. MISCELLANEOUS**

Affidavit of Athanase Rutabingwa, dated 13 March 2015, given in the *Munyagishari* case, appending a template contract (Affidavit of Athanase Rutabingwa).

Pay Slips from the National Public Prosecution Authority for January–April 2015 (2015 National Public Prosecution Pay Slips).

*Curricula Vitae* of Isacar Hishamunda and Joseph Ngabonziza (New Counsels' CVs).

# ANNEX 3

Statement of the Rwandan Police: Arrest Report,  
file no. EKS/JP/KGL/2012, dated 19 April 2012

REPUBLIKA Y'U RWANDA

Doss N° .....EKS./JP/KGI./2012

POLISI Y'UBUGENZA - CYAHA

INTARA UMUJYI KIGALI, AKARERE KA KICUKIRO.

INYANDIKO MYUGO Y'IFUNGA

Umwaka w'ibihumbi bibiri na 12 Umunsi wa 19, w'ukwezi kwa 8. Twebwe AIP Enoch KAREMERA. SAFARI, umugenzacyaha ufite ububasha buhesuye bwo kugenza ibyaha, dukorera imirimo ku biro Bikuru by'Ubugenzachaha bwa Polisi y'Igihugu (CID) kiri ku Kacyiru, tumaze kubona ingingo ya 9 y'itegeko n° 20/2006 ryo kuwa 22/04/2006 rihindura kandi ryuzuza itegeko N° 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza zishinjabyaha.

Tumaze kubona ko :

Icyaha gihanishwa igifungo kirenze imyaka ibili byibuze cyangwa Ushinjwa ashobora gucika cyangwa umwirondoro w'ushinjwa utazwi cyangwa umwirondoro we ushidikanywaho.

Tumenyesheje ibi bikurikira :

Turi ku (Intara / Umujyi . . . . . / Akarere / . . . . .)

Twafashe kuwa 19/04/2012.. saa 18:04' uwitwa : Uwinkindi Jean mwene SABANIMWE..... na NTIYIMANA wavukiye mu Kabuye, Rukiro, Gitete.....Umwuga.....Pastor.....

Ashinjwa: Gukora icyaha cya Jenocide n'ibindi byaha byibasiye inyoko muntu harimo n'ubwicanyi.

Ibyaha biteganyijwe kandi bihanishwa ingingo za 51 (Igika cya 1-3) n'iya 72 y'itegeko ngenga No 16/2004 ryo kuwa 19/06/2004 rigena imiterere, ububasha n'imikorere by'Inkiko Gacaca, n'ingingo ya 312 y'igitabo cy'amategeko ahana y'u Rwanda.

Ufunzwe amenyeshejwe uburenganzira bwe nkuko biteganywa mu ingingo ya 38 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza zishinjabyaha.

Ndahiye ko iyi nyandiko mvugo ari ukuri.

Itariki n'isaha 19/04/2012 a 18:04'

Uwafashwe

UWINKINDI Jean

Umugenzacyaha

AIP Enoch KAREMERA SAFARI.



**OTP DRAFT TRANSLATION**

**OTP – UNCERTIFIED TRANSLATION**

Republic of Rwanda

File n° EKS/JP/KGL/2012

Rwanda National Police

Directorate of Judicial Police

Kicukiro / Kigali Ville-

**STATEMENT OF THE POLICE : ARREST REPORT**

On 19 April 2012, I, **AIP Enock KAREMERA SARAFI**, Judicial Police Officer, with general jurisdiction, whose office is located in the Head Office of the Criminal Investigation Department in Kacyiru, pursuant to Article 9 of Law n° 20/2006 of 22 April 2006, modifying and complementing Law n° 13/2004 of 17 May 2004 relating to the Code of criminal procedure,

after noting that:

the crime is punishable with a prison term of more than 2 years or

the suspect may abscond or the details of the identity of the suspect are unknown or the details of his identity are dubious

declare the following;

While in Kicukiro, Kigali ville,

I arrested on 19 April 2012 at 6.47 pm, Jean UWINKINDI, son of SUBWANONE and NTIZISIGWA, a pastor born in Rutsiro, former Kibuye *prefecture* charged of **the crime of genocide and other crimes against humanity**; crimes provided for and punishable by paragraph 1-3 of Article 51 and 72 of Organic Law n° 16/2004 of 19 June 2004 establishing the organization, competence and functioning of the Gacaca courts and Article 312 of the Penal Code of Rwanda.

The person detained is notified of his rights as provided by Article 38 of Law n° 13/2004 relating to the Code of criminal procedure.

I swear that the above information is true and correct.

The person arrested

The Judicial Police Officer

[signed]

[signed]

Jean UWINKINDI

AIP Enock KAREMERA SAFARI



# ANNEX 4

Pro-Justitia of 23 April 2012, Questioning of Jean Uwinkindi before the Prosecutor of Nyarugenge



C-22



REPUBLIC OF RWANDA  
 NATIONAL PUBLIC PROSECUTION AUTHORITY  
 ORGANE NATIONAL DE POURSUITE JUDICIAIRE  
 UBUSHINJACYAHA BUKURU  
 URWEGO RWISUMBUYE RWA NYARUGENGE

PRO - JUSTITIA

Umwaka wa 2012, Ukwezi kwa MATA Umunsi wa 23 saa cyenda n'iminota itanu (15h 05)

Twebwe, **NDIBWAMI Rugambwa**, umushinjacyaha ku rwego rwisumbuye rwa NYARUGENGE turi i Nyarugenge, twakiriye ~~Madamu/Madamazela~~/Bwana/ : **UWINKINDI Yohana** mwene SUBWANONE na NTIZISIGWA wavutse mu mwaka w'1951, avukira muri cyahoze ari segiteri Gitebe, Komine Rutsiro, Perefegitura ya Kibuye muri Repubulika y'U RWANDA, akaba abarutirwa mu cyahoze ari cellule Gatare, segiteri Kayumba, Komine Kanzenze, Perefegitura ya Kigali Ngali, yashakanye na Kabagwira Rose, bafitanye abana umunani, abahungu 3 n'abakobwa 5, umwuga Pasitoro mw'itorero rya ADEPER, Ubwengihugu, umunyarwanda; Ntacyo akora, ntacyo atunze, nta cyaha kizwi yigeze ahanirwa.

INYANDIKO-MVUGO Y'IBAZWA RYA UWINKINDI Yohana:

Mbere y'ibazwa ryawe twagiraga ngo tukumenyeshe ko ukutikiranyweho icyaha cya jenocide hashingiwe ku ngingo ya 2 (3) (a) ya sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda n'itsembatsemba nk'icyaha cyibasiye inyokomuntu, hashingiwe ku ngingo ya 3 (b) ya sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda nk'uko ibi byaha wabirezwe n'Umushinjacyaha w'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ashingiye ku ngingo za 17, 6(1), 2(3)(a) na 3(b) ibi byaha ukaba ucyekwa kuba wababikoreye muri Commune Kanzenze, mu cyahoze ari Perefegitura ya Kigali-Ngali, muri Repubulika y'U Rwanda hagati y'itariki ya 1/1/94 na 31/12/1994.

Ibi byaha nanone bikaba biteganywa kandi bigahanishwa ingingo ya mbere, ingingo ya 51(1-3) n'ingingo ya 72 z'Itegeko Ngenga n° 16/2004 ryo kuwa 19/6/2004 rigena imiterere, ububasha n'imikorere by'Inkiko Gacaca zishinzwe gukuzikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyokomuntu byakozwe

*Rawel*

*D*



C-23A

hagati y'itariki ya mbere Ukwakira 1990 n'ya 31-Ukuboza 1994 nk'uko ryahinduwe kandi ryujwe kugeza ubu, n'ingingo ya 9 n'ya 17 z'Itegeko n° 13/2008 ryo kuwa 19/05/2008, n'ingingo 1(3) y'itegeko ngenga n° 66/2008 ryo kuwa 21/11/2008 ryuzuza itegeko ngenga n° 31/2007 ryo kuwa 25/07/2007 rikuraho igihano cy'urupfu, ndetse n'ingingo ya 312 y'igitabo cy'amategeko ahana ibyaha mu Rwanda.

Dukurikije ibitegenywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubilika y'U Rwanda ryo kuwa 4 Kamena 2003 nk'uko ryavugururwe kugeza ubu, n'ingingo ya 64 y'itegeko N° 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'ianza z'inshinjabyaha nkuko ryavugururwe kandi rikuzuzwa kugeza ubu; ndetse n'ingingo ya 13 y'itegeko Ngenga rigena kwimurira muri Repubilika y'u Rwanda Imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga Rwashyirirweho u Rwanda n'izivuye mu bindi bihugu nkuko ryahinduwe kandi rikuzuzwa kugeza ubu,

Turakumenyeshya uburenganzira uhabwa n'amategeko yavuzwe haruguru, bumwe mu burenganzira uhabwa n'ayo mategeko n'ubu bukurikira:

- ✓ Ufite uburenganzira bwo kugira ukunganira mu mategeko;
- ✓ Ufite uburenganzira bwo kumenyeshwa ibyo ukurikiranyweho n'icyo amategeko ateganya
- ✓ Ufite kandi uburenganzira bwo kwifata no kudahatirwa ikintu cyagushinje...

Q1: Ufite ukunganira mu mategeko kugira ngo dutangire ibazwa ryawe?

R1: Ntawe mfite ariko ndamucyeneye

Q2: Ufite ubushobozi bwo kumwishyura?

R: Nta bushobozi mfite

Q3: Hari urutonde rw'abavocats babarizwa mu Rugaga rw'abavocat bo mu Rwanda wasigiye n'umugenzacyaha tariki ya 19/04//2012 haba hari abo washoboye guhitamo?


R4: Liste nariyibonye ariko ntabwo nari nabatoranya ntaravugana nabo, hari abo ntekereza ko banyunganira mu rubanza rwanjye.

Q5: Wumva ukunganira uzamubona ryari?

R: Naba namaze kumubona no gutegura ibazwa ryanjye mu kwezi kumwe n'igice cyangwa amezi abiri.

Q6: Ubushinjacyaha bufitse igihe kingana n'iminsi irindwi gusa kugira ngo bure bwakugejeje imbere y'Urukiko bumaze kukumva, hari icyo byaba bitwaye tukujyanye



C-24 A

mu Rukiko mbere y'iyi minsi uko ari 7 dore ko n'ubundi uzaba utarabona ukunganira ngo ushobore kubazwa?

R6: icyo nifuzwa n'uko n'ubwo nta avocat nzaba ntarabona, ejo cyangwa ejobundi munyanye mu Rukiko byaba ari vuba ariko kuwa Kane naba niteguye nta kibazo kuko naba namaze gutegura n'umwenda wo kwambara.

Q: Waba ukencye ubuhe bufasha kugira ngo uvugane na avocat wawe?

R: Ni ukumpuza nawe kugira ngo mumenye tuvugane, kuko muzi kuri liste gusa

Q: Wifuzwa ko byaba ryari?

R: Guhera ejo bishobotse byamfasha?

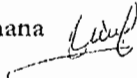
Q: Ejo aramutse abonetse ntabwo wabazwa nk'ejobundi?

R: Oya bicasaba ko mbanza kubonana nawe tukavugana nkumva ku yamfasha mu rubanza rwanjye?

Ibazwa risubitswe kugira ngo ashake umwunganira saa kumi (16h00)

Ubajijwe

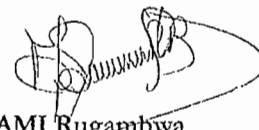
UWINKINDI Yohana



Ubajije

NDIBWAMI Rugambwa

Procureur en chef



**OTP DRAFT TRANSLATION**

## OTP – UNCERTIFIED TRANSLATION

Pro-Justitia of 23 April 2012 at 3.05 pm - Before the Prosecutor of Nyarugenge

## Questioning of Jean Uwinkindi

[.....]

We are informing you about your rights provided by the abovementioned laws. Some of the rights prescribed by those provisions are the following:

- ✓ You have the right to have a counsel to provide you legal assistance
- ✓ You have the right to be informed of the charges carried against you and the relevant provisions of the law
- ✓ You have also the right to remain silent and not to say anything that could be used against you...

Q1: Do you have any counsel who could provide you with legal assistance so that we can start your questioning?

R1: I do not have any counsel but I need one.

Q2: Do you have sufficient means to pay for his services?

R: I do not have sufficient means.

Q3: There is a list of advocates enrolled with the Rwanda Bar Association that the Prosecutor left for you on 19 April 2012. Did you manage to choose some advocates from it [list]?

R4: I saw the list but I have not yet made my choice as I have not yet spoken to them [counsels]. There are some [counsels] that I think may assist me in my case.

Q5: When do you think you will get a counsel?

R: I will have one and will prepare my examination in one and a half month or two months.

Q6: The Prosecution has a timeframe of only seven days to take you before the court after questioning you. Is there any problem if we take you before the court before those 7 days since you will not have gotten a counsel to assist you so that you can be questioned?

R6: My wish is that, even if I will not have a counsel, taking me before the court tomorrow or the day after tomorrow will be soon. I will be ready from Thursday onwards as there won't be any problem since I will have also prepared clothes to wear.

Q: Which assistance do you need to talk to your counsel?

R: I need to get in touch with him so that I can get to know him, talk to him, because I only know him on paper.

## OTP – UNCERTIFIED TRANSLATION

Q: When do you want to meet him?

R: From tomorrow if possible. This would be of help.

Q: If you manage to get in touch with him tomorrow, can you be questioned the day after tomorrow?

R: No, I need to get in touch with him, so that we can talk and I can see if he can assist in providing me with assistance in my case.

The questioning was postponed to enable him look for a counsel.

The interviewee

The interviewer

Jean Uwinkindi

Rugambwa NDIBWAMI

# ANNEX 5

*Public Prosecution v. Uwinkindi*, The High Court,  
The Special Chamber Trying International and  
Trans-Border Crimes, case no. RP 0002/12/HCCI,  
Decision, 16 May 2013



(8)

The High Court, the special chamber trying international and trans-border crimes, has, on 16-05-2013, sitting in Kigali, trying in public Case RP0002/12/HCCI, taken the following decision:

**The Prosecutor versus the Accused:**

Jean UWINKINDI son of SUBWANONE and NTIZISIGWA, born in 1951 at Rutsiro in former Kibuye Prefecture in the Republic of Rwanda, up to 1994, he was residing in former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatara Cell; he is married to Rose Kabagwira and they have eight (8) children together, he is a pastor, Rwandan, owns no property, detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he is suspected of having committed in Rwanda. He is represented by counsels Gatera Gashabana and Jean Baptiste Niyibizi.

**CHARGES AGAINST HIM:**

- The crime of genocide provided for and punishable under Articles 114 and 115 of the Penal Code of Rwanda, Article 1 and 3 (c) of the Convention for the prevention and punishment of the crime of genocide;
- The crime of extermination as a crime against humanity provided for and punishable under Article 120 section 2 as well as Article 121 of the Penal Code of Rwanda.



**C. NATURE OF THE CASE**

1. At the hearing of 20/03/2013, Jean UWINKINDI and his counsels Gatera Gashabana and Jean Baptiste Niyibizi raised the following objections requesting that they should be examined before the hearing of the substantive case: appointing investigators, an objection aimed at requesting for the indictment written in Kinyarwanda language only because it is the only language he understands, and this objection should be met; and an objection requesting the throwing out of the charge of extermination as a crime against humanity, the charge of complicity and the charge of doing nothing to stop the killings.
2. The Court has to examine the merits of these objections if any;

**D. ANALYSIS OF ISSUES IN THE CASE**

- Objection requesting for the appointment of investigators

*(Handwritten mark)*

(8)

3. Jean UWINKINDI and his counsels namely Gatera Gashabana and Jean Baptiste Niyibizi citing Article 19 of the Constitution of the Republic of Rwanda of 04/06/2003 as amended to-date; Article 11 paragraph one of the International Declaration of Human rights of 10 December 1948; Article 14 of the International Covenant on Civil and Political rights of 19 December 1966, Article 13, 4°, 9° and 15 of Organic Law n°11/2007 of 16/03/2007 on the transfer to the Republic of Rwanda of cases from the International Criminal Tribunal for Rwanda (ICTR) and from other countries as amended to-date, requested for the appointment of investigators in charge of making inquiries on defence witnesses, in accordance with case n° ICTR-01-75-AR 11 bis of 16 December 2011 transferring Jean UWINKINDI to Rwanda for trial; it reads that the Prosecutor promised the ICTR that Jean UWINKINDI will get adequate defence comprising a senior attorney, an attorney and assistant attorneys and an assistant in charge of documentation as it is the practice at the ICTR. They requested that after appointing the investigators and providing them with the means to carry out the work, the accused should be given six months to prepare his defence statement and submit it to the High Court.

4. They explained that although in Rwandan law, investigation, whether for the Prosecution or the defence is carried out by the judicial police or the Public Prosecution, these organs should not look for defence evidence for the accused especially as they note that the investigation which has been carried out to date is for the Prosecution only; moreover, the Prosecutor is a party like any other and parties are equal before the courts.

5. Jean UWINKINDI claims that he has up to 76 witnesses who can give evidence for him; out of these, 38 live in various countries outside Rwanda and the remaining ones live in Rwanda.

6. Jean UWINKINDI's counsels say they can also carry out the investigation on witnesses, but that they lack the means to perform the task; that they had informed the Ministry of Justice and the Bar Association about this problem but that they have not yet got any reply. They go on to say that they had an agreement with donors to be paid hourly, but that the money required to reach the witnesses is not included as they did not expect the counsels would do the investigation on witnesses.

7. On 15/04/2013, counsels for Jean UWINKINDI namely Gatera Gashabana and Jean-Baptiste Niyibizi submitted the following documents to the High Court:

- Agreement between the Bar Association and Jean UWINKINDI's counsels;
- Agreement between the representative of the Bar Association and the Ministry of Justice on free legal representation of children in court;

*N*

(8)

- Reports on meetings held on 21/08/2012 and on 08/10/2012 between the Ministry of Justice, the Public Prosecution's Office and the Bar Association on the remuneration of Jean UWINKINDI's counsels;
- A letter dated 09/07/2012 written by counsel Gatera Gashabana to the national representative of the Bar Association asking for the appointment of investigators for Jean UWINKINDI;
- A letter written by counsel Gatera Gashabana showing the work that has been done so that he may be paid his fees;
- ICTR document on fees paid to Court appointed lawyers and their assistants.

8. They said that in submitting these documents they wanted to show that they had duly brought to the attention of the concerned authorities the issue of looking for Jean UWINKINDI's witnesses residing abroad but the issue was not resolved; it was later decided that this issue of appointing assistant attorneys to carry out investigations would be examined in court.

9. The Prosecution finds that the request has no merit. It goes on to say that Jean UWINKINDI and his counsels have no legal stand to request the Court to appoint investigators, that the Organic Law n°11/2007 of 16/03/2007 on the transfer of Rwanda of cases from the ICTR and from other countries as amended to-date has no provision for the appointment of investigators for the accused; rather, there is provision for legal representation and this has been provided as two lawyers have been appointed for his defence and he has not indicated that they have failed in the performance of their duties and therefore needs other lawyers.

10. The Prosecution therefore finds that, pursuant to Article 19 of Law N°13/2004 of 17/05/2004 on criminal proceedings as amended to-date stipulates that investigations on Prosecution and defence evidence are carried out by the judicial police. According to the Prosecution, Jean UWINKINDI and his defence ought to show the area where investigation should be carried out and disclose

defence witnesses to the Court and the judicial police. In the event the judicial police refuses or is unable to carry out the investigation, then the accused and his defence will request the Court to find a solution to the problem.

11. On the assertion that the Prosecution is a party like any other, the Prosecution retorts that even if that were the case, it has special duties as it tries criminal cases in the name of the people and that it is entrusted with fair prosecution and defence investigation pursuant to the above-mentioned Article 19 N° 13/2004 of 17/05/2004 on criminal proceedings as amended to-date.

TV

(8)

12. The Prosecution goes on to say that defence too has the obligation to find evidence in defence of the accused and that the defence has not indicated that it cannot perform that duty. It explains that in the process of transferring Jean UWINKINDI to Rwanda, in the brief the Bar Association transmitted to the Court, the Bar association noted that investigation whether for the defence or the prosecution is carried out by the judicial police, and that even witnesses for the accused can look for their own evidence (paragraphs 44-46 of the judgement).

13. The Prosecution recalls that at the hearing, Jean UWINKINDI's counsels said that they had 49 witnesses whom they know and wonders how they then say that they have 90 unknown witnesses. The Prosecution says that Jean UWINKINDI was given time to call his defence witnesses during investigation and he did not do it; therefore, since the case file was submitted to the Court, pursuant to Article 66 of Law N°15/2004 of 16/06/2004 on evidence and its presentation, the Prosecution finds that Jean UWINKINDI should submit to the Court the names of his witnesses, their whereabouts and how useful they are to his defence, then the Court will decide those who should be examined and how they should be examined in accordance with Article 14 bis of Law N°03/2009/O/L of 26/05/2009 modifying and completing Organic Law N°11/2007 of 16/03/2007 on the transfer of cases to the Republic of Rwanda.

14. Concerning the period of six months requested by Jean UWINKINDI and his counsels to enable them to submit their briefs, the Prosecution finds that the request has no merit as they have been given adequate time and means to prepare themselves; moreover, Article 13 of Law N°21/2012 of 14/06/2012 on civil, commercial, labour and administrative proceedings also stipulates that such cases must be expedited once they have been referred to courts and prescribes a period within which a case before the court must be tried.



15. The Court finds that Organic Law N° 11/2007 of 16/03/2007 on the transfer to Rwanda of cases from the ICTR and from other countries as amended to-date has no provisions for the appointment of investigators; therefore, concerning investigating for evidence, law n°13/2004 of 17/05/2004 on criminal proceedings as amended to-date should be applied.

16. Article 19 of the law states that the duties of involved in the investigation include gathering evidence for the prosecution as well as exculpatory evidence. Also, article 22 of this law states that the judicial police is responsible for preliminary investigation.

17. Article 42 of the law stipulates that once the investigation is over, the judicial police submits the case file to the Prosecution. Article 43 states that once the

*W*

Prosecution has received the case file, it can immediately take the case to the competent court if it deems that the file is complete, or conduct further investigation if it finds that the evidence is insufficient. Concerning Article 119 provides that if the Prosecution has decided to prosecute, it sends the complete case file to the competent court for trial.

18. Article 44 paragraph 1 of the Law stipulates that, concerning investigation, when the Prosecution submits the case to court, it must also produce incriminating evidence. Paragraph 3 stipulates that if incriminating evidence has been found, the accused or his counsel must show proof that the charge lacks credibility, showing that the charge is not an offence or that he is innocent and all other reasons countering the charge.

19. The Court notes that counsels Gatera Gashabana and Jean Baptiste Niyibizi suggest that if the Court does not think it necessary to appoint investigators, they can look for those investigators, but that they lack the means, that the agreement they had with sponsors pays the counsels by the hour but has no provisions for travel costs which would enable them to go and meet the witnesses.

20. The Court notes that, in the brief submitted to the ICTR by the Bar Association in case ICTR-01-75 transferring Jean UWINKINDI to Rwanda, in mark 4368-4282, paragraph 47 (mark 4352) it reads that lawyers working in Rwanda routinely conduct their own criminal investigations both in Kigali and in the provinces, without interference or particular difficulties materially impairing their work. In paragraph 48 they also say that in their daily work, lawyers are able to find defence witnesses, interview them and produce defence witnesses without being materially impaired (*Thus, in practice, defence counsel are able to produce at trial supporting evidence through defence witnesses. Their*

*ability to find, interview and produce supporting witness during a trial in Rwanda have not been materially impaired in recent years.*)

21. As far as this case is concerned, the Court notes that investigation was conducted, the Prosecution decided to bring the case to this Court to which a case-file with incriminating evidence. Therefore, based on the above-mentioned articles and on the brief of the Bar Association in the paragraph preceding this one, the Court is of the opinion that once a case has been submitted to it because the accused says he has witnesses, he or his defence counsels have the responsibility to produce them. Special reference should be made to judgement ICTR-01-75 transferring Jean UWINKINDI to be tried in Rwanda, rendered by the ICTR, a tribunal which is competent in criminal proceedings in Rwanda and how prosecution and defence evidence are found; it is not stated anywhere that lawyers must be given investigators at all costs.

22. Concerning article 66 of the law on evidence and production of evidence, the Court notes that although the case has been filed in Court, Jean UWINKINDI has



(8)

not yet submitted his defence statement claiming that he has not yet obtained statements of his defence witnesses. The Court notes that the issue was raised with the Ministry of Justice and the Bar Association by Jean UWINKINDI and his counsels before the Prosecution filed the case and the matter was not settled; the Court would therefore that would not be a basis in examining this issue because this article is applicable after the Court has heard the accused present his own exculpatory evidence before calling his witnesses to support his statement; what should constitute a basis is paragraph 4 of Article 13 of Organic Law N°11/2007 of 16/03/2007 on the transfer to Rwanda of cases from the ICTR and from other countries as amended to-date; this paragraph states that an accused in a case transferred from the ICTR to Rwanda is entitled to adequate time and other requirements to prepare his/her own defence.

23. On the issue of resources; the Court notes that counsels for Jean UWINKINDI submitted a document showing the amount of money that is required to reach all his witnesses inside or outside Rwanda. The Court finds that in the document submitted to it by Jean UWINKINDI's counsels the issue was not examined as those who were supposed to do it had to be known first, and the Court decided that counsels for Jean UWINKINDI should examine it.

24. The Court finds that counsels for Jean UWINKINDI should submit to the Ministry of Justice and the Bar Association the resources which will help them

to find the evidence thereby enable them to prepare their client's defence statement.

25. Concerning the prescribed time within which Jean UWINKINDI and his counsels must submit the statement of defence, the Court finds that a period of six months is too long especially as Jean UWINKINDI himself submitted to the Court a list of those witnesses and where they can be found and some of them had met his counsels at ICTR; in its wisdom, the Court finds that they should submit to the Court his defence statement not later than 20/08/2013 and the trial should resume on 05/09/2013.

➤ Objection requesting for the indictment to be written in Kinyarwanda language

26. Citing paragraph three Article 13 of Organic Law N° 11/2007 of 16/03/2007 on transferring to Rwanda cases from the ICTR and from other countries and paragraph 3, Article 14 of the International Covenant on Civil and Political rights of 19 December 1966, Jean UWINKINDI and his counsels requested the Court that Jean UWINKINDI should be given the indictment in Kinyarwanda language only because it is the only language he knows and can use in Court.

*Handwritten mark*

27. The Prosecution retorts that their request is baseless as the articles he is citing stipulates that the accused has the right to know what he/she is charged with in a language he/she understands; he was told what his charges were in Kinyarwanda language and he pleaded not guilty. This is different from requesting that parts of the indictment should be translated into Kinyarwanda language. The Prosecution said that even this has already been done and that he was given the translation. The Prosecution explains that saying he needs an indictment that contains no foreign language is contrary to the spirit of principles guiding the Prosecution when it is preparing a case file as it has to look for the jurisprudence, academic documents which can help in preparing a file like this dealing with the crime of genocide, a crime with international dimensions. Therefore, the Prosecution finds that the use of foreign language does not in any way affect the crimes the accused is charged with, even though those languages he is talking about have been explained and translated into Kinyarwanda language.

28. Article 18 of the Constitution of the Republic of Rwanda prescribes that being informed of the nature and the motives of the offence one is being charged, self-defence and being represented are inalienable rights at all times, everywhere, at all levels of the administration, the judicial and other decision-making organs

29. Paragraph 3 of article 14 of the International Covenant on Civil and Political rights of 19 December 1966 and paragraph 3 of Article 13 of the Organic Law n°11/2007 of 16/03/2007 on the transfer to Rwanda of cases from the ICTR and from other countries as amended to-date stipulates that the accused has the right to be informed without delay, in a language he/she understands and in detail, about the nature and the basis of the charges against him/her.

30. The Court finds that, based on these articles, informing the accused about the charges against him/her is not limited to those charges but must also be given detailed clarifications about the nature and the basis of the charges against him/her, and therefore this should be reflected in the indictment. For this reason, the indictment must be in a language which the accused understands so that he/she may be able to understand it and defend himself/herself easily.

31. The Court finds that although it is true the Prosecution translated into Kinyarwanda language parts of the indictment which were in foreign languages, the way it was done does not help the accused to follow well the reasoning in the document as it is written in two different ways, one explaining the other and still containing words from languages the accused

(8)

claims he does not understand. The Court therefore finds that, in the interest of the accused and order to respect his full rights to self defence, Jean UWINKINDI should be given the full text of the indictment in Kinyarwanda language, as it is the language he understands.

➤ *That the accused was served with an incomplete indictment*

32. Jean UWINKINDI and his counsels, citing paragraph three of Article 13 of Organic law n° 11/2007 of 16/03/2013 on the transfer to Rwanda of cases from ICTR and from other countries, paragraph 3 of Article 14 of the International Covenant on Civil and Political rights of 19/December 1966, Article 18 of the Constitution and Article 28 of Law n°13/2004 of 17/05/2004 on criminal procedure as amended to-date, claimed that they were not served with the statement of witness BZI, yet this witness is in the list of Prosecution

witnesses. They also claim that the statement of witness BZK is full of obscure language to the point that they cannot understand his testimony. They request that both statements are handed in to the accused and clarifications made in witness BZK's statement so that the accused may give his own explanation in full knowledge of the contents as provided for by the law.

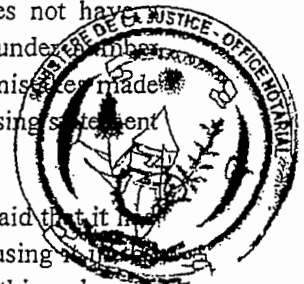
33. Concerning the statement of witness BZI, the Prosecution says that there was an error in the spelling of his/her first name, that it does not have a witness called BIZOZA, but that it has a witness called BZI under number 632. The Court finds that the Prosecution made corrections of mistakes made in writing the names of the witness and therefore there is no missing statement to be given to Jean UWINKINDI.

34. Concerning the statement of witness BZK, the Prosecution said that it had not put the statement in the case file as it had no intention of using it in the case, but that it was handing it to the Court and that there is nothing obscure about it. The Court finds that the Prosecution has done as Jean UWINKINDI had wished, and therefore the statement was no more a problem as to its contents.

➤ *Objections to counts of indictments*

35. Jean UWINKINDI and his counsels are requesting the Court to dismiss the following counts of indictment:

- The count of extermination as a crime against humanity as it is not different from the count of genocide;





(8)

- The count of being an accomplice to other persons because the Prosecution is not allowed to charge it on the accused as the ICTR had struck it off the list of charges made against Jean UWINKINDI;
- The charge of not doing anything to stop the killings as the charge was neither referred to the court nor did the court have the power to try it.

36. The Prosecution maintains that the objection against extermination as a crime against humanity cannot be examined because the case has not yet been tried and its merits considered. Concerning the other objections, the

Prosecution says that they are unfounded as it did not charge him with those crimes.

37. The Court finds that it cannot examine all these objections without going into the substantive case in order to find out if the charges that were brought before it constitute the crimes Jean UWINKINDI claims to be accused of, and they are the ones the Prosecution referred to Court; therefore, these objections should be examined together with the substantive case.

#### C. RULING OF THE HIGH COURT

38. The High Court has decided that no investigators shall be appointed in this case.

39. The High Court has decided that Jean UWINKINDI's counsels are the ones to find his witnesses for his defence.

40. The High Court has ordered that the Prosecution must serve Jean UWINKINDI with one copy of the indictment entirely in Kinyarwanda language.

41. The High Court has ordered Jean UWINKINDI and his defence counsels to submit his defence statement to Court not later than 20/08/2013.

42. The High Court hereby orders that the hearing of this case resume on 05/09/2013.



*[Handwritten signature]*

(8)

IT WAS SO DECIDED AND READ IN PUBLIC TODAY 11/10/2013.

R. Alice NGENDAKURIYO [Signed] President

Angéline RUTAZANA

Cassien NZABONIMANA

Judge (Signed)

Judge (Signed)

Hypax NYAMUTAMA Registrar (Signed)

Translated by: Tharcisse NTUKANYAGWE, M.Litt. (Oxon)

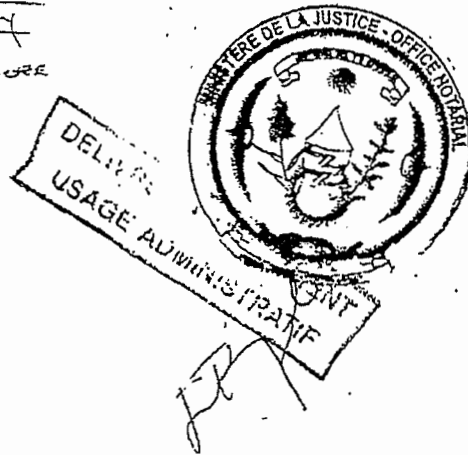
Translator.

Vu pour legalization de la Signature  
de M. Tharcisse NTUKANYAGWE

Apposee ci-contre

Kigali le 20 Mars 2015

Notaire  
MUKULU ANTONNY. N



# ANNEX 6

Letter from Athanase Rutabingwa, President of the Rwandan Bar Association, to the Permanent Secretary/Deputy Attorney General of the Ministry of Justice, dated 5 August 2013, submitting notes of legal fees for Uwinkindi's defence team

(27)

## BAR ASSOCIATION

KIGALI

Kigali, 05/08/2013

N/Ref.: Let 2994/Bat./RA/08/2013

To: The Permanent Secretary/Deputy Attorney-General

KigaliRe: Submitting to you *Notes of legal fees* for UWINKINDI's defence team.

Dear Sir,

Pursuant to the agreement signed on 31 October 2012 between the Bar Association and Jean UWINKINDI's defence team and approved by the Ministry where you are the Permanent Secretary, and whose copy was sent to all concerned,

It is my pleasure to submit to you the *Notes of legal fees* of the team, structured as follows:

Barrister Gatera Gashabana: 5,130,000Frw including 15% professional tax for three months of representation work (February-April 2013) as per the defence report consisting mainly in meeting the detainee in prison, examining and preparing the dossier of the case and appearing in court.

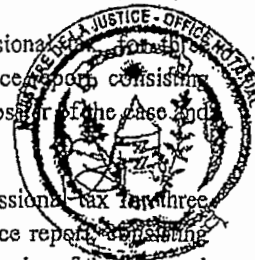
Barrister Jean Baptiste Niyibizi: 5,145,000Frw including 15% professional tax for three months of representation work (February-April 2013) as per the defence report consisting mainly in meeting the detainee in prison, examining and preparing the dossier of the case and appearing in court.

In accordance with article 13 of the agreement on legal aid between the Bar Association and MINIJUST which was signed on 03/08/2013, I am hereby requesting you to pay the fees of this team into the usual Legal Aid account N°0110-1001482 called BARREAU DE KIGALI/ASSISTANCE JURIDIQUE in FINA BANK.

Yours faithfully,

Barrister Athanase RUTABINGWA,

President, Bar Association [Signed]



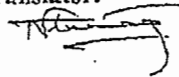
(27)

Cc. :

- Hon. Minister of Justice/ Attorney-General;
- The Prosecutor General;
- The Registrar, High Court of Justice;
- Members of Uwinkindi's Defence team.

Translated by: Tharcisse NTUKANYAGWE, M.Litt. (Oxon)

Translator.



(25)

Table showing financial requirements during the investigation of defence witnessesI. Financial costs to cover the mission (tickets + mission fees + professional fees)A. Budget for looking for witnesses living abroad

Country and Town	Number	Days spent	Air ticket		Accommodation Food, local transport, Communication			Total
			U.P	T.P	U.P	S/T	T.P	
Kenya-Nairobi	3	6	\$285	\$570	\$272	\$1672	\$3264	\$3834
South Africa- Soweto	1	4	\$470	\$940	\$336	\$1356	\$2712	\$3652
Congo Brazaville	13	20	\$1050	\$2100	\$347	\$6940	\$13880	\$38567
Malawi-Blantyre	8	15	\$708	\$1416	\$194	\$2910	\$5820	\$9744
Swaziland- Mbabane	1	4	\$780	\$1560	\$262	\$1048	\$2096	\$3656
Mozambique- Maputo	3	7	\$830	\$1660	\$243	\$1701	\$3402	\$5062
Tanzania- Arusha	2	5	\$530	\$1060	\$173	\$865	\$1730	\$2790
Burundi- Bujumbura	5	14	\$225	\$450	\$202	\$2828	\$5656	\$6106
DRC-Lubumbashi	1	4	\$870	\$1740	\$216	\$864	\$1728	\$3468
USA-New York	1	7	\$1700	\$3400	\$475	\$3325	\$6650	\$10050
Total								\$61834
Incidentals 5%								\$3091
Grand total		86 days						\$64925



(25)

B. Budget for looking for witnesses living in Rwanda

Place	Number	Days	Motorvehicle hire	
			U.P	T.P
Mayange-Kanzenze	1	1	30,000Frw	30,000Frw
Karera-Gashora	1	1	30,000Frw	30,000Frw
Rilima Prison	13	7	30,000Frw	210,000Frw
Kayenzi	3	3	30,000Frw	90,000Frw
Mutara	4	2	40,000Frw	80,000Frw
Gashora	1	2	30,000Frw	60,000Frw
Kabarondo	5	2	30,000Frw	60,000Frw
Muhanga	1	1	25,000Frw	25,000Frw
Huye	1	1	50,000Frw	50,000Frw
Gikoro	1	1	30,000Frw	30,000Frw
Kayumba	2	1	30,000Frw	30,000Frw
Maranyundo	1	1	30,000Frw	30,000Frw
Musanze	2	1	50,000Frw	50,000Frw
Kigali	1	1	10,000Frw	10,000Frw
Rwanza	1	1	50,000Frw	50,000Frw
Total				835,000Frw
Incidentals 5%				41750Frw
Grand total		26 days		876,750Frw



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II. Hourly fees for advocates while carrying out investigation: 9 hrs/day

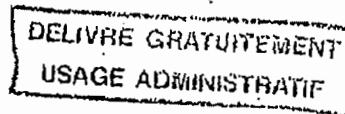
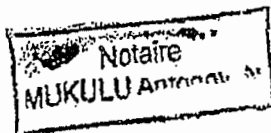
Location	Days to be spent	Working hours	Salary/hour	U.P	T.P
Abroad	86	774	30,000Frw	23,220,000Frw	46,440,000Frw
Rwanda	26	234	30,000Frw	7,020,000Frw	14,040,000Frw
Grand total	112				60,480,000Frw

III. Total budget required

Budget for looking for witnesses abroad	Budget for looking for witnesses in Rwanda	Professional fees for 2 lawyers for 112 days	Total
42,525,875Frw	876,750Frw	60,480,000Frw	103,882,625Frw

Translated by: Tharcisse NTUKANYAGWE, M.Litt. (Oxon)

Translator



Je soussigné, Tharcisse NTUKANYAGWE, M.Litt. (Oxon),  
 Apposé ci-contre  
 le 20 Mars 2015



# ANNEX 7

Contrat d'Assistance et de Représentation en Justice between the Rwandan Bar Association and Defence Counsel for Uwinkindi, Maître Gatera Gashabana and Maître Jean Baptiste Niyibizi, undated

CONTRAT D'ASSISTANCE ET DE REPRESENTATION EN JUSTICE

ENTRE

LE BARREAU DU RWANDA.

ET

LES CONSEILS DE LA DEFENSE

DE UWINKINDI JEAN

EN PRESENCE DU

MINISTERE DE LA JUSTICE

CONTRAT NUMERO .....

*fm*      *⊕*      *↑*      *5*

ENTRE LES SOUSSIGNES

- Barreau du Rwanda, dont le Siège Social est établi à Kigali, District de Kicukiro, représenté par Maître Athanase Rutabingwa, Batonnier de l'Ordre, ci-après dénomé le BARREAU.

ET

- Les Conseils de Défense de Jean Uwinkindi
  1. Maître Gatera Gashabana agissant aux fins des présentes en qualité de Conseil Principal
  2. Maître Jean Baptiste Nyibizi agissant aux fins des présentes en qualité de Co -Conseil, ci-après dénomé les CONSEILS

EN PRESENCE DU

Ministère de la Justice dument représenté par le Secrétaire Permanent /Mandataire Général Adjoint ; ci-après dénomé le MINISTERE.

PREAMBULE.

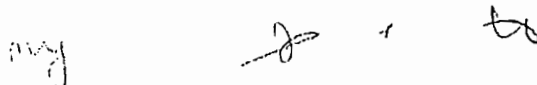
Considérant la nécessité d'une assistance en justice devant les Tribunaux en faveur des prévenus poursuivis d'avoir participé à la commission du crime du Génocide contre les Tutsis et autres infractions connexes, transférés au Rwanda dans le cadre de la coopération judiciaire internationale ne disposant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

Considérant la volonté conjointe du Barreau du Rwanda et 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 Jean Uwinkindi, poursuivi d'avoir participé à la commission du crime du génocide contre les Tutsi 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 RECIPROQUES

### 3.1. Des Conseils de la Défense

Les Conseils de la Défense s'engagent à :

- Assister le prévenu Jean Uwinkindi devant les juridictions rwandaises à tous les degrés et à toutes les étapes de la procédure;
- Rendre compte au Barreau et au Ministère de la justice de tous les actes accomplis en exécution de leurs prestations respectives.
- 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 Barreau

- S'occuper du suivi des activités relatives à la gestion du dossier Uwinkindi Jean.
- Recueillir les avis des conseils de la défense sur toutes les orientations susceptibles d'assurer au prévenu une défense irréprochable.
- Suivre conjointement avec le Ministère de la Justice l'Etat d'avancement de la procédure
- Emettre des observations ou recommandations sur les rapports reçus en vue de l'amélioration des activités d'aide légale dans le futur.

### 3.3 Du ministère de la Justice

- Assurer conjointement avec le Barreau le suivi et l'évaluation des activités des Conseils;
- Pourvoir au financement de l'aide légale;
- faciliter la communication entre les Conseils de la Défense et les instances judiciaires (Cour Suprême, ONPJ, Police Nationale, et les Prisons);
- 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 reçoivent des honoraires sous forme d'un forfait payable mensuellement sur présentation de la facture et du rapport de l'avancement de l'affaire.

Le forfait des honoraires par Avocat est fixé à un million des francs rwandais net (1.000.000 Frw), payable mensuellement.

Article 5 : Des frais relatifs aux enquêtes

Les frais relatifs aux enquêtes seront négociés entre les parties contractantes et traités selon le cas.

Article 6 : De la révision du contrat

De commun accord, les parties pourront dans les six mois, si besoin en est, réviser les termes du présent contrat.

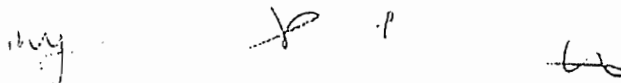
Article 7 : De la résiliation du contrat

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

Lorsque le contrat est résilié, les Conseils sont tenus de remettre toutes les pièces du dossier aux confrères qui leur succèdent dans la même affaire.

Article 8: Du Règlement de différends

En cas de contestation relative à l'interprétation ou à l'exécution du présent contrat, les parties privilégieront un arrangement amiable.



Article 9: De l'Entrée en vigueur

Le présent contrat prend effet à compter du premier Novembre 2013.

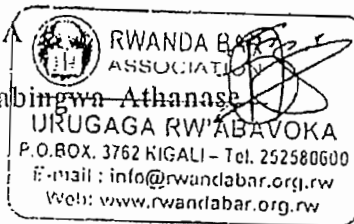
## LES CONSEILS DE LA DEFENSE

Maitre Gatera Gashabana

Maitre Jean Baptiste Niyibizi

LE BARREAU DU RWANDA

Représenté par Maitre Rutabingwa Athanase  
Le Bâtonnier



LE MINISTERE DE LA JUSTICE.

Représenté par Monsieur Ruganintwali Pascal  
Secrétaire Permanent, Mandataire Général  
Adjoint

# ANNEX 8

Letter from Gatera Gashabana and Jean Baptiste Niyibizi to the Permanent Secretary/Deputy Attorney General of the Ministry of Justice, dated 8 December 2014, including opinions and comments on the draft contract

(32)

Barrister GATERA GASHABANA

Tel: 0788303744

Barrister NIYIBIZI Jean Baptiste

Tel: 0788502007

ADVOCATES

Kigali, on 8th/12/2014

Madam the Permanent Secretary/

Deputy Attorney General

RE: Opinions and Comments on the draft

contract between MINJUST and Defense Counsel

of Jean UWINKINDI.

Madam the Permanent Secretary,

We refer to our meeting of December 4, 2014 and to the draft contract, which you sent to us so that we may share observations and comments thereon:

From the outset, we wish to inform you that the same draft was sent to us for review on 01<sup>st</sup>/11/2013. We had in his time considered as the content of the draft clearly violates the spirit and the judgment of the appeal Chamber of the International Criminal Tribunal for Rwanda ordered transfer of the accused Jean UWINKINDI to Rwanda.

Moreover, the amounts referred in Article 4 of that contract are well below the minimum standards required for the defense of the accused in international Courts.

Finally on 1<sup>st</sup>/11/2013 you made us take a draft contract containing the same terms as this one, which was dismissed by agreement, the reason why we had agreed to conclude a new contract which is in force till today.

Our position remains unchanged and therefore cannot be revoked.

For your information we hold you in Annex our humble opinions and observations thereon, and wish you good reception.

Yours faithfully

Barrister Gatera GASHABANA

Barrister NIYIBIZI Jean Baptiste.

Cc:




- The Minister of Justice
- The President of the Bar of Rwanda
- The Chairman of the Seat in RP0002/12/HCCI: NPPA V/UWINKINDI Jean



A handwritten signature in dark ink, located at the bottom center of the page.

(32)

Opinions and Comments on the draft contract of assistance and legal representation

1. The Bar of Rwanda with legal help in its prerogatives should be part of this contract. Indeed among the legal obligations it contained legal assistance to the poor (Art. 59 of Law No. 83/2013 of 09/11/2013 establishing the Bar Association in Rwanda and determining its organization and functioning).
2. More after the Amicus Curiae signed by the Bar of Kigali represented by the president of the Bar on 23/01/2012 in the case: the prosecutor v / UWINKINDI Jean, No ICTR-2005-89-R11 bis, especially in paragraph 25 (page 9), it is explicitly stated that the legal aid fund of the Bar of Kigali is powered mainly by government subsidies.
3. In his affidavit in the case Munyagishari signed on 15/02/2011, the Minister of Justice reiterated that his ministry is supporting the legal aid program of the Bar to indigents whose cases are transferred to Rwanda.
4. Under the decision in case No. ICTR-2005-89-R11 a (par.141) of 06/06/2012 involved: Prosecutor v / UWINKINDI Jean, the Trial Chamber of the ICTR had decided to defer based on allegations supported by the prosecutor and the Bar of Kigali who said that the right to legal representation is provided in the Rwandan law and guaranteed by a legal aid system which funding is sufficiently assured.
5. Based on the above arguments, the ICTR judges considered that the factual assertions of the defense does not refute the affidavits of the Minister of Justice and the General Secretary of the Supreme Court and believed that the assurance that sufficient funds will be allocated has been given in good faith. (par. 153 of the above case).
6. The ICTR judges also reaffirmed the fundamental right to defense in these words: "if it is obstructing the defense counsel of Jean UWINKINDI, so that it is not able to efficiently defend the interested, the removal order will be canceled in accordance with Article 11a of Regulation." (par.170 of the case which references above).
7. It follows that the financial contributions of the government in favor of the Bar in the legal aid field must pass through the accounts of the Bar and not through the accounts of lawyers, why the Bar should be party to the procedure for concluding the new contract.
8. With particular regard to legal aid, the decision of the ICTR Appeal Chamber in that case (par.84) could not be clearer "... if Rwanda had not allocate enough funds, affecting the right of the accused to a fair trial, the removal order would be canceled. "
9. The draft contract that was submitted to our appreciation contains ambiguities on the number of lawyers to assign in an international trial: the main counsel and the co-counsel, and, Article 3.1. outlines the defense counsel; while the site reserved for parties and signatories to the contract allows reflected the presence of a single lawyer. Therefore, the

(32)  
question is how a lawyer can engage a liability of others? (art. 64 of Law No. 45/2011 of 25/11/2011 governing contracts).

10. The amount of the fees of 15,000,000Rwf planned of all legal proceedings in Article 4 of the draft agreement had been denied by the parties including yet the Ministry of Justice. Why now return to that amount that the modality and the low level are no longer need to express.

1. The average length of judicial proceedings in the international trial is 5 years.

In this case, the two lawyers appointed: The principal counsel and the Co-counsel would provided their services in the servicing liability of their respective offices with serious consequence of falling insolvent.

Indeed, the monthly fees allocated to each of them would be:

15,000,000Rwf = 125,000Rwf

2x12x5

And the assessed amount could not cover the monthly expenses of operating a law firm.

2. The hypothesis of a confession and guilty plea procedure was not considered by the Ministry of Justice, which could release the same amount of 15,000,000Rwf to lawyers who provided their services for a period not exceeding one month.

3. However, there are references reliable to avoid mistakes include:

- The ICTR and mechanism have planned in their lists of legal counsel's fees from US \$ 80 to \$110 net per hour of service provided by a counsel (Cf. Document attached pp 14-15). All costs and disbursement remain the responsibility of these institutions.

- The scale of the ICC also provides for each legal counsel fees in the range from US \$ 80 to \$110 net per hour. Also it must be noted that all costs incurred by lawyers as part of their benefits are fully supported by the ICC.

- In the related file RP0002/12/HCCI, involved National Public Prosecution Authority v/ Jean UWINKINDI: an assistance and legal representation contract signed on 01<sup>st</sup> / November / 2013 provides in Article 4, fees of 1,000,000Rwf net per month per legal counsel.

- The new schedule of the Bar Association has set the hourly rate between 150,000Rwf and 300,000Rwf gross by a legal counsel per service hour; with the possibility of 30% increase in the complex case like genocide (Arts 35 and 36).

11. With these practices data and reliable references; also aware of the economic realities of our country; it is our with all the modesty that is needed to offer the rigorous application

(32)  
of the rules that govern us, as the scale of the Bar regarding the hourly rate or to make use of precedent in the case Prosecution v / Jean UWINKINDI.

12. The draft contract stipulates in Article 4 paragraph 3 that the amount of 15,000,000Rwf includes all costs of the legal counsel in the country. This provision is not explicit on survey costs within the country.

How can you fix a priori the costs of investigations that are not scheduled, localized and specified?

13. The movement within the country cannot be carried out in the same places and for the same periods in different cases.

14. Consequently, the cost of investigations within the country should vary from one case to another.

15. Exculpatory investigations to be conducted within and outside the country must also get funding to match these tasks, moreover, it must be emphasized that all potential witnesses of Mr. Jean UWINKINDI reside .... (cf. paragraph 153 of the decision of 06/06/2012, Case No. ICTR-2005-89-R11, bis cited above)

16. In the investigation, it should be noted for illustrative purposes that the ICTR and mechanism aside a budget of US \$ 100,000 net as legal counsel fees excluding transport and accommodation costs. (Cf. Document attached p. 11).

17. In our humble opinion, the cost of investigations should be made available in accordance with the official rate applicable in the Rwandan administration. This shows how the defense would not in any location to outbid in its claims.

18. To close the chapter of the fees, it should be emphasized that their disbursement should be done on the legal aid fund managed by the Bar Association or on the account of the bar load for him to deliver to whom it may concern (see also points 1 and 4 of this).

19. Article 3, 1b contains terms could undermine the independence of the legal profession guaranteed by Article 48 paragraph 1 of Law No. 33/2013 of 11 September 2013 establishing the Bar Association in Rwanda and determining its organization and functioning and therefore undesirable.  
The content of this provision is also included in logical terms in section C of the same article.

20. Article 3.2 of the draft contract tends to give to the Ministry of Justice powers to monitor and evaluate the activities of legal counsels legally assigned to the Bar Association of Rwanda (Article 59 of the Law on the aforementioned) and must ipso facto be deleted.

21. Article 6, paragraph 2 of the draft contract contains points for the less obscure and which are in flagrant violation of the sacrosanct principle of the independence of legal counsel

*JS*

(32)

(Article 48 paragraph 1 of the Act establishing the Bar association aforesaid), the constitutional principles of the presumption of innocence (Art. 19) and the fundamental freedom of expression (Art. 34) and consequently deserves to be canceled.

22. Finally, we consider that the project was proposed to us does not meet the concerns of the defense counsel as had been reported at our meeting of December 4, 2014. We remain at your disposal for any additional information you consider relevant to ask and thank you for the attention you please to grant this.

Done at Kigali on 12<sup>th</sup>/08/2014

Barrister Gatera Gashabana

Barrister Niyibizi Jean Baptiste

Translated by: Joseph KAREGA, Translator NPPA.



*Handwritten signature*  
Vu pour légalisation de la Signature  
de M. Joseph KAREGA  
Apposée ci-contre  
le 20-08-2015

DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF

Notaire  
MUKULU Anthony, N

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# ANNEX 9

Minutes of a meeting on the agreement for the defence of Uwinkindi Jean between the Minister of Justice, Attorney General, President of the Rwandan Bar Association, and the Permanent Secretary/Deputy Attorney General, dated 6 January 2015

(22)

**MINUTES OF THE MEETING ON THE AGREEMENT  
FOR THE DEFENCE OF UWINKINDI JEAN**

Today Tuesday 06 January 2015, The Honourable Ministry of Justice and Attorney General held a meeting with the President of the Bar Association Me Athanase RUTABINGWA; also in attendance was the Permanent Secretary/Deputy Attorney General. The meeting aimed at examining the agreement between MINIJUST, Me GATERA Gashabana and Me NIYIBIZI Jean Baptiste and the Bar Association for the defence of Jean UWINKINDI who was transferred to Rwanda and is being prosecuted for the crime of Genocide.

The Honourable Minister and Attorney General started the meeting by recalling the reason behind the disagreement between both parties on the amendment of the agreement.

He explained that MINIJUST wanted an amendment of the agreement putting it in line with the legal aid policy and with other agreements so that legal aid for the defence of persons transferred to Rwanda may be the same since all the accused are equal.

Those who attended the meeting examined the hearing held on 12/2014 and the reasons given by UWINKINDI's defence for requesting for the termination of the trial claiming that they had no means left to represent UWINKINDI.

**Recommendations of the meeting:**

Those present at the meeting noted that:

1. Article 7 of the agreement between MINIJUST, Me GATERA Gashabana, Me NIYIBIZI and the Bar Association provides that in case of termination of the agreement, a three months notice shall be given; the notice was given.
2. In a letter dated 22/12/2014, MINIJUST gave a three months notice effective from the date of reception of the letter by UWINKINDI's lawyers, and reminded them that they must continue representing UWINKINDI during that period as provided for in the agreement.
3. The agreement remains valid till the end of the three months notice; this means that besides representing UWINKINDI, even negotiations between MINIJUST and his defence lawyers should continue.
4. Me GATERA and Me NIYIBIZI should continue representing UWINKINDI and they will be remunerated for it, pursuant to the agreement.



(22)

Done at Kigali, on 06/01/2015

Chairman of the meeting:

BUSINGYE Johnston [Signed]

Minister of Justice/Attorney General

Translated by: Tharcisse NTUKANYAGWE, M.Litt. (Oxon)

Translator



Notaire  
MUKULU Antonny. N

DELIVRE  
USAGE  
MATIF

Apposee et  
le 20 JANVIER 2015



# ANNEX 10

*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

(2)

THE HIGH COURT, THE SPECIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES, SITTING IN KIGALI, TRYING PENAL CASES AT FIRST INSTANCE MADE THE FOLLOWING PUBLIC RULING ON CASE RP 0002/12/HCCI IN A PRE-TRIAL CASE ON 06/02/2015:

THE PROSECUTOR

versus

THE ACCUSED:

Jean UWINKINDI son of Subwanone and Ntizişigwa, born in 1951 at Rutsiro in former Kibuye Prefecture in the Republic of Rwanda, up to 1994 he was residing in former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatare Cell, married to Kabagwira Rose and they have eight (8) children, pastor, Rwandan, owns no assets, currently detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he has been accused of having committed in Rwanda. He is represented by legal Counsels Barrister GABONZWA Joseph and Barrister HISHAMUNDI Issacar.

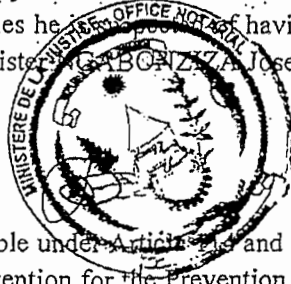
CHARGES AGAINST HIM:

- The Crime of Genocide provided for and punishable under Article 23 and 115 of the Penal Code in Rwanda, Article 1 and 3 (c) of the "Convention for the Prevention and Punishment of the Crime of Genocide";
- The Crime of extermination as a crime against humanity provided for and punishable under Article 120 par. 2 as well as Article 121 of the Penal Code of Rwanda.

I. NATURE OF THE CASE

1. On 05/02/2015, Jean UWINKINDI informed the court that he does not have legal counsel because those assigned to him by the Bar Association are not his legal counsel. He claimed that they were appointed unlawfully because he is the one to choose his legal counsels from the list of the Rwanda Bar Association.

2. The Prosecutor declared that there is no law that stipulates that an indigent accused person who doesn't have means to pay his/her legal counsel should choose himself his legal counsel, that it is the Bar Association which assigns him/her legal counsel.



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(2)

3. Therefore, the court shall examine whether assigning legal counsel to Jean UWINKINDI is unlawful.

## II. ANALYSIS OF CASE ISSUE

4. On 21/01/2015, after noting that Jean UWINKINDI had no legal counsels because Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi had withdrawn from the hearing, the court decided to request the concerned authority to assist him in finding legal counsel.

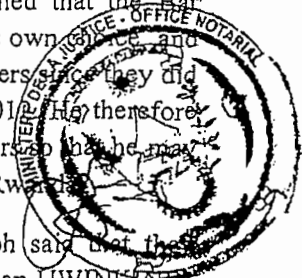
5. On 05/02/2015, Jean UWINKINDI appeared before the court with Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar, both appointed by the Bar Association as legal counsels to replace Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi.

6. Jean UWINKINDI informed the court that Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar are not his legal counsels because he had realized that they were appointed in breach of Article 14 paragraph 6 of Organic Law N° 09/2013/OL of 16/06/2013 on the transfer of cases to the Republic of Rwanda from International Criminal Tribunal of Rwanda and other states, as amended and modified to date. He explained that the Bar Association should have given him the list of lawyers and let him make his own choice and that even for those assigned to him there was no evidence that they are lawyers since they did not appear on the list of lawyers which was submitted to him on 26/04/2015. He therefore requests the Court to order the Bar Association to give him the list of lawyers so that he can make his own choice of lawyers just like it was done when he first came to Rwanda.

7. Barrister HISHAMUNDA Issacar and Barrister NGABONZIZA Joseph said that they appeared in this case as lawyers chosen by the Bar Association to defend Jean UWINKINDI and that it was their duty to abide by the Bar Association's request.

8. The Prosecutor argued that Article 14 paragraph 6 of the Organic Law N° 09/2013/OL of 16/06/2013 on the transfer of cases to the Republic of Rwanda from International Criminal Tribunal of Rwanda and other states, as amended and modified to-date stipulates that the accused person can choose his legal counsel when he has the means to pay them, in case the accused person does not have legal representation, the Bar association assigns it to him. This matches with decisions of International Criminal Tribunal for the former Yugoslavia and even Rwanda.

9. Therefore, they concluded that since the Bar Association has already provided him with legal counsels but Jean UWINKINDI does not want them, the following alternatives are left: to look for a legal counsel and pay him/her, to plead without legal counsel, or to withdraw the argument and let the trial proceed.



10

(2)

10. Article 14 paragraph 6 of the Organic Law N° 47/2013 of 16/06/2013 on the transfer of cases to the Republic of Rwanda stipulates that *"the accused person transferred to Rwanda from ICTR, Mechanism or other states, has the right to legal counsel of his/her choice in any examination; in case he/she has no means to pay, he/she shall be entitled to legal representation."*

11. The Court notes that pursuant to this article, the right to choose a legal counsel is granted to a person with means to pay him/her. Consequently an indigent person should be assigned with legal assistance free of charge by the Bar Association. This was adopted during AKAYESU Jean Paul's trial ruled by the International Tribunal for Rwanda, where they say that the fact that the accused person is assigned with legal assistance free of charge, does not grant him the right to be provided with legal assistance of his/her own choice, because the accused person with means to pay is the one who is granted the right of making his/her own choice.

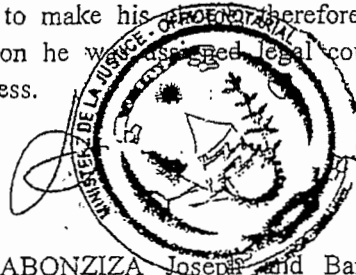
12. The Court also observed that even if Jean UWINKINDI while assigning him with new legal counsels, the Bar Association should submit him the list of legal counsels so that he may make his choice as it was done upon his arrival in Rwanda, this was not done in accordance to any law and he should therefore not consider it as a legitimate right. This was also the decision taken in AKAYESU Jean Paul's case mentioned above where the court registrar allowed an indigent accused person to make a choice of legal counsel from the list of lawyers, the court registrar is not obliged to respect such a choice; that instead, he/she could use his/her discretion and in the interest of justice, has the power to respect it or not<sup>4</sup>.

13. Therefore, the Court notes that the Bar Association has the authority to assign legal counsel to Jean UWINKINDI without allowing him to make his choice, therefore Jean UWINKINDI's declarations that, as an indigent person he was assigned legal counsels unlawfully and that they cannot defend him, are groundless.

### III. THE COURT'S RULING

14. The Court hereby confirms that Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar were legally appointed by the Bar Association as Jean UWINKINDI's legal counsels.

15. The Court has decided that the trial should continue.



*[Handwritten signature]*

IT WAS SO RULED AND PRONOUNCED IN PUBLIC TODAY 06/02/2015

NGENDAKURIYO R. Alice [Signed]  
President

Sé  
NSANZIMANA Fidèle [Signed]  
Judge

KANYEGERI Timothée [Signed]  
Judge

Sé  
MUKAMANA Patricie [Signed]  
Court registrar

Notaire  
MUKULU Antony. N



Certified copy authentic to the original  
Done at Kigali on...06/02/2015  
Court registrar [Signed]

Translated by Nadine NDUWIMANA  
Translator

Vu pour legalisation de la Signature  
de M. Mukulu Antony N. Notaire  
Apposee ci-contre  
Kigali le 20 Mars 2015

DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF  
(2)

# ANNEX 11

*Uwinkindi v. Public Prosecution*, The Supreme Court Sise at Kigali, Trying Criminal Cases, case no. RPA 0011/15/CS, Decision, 24 April 2015

COURT JUDGMENT RPA 0011/15/CS

page 1

**SUPREME COURT SISE AT KIGALI, TRYING CRIMINAL CASES, RULED IN PUBLIC THE CASE RPA 0011/15/CS ON 24/4/2015 AS FOLLOWS:**

**IN TRIAL:**

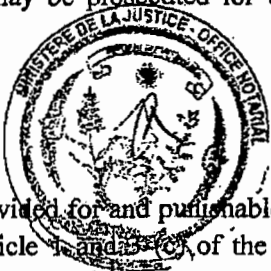
**THE PUBLIC PROSECUTION**

**VERSUS**

**THE ACCUSED:**

Jean UWINKINDI ( the appellant), son of Subwanone and Ntizisigwa, born in 1951 at Rutsiro in the former Kibuye Prefecture in the Republic of Rwanda, up to 1994 he was residing in the former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatare Cell, married to Kabagwira Rose and they have eight (8) children, pastor, Rwandan, owns no assets, currently detained in kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he is suspected of having committed in Rwanda.

**CHARGES AGAINST HIM:**

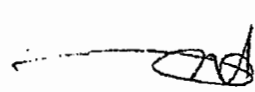
- 
- The Crime of Genocide provided for and punishable under the article 114 and 115 of the Penal Code in Rwanda, article 1 and 2<sup>1</sup> of the "Convention for the Prevention and Punishment of the Crime of Genocide"
  - The Crime of extermination as a crime against Humanity provided for and punishable under the article 120 part 2 as well as article 121 of the Penal Code of Rwanda.

(Appealing an interlocutory judgment in the case n° RP 0002/12/HCCI ruled on 06/02/2015 by the High Court, the Specialized Chamber Trying International and Cross-border Crimes)

<sup>1</sup> The decision of the General Assembly of the United Nations N° 206 (iii) of 09/12/1948 ratified by Rwanda and incorporated in Rwanda Laws by the Decree Law n° 08/75 of 12/02/1975, incorporated in Official Gazette of Rwanda (1975), p. 230.

*and*

**I. THE NATURE OF THE CASE**

1. On 21/01/2015, after noting that his legal counsels namely Barrister GATERA GASHABANA and Barrister NIYIBIZI Jean Baptiste withdraw from the trial, the High Court Specialized Chamber trying International and Cross-border Crimes (HCCI) ruled that the concerned organs support UWINKINDI Jean to get legal representation.
  2. On 05/02/2015, UWINKINDI Jean appeared before the High Court with Barrister NGABONZIZA Joseph and HISHAMUNDA Isacaar appointed as his legal counsels by the Bar Association. At this time, UWINKINDI Jean submitted an objection of having been assigned legal counsels unlawfully because he didn't elect his self-representation.
  3. In the interlocutory judgment n° RP 0002/12/HCCI of 06/02/2015, the High Court (HCCI) adopted that Barrister NGABONZIZA Joseph and HISHAMUNDA Isacaar were lawfully appointed by the Bar Association.
  4. While making decision, that court based on the article 14, paragraph 6 of the Law n° 47/2013 of 16/06/2013 related to Transfer of Cases to the Republic of Rwanda, noted that the right to make his/her own choosing of a legal counsel is entitled to the accused who can financially bear the cost. In case he/she has no means to pay, he/she shall be entitled to legal representation;
  5. That Court based also on AKAYESU Jean Paul judgment ruled by ICTR and noted that although upon his arrival in Rwanda, UWINKINDI Jean was presented a list of legal counsels and made his own choosing, it is not a command so that he considers it as an absolute right.
  6. UWINKINDI Jean, appealed against that judgment to the Supreme Court on 03/03/2015, claiming that he was deprived of his right to defense provided under the article 18, paragraph (3) of the National Constitution, article 150, 3<sup>o</sup> of the Law n° 30/2013 of 24/05/2013 related to the Code of Criminal Procedure, and article 14, 6<sup>o</sup> of the Law n° 47/2013 of 16/06/2013 related to Transfer of Cases in the Republic of Rwanda.
  7. The Public Prosecution submitted the objection related to the inadmissibility of UWINKINDI Jean's appeal because it was submitted unlawfully; however in case the Court understands it otherwise, may adopt that this appeal is unfounded.
- 



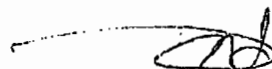
8. The hearings on that appeal was scheduled on 9/03/2015, but on that day the case was not ruled because Barrister GATERA GASHABANA and Barrister NIYIBIZI Jean Baptiste brought by UWINKINDI Jean to legally represent him were not allowed to plead because they have not yet pay the civil fine charged by the Court. The hearing was postponed on 6/4/2015. On that day, after noting that this time UWINKINDI Jean's legal counsels have implemented the decision of the Court; the hearing was held in public UWINKINDI Jean appeared before the court with his legal counsels Barrister GATERA GASHABANA and Barrister NIYIBIZI Jean Baptiste, the Public Prosecution represented by RUBERWA Bonaventure in collaboration with MUTANGANA Jean Bosco, all Prosecutors at National Level.

## II. ANALYSIS OF CASE ISSUES

### A. Examining if the appeal of UWINKINDI Jean was submitted unlawfully

9. The Prosecutors said that based on the article 162 of the Law n° 21/2012 of 14/06/2012 related to the Civil, Commercial, Labor and Administrative Procedures, the appeal against an interlocutory judgment shall be made only jointly with the final judgment. They also say that this view is contained in article 34,10° of the Organic Law N° 03/2012/OL of 13/06/2012 determining the Organization, Functioning and Jurisdiction of the Supreme Court forbidding the Chief Registrar of the Supreme Court to receive an appeal on interlocutory judgment which is not lodged jointly with the final judgment. They end up requesting the Court the make the decision based on the general provisions of the Law in Rwanda, because this article 18 of the Law related to the Transfer of Cases in the Republic of Rwanda did not provide the way the appeal may be made.
10. UWINKINDI Jean argues that this objection did not consider the articles he based on while lodging his appeal, including articles 16 and 27 of the Law related to the Transfer of Cases in the Republic of Rwanda that specifies that in the event of any inconsistency between this Law and any other ordinary Law, the provisions of this Law shall prevail. He also said that based on the article 180 of the Law related to the Civil, Commercial, Labor and Administrative Procedures, the trial proceedings should have been suspended till the examination of the appeal, because among the points he appealed against, there is an important issue which may disrupt the trial on the merits because the hearing shall not go on if he have not a legal counsel, that in such case he may not even has a trial.

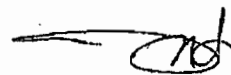
11. Barrister NIYIBIZI Jean Baptiste comments that on behalf of the legal counsels, the objection of the inadmissibility of the appeal is unproven because UWINKINDI Jean appealed based on the article 18 of the related to Transfer of Cases in the Republic of Rwanda granting the right to both the prosecution and the accused to appeal against any decision taken by the High Court, and UWINKINDI Jean did it. He goes on and says that he is highlighting it because UWINKINDI Jean was deprived of the right to defense as provided by the National Constitution of the Republic of Rwanda which stipulates that the right to defense is absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs.
12. He also declares that the article 162 of the Law related to the Civil, Commercial, Labor and Administrative Procedures should not be based on because it is not related to criminal proceedings, that furthermore as this case was transferred to Rwanda by the International Criminal Tribunal for Rwanda, there is a Special Law specifying the way these cases should be judged, this is the one which has to be respected before resorting to the common Law in case there is a contradiction. He comments that it is in that context that basing on the article 18 of the Law related to Transfer of Cases to the Republic of Rwanda, UWINKINDI Jean has the right to elect his self-representation, that also there is no restriction preventing him from appealing that decision which deprived him of that right.
13. He ends up saying that the article 34 10° of the Organic Law determining the Organization, Functioning and Jurisdiction of the Supreme Court is respected by the Chief Registrar of the Supreme Court, the latter received and registered this appeal and decided that it is received.
14. Barrister GATERA GASHABANA also states that the objection from the Public Prosecution is unproven because the appealed decision is not a provisional ruling, that instead basing on the article 14 of the International Convention of Civil and Political Rights ratified by the Republic of Rwanda in 1975, this is an final decision which was already a law on the objections presented regarding the right to defense of Uwinkindi which he was deprived of while the article 18 of the National Constitution of the Republic of Rwanda and article 14 of the Law related to the Transfer of Cases to the Republic of Rwanda grants him the right to elect his self-representation.
15. He concludes that the article 18 of the Law related to the Transfer of Cases to the Republic of Rwanda is a Special Law granting to Uwinkindi and any other plaintiff the right to appeal against any decision, that appeal may suspend the final judgment while waiting for the decision from the Court at higher level, that therefore the



allegations saying that he (Uwinkindi) shall wait the decision of the trial on the merit are unpersuasive.

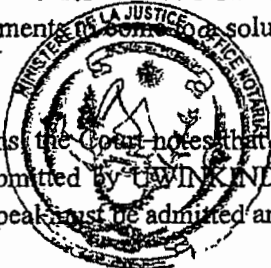
## LEGAL CONCLUSIONS

16. The article 3, first paragraph of the Law n° 47/2013 of 16/06/2013 related to the Transfer of Cases to the Republic of Rwanda specifies that *'This Law applies in matters concerning transfer of cases to the Republic of Rwanda from the Mechanism and from other States, relating to crime of genocide perpetrated against Tutsi and other crimes against humanity.'*
17. The article 18 of the Law n° 47/2013 of 16/06/2013 above mentioned, stipulates that *'Both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or all of the following grounds:*
- 1° *an error on a question of law invalidating the decision;*
  - 2° *an error of fact which has occasioned a miscarriage of justice.*
- The Supreme Court may uphold or invalidate some or all of the decisions of the High Court. Where necessary, it may order the High Court to review the case.'*
18. The article 27 of the Law n° 47/2013 of 16/06/2013 above mentioned, provided that *'In the event of any inconsistency between this Law and any other ordinary law, the provisions of this Law shall prevail.'*
19. The article 34, 10° of the Organic Law n° 03/2012/OL determining the Organization, Functioning and Jurisdiction of the Supreme Court, stipulates that *'The Chief Registrar of the Supreme Court shall determine whether the appeal is admissible before it is recorded in court registers. He/she shall not register a lodged appeal in the event of [...] appeal on interlocutory judgment which is not ruled together with the final judgment;'* [...]
20. The article 162, second paragraph of the Law n° 21/2012 of 14/06/2012 related to related to the Civil, Commercial, Labor and Administrative Procedures specifies that *'However, the appeal against an interlocutory judgment shall be made only jointly with the final judgment. In this case, the time limit for appealing against the interlocutory judgment starts running from the date on which the final judgment was notified to the party.'*
21. Regarding this case, the court notes that as this claim was received through the normal procedure of submitting claims, the Chief Registrar received it and registered it, the President of the Supreme Court has scheduled the day of the hearing, the



decision of the Chief Register becomes final, and thus there is no reason to come back to it.

22. The Court notes also that as the article 18 of the Law n° 47/2013 of 16/06/2013 above mentioned stipulates that any decision taken by the High Court may be appealed against, and this is the law that shall be respected regardless the provisions of other laws in case of inconsistencies, UWINKINDI Jean had the right to appeal against a decision made by the High Court Specialized Chamber trying International and Cross-border Crimes (HCCI), with regard to legal representation.
23. The Court finds out also that apart from the explanations in the above paragraph, the appealed judgment was called interlocutory judgment, if you really examine it, you note that it was not at the level of interlocutory judgment mentioned in the article 162 of the n° 21/2012 of 14/06/2012 mentioned above, because this judgment was made in a final way in the context of closing the discussions raised with regard to the issue of legal representation of Uwinkindi Jean in High Court, while interlocutory judgment are judgment which settles out issues related to the trial in question.
24. While highlighting the difference between those cases, the experts in Law declares that the final judgment settles out discussions to the extent that it will not be necessary to come back to it, whereas interlocutory judgment on its turn do not settle out an issue instead these are decision made in the mid of the trial proceedings aiming at protecting some interest before the trial starts (provisionary judgment) or allows to gather the required elements for a solution (verdict related to the hearing)<sup>2</sup>.
25. Following the above clarifications, the Court notes that the objections related to the inadmissibility of the appeal submitted by UWINKINDI Jean raised by the Public Prosecution is unfounded, his appeal must be admitted and examined.



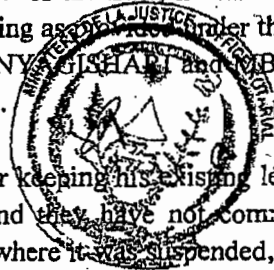
#### **B. Assessing if UWINKINDI Jean has the right to elect his self-representation**

26. UWINKINDI Jean argues that his appeal grounds is specifically based on the right to defense provided by the Law, that on 5/2/2015 he was unexpectedly compelled to plead, compelled to accept unknown legal counsel he doesn't know in which way they are involved in his case because he didn't elect them after being deprived of his current ones, he said that this was done against the article 18 of the National

<sup>2</sup> Jacques Ghestin, Gilles Goubeaux avec le concours de Muriel Fabre-Magnan, *Traité de Droit Civil, Introduction General*, 4<sup>ème</sup> Edition, P. 588, Para. 617 in fine.

Constitution of the Republic of Rwanda, the Law n° 30/2013 of 24/5/2013 related to the Code of Criminal Procedure, article 14 of the Law n° 47/2013 of 16/06/2013 related to Transfer of Cases in the Republic of Rwanda.

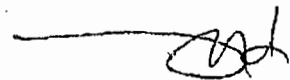
27. He also comments that Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph, appointed by the Bar Association, even if he was not involved in their appointment and he is criticizing it, they don't have the capacity to plead a case like this one because Barrister NGABONZIZA Joseph has not the required experience, whereas Barrister HISHAMUNDA Isacaar the primary Court of Nyarugunga decided that he has no capacity to plead in such cases.
28. He said his case was almost at the final level because it was at the level of listening to witnesses; it is at that period that his legal counsels were suspended by the Court, while he was transferred from Arusha hoping to get equitable justice as guaranteed by Rwanda.
29. UWINKINDI Jean also said that three errors occurred, the latter are as the Court received jurisprudence while the hearing was closed, and he was not allowed to defend on them, the fact that he hasn't reject legal counsels instead the Court dismissed his legal counsels, this is different from AKAYESU's case discussed in 'jurisprudence' because he rejected them and the fact that the Court neglects the article 16 of the National Constitution of the Republic of Rwanda which stipulates that all human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the Law, he said that he was not provided with the list to make his own choosing as per the law and there are some who benefited from it such as MUNYISHA and BARUSHIMANA, and for this one it happened on 25/03/2015.
30. UWINKINDI Jean requests for keeping his existing legal counsels because his trial is almost at the final level and they have not committed any mistakes thus the hearing should continue from where it was suspended, otherwise he should be given the list for electing his self-representation, but they shall be granted sufficient time to prepare the trial, it will be like starting again because he is charged of important crimes.
31. Barrister NIYIBIZI Jean Baptiste supports UWINKINDI Jean's allegations saying that his client was deprived of the right to legal defense of his own choosing after making the decision that he has no legal counsels, that electing self-representation was ordinarily respected, that he even has a letter appointing him in the case of



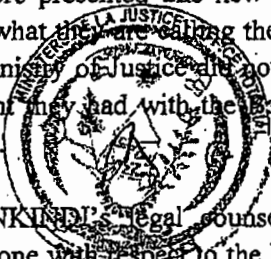
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MUNYAGISHARI after being elected by him, that this is the normal procedure respected in International Courts including Arusha.

32. He said that the 'jurisprudence' submitted by the Public Prosecution is not consistent with UWINKINDI Jean's case, because he doesn't want to change the legal counsels like AKAYESU whose request was not approved in the context of a fair justice, instead he wants to keep his legal counsels always in the same context of a fair justice.
33. He also argues as that jurisprudence the Court based on it to make a decision, it should not base on it since it was submitted after closing the trial proceedings without resuming the hearing so that even UWINKINDI Jean comments on it, that this is against the article 18 of the National Constitution of the Republic of Rwanda.
34. Regarding the 'jurisprudence' above mentioned, the grounds compelling the International Criminal Tribunal for Rwanda refused to AKAYESU to change the legal counsels, it argued that it is in the context of having a smooth running of the hearing, he thus wondering the reasons why Uwinkindi Jean's legal counsels should be changed while they have been in this case for two years and six months, they prepared the closing brief of 120 pages, he notes that the new appointment legal counsels could not defend those closing brief in court, that even if they will analyze them the fair justice should not be achieved.
35. He ended requesting the Court to let UWINKINDI Jean keep collaborating with the existing legal counsels, because the new appointed by the Court, apart from not electing them they don't have 10 years' experience required for pleading in such cases.
36. Barrister GATERA GASHABANA on his behalf argues that the High Court makes a mistake, interprets wrongly the article 14,6° related to the Transfer of cases in the Republic of Rwanda, it specifies that shall be entitlement to counsel of his/her choice if he/she can financially bear the cost. In case he/she has no means to pay, he/she shall be entitled to legal representation by the Court. He said that this is not right basing on the principle in the article 14 (d) of the International Convention on Civil and Political Rights which specifies that all people are equal before the court, they shall be represented by their self-representation, either they can financially bear the cost or not, that this Conventions are first applied before Rwandan laws.



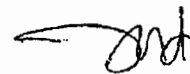
37. Barrister GATERA GASHABANA declares that the Bar Association respects is granting the principle to the plaintiff a legal counsel of his own choosing that the authorities should do everything possible for respecting this principle. He goes on explaining that the High Court made a decision against this principle, that UWINKINDI Jean's legal counsels of his own choosing were sacked by the Court on the basis of the guidelines contained in the letter from the Ministry of Justice, that such procedures are against the National Constitution because the Judicial Power is independent, they are requesting the Executive Power for not interfering in justice matters. He ended up requesting that UWINKINDI Jean should be legally represented by legal counsels of his own choosing because the laws allowed it to him.
38. The Prosecutors argue that the right to legal counsel of his/her own choosing in court is not absolute, especially that an indigent with no means to bear the cost, that for such a person to be granted legal assistance in court has procedures to be followed, that the Bar Association assigns legal counsels, Ministry of Justice provides fees to pay them.
39. The Prosecutors explains that regarding UWINKINDI Jean as well as others who were transferred by the International Court Tribunal for Rwanda sited at Arusha even other mechanisms, the Ministry of Justice has now set payment plan of fifteen million (15.000.000) per each case till it is closed, but that this plan started when Barrister GATERA GASHABANA and Barrister NIYIBIZI Jean Baptiste already had an agreement contract of being paid one million (1.000.000) per month till the case is closed, when they were presented this new plan, they rejected it and the contract was terminated, this what they are calling the interfering of the Ministry of Justice. They note that the Ministry of Justice did not dismiss those legal counsels, instead, the contract agreement they had with the Bar Association was terminated because of a misunderstanding.
40. They argue that after UWINKINDI's legal counsels withdrew from the case, assigning him new ones was done with respect to the laws because the articles 14,6° of the Law n° 47/2013 of 16/06/2013 related to the Transfer of Cases in the Republic of Rwanda specifies that in case the accused has no means to bear the cost of a legal counsel, he is assigned them, that in such a case he/ she is not allowed to elect his self-representation, thus, this is what happened.
41. They highlight that such issues were raised in international courts and decisions were made on them, that the so-called right to counsel those courts explained that the accused has a right to elect self-representation but that right is not unlimited and may



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be denied where for instance the election is made mid trial and has the potential to seriously disrupt the proceedings. They refer to this in the appeal trial of Krajisnic, paragraph 118.

42. They also say that those courts explain that if an accused elects self-representation, he forfeits the right to legal assistance, even if he is indigent. This refers to Vojslav Seselj case in relation with Contempt of Court, Case number IT -03-67-RR77.4-A Paragraph 39.
43. Another example presented by Prosecutors, is related to the International Criminal Tribunal for Rwanda which made the decision that the right of an indigent defendant to effective representation does not entitle him to choose his own counsel. The right to choose counsel applies only to those accused who can financially bear the costs of counsel. This refers to the case of NAHIMANA and his friends in appeal, the case of KAMBANDA in appeal and that of AKAYESU in appeal.
44. While focusing on the fact that the accused can elect his self-representation, the Prosecutors refer again on the decision made by the International Criminal Tribunal for Rwanda, where during AKAYESU case the judge declared that although an indigent accused may choose from among a list of counsel generated by the registrar, the registrar is not necessarily bound by the indigent accused's wishes. The accused's choice regarding counsel 'should be respected' but the registrar may decide not to appoint the accused first choice of counsel, if there are sufficient grounds overriding the accused's preference.' That an accused would have preferred another counsel is not a sufficient basis for warrant intervention by the Appeals Chamber. The registrar has wide discretion which he exercised in the interest of justice.
45. In addition, although the Bar Association appointed UWINKINDI Jean's legal counsels and the Ministry of Justice agreed to pay legal counsels of his choice, yet meanwhile the contract agreement was terminated on the basis of a misunderstanding from both sides, they note that he (Uwinkindi) should accept the legal counsels assigned by the Bar Association namely Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph because their appointment was done in the interest of justice since the existing legal counsels withdrew from the case, otherwise he should elect others and bears the costs. They explain that this is the same decision made in the case of NAHIMANA versus the Prosecution in ICTR, where the Court ruled that the appointment of new counsel cannot take place until existing counsel withdraws his or her representation.





46. They end up saying that UWINKINDI Jean should not base on the article 39 of the Code of Criminal Procedure specifying that any person held in custody by the Judicial Police shall have the right to legal counsel and to communicate with him/her. If a suspect is unable to find a legal counsel, the Judicial Police Officer or the Prosecutor shall inform the Chairperson of the Bar Association so that he/she assigns a legal counsel for the suspect. The suspect shall have the right to accept or refuse to be represented by such a legal counsel. They argue that UWINKINDI Jean has no right to refuse a legal counsels assigned by the Bar Association based on that article because currently he is not in custody by the Judicial Police.

#### Legal conclusion

47. The article 14.3 (d) of the International Conventions on Civil and Political Rights, stipulating that any accused of a criminal offense has the right, in full right at least to the following advantages: [.....] d) to personally be present during trial proceedings to self-defense or to be granted a counsel of his/her choice; if he/she does not have a legal counsel, to be notified to have one free of charge if he does not bear the financial cost.
48. The article 14.6° of the Law n° 47/2013 of 16/06/2013 related to Transfer of Cases to the Republic of Rwanda specifies that *'the accused person in the case transferred by ICTR, by the Mechanism or by other States to Rwanda shall be guaranteed the following rights: entitlement to counsel of his/her choice in any examination. In case he/she has no means to pay, he/she shall be entitled to legal representation.'*
49. The Court notes that the main issue to be examined in this case is to know if the legal counsels Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph assigned to UWINKINDI Jean for defense are appointed lawfully because this is the charge which was pled in the appealed judgment.
50. The Court observes that on 21/01/2015 after that the High Court Specialized Chamber Trialing International and Cross-border Crimes, noted that UWINKINDI Jean has no longer legal counsels made the decision to write to the President of the Bar association requesting for assigning him legal counsels because he is indigent, then on 29/01/2015, he appointed Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph. However, on 5/2/2015 once in Court for starting their duties, UWINKINDI Jean rejected them alleging that they are appointed unlawfully because he didn't elect them, the Court made the decision that they must defend him because they were appointed lawfully.

51. During this trial proceedings in this Court, both side, either the Prosecution nor UWINKINDI Jean and his witnesses, they agree on the articles of the law above mentioned, debates raised from the understandings of each side on those articles where the Public Prosecution declares that if the accused has no financial means to bear the cost of a legal counsel forfeits the right to elect self-representation, on the other side, UWINKINDI Jean and his legal counsels claim that although he is indigent, the accused keeps the rights to elect self-representation and the concerned organs bear the costs.
52. The Court finds out that the analysis of the article 14.3 (d) of the International Convention on Civil and Political Rights and article 14.6° of the Law n° 47/2013 of 16/06/2013 related to the Transfer of Cases in the Republic of Rwanda, highlights without confusion that an accused has the right to elect self-representation if only he can bear the financial cost, but in case he/she has no means to pay, he/she shall be entitled to legal representation. This means that concerned organs appoint them (the Bar Association), without necessarily involving him
53. The Court observes that although in the functioning of those organs, in some occasions while assigning the indigent accused a legal counsel, he is given the flow to elect self-representation, however the principle, with respect to the law articles above mentioned, states that, although the accused has the right to legal representation, this does not grant him/her the right to one's choosing.
54. Apart from the allegations in the articles above mentioned, there exist other international conventions discussing on this issue. We can mention the International Conventions of European Countries on Human Rights, where in its 6.3 c article they confirm that the accused has the right to elect freely self-representation, in case he can bear the financial costs. If he/she is an indigent, he is offered a legal assistance from the Bar, in the interest of justice. This also emphasized by other experts who confirmed that the accused on one hand has the right to plead in person or by a legal counsel of his/her own choosing, on the other hand if he/she cannot financially bear the cost, he/she has the right, in the interest of justice, to be legally represented free of charge by a counsel appointed by concerned organs.
55. Experts in law while explaining this article, Doydas Vitkaus and Grigory Dikov, in their publication called 'La protection du droit à un procès équitable par la convention européenne des droits de l'homme' (Protection of right for a fair trial by the European convention on human rights) on page 105, last paragraph, they also

explained that those entitled to the right of electing self-representation are those who can financially bear the cost (Campbell et Fell), that those who need assistance are not entitled to that right (Krempovskij, dec.). They furthermore argue that in case the appointed legal counsel is not performing well his duties, the concerned organs have the responsibility to replace him.

56. Apart from the arguments from the international conventions and laws above mentioned, there exist decisions which were made in cases judged by others courts on the issue regarding the legal assistance of an indigent accused, we are hereby focusing especially on cases ruled by the International Court Tribunal for Rwanda. In the case of Jean-Paul AKAYESU, on that issue, the Court sentenced that it found that in general the right to legal assistance is not related with the right to elect self-representation, that instead it is entitled to the accused who can financially bear the cost.
57. This court decision continues arguing that the legal counsel of the indigent accused is appointed by the Court Registrar selecting him on the list of available legal counsels who fulfill the requirements of the Court. It adds that in general the indigent accused elects his self-representation on that list therefore the Court Registrar considers his choice while assigning him a legal counsel. However, the Appeal Chamber notes that the Court Registrar is not necessarily bound by the indigent accused's wishes. The registrar has wide discretion, which he exercised in the interest of justice.
58. Regarding KAMBANDA Jean's case, the Appeal Chamber concerning the right to elect self-representation, the appellant supports that he should have benefited from that right, in other case he is deprived to a fair trial. On this issue, the appeal Chamber of the International Criminal Tribunal for Rwanda referred to the analysis of the First Chamber regarding NTAKIRUTIMANA's case with respect to the interpretation of its Regulations and Statutes at the same time with relevant decisions made by the Human Rights Committee and Organs of European Conventions on Human Rights, concluded that the right to legal assistance does not confer the right to elect self-representation.
59. Concerning this case, regarding the way Barrister GATERA GASHABANA and Barrister NIYIBIZI Jean Baptiste who were UWINKINDI Jean's legal counsels withdrew from the case, the court notes that this issue should not be examined at appeal level because it is not highlighted that it has been first discussed in the appealed judgment for making a decision, especially that an appeal intends to criticize the court ruling made at first level.



60. Regarding UWINKINDI Jean's allegations that the Court based on the document talking of AKAYESU Jean Paul's case submitted by the Public Prosecution after the hearing, the Supreme Court finds that he is not providing any evidence proving that this document was submitted by the Public Prosecution because the Court should have got it from elsewhere aiming at grounding its decision.
61. Concerning the issue of competency of Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph, UWINKINDI Jean is claiming that apart from he did not elect them, but they don't even have the ability to plead a case like this, because Nyarugunga Primary Court made the decision that Barrister HISHAMUNDA Isacaar has not the competency to plead such cases and Barrister NGABONZIZA Joseph has no experience. The Court notes that he should not criticize their competency in case they were appointed by the President of the Bar Association, who is in charge of leading and following up on a daily basis activities of the Bar found them competent. In addition, UWINKINDI Jean did not let them start their duties of representing him legally and then probably in the mid after assessing their working approach, he may criticize them or even the Court may observe that they are not legally represent him effectively. Furthermore, apart from alleging it only, UWINKINDI Jean did not provide any court ruling demonstrating that Barrister HISHAMUNDA Isacaar is incompetent.
62. Regarding the allegations from Barrister NIMBIYE Jean, Barrister the legal counsel of UWINKINDI Jean, specifying that although the court based on AKAYESU Jean Paul ruling which is not similar to UWINKINDI Jean's case since he did not reject his legal counsels while AKAYESU Jean Paul rejected them wishing to change them. The Supreme Court notes that these allegations are unproven because the reason behind AKAYESU Jean Paul's case was to assess in general if an indigent accused has the right to elect self-representation, that court ruled that the Chief Registrar of the Court while appointing a legal counsel, is not necessarily bounded to respect the accused's wishes, because apart from requesting for a fair justice, he should also care about the good management of the funds of the Court.
63. Therefore, concerning Barrister GATERA GASHABANA's allegations that the Court misinterpreted the article 14,6° of the Law n° 47/2013 of 16/06/2013 related to Transfer to the Republic of Rwanda, claiming that the article 14 (d) of the International Convention on Civil and Political Rights should be analyzed, the Court notes that based on the evidences above mentioned, if they interprets in parallel with the contents of the International Conventions and other decisions made by the courts above mentioned, certainly the accused who has the unlimited right to elect self-

representation, is the one who can financially bear the cost, that the indigent accused if for the interest of justice it is compulsory to have legal representation, the concerned organs appoint him without involving the accused.

64. Basing on the above comments, especially on the issue regarding if Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph appointed by the Bar Association as legal counsels for UWINKINDI Jean who claims to be indigent, was made in a lawful process and approach. The Supreme Court notes that the High Court Specialized Chamber Trying International and Cross-border Crimes made no mistake while adopting that it was done lawfully and in the interest of justice, thus UWINKINDI Jean's appeal is unpersuasive.

**III. COURT RULING**

- 65. Adopts that UWINKINDI Jean's appeal is unpersuasive;
- 66. Adopts that the objections related to the inadmissibility of the appeal submitted by the Public prosecution is dismissed;
- 67. Declares that the decision no RP 0002/12/HCCI made by the High Court, Specialized Chamber Trying International and Cross-border Crimes on 6/02/2015 is still valid; that Barrister HISHAMUNDA Isacaar and Barrister NGABONZIZA Joseph were lawfully appointed by the Bar Association as legal counsels of UWINKINDI Jean;
- 68. Orders that there will be no payment of case fees.

**IT IS RULED LIKE THAT AND PRONOUNCED IN PUBLIC TODAY ON 24/4/2015.**

**MUTASHYA Jean Baptiste**

President

Signed

vu pour legalization de la  
de M. **NADINE NBUWIMANA**

Apposee et contre

le 24/04/2015

**GAKWAYA Justin**

Judge

Signed

**HITIYAREMYE Alphonse**

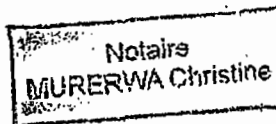
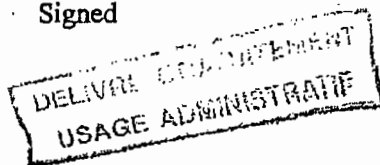
Judge

Signed

**MUHIMAKAZI Léoncie**

Court Clerk

Signed



*[Handwritten signature]*

*Translated by Nadine NBUWIMANA, Translator.*

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# ANNEX 12

Letter from Athanase Rutabingwa, President of the Rwandan Bar Association, to Isacaar Hishamunda and Joseph Ngabonziza, dated 29 January 2015, regarding legal representation for Uwinkindi

RWANDA BAR ASSOCIATION

Kigali, 29 January 2015

N/Ref.: Let.041/Bat/RA/01/2015

Barrister HISHAMUNDA Isacaar  
Barrister NGABONZIZA Joseph  
KIGALI

*See series page.*

Object: Legal representation for UWINKINDI Jean

Dear Colleagues,

Reference is made to the letter Ref N°: 001/PHCIC/02/2015 of 26/01/2015 wrote to us by the President of the Specialized Chamber of the High Court Trying International and Cross-border Crimes and the letter N°: 152/08.25 MOK/LSD of 27/01/2015 wrote to us by the Ministry of Justice all requesting us to assign to UWINKINDI Jean legal counsel;

Reference is also made to the letter from the Permanent Secretary of the Ministry of Justice n° 2185/0825 MOK/LSD of 22/12/2014 terminating the agreement contract of UWINKINDI Jean's legal counsels with MINIJUST;

I am pleased to inform you that the Bar Association appointed you to legally represent UWINKINDI Jean. You are requested to contact the Ministry of Justice which is copied so that you agree on the contract agreement regarding this legal representation.

Stay in peace.

(Signed and Sealed)  
Barrister RUTABINGWA Athanase  
The President of the Bar

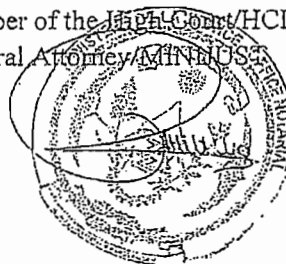
DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF

Notaire  
MURERWA Christine

Cc:

- Mr. President of the Specialized Chamber of the High Court/HCIC
- Ms. Permanent Secretary/Deputy General Attorney/MINIJUST
- UWINKINDI Jean

Kigali



vu pour legalisation de la signature  
de M. ATHANASE RUTABINGWA  
Apposee ci-contre  
Kigali le 25 JAN 2015

Translated by Nadine Nduwimana  
Translator *[Signature]*

*[Signature]*

# ANNEX 13

*Curricula Vitae* of Isacar Hishamunda and Joseph Ngabonziza



## CURRICULUM VITAE

### IDENTITE

Nom : HISHAMUNDA  
 Prénom : Isacar  
 Père : RWABUKWANDI Esdras  
 Mère : MUKANKUBITO Damaris  
 Date de naissance : 1971  
 Lieu de naissance : Kabagari - Gitarama  
 Lieu de résidence : Kacyiru - Ville de Kigali  
 Etat Civil : Marié

### ETUDES FAITES

De 1978 - 1986 : Ecole Primaire au collège adventiste de Gitwe  
 De 1986 - 1992 : Ecole secondaire au collège Adventiste de Gitwe (Diplôme des humanités pédagogiques)  
 De 1995 - 1998 : Etudes supérieures à l'Université Nationale du Rwanda (Baccalauréat en Droit)  
 De 1998 - 2001 : Etudes supérieures à l'Université Nationale du Rwanda (Licence en droit)

### NIVEAU D'ETUDES

Licence en droit

### FORMATION RECUES

Au cours de notre travail d'officier du ministère Public, j'ai reçu la formation relative à la recherche et à la poursuite des infraction ainsi qu'à la plaidoirie à l'audience publique et ce de la part du Ministère de la Justice, cette formation se passait au centre National de formation des juristes à Nyabisindu (Ville de Nyanza)

### PRESTATION DE SERVICE

- Formation des personnes intégrés appelées communément Inyangamugayo dans le cadre du lancement officiel des juridictions Gacaca .
- Du 10/10/2002 à nos jours : Officier du ministère public au parquet de la République Kigali

### LANGUES PARLEES ET ECRITES

LANGUES	PARLEE	ECRITE
Kinyarwanda	Excellent	Excellent
Français	Très Bien	Très Bien
Anglais	Bien	Bien

Je jure sur mon honneur que les renseignements ci-haut fournis sont sincères et exacts

Fait à Kigali le 03/08/2004  
**HISHAMUNDA Isacar**

*(Signature)*

## CURRICULUM VITAE

### I. IDENTITE

Noms : NGABONZIZA Joseph

Date de naissance : 21/07/1968

Lieu de naissance : BUKAVU/RDC

Père : RUTAGARAMA Narcisse

Mère : KANKINDI Vénérande

### II. ETUDES FAITES

1974-1984 : Ecole Primaire

1981-1988 : Institut de BAGIRA (Diplôme des humanités en sciences sociales)

1995-2002 : Université Nationale du RWANDA(Licence en Droit)

### III. FORMATIONS PROFESSIONNELLES

- 06/09/2004 -07/10/2004 : Formation sur la Réforme juridique organisée par le CNFDJ

- 18 au 22/07/2005 : Formation sur les règles applicables au contentieux du génocide et d'autres crimes contre l'humanité commis au RWANDA organisée par la Cour Suprême avec l'appui de l'ASF
- 07 au 09/11/2005 : Formation des juges sur les indices sérieux de culpabilité organisée par CNFDJ
- Septembre 2007 Formation sur l'articulation des lois organiques régissant les contentieux du génocide et d'autres crimes contre l'humanité commis au RWANDA
- 22 mai-26 mai : Visite de travail au TPIR à ARUSHA

#### IV. EXPERIENCE PROFESSIONNELLE

- 2001-2009 : Juge au Tribunal Militaire

Je jure sur mon honneur que ce CV est sincère

NGABONZIZA Joseph



# ANNEX 14

*Public Prosecution v. Uwinkindi*, The High Court,  
The Specialised Chamber Trying International and  
Cross-Border Crimes, case no. RP 0002/12/HCCI,  
Decision, 9 June 2015

THE HIGH COURT, SPECIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES, SITTING IN KIGALI TRYING PENAL CASES AT FIRST INSTANCE PRONOUNCE IN PUBLIC THE FOLLOWING RULING ON CASE RP 0002/12/HCCI ON 09/06/2015

**IN TRIAL:**

**THE PUBLIC PROSECUTION**

AND

**ACCUSED:**

Jean UWINKINDI son of Subwanone and Ntizisigwa born in 1951 in Ritsiro in the former Kibuye Prefecture, in the Republic of Rwanda, till in 1994 he was residing in the former Rural Kigali, in Kanzenze District, Kayumba Sector, Gatare Cell, married to Kabagwira Rose, they have eight (8) children, pastor, Rwandan, no assets, he is now detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he can be pursued for the crimes he is suspected to have committed in Rwanda. Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Isaacar are his legal counsels.

**CHARGES:**

- The Crime of Genocide provided and punishable under the article 114 and 115 of the Penal Code in Rwanda, article 1 and even 3 (c) of "Convention on the Prevention and Punishment of the Crime of Genocide<sup>1</sup>;
- The Crime of extermination as a crime against humanity provided and punishable under the article 120 in its 2<sup>nd</sup> paragraph and even under article 121 of the Penal Code in Rwanda.

**I. NATURE OF THE CASE**

1. On 02/02/2015, during hearing the following issues were raised:

- UWINKINDI Jean requested the Court that this hearing should be suspended waiting for the decision of the Mechanism for International Criminal Tribunals (MICT) established for closing the International Criminal Tribunals activities, on the claim regarding the transfer of this case to MICT for judgment.

<sup>1</sup> Decision of the General Assembly number 206 (iii) on 9<sup>th</sup> December 1948 ratified by Rwanda and incorporated in Rwanda Laws by the Decree-Law number 08/75 of 12/02/1975, published in Official Gazette of Rwanda (1975), p 230.

- Barrister NGABONZIZA and Barrister HISHAMUNDA requested to be granted time for the preparation of this case.
- The Public Prosecution requested that in the interest of Justice, UWINKINDI Jean's legal counsels should be approved although he is rejecting them.

2. There should be an examination if this case should be suspended till the decision from the Mechanism for International Criminal Tribunals (MICT), examination regarding the fact that the accused should be legally represented by legal counsels he is rejecting and the issue regarding allotting the time to UWINKINDI Jean's legal counsels for preparing the case.

## II. ANALYSIS OF THE CASE ISSUES

### ➤ Regarding the suspension of the hearing of this case

3. UWINKINDI Jean informed the court that he instituted a claim at the Mechanism for International Criminal Tribunals (MICT) established for closing the International Criminal Tribunals activities requesting for transferring his case to be judged at MICT, he therefore requesting that while the established panel for examining his claim has not yet replied, his hearing should be suspended.

4. The Public Prosecution argues that there is no reason compelling the suspension of this case because that Mechanism has not state that this judgment should be suspended, especially that the decision made by that Mechanism will be implemented at any phase it will be though it will be in appeal.

## THE COURT ANALYSIS

5. The Court notes that UWINKINDI Jean is not providing any law he based on which provided that in case the Mechanism for International Criminal Tribunals (MICT) established for closing the International Criminal Tribunals activities is lodging a case, the hearing in Rwandan Court must be suspended, thus his request is unfounded.

### ➤ Regarding the fact that the accused should legally represented by legal counsels he is not approving

6. The Public Prosecution declares that in case UWINKINDI Jean keeps on rejecting the legal counsels he was assigned as an indigent, for the interest of Justice, the Public Prosecution requests the Court to decide to keep them, and they should be given the floor during hearing, because of the severity of case.

7. UWINKINDI Jean states that he has no legal counsel, that he should not be forced to consent legal counsels he does not requested for.

8. Barrister NGABONZIZA and Barrister HISHAMUNDA declared that they appeared before the Court in the context of implementing the decision RPA 0011/15/CS made on 24/04/2015 by the Supreme Court where it underlined the decision made by the High Court that they were legally appointed, and the letter from the President of the Bar Association reminding them that they were assigned duties to legally represent UWINKINDI Jean.

#### THE COURT ANALYSIS

9. On 21/01/2015, after the Court noted that UWINKINDI Jean is not legally represented because Barrister GATERA GASHAMBA and Barrister NIYIBIZI Jean Baptiste voluntary withdrew from the case, it made the decision to request the concern organs to assist him so that he get legal counsels.

10. On 05/02/2015, UWINKINDI Jean appeared before the Court and Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar appointed by the Bar Association for UWINKINDI Jean's legal defense to replace Barrister GATERA GASHAMBA and Barrister NIYIBIZI Jean Baptiste. UWINKINDI Jean told the Court that Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar are not his legal counsels because he notes that they were illegally appointed.

11. On 06/02/2015, the Court made the decision that Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Issacar were legally appointed by the Bar Association as UWINKINDI Jean's legal counsels.

12. UWINKINDI Jean appealed against that decision in the Supreme Court. On 24/04/2015 during the judgment RPA 0011/15/CS, that Court adopted that the same decision remains valid.

13. The court notes that the accused has the absolute right to defense at all levels and degrees of proceedings before administrative, judicial and all other decision making organs and all the necessary guarantees for defense shall be made available, as provided by the articles 18 and 19 of the National Constitution of the Republic of Rwanda.

14. The Court also notes that in the interest of justice and with respect to the principle that all plaintiffs shall be granted equal opportunities regarding hearing approaches (equality of arms), UWINKINDI Jean must be legally represented by assigned lawyers though he is rejecting them for the following reasons:

- As UWINKINDI Jean has demonstrated since the beginning of this case that he cannot plead without legal defense;

- As from the beginning of this trial he was legally represented till the time allotted to listen to witnesses when his legal counsels namely Barrister GATERA GASHAMBA and Barrister NIYIBIZI Jean Baptiste voluntary withdrew from the case;
- As during the interview of witnesses for the Prosecution, UWINKINDI Jean declared that he will comment when he will be assigned legal counsels, this proves that he is unable to defend himself without legal counsels,
- As the decision from of the Supreme Court emphasizing that Barrister GATERA GASHAMBA and Barrister NIYIBIZI Jean Baptiste were legally appointed as his legal counsels;
- As even though UWINKINDI Jean states that he doesn't want to be legally represented by Barrister NGABONZIZA and Barrister HISHAMUNDA, without showing other legal counsels whereas he said that he needs to be legally represented;
- As though he is not approving those legal counsels, their skills as professionals will lead the Court to have a fair judgment.

15. Therefore, the Court notes that Barrister NGABONZIZA and Barrister HISHAMUNDA must defend UWINKINDI Jean, the trial should continue and the Court should again listen to witnesses from both sides.

➤ Regarding the issue of postponing the trial so that UWINKINDI Jean' s legal counsels prepare the case

16. Barrister NGABONZIZA and Barrister HISHAMUNDA are requesting to be allotted time for preparing the file.

17. The Public Prosecution argues that their request is founded, thus the required time shall be specified by the Court.

18. The Court notes that it is crucial to allot required time to UWINKINDI Jean' s legal counsels to prepare the file, they are therefore granted tree (93) months period.

### III. COURT DECISION

19. The Court adopts that UWINKINDI Jean's request to suspend the hearing is unfounded;



20. The Court adopts that Barrister NGABONZIZA Joseph and Barrister HISHAMUNDA Isaacar are UWINKINDI Jean's legal counsels.

21. It adopts that they are allotted three (3) months for preparing the case.

22. The Court ordered that the hearing will be resumed on 10/09/2015 at 08h: 30 min.

**IT IS RULED LIKE THAT AND PRONOUNCED IN PUBLIC TODAY ON 09/06/2015.**

NGENDAKURIYO R. Alice  
President  
(Se)

KANYEGERI Timothée  
Judge  
(Se)

NSANZIMANA Fidèle  
Judge  
(Se)

NYAMUTAMA Hippax  
Court Clerk  
(Se)

Certified copy to the original

Translated by Nadine NDUWIMANA  
Translator

# ANNEX 15

*Public Prosecution v. Uwinkindi*, The High Court,  
The Specialised Chamber Trying International and  
Cross-Border Crimes, case no. RP 0002/12/HCCI,  
Decision, 21 January 2015

(1)

THE HIGH COURT, THE SPECIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES, SITTING IN KIGALI, TRYING PENAL CASES AT FIRST INSTANCE MADE THE FOLLOWING PUBLIC RULING ON CASE RP 0002/12/HCCI IN A PRE-TRIAL CASE ON 21/01/2015:

THE PUBLIC PROSECUTION

VERSUS

THE ACCUSED:

Jean UWINKINDI son of Subwanone and Ntizisigwa, born in 1951 at Rutsiro in former Kibuye Prefecture in the Republic of Rwanda, up to 1994 he was residing in former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatare Cell, married to Kabagwira Rose and they have eight (8) children, pastor, Rwandan, owns no assets, currently detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he is suspected of having committed in Rwanda. He is represented by legal Counsels Gatera Gashabana and Jean Baptiste Niyibizi.

CHARGES AGAINST HIM:

- The Crime of Genocide provided for and punishable under article 114 and 115 of the Penal Code of Rwanda, article 1 and 3 (c) of the "Convention for the Prevention and Punishment of the Crime of Genocide";
- The Crime of extermination as a crime against humanity provided for and punishable under article 120 part 2 as well as article 121 of the Penal Code of Rwanda.



I. NATURE OF THE CASE

1. On 30/12/2014, Jean UWINKINDI's legal counsels namely Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi requested for the adjournment of this hearing because the Ministry of Justice had breached Jean UWINKINDI's legal aid contract and they were given three months notice. They said that they will not continue to represent Jean UWINKINDI during the substantive trial before the issue is settled, because the decision of the Ministry of Justice is confusing them. The court agreed to adjourn the hearing trial so that his legal counsels may continue discussions with the Ministry of Justice. The hearing was adjourned till 8/01/2015.
2. On that date, the same issue was raised, the court ruled that since Jean UWINKINDI's legal counsels have not yet confirmed that they are withdrawing from the case, the court considers that Jean UWINKINDI has legal counsels, thus the substantive trial should go on and the hearing was adjourned till 15/01/2015.

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3. On 13/01/2015, Jean UWINKINDI wrote to the court informing them that he is anxious that even if it was ruled that Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi are still his legal counsels and the trial proceedings should go on, he finds that they should not continue to assist him legally while their issue has not been settled. He requested the court to suspend the trial proceedings so that the issue regarding the legal fees between his legal counsels and the Ministry of Justice may be settled first.

4. On 15/01/2015, after the court observed that during the hearing of 08/01/2015 and in previous hearings a decision had been made regarding Jean UWINKINDI's request, they informed the parties that the trial proceedings would continue. Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi appealed that decision, requesting the court that the hearing should be suspended so that the Supreme Court may decide on their appeal. The court ruled that their appeal should not interrupt the hearing.

5. Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi immediately declared that although they are still Jean UWINKINDI's legal counsels, they were withdrawing from the proceedings (withdrawal of appearance) so that they may submit their appeal to the Supreme Court. Jean UWINKINDI was left without legal counsel.

6. After observing that Jean UWINKINDI has no legal counsel, the court immediately took the decision to adjourn the trial, ruled that his legal counsels be fined 500,000 Rwfr each because they abandoned Jean UWINKINDI with intent to delaying the trial. The trial was adjourned till 21/01/2015.

7. During the hearing of 21/01/2015, the Prosecutor and Jean UWINKINDI appeared before the court, but Jean UWINKINDI's legal counsels didn't appear, and he did not inform the court about the reason for their non-appearance.

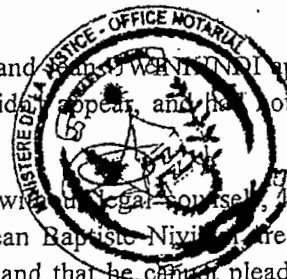
8. Jean UWINKINDI was asked if he will plead without legal counsels, he replied that Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi are still his legal counsels even if they didn't appear before the court and that he cannot plead without legal counsels.

9. The Prosecutor declared that Jean UWINKINDI's legal counsels had decided to withdraw from the case, and that they were no longer Jean UWINKINDI's legal counsels, and requested that he should be assigned other legal counsels.

10. There was need to examine whether Jean UWINKINDI still had legal counsels

## II. ANALYSIS OF THE ISSUE OF THE CASE

11. Jean UWINKINDI informed the court that he cannot plead without legal counsels because he didn't study law. He said that the issue that his legal counsels submitted to the



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court was in the hands of the people concerned, and that it would be settled soon, that he needs to plead but with legal counsels.

12. The Prosecutor noted that it was true Jean UWINKINDI could not be tried without legal counsel, but requested that Jean UWINKINDI should be assigned other legal counsels because Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi had decided to withdraw from the case, that they were no longer Jean UWINKINDI's legal counsels.

13. The court noted that as stipulated under article n° 18 of the National Constitution of the Republic of Rwanda, the accused person has the inalienable right to legal counsel at any time. Thus Jean UWINKINDI could not be tried without legal counsel.

14. The court noted that even if Jean UWINKINDI, Barrister GATERA GASHABANA and Barrister Jean Baptiste Niyibizi are still confirming that Jean UWINKINDI has legal counsels, their conduct whereby they withdrew from court hearing on 15/02/2015 as well as their non-appearance before court during today's hearing, was proof that Jean UWINKINDI has no longer legal counsel. Therefore, since he had no counsel, the concerned authorities should find and assign him legal counsels.

### III. COURT'S RULING

15. The court has ruled that Jean UWINKINDI does not have legal counsel.

16. Orders that the concerned authorities should assist him in finding legal counsel.

17. Orders that the trial of this case should be resumed on 05/02/2015 at half past eight in the morning (8:30 am).

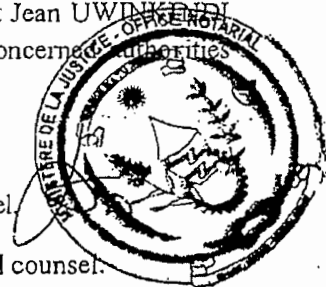
IT WAS SO RULED AND PRONOUNCED IN PUBLIC TODAY 21/01/2015

NGENDAKURIYO R. Alice [Signed]  
President

KANYEGERI Timothée [Signed]  
Judge

NSANZIMANA Fidèle [Signed]  
Judge

NYAMUTAMA Hypax [Signed]  
Registrar



*[Handwritten signature]*

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Copy certified authentic to the original  
Done at Kigali, on 21/01/2015  
Registrar NYAMUTAMA Hypax [Signed]

Translated by: Nadine NDUWIMANA  
Translator

Vis pour legalization de la Signature  
de M. *AKUMAR* *NDUWIMANA*

Apposee ci-contre  
le 20-01-2015

Notaire  
MUKULU ANTOINNY. IV



DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF

# ANNEX 16

*Public Prosecution v. Uwinkindi*, The High Court, The Specialised Chamber Trying International and Cross-Border Crimes, case no. RP 0002/12/HCCI, Decision, 11 October 2013

7(1)

THE HIGH COURT, SPECIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES, SITTING IN KIGALI TRYING PENAL CASES AT FIRST INSTANCE PRONOUNCED THE FOLLOWING RULING ON CASE RP 0002/12/HCCI IN PUBLIC ON 11/10/2013

**THE PROSECUTOR**

Versus

**THE ACCUSED:**

Jean UWINKINDI son of Subwanone and Ntizisigwa, born in 1951 at Rutsiro in former Kibuye Prefecture in the Republic of Rwanda, up to 1994 he was residing in former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatara Cell, married to Kabagwira Rose and they have eight (8) children, pastor, Rwandan, owns no assets, currently detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he is accused of having committed in Rwanda. He is represented by legal Counsels Gatera Gasalant and Jean Baptiste Niyibizi.

**CHARGES AGAINST HIM:**

- The Crime of Genocide provided for and punishable under the articles 24 and 115 of the Penal Code of Rwanda, article 1 and 3 (c) of the "Convention for the Prevention and Punishment of the Crime of Genocide;
- The Crime of extermination as a crime against humanity provided for and punishable under the article 120 part 2 as well as article 121 of the Penal Code of Rwanda.

**A. NATURE OF THE CASE**

1. On 16/05/2013 the Court decided that Jean UWINKINDI's legal counsels are responsible for looking for defence witnesses for him, ordered Jean UWINKINDI and his legal counsels to submit his defence statement not later than 20/08/2013. Ordered that the hearing should be resumed on 05/09/2013.

2. During the hearing of 05/09/2013, Jean UWINKINDI with his legal counsel Barrister Jean Baptiste Niyibizi appeared before the court without defence statement and requested for an additional six months period to prepare the defence statement on the ground that they do not have means to go and look for defence witnesses. The Court decided to grant them more



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time to look for witnesses within the country, they should have submitted the defence statement by 03/10/2013, and the hearing of the substantive charge started on 11/10/2013.

3. During the hearing of 11/10/2013 Jean UWINKINDI with his legal counsels Barrister Jean Baptiste Niyibizi and Barrister Gatera Gashabana appeared before the court without the defence statement and requested again six additional months to prepare the statement on the ground that they do not have means to look for witnesses for the defense.

4. The Court shall examine if they should be granted the additional six months period they are requesting.

#### B. ANALYSIS OF CASE ISSUE

5. Jean UWINKINDI with his legal counsels Barrister Jean Baptiste Niyibizi and Barrister Gatera Gashabana said that they didn't manage to submit to the court the requested defence statement due to constraints beyond their control, because they didn't get the means to do it. They explained that after the Court's decision on 05/09/2013 they wrote to the Bar Association and informed the Ministry of Justice, requesting facilities to look for witnesses for the defense. They said that up to the hearing's day, they didn't get any reply, therefore they are requesting to be granted six additional months period to look for witnesses for the defense and prepare the defence statement starting from the time those facilities will be made available.

6. The Prosecutor declared that Jean UWINKINDI's legal counsels were responsible for delaying the hearing. He/she explained that they did not inform the Ministry about their needs early enough so that they may look for the evidences, that once the Ministry of Justice got their letter, they immediately deposited the requested money on the Bar Association's account as can be proved by the copy of the cheque dated 26/09/2013. Based on e-mail correspondences between the Ministry of Justice, the Bar Association and Barrister Gatera Gashabana it is clear that the money was paid, Jean UWINKINDI's legal counsels were informed about it, but they did not use the money for its purpose.

7. The Prosecution requests that if Jean UWINKINDI's legal counsels do not conduct their requested investigation after the Court's approval, the court should consider changing the decision of 16/05/2013, and order the judicial police to conduct the investigation as provided by the law, thus Jean UWINKINDI's legal counsels should submit to the judicial police all names of witnesses residing in Rwanda and be ordered to collaborate with the judicial police during that process.

8. Jean UWINKINDI's legal counsels say that they are not responsible for delaying the hearings, that based on those emails correspondences provided by the Prosecution, it is detailed that that money was first misplaced and put on the Bar Association's account on

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08/10/2013 after the Court's deadline for the submission of the defence statement, that they were waiting for the money before they can start looking for witnesses.

9. Jean UWINKINDI declared that the Court has already decided that his legal counsels will look for witnesses and that he did not wish the Public Prosecution to do it.

10. Article 14 paragraph 4 of Law N° 47/2013 of 16/06/2013 relating transfer of cases to the Republic of Rwanda stipulates that the accused person is granted time and required facilities so that he/she may prepares his/her defence statement.

11. After the hearing both sides regarding Jean UWINKINDI and his legal counsels' request to adjourn the hearing of the substantive charge on the grounds that Jean UWINKINDI's legal counsels had not yet got facilities to meet witnesses within Rwanda, the Court noted that the letter from the Ministry of Justice to the Public Prosecution clarifies that, as requested and agreed upon by Jean UWINKINDI's legal counsels, an amount of 876,750 frw was deposited on the Bar Association's account on 08/10/2013. It is therefore clear that they could not have conducted the investigation before that date.

12. The Court pointed out that Jean UWINKINDI's legal counsels agreed to do their best so that they can access that money as soon as possible and start the investigation. Based on that Article 14 part 4 of Law N° 47/2013 of 16/06/2013 relating to the transfer of cases to the Republic of Rwanda and on the above explanations, the Court noted that it was necessary to grant additional time to Jean UWINKINDI's legal counsels to meet witnesses and prepare the defence statement.

#### C. RULING OF THE HIGH COURT

13. The High Court hereby decides that the hearing is adjourned and will resume on 18/11/2013 at 8:00 a.m..

14. The Court hereby orders that Jean UWINKINDI and his legal counsels to submit their defence statement not later than 11/11/2013.

IT IS SO RULED AND PRONOUNCED IN PUBLIC TODAY, 11/10/2013.

NGENDAKURIYO R. Alice  
President [Signed]

RUTAZANA Angéline

NZABONIMANA Cassien

Judge [Signed]

Judge [Signed]

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NYAMUTAMA Hypax  
Court Registrar [Signed]

Translated by Nadine NDUWIMANA  
Translator

*[Handwritten signature]*

Notaire  
MUKULU Anthony. N

DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF

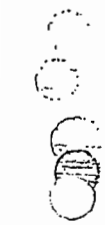


Voir pour legalisation de la Signature  
de M. *Nadine NDUWIMANA*

Apposee ci-contre

Kigali le 20 Mars 2015

*[Handwritten signature]*



# ANNEX 17

Contrat d'Assistance et de Représentation en Justice between the Rwanda Bar Association and the Defence Counsel for Uwinkindi, Maître Joseph Ngabonziza and Maître Issacar Hishamunda, dated 1 May 2015

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CONTRAT D'ASSISTANCE ET DE REPRESENTATION EN JUSTICE

ENTRE

LE BARREAU DU RWANDA

ET

LES CONSEILS DE LA DEFENSE DE  
UWINKINDI Jean

CONTRAT N° 01/MAU/2015

( / )

For the Bar Association

Barrister RUTABINGWA Athanase,

President of the Bar Association. [Signed and Sealed]

Counsels:

1. Barrister NGABONZIZA Joseph [Signed]
2. Barrister HISHAMUNDA Issacar [Signed]

ENTRE LES SOUSSIGNES:

Le Barreau du Rwanda, ci-après dénommé « Le Barreau », représenté par Maître Athanase RUTABINGWA, Bâtonnier de l'Ordre ;

ET

Les Conseils de la Défense d'UWINKINDI Jean:

1. Maître NGABONZIZA Joseph agissant en qualité de Conseil principal,
  2. Maître HISHAMUNDA Issacar agissant en qualité de Co-Conseil.
- ci-après dénommés les CONSEILS d'autre part.

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 nécessité absolue de promouvoir l'accès à la justice pour tous ;

Considérant que le présent contrat est dans le cadre de l'aide légale ;

IL A ETE CONVENU ET ARRETE CE QUI SUIVIT:

Article premier: De l'objet du contrat

Le présent contrat concerne l'Assistance judiciaire au bénéfice de Jean UWINKINDI 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 des parties

#### 3.1 Des Conseils de la Défense

Les Conseils de la défense s'engagent à :

- a) Assister le prévenu Jean UWINKINDI devant les juridictions rwandaises à tous les degrés et à toutes les étapes de la procédure;
- b) Rendre compte au Barreau et au Ministère 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 Barreau

- a) Assurer le suivi des activités des conseils ;
- b) Recueillir les avis des conseils de la défense sur toutes les orientations susceptibles d'assurer au prévenu une défense irréprochable.
- c) Emettre des observations ou recommandations sur les rapports reçus en vue de l'amélioration des activités d'aide légale dans le futur ;
- d) Payer aux Conseils les frais d'aide légale selon le calendrier et/ou les termes convenus dans l'article 4.

### Article 4: Du montant de l'aide légale

Pour l'exécution de ce contrat, les Conseils reçoivent des facilités de façon suivante :

1° Quelque soit le nombre des Avocats, ils reçoivent en tout des frais d'aide légale sous forme d'un forfait de quinze millions de francs rwandais (15.000.000 Frw) hors taxes pour tous les degrés de juridiction, payables de la façon suivante :

- a) Quatre millions de francs rwandais (4.000.000 Frw) à la signature du contrat;
- b) Trois millions cinq cent mille francs rwandais (3.500.000 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.



2° Un autre contrat sera négocié pour toutes les autres voies de recours extraordinaires faites par le prévenu. Mais le montant ne peut pas dépasser trois millions de francs rwandais (3.000.000 Frw).

3° Si le tribunal ordonne un déplacement de l'Avocat à l'extérieur du pays, un contrat séparé sera négocié.

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.

#### 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 trente (30) jours.

Le Barreau 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 Ministère de la justice n'est plus capable d'octroyer l'appui financier convenu pour ce dossier

Lorsque le contrat est résilié, les Conseils sont tenus de continuer d'assister et de représenter le prévenu pendant la durée de préavis, puis, à l'expiration de celui-ci, 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 sommes dus par l'une ou l'autre partie. L'Avocat entrant doit percevoir les sommes restantes 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 :

- Pour le Barreau :

P.O.Box : 3762 Kigali ; E-mail : [info@rwandabar.org.rw](mailto:info@rwandabar.org.rw),  
Kicukiro/Kigali/Rwanda

- Pour les Conseils de Jean UWINKINDI:

Maître NGABONZIZA Joseph ; Tel : 0788757121 ; e-mail : [ngabo\\_jeffa@yahoo.fr](mailto:ngabo_jeffa@yahoo.fr) ;  
Kigali/Rwanda

Maître HISHAMUNDA Issacar ; Tel : 0788526330 ; e-mail : [isahisa@yahoo.fr](mailto:isahisa@yahoo.fr) ;  
kigali/Rwanda

Articles 8: Loi régissant le contrat

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

Articles 9: Du Règlement de différends

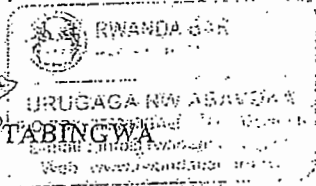
En cas de contestation relative à l'interprétation ou à l'exécution du présent contrat, les parties privilégient un règlement à l'amiable. En cas d'échec, l'affaire est soumise devant les juridictions nationales compétentes.

Articles 10: De l'Entrée en vigueur

Le présent contrat prend effet à compter du .....

Pour le Barreau,

Me Athanase RUTABINGWA  
Bâtonnier



Les Conseils :

1. Maître NGABONZIZA Joseph
2. Maître HISHAMUNDA Issacar

# ANNEX 18

Practice Direction by the Chief Justice on  
Allocation of Means for Further Defense  
Investigations for Indigent Accused Transferred to  
Rwanda, 2015

AMABWIRIZA NO ...../2015 YO KUWA .../.../2015 YA PEREZIDA W'URUKIKO RW'IKIRENGA AGENGA UBURYO BUGENERWA ABUNGANIRA UREGWA UTISHOBOYE WOHEREJWE MU RWANDA KUGIRA NGO BABASHE KUMUKORERA IPEREREZA RY'INYONGERA.

**Perezida w'Urukiko rw'Ikirenga:**

Ashingiye ku Itegeko Ngenza n°3/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga cyane cyane mu ngingo yaryo ya 13, 7°;

Amaze kubona Itegeko ngenza n° 09/2013/ol ryo kuwa 16/06/2013 rikuraho itegeko ngenza n° 11/2007 ryo kuwa 16/03/2007 rigena kwimurira muri repubulika y'u Rwanda imanza zivuye mu rukiko mpanabyaha mpuzamahanga rwashyirirweho u Rwanda n'izivuye mu bindi bihugu, nk'uko ryahinduwe kandi ryujujwe kugeza ubu;

Ashyizeho amabwiriza akurikira:

PRACTICE DIRECTIONS NO ..../2015 OF .../.../2015 BY THE CHIEF JUSTICE ON ALLOCATION OF MEANS FOR FURTHER DEFENSE INVESTIGATIONS FOR INDIGENT ACCUSED TRANSFERRED TO RWANDA

**The Chief Justice:**

Pursuant to the Organic Law n°3/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, especially in Article 13, 7°;

Considering the organic law n° 09/2013/ol of 16/06/2013 repealing the organic law n° 11/2007 of 16/03/2007 concerning the transfer of cases to the Republic of Rwanda from The international criminal Tribunal for Rwanda and from other states, as modified and complemented to date;

Issues the following directions;

REGLEMENT NO ...../2015 DU .../.../2015 DU PRESIDENT DE LA COUR SUPREME SUR L'ATTRIBUTION DE MOYENS POUR COMPLÈMENT D'ENQUÊTE DE LA DÉFENSE DES ACCUSÉS INDIGENTS TRANSFÉRÉS AU RWANDA.

**Le Président de la Cour Suprême ;**

Vu la loi organique n°3/2012/OL du 13/06/2012 portant organisation, fonctionnement et compétence de la Cour Suprême, spécialement en son Article 13, 7°;

Loi organique n° 09/2013/ol du 16/06/2013 portant abrogation de la loi organique n° 11/2007 du 16/03/2007 relative au renvoi d'affaires à la République du Rwanda par le Tribunal pénal international pour le Rwanda et par d'autres Etats, telle que modifiée et complétée à ce jour;

Arrête le règlement suivant:

**Ingingo ya 1 : Kwemererwa n'Urukiko Rukuru**

Uregwa uishoboye iyo asabye uburyo bworoheraza abamwunganira kumukorera iperereza agomba kubahiriza ibisabwa bikurikira :

1. Uregwa agomba gushyikiriza Umwanditsi Mukuru mu Rugereko rwihariye rw'Urukiko Rukuru ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibe.

2. Ubusabe bwe bugomba kuba bwageze ku Rukiko iminsi 30 nibura mbere y'uko iperereza ritangira cyangwa mbere y'uko urugendo ruteganijwe rukorwa.

3. Ubusabe bwe bugomba kuba bukubiyemo ibi bikurikira aho bikwiye:
  - a. Ibisobanuro bihagije ku mpanvu y'iperereza n'ibizakorwa muri iryo perereza ;

**Article 1: Authorization from the High Court**

Indigent accused requesting funds for further investigation must comply with the following requirements:

1. The Accused must make an *ex parte* application to chief registrar of the Specialized Chamber of the High Court hearing international crimes and cross-border crimes.

2. The Application must be made at least 30 days before the commencement of the investigation or planned travel.

3. The application must include the following information, where applicable:
  - a. A detailed explanation of the purpose of the investigation and the work to be undertaken;

**Article 1: De l'Autorisation du financement de l'enquête par la Haute Cour**

L'accusé indigent qui requiert des fonds pour financer l'enquête de sa défense doit remplir les conditions suivantes :

1. L'accusé doit soumettre une requête au Greffier en Chef de la Chambre Spécialisée de la Haute Cour connaissant des affaires liées aux crimes à caractère international et crimes à caractère transfrontalier.

2. La requête doit être soumise au greffier au moins 30 jours avant le début des enquêtes ou du voyage planifié.

3. La requête doit notamment contenir les informations suivantes s'il y a lieu :
  - a. Les explications détaillées sur l'objet de l'enquête et les activités à entreprendre;

- b. Igihe rizatangirira, igihe rizarangirira, amatariki n'aho bateganywa kurikorera, uburyo buhendutse bushoboka bw'ibikenewe n'uburyo bworoshye bwo kwishyura ingendo, umubare w'abakenewe muri urwo rugendo;
- b. The start, end dates and place(s) of any anticipated travel, the most economical and efficient route and means of transport, and of persons who are required to travel;
- b. Le début, la fin, et l'endroit(s) du voyage prévu, les voies et moyens de transport les plus économiques, ainsi le nombre de personnes qui doivent voyager;
- c. Gahunda y'ibazwa ry'abatangabuhamya cyangwa iy'ibindi bikorwa by'iperereza n'igihe bigomba kuzamara;
- c. The dates and duration of any anticipated witness interview(s) or other investigation;
- c. Le calendrier de chaque audition de témoin ou d'autres sortes d'investigation,
- d. Amakuru afitiwe gihanywe apanye n'aho abatangabuhamya baherereye, inyandiko cyangwa ibindi bikenewe;
- d. Verifiable information about the whereabouts and availability of the witness(es), documents, or other items;
- d. Les informations vérifiables sur le lieu et la disponibilité des témoins, documents et autres objets;
- e. Ibisobanuro bigaragaza ko amakuru yava muri iryo perereza adashobora kubonka binyuze mu kuvugana imbona nkubone mu mashusho hifashishijwe iyakure, hakoreshejwe interineti, iposita cyangwa ubundi buryo buhendutse;
- e. An explanation why the information sought cannot be obtained by video-link, telephone, email, post, or other more economical means;
- e. Les explications sur les raisons pour lesquels l'information recherchée ne peut être obtenue par liaison vidéo, par courrier, par poste, ou par autre voie moins coûteuse;
- f. Amafanga yo gusenura iyo ari ngombwa.
- f. Any interpretation costs.
- f. Frais d'interprétation éventuelle.

**Ingingo ya 2 : icyemezo cy'Urukiko Rukuru**

Urukiko Rukuru rugomba kwemeza niba hakenewe iperereza, niba rikenewe ku byasabwe byose cyangwa igice cyabyo; igihe haba hakenewe gukorwa ingendo hakagarazwa uburyo buzakoresha, umubare w'abazaziyamo n'igihe zizamara.

Urukiko Rukuru rugomba kumenyesha Ministeri y'Ubutabera icyemezo cyo kongera amafaranga akenewe mu gihe bibaye ngombwa.

**Ingingo ya 3 : Amafaranga ashobora kwishyurwa ku ngendo no ku busemuze**

Ibigomba gutangwaho amafaranga ni ibi bikurikira :

1. Umwanya wo mu rwego rwa kabiri mu ndege, umwanya wo mu rwego rwa kabiri muri gari ya moshi, n'ubundi buryo bukoresha mu ngendo ;

**Article 2 : Determination by the High Court**

The High Court shall determine whether the investigation is reasonable, in whole or in part, and where travel is required, the means of travel, and the number of persons authorized to travel.

The High Court shall notify the Ministry of Justice to extend any necessary funding.

**Article 3: Costs recoverable for travel and interpretation**

Only the following costs will be authorized:

1. Economy class flight(s), second class train ticket(s), or other means of travel;

**Article 2: Décision de la Haute Cour**

La Haute Cour doit décider si l'enquête est nécessaire, entièrement ou partiellement ; et, s'il y a nécessité de voyage déterminer les moyens de transport, le nombre de personnes autorisées à voyager et la durée du voyage.

La Haute Cour doit notifier éventuellement l'extension du financement en cas de nécessité au Ministère de la Justice.

**Article 3 : Les frais de voyage et d'interprétation**

Seuls les coûts suivants seront autorisés:

1. Le vol en classe économique (s), le(s) billet(s) de train de deuxièmes classe (s), ou autres moyens de transport;

2. Insimbura mubyizi ihabwa umukozi wa leta uri mu rwego rwa Dirigitari nk'uko biteganywa n'Iteka ry'ya Minisitiri N° 005/08/10/MIN ryo kuwa 01 Nzeri 2008 ;

2. Daily subsistence allowance equivalent to that received by Director Generals as set out in Ministerial Order No. 005/08/10/MIN of 1 September 2008;

2. L'indemnité journalière équivalente à celle prévue pour un officiel du rang de Directeur Général tel que prévu par l'Arrêté Ministériel N° 005/08/10/MIN du 01 Septembre 2008 ;

3. Ibisobanuro ku mafaranga y'ubusemuzi

3. Any interpretation costs.

3. Frais d'interprétation éventuelle.

Inyemezabuguzi zose ndetse n'inyandiko zakoreshejwe mu rugendo, harimo na tike y'indege, iya gari ya moshi cyangwa iya bisi zigashyikirizwa Minisitiri y'ubutabera mu minsi 7 nyuma yo kuva mu rugendo.

All receipts and proof of travel, including boarding passes, train or bus tickets, must be submitted to Ministry of Justice within 7 days from the end date of travel.

Tous les reçus et les pièces justificatives du voyage effectué, y compris les billets d'embarquement d'avion, ticket du train ou des bus doivent être déposés au Ministère de la Justice endéans 7 jours à partir de la date de retour du voyage.

**Ingingo ya 4: Itegurwa ry'aya mabwiriza**

Aya mabwiriza yateguwe mu rurimi rw'Icyongereza.

**Article 4: Drafting of these practice directions**

These practice directions were drafted in English.

**Article 4: Initiation de ce règlement**

Le present règlement a été initié en anglais.



**Ingingo ya 5: Igihe amabwiriza atangira gukurikizwa**

Aya mabwiriza atangira gukurikizwa ku muni atangajweho Igazeti ya Repubulika y'u Rwanda.

Bikorewe i Kigali kuwa 06/08/2015.

**Prof. Sam Rugege**

**Perezida w'Urukiko rw'Ikirenga**

**Article 5: Commencement**

These practice directions shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Done in Kigali on 06/08/2015

**Prof. Sam Rugege**

**Chief Justice**

**Article 5: Entrée en vigueur**

Le present règlement entre en vigueur le jour de sa publication au Journal Officiel de la République du Rwanda.

Fait à Kigali le 06/08/2015.

**Prof. Sam Rugege**

**Président de la Cour Suprême**

# ANNEX 19

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 Rwandan Bar Association 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

REPUBLIKA Y' KWANDA

Rwanda, P. O. Box 160, Kigali  
N° 4527/08.25/UC/LSD

MINISITERI Y'UBUTABERA  
P.O BOX 160 KIGALI  
Tel: (250) 252586561 Fax: (250)252586509  
Email: [miniust@miniust.gov.rw](mailto:miniust@miniust.gov.rw)

Entré le	10/07/2015
N° Inj	10/07/2015
A l'usage de	CAB
Classification	

Bwana Komiseri w'Urwego rw'Igihugu Rushinzwe  
Imfungwa n'Abagororwa(R.C.S)  
KIGALI

Impamvu: Urutonde rw'Abavoka bazajya biyambazwa mu manza nshinjabyaha z'abatishoboye bohererwa kuburanira mu Rwanda.

Bwana Komiseri Mukuru,

Nshingiye ku ibaruwa Umukuru w'Urugaga rw'Abavoka mu Rwanda yo kuwa 31/07/2015,yandikiye Minisitiri w'Ubutabera/Intumwa Nkuru ya Leta amushyikiriza urutonde rw'Abavoka bazajya biyambazwa mu manza nshinjabyaha z'abatishoboye bohererwa kuburanira mu Rwanda;

Nejewe no kubohererwa k'umugereka w'iyi baruwa urwo rutonde, tunasaba ko mwarumenyesha abohererwa kuburanira mu Rwanda.

Turabasaba kurubamenyesha binyuze ku muntu ufite ububasha bw'Umuhesha w'Inkiko bigakororwa n'inyandiko ibihamya.

Mugire amahoro.

  
**KALIHANGABO Isabelle**  
Umunyamabanga uhoraho/Intumwa Nkuru ya Leta Yungirije

Bimeneshejwe:

- Nyakubahwa Perezida w'Urukiko rw'Ikirenga/Perezida w'Inama Nkuru y'Ubushinjacyaha
- Bwana Minisitiri w'Ubutabera/Intumwa Nkuru ya Leta
- Bwana Umushinjacyaha Mukuru ✓
- Bwana Perezida w'Urukiko Rukuru
- Madamu Umuyobozi w'Urugaga rw'Abavoka

KIGALI

Website : [www.miniust.gov.rw](http://www.miniust.gov.rw)

URUTONDE RWABAVOKA BAZAJYA BIYAMBAZWA MU MANZA Z'ABATSHOBYE BOHEREZWA  
KUBURANIRA MU RWANDA


	LAST NAME	FIRST NAME	TELEPHONE	E-MAIL
1	KARANGWA	Vincent AB**	+250786515997	karangwvvin@yahoo.fr
2	KAZENZEZA	Théophile	+250788513203	kazetheo@yahoo.fr
3	NSENGIYIMYA	Straton	+250788613174	nsestfa@yahoo.fr
4	SHEMA T	Cerail	+250788304732	shemger@yahoo.com
5	RWABIGWI	Augustin	+250788505577	rwuraga@yahoo.fr
6	UMUTESI	R. Jeann d'Arc	+250788468471	maître.jeanne.darc@gmail.com
7	INKURUNZIZA	Jean Pierre	+250788522562	inkuruni67@yahoo.fr
8	NYIRIDANDI	Assiel	+250788306282	anyiridandi@yahoo.fr
9	RUKUNDO	Enile	+250788513635	rukundo_cmlt@yahoo.fr
10	NDAMAGE	Ferdinand	+250788414707	ndamagel@gmail.com
11	KAYITANA	Dominique Savio	+250788532519	kayidom44@yahoo.fr
12	KARAKE	Cantibus	+250788462533	karakec@yahoo.fr
13	BIZIMANA SHOSHI	Jean Claude	+250788562554	jeanclaudebsh@yahoo.fr
14	HAKIZIMANA	Théogène	+250788562022	thegoehaki@yahoo.fr
15	BARUNABO	Idris	+250788385826	baridris@yahoo.fr
16	MUKIZA BIN MUKIZI	Thaddeé	+250788643870	mulihhadde@gmail.com
17	BUGABO	Laurent	+250788409295	bugalaurent@yahoo.fr

18	UMUPFASONI	Blandine	+250788477393	umubla78@yahoo.fr
19	KABERA	Johnson	+250788302432	johnsonkabera@gmail.com
20	MUREKATEYE B	Marguerite	+250788754071	mbnukr@yahoo.fr
21	NGAMUJE KIRABO	Guido	+250788527020	guido_nk@yahoo.fr
22	NTAGANDA KABARE	Festio	+250788531136	ntakate@yahoo.fr
23	BIGARABA RWAKA	John	+250788444869	bigarabaihn@gmail.com
24	KABASENGA	Berthilde	+250788531743	uwonizeye@yahoo.fr
25	NDENGEYINGOMA	Louise	+250788511559	ndemalcw@yahoo.fr
26	MUBANGIZI	Frank	+250788302502	mbafra2012@yahoo.fr
27	TUGANUMUREMYI	Donata	+250788676762	donatug@yahoo.fr
28	BIKOTWA	Bruce	+250788470696	brucebik@yahoo.fr
29	KARAMIRA	Jacques	+250788442258	jacqueskaramira@yahoo.fr
30	TWAGIRAYEZU K	Christophe	+250788595411	twakanchr@yahoo.fr
31	MUSONERA	Alexis	+250788403812	musalex2002@yahoo.fr
32	SEBAZUNGU	Alphonse	+250788301096	alschazungu@gmail.com
33	MUNYURANGABO	Dominique	+250788435895	munyurangabodominique@yahoo.com
34	MUTUNZI	Donat	+250788855121	dmutunzi@yahoo.fr
35	HABINSHUTI	Yves	+250788290546	yvesshuti@yahoo.fr
36	RWAKAYUDA M	John	+250788511570	hnicar_fr@yahoo.com
37	NIZEYIMANA	Boniface	+250788538566	boniface@ksolutions.law.com
38	BAREMERA	Jean Berchinas	+250788770708	hberchinm@yahoo.fr

8

39	RWISUMBURA UMUTONI	Thérèse	+250788798833	threddy002@yahoo.fr
40	NGABONZIZA	Joséph	+250788757121	ngabo_jeff@yahoo.fr
41	RUTAGENGWA	Mukiga	+250788589305	rutagengwa1@gmail.com
42	BIZIMANA	Elopolid	+250788851416	bizimanaeloold@yahoo.com
43	SESONGA	Théobald	+250788291004	sesonga@yahoo.com
44	NSENGITYUMVA	Enos	+250788357308	nsengityumva@yahoo.fr
45	HABIMANA	Bonaventure	+250788389776	bonabivrasa@yahoo.fr
46	MUTIMURA B	Patrick	+250788309279	pmutimura@gmail.com
47	RWAMAKUBA	Laurent	+250788614604	laurent.rwamakuba@yahoo.fr
48	KWIZERA	Bernard	+250788440787	bernardkwizera@yahoo.fr
49	MUHISONI	Stella Mutuina	+250788745742	ismutuina2006@yahoo.fr
50	NYEMBO	Emeline	+250788847615	enyembo@yahoo.fr
51	MURARA	Odette	+250788504290	odde.murara@gmail.com
52	SEBAZUNGU A	Cathérine	+250788303176	alsebazungu@gmail.com
53	RWAGASANA	Innocent	+250788416420	rwaginocent@yahoo.fr
54	MUKANSANGA	Godeleje	+250727232988	godemuka@yahoo.fr
55	YATUBABARIVE	Jean Chrystosome	+250788540485	yatubabartje@yahoo.fr
56	MUKESHIMANA	Providence	+250788790759	providencemukeshaha@gmail.com
57	SEBAGABOMI	Paul	+250788585684	sebpaul@rocketmail.com
58	MUKARUGWIZA	Dinahelle	+250788898404	mukarugwiza2007@yahoo.fr
59	UWAMARIVA	Consoice	+250788674920	uwadika08@yahoo.fr
60	KABERUKA BISENGE	Claude	+250788304383	kabebise@yahoo.fr

61	NANKAMISHA N	Thièssè	+250788554625	nankamishna@yahoo.fr
62	NSANZIMFURA	Eugène	+250788844086	nsanzeieug2002@yahoo.fr
63	RUGAMBAGE	Albert	+250788304903	albertrugumbage@yahoo.fr
64	YANKURUE	Dalyo	+250788461430	yada1970@yahoo.fr
65	MULOMBI KABEYA	Augustin	+250783073865	mulombiaugustin@yahoo.fr
66	INDUTYE	Yussuf	+250788502175	indutye@yahoo.fr


  
 REPUBLIQUE RWANDAISE  
 MINISTÈRE DE L'ÉCONOMIE ET DES FINANCES  
 URUS NGANA RWANDA  
 20000 KIGALI - RWANDA  
 Téléphone : +250 20 20 20 20  
 Courriel : info@urusngana.gov.rw  
 Web : www.urusngana.gov.rw

**OTP DRAFT TRANSLATION**



**OTP – UNCERTIFIED TRANSLATION**

REPUBLIC OF RWANDA

Kigali, .....[illegible]

MINISTRY OF JUSTICE

N° 1527/08.25/UC/LSD

P O Box 160 Kigali

Tel (250) 252586581 Fax (250) 252586509

Email : [mjust@minijust.gov.rw](mailto:mjust@minijust.gov.rw)

To the Commissioner General  
of the Rwanda Correctional Service (R.C.S)

**KIGALI**

**Subject: List of advocates whose services may be relied upon in criminal cases of indigent and needy persons transferred to Rwanda**

Dear Mr. Commissioner General,

Reference is made to the letter dated 31 July 2015 from the President of the Bar Association of Rwanda to the Minister of Justice/Attorney General communicating the list of advocates whose services will be relied upon in criminal cases of indigent and needy persons transferred to Rwanda.

I am pleased to forward the same as an annex to this letter and invite you to communicate it to the relevant parties that transfer such cases to Rwanda.

We are requesting you to inform them about it through an authorised court bailiff under a relevant transmission report.

Yours truly,

[signed and stamped]

**Isabelle KALIHANGABO**

**Permanent Secretary/Deputy Attorney General**

c.c.:

- H. E. The President of the Supreme Court/ President of the Supreme Council of the Judiciary
- The Minister of Justice/Attorney General
- The Prosecutor General
- The President of the High Court
- The President of the Bar Association

**KIGALI**

# **ANNEX 20**

Pay Slips from the National Public Prosecution  
Authority for January–April 2015

Republic of Rwanda

03-06-2015 14:19:37



National Public Prosecution Authority

**Pay Slip**  
 February 2015  
 PROCUREURS NATIONAUX

<b>Bank</b>	<b>Branch</b>	<b>Account Number</b>
<b>Allowances</b>	<b>Employer Contribution</b>	<b>Withheld</b>
Base Pay 860 640	CSR Pension 33 361	CSR 33 361
Housing Allowance 122 949	CSR Prof Risk 22 241	TPR 317 613
Transport Allowance	Med Insurance 64 548	Med Insurance 64 548
Taxable Allowance 128 453		Non Statutory 5 000
Exempted Allowance		
<b>Gross Salary 1 112 042</b>	<b>Total 120 150</b>	<b>Total 420 522</b>
	<b>Partial Net</b>	<b>Take Home</b>
	691 520	691 520

Republic of Rwanda

03-06-2015 14:18:59



National Public Prosecution Authority

**Pay Slip**  
 January 2015  
 PROCUREURS NATIONAUX

<b>Bank</b>	<b>Branch</b>	<b>Account Number</b>
<b>Allowances</b>	<b>Employer Contribution</b>	<b>Withheld</b>
Base Pay 860 640	CSR Pension 33 361	CSR 33 361
Housing Allowance 122 949	CSR Prof Risk 22 241	TPR 317 613
Transport Allowance	Med Insurance 64 548	Med Insurance 64 548
Taxable Allowance 128 453		Non Statutory 5 000
Exempted Allowance		
<b>Gross Salary 1 112 042</b>	<b>Total 120 150</b>	<b>Total 420 522</b>
	<b>Partial Net</b>	<b>Take Home</b>
	691 520	691 520

Republic of Rwanda

03-06-2015 14:16:09



National Public Prosecution Authority

**Pay Slip**  
 [Redacted]  
 March 2015  
 PROCUREURS NATIONAUX

Bank	Branch	Account Number
[Redacted]	[Redacted]	[Redacted]
<b>Allowances</b>	<b>Employer Contribution</b>	<b>Withheld</b>
Base Pay 860 640	CSR Pension 33 361	CSR 33 361
Housing Allowance 122 949	CSR Prof Risk 22 241	TPR 317 613
Transport Allowance	Med Insurance 64 548	Med Insurance 64 548
Taxable Allowance 128 453		Non Statutory 5 000
Exempted Allowance		
<b>Gross Salary</b> 1 112 042	<b>Total</b> 120 150	<b>Total</b> 420 522
	<b>Partial Net</b>	<b>Take Home</b>
	691 520	691 520

Republic of Rwanda

03-06-2015 14:14:24



National Public Prosecution Authority

**Pay Slip**  
 [Redacted]  
 April 2015  
 PROCUREURS NATIONAUX

Bank	Branch	Account Number
[Redacted]	[Redacted]	[Redacted]
<b>Allowances</b>	<b>Employer Contribution</b>	<b>Withheld</b>
Base Pay 860 640	CSR Pension 33 361	CSR 33 361
Housing Allowance 122 949	CSR Prof Risk 22 241	TPR 317 613
Transport Allowance	Med Insurance 64 548	Med Insurance 64 548
Taxable Allowance 128 453		Non Statutory 5 000
Exempted Allowance		
<b>Gross Salary</b> 1 112 042	<b>Total</b> 120 150	<b>Total</b> 420 522
	<b>Partial Net</b>	<b>Take Home</b>
	691 520	691 520

# ANNEX 21

Affidavit of Athanase Rutabingwa, dated 13 March 2015, given in the *Munyagishari* case, appending a template contract

## Mechanism for International Criminal Tribunals

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Before: Judge Theodor Meron, President

Registrar: John Hocking

THE PROSECUTOR

v.

Bernard MUNYAGISHARI

*Case No. MICT-12-20*

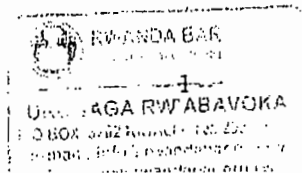
---

### AFFIDAVIT OF ATHANASE RUTABINGWA

---

1. Athanase Rutabingwa, hereby depose and state as follows:

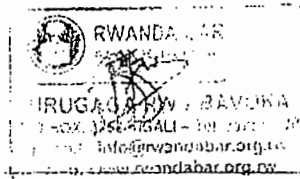
1. I am the current President of the Rwanda Bar Association.
2. The Rwanda Bar Association is responsible for assigning counsel to represent indigent accused in accordance with the Bar rules and regulations on legal aid.
3. In this capacity, the Rwanda Bar Association was consulted by the Ministry of 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.



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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 13<sup>th</sup> day of March 2015.



Athanasie 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. Maître .....agissant en qualité de Conseil principal, d'autre part.
2. Maître .....agissant 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 22

Article 20 of Law N° 30/2013 of 24/5/2013 Relating to the Code of Criminal Procedure and Articles 18–19 of the Law N° 13/2004 Relating to the Code of Criminal Procedure, 17 May 2004

***Ibirimo/Summary/Sommaire*** ***page/urup.***

***Itegeko / Law / Loi***

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 Y'IMANZA Z'INSHINJABYAHA PROCEDURE

ISHAKIRO

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Akiciro ka 2: Inshingano z'Ubugenzacyaha n'uko zishyirwa mu bikorwa

**A. Iperereza rikorwa n'Ubugenzacyaha**

Ingingo ya 20: Inshingano z'Ubugenzacyaha

Ubugenzacyaha bufitse inshingano zikurikira:

- 1° gushakisha ibyaha;
- 2° kwakira ibirego n'inwandiko zijyanye n'ibyaha;
- 3° gukusanya ibimenyetso bishinje n'ibishinjura;
- 4° gushakisha abakoze ibyaha, abafatanyije na bo n'ibytso byabo kugira ngo bakurikiranwe n'Ubushinjacyaha.

Sub-section 2: Responsibilities of the Judicial Police and how they are discharged

**A. Investigation by Judicial Police**

Article 20: Responsibilities of the Judicial Police

The Judicial Police shall be responsible for:

- 1° detecting offenses;
- 2° receiving complaints and documents relating to such offenses;
- 3° gathering incriminating and exculpatory evidence;
- 4° searching for perpetrators of such offenses, their co-offenders and accomplices so that they can be prosecuted by the Public Prosecution.

Sous-section 2: Attributions de la Police Judiciaire et modalités de leur exercice

**A. Enquête par la Police Judiciaire**

Article 20: Attributions de la Police Judiciaire

La Police Judiciaire est chargée de :

- 1° constater les infractions ;
- 2° recevoir les plaintes et documents relatifs aux infractions ;
- 3° rassembler les preuves à charge et à décharge ;
- 4° rechercher les auteurs, leurs coauteurs et complices pour que l'Organe National de Poursuite exerce l'action publique à leur encontre.

Ingingo ya 21: Uburyo iperereza rikorwa

Abagenzacyaha bakora iperereza babyibwirije, baregwe cyangwa se babitegetswe n'Ubushinjacyaha.

Article 21: Investigative procedure

Judicial Police Officers shall institute investigation on their own initiative, upon complaint or instruction from the Public Prosecution.

Article 21: Procédure d'enquête préliminaire

Les Officiers de Police Judiciaire procèdent à des actes d'enquête préliminaire soit d'office, soit sur plainte ou dénonciation, soit sur instruction de l'Organe National de Poursuite.

Abagenzacyaha ni bo bashinzwe gukora iperereza mu rwego rwa mbere.

Judicial Police Officers shall have the primary responsibility to conduct preliminary investigation.

Les Officiers de Police Judiciaire ont le monopole des actes d'enquête préliminaires.

- [Policy Documents](#)
- [Reference Documents](#)
- [Resources](#)
  - [External Links](#)
  - [Information Alerts](#)
  - [Protection Starter Kit](#)
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## Law N° 13/2004 Relating to the Code of Criminal Procedure

Publisher	<a href="#">National Legislative Bodies / National Authorities</a>
Author	Ministry of Justice
Publication Date	17 May 2004
Citation / Document Symbol	13/2004
Reference	<a href="http://www.amategeko.net/display_rubrique.php?Information_ID=1333&amp;Parent_ID=30693517&amp;type=public&amp;Langue_ID=An">http://www.amategeko.net/display_rubrique.php?Information_ID=1333&amp;Parent_ID=30693517&amp;type=public&amp;Langue_ID=An</a>
Cite as	<i>Law N° 13/2004 Relating to the Code of Criminal Procedure</i> [], 13/2004, 17 May 2004, available at: <a href="http://www.refworld.org/docid/46c306492.html">http://www.refworld.org/docid/46c306492.html</a> [accessed 2 September 2015]
Comments	Official Gazette of the Republic of Rwanda, Special No. of 30/07/2004. The text in square brackets in Articles 52, 117 and 247 are unofficial, as the official translation was incomplete.
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### Chapter 1. PRELIMINARY PROVISIONS

When a civil action is brought in a criminal court, the court may, on its own motion or upon application by any of the parties, separate the civil action from criminal proceedings when the civil claim is likely to prejudice or delay the hearing of the criminal case.

Article: 14

Proceedings of the civil action are kept in abeyance as long as the criminal case has not been finally determined, whether the criminal proceedings were instituted before or in course of the civil proceedings.

Article: 15

A civil action arising from a criminal offence becomes time-barred after five (5) years from the time when the offence was committed.

However, if the prescription of a civil action precedes the prescription of a criminal action, a civil action becomes time-barred at the same time with that of the criminal offence.

Article: 16

A civil action cannot be brought before a criminal court after prescription of prosecution of a criminal case.

However, when a criminal court has been seized with civil actions it can, when there are sound prosecution evidence, proceed with its trial if the criminal action has been time barred, if the accused died, in case of commission of an offence or in case of amnesty.

Article: 17

The waiver of a civil action does not bar the prosecution of a criminal case.

## **Section 2. Services responsible for prosecution**

### **Sub-section 1. The Judicial Police**

#### **a) Organisation of the Judicial Police**

Article: 18

Criminal investigation and prosecution are carried out by judicial police officers under the control and supervision of the Prosecution Service.

The Criminal Investigation and Prosecution shall always communicate to the victim his/her right to claim for damages.

Article: 19

The Judicial police is responsible for investigation of crimes, receiving complaints and documents relating to the offences, gathering evidence for the prosecution and defence and, searching for perpetrators of the crimes, their accomplices and accessories so that they can be prosecuted by the Prosecution.

Article: 20

# **ANNEX 23**

Articles 37 and 100 of the Law N° 13/2004 Relating to the Code of Criminal Procedure, 17 May 2004

# Law N° 13/2004 Relating to the Code of Criminal Procedure

Publisher National Legislative Bodies / National Authorities

Author Ministry of Justice

Publication Date 17 May 2004

Date

Citation /

Document 13/2004

Symbol

Reference [http://www.amategeko.net/display\\_rubrique.php?Information\\_ID=1333&Parent\\_ID=30693517&type=public&Langue\\_ID=An](http://www.amategeko.net/display_rubrique.php?Information_ID=1333&Parent_ID=30693517&type=public&Langue_ID=An)

Cite as *Law N° 13/2004 Relating to the Code of Criminal Procedure* [], 13/2004, 17 May 2004, available at: <http://www.refworld.org/docid/46c306492.html> [accessed 3 September 2015]

Comments Official Gazette of the Republic of Rwanda, Special No. of 30/07/2004. The text in square brackets in Articles 52, 117 and 247 are unofficial, as the official translation was incomplete.

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## Chapter 1. PRELIMINARY PROVISIONS

Article: 1  
(Organic Law no 20/2006 of 22/04/2006)

This law governs criminal investigation and prosecution aimed at imposing penal sanctions against acts that contravene the penal law.

Criminal judgements must be held in public audience, be fair, impartial, comply with the principle of self defense, cross examination, treat litigants equal in the eyes of the law, base on evidences legally produced and be rendered without any undue delay.

### Section 1. Actions arising from offences

#### Sub-section 1. Criminal action

Article: 2

is found in possession of property, arms, instruments or documents leading to the suspicion that he or she might be the one responsible for committing the offence or aided and abetted the author of crime, provided it is soon after the commission of the crime.

Article: 35

When a person unequivocally admits to have committed an offence, the provisions of article 33, paragraphs 2 and 3 of this law shall apply in the course of investigation and prosecution and the trial judge or magistrate can reduce the applicable sentence to a half.

Article: 36

For any offence that falls under his or her competence if a Judicial Police Officer estimates that due to circumstances that led to its commission, a court is likely to impose a punishment of fine and if necessary, to order the eventual forfeiture of property, the Judicial Police can request the Public Prosecutor to invite the suspect to make a choice between filing a case against him or payment of a fine not exceeding the maximum fine to which are increments that are provided for by the law.

When the accused has completed his or her choice, investigation is discontinued except when the Public Prosecutor decides to go on with the prosecution.

The payment of fine does not imply admission of an offence.

## **2. Arrest and necessary conditions**

Article: 37

When an offence is punishable by at least an imprisonment of two (2) years or if there exist reasonable grounds to suspect that the accused is likely to escape or if his or her identity is unknown or is doubtful, a Judicial Police Officer can, if it is deemed necessary for the purposes of investigation, arrest and detain him or her in an official remand in a custody which is situated at a police station if there are serious reasons to suspect that he or she committed the offence.

The Judicial Police Officer records a statement of the arrest in four (4) copies, one of which is immediately transmitted to the competent public prosecutor, another is filed in the criminal case file, another given to the in-charge of the remand prison and the last given to the accused.

A statement for arrest of an accused is valid for seventy-two (72) hours, which cannot be extended.

Any person against whom there is no sufficient evidence to suspect that he or she committed or attempted to commit an offence shall immediately be released.

Article: 38

Any person detained by the Judicial Police Department shall be informed of his or her charges as well as his or her rights including the right to inform his or her advocate or any other person he or she wishes to be informed. Such a notification is recorded in the statement of judicial police.

Magistrate or Judge immediately informs the accused of the decision in writing or orally and then reduced into writing.

Article: 100

An order authorising for preventive detention remains in force for 30 days including the day on which it was delivered. After the expiry of that time, it can be renewed for one month and shall continue in that manner.

However, after expiration of 30 days, the time cannot be extended for contraventions. For misdemeanours, the time cannot be extended after the accused has been detained for 6 months and after one year for felonies.

Orders extending the period of detention are made in accordance with the form and periods provided for under article 99 of this law.

An order for pretrial detention or for extending the time of detention shall specify the grounds that justify it.

Preventive detention can also be ordered if an accused person has voluntarily breached some of the conditions of bail imposed on him or her.

#### **Section 4. Release on bail and execution of bond**

Article: 101

In all offences, an accused person or his or her counsel can at any time apply for bail to the public prosecutor charged with the preparation of the case or to a Judge or Magistrate depending on the stage of investigation.

A Judge or Magistrate delivers a ruling on the application and its legal basis within five (5) days. When the release is guaranteed, the accused may be ordered to respect some conditions.

Article: 102

When a Magistrate or Judge does not find sufficient evidence for prosecution, an accused person shall be immediately released.

When a Judge or Magistrate finds that there is enough evidence to warrant detention of the accused, an order for preventive detention can be made; or he may not be detained but ordered to respect certain conditions.

Some of the conditions, which can be imposed on the accused, include the following:

- 1° to live in the area where the prosecutor charged with the preparation of the case file works;
- 2° not to travel beyond a prescribed area without obtaining prior permission of the prosecutor charged with the preparation of the case file or his or her representative;
- 3° not to travel to specific areas or not to be found in certain areas at given times;
- 4° to report at given periods before a public prosecutor who is charged with the preparation of the case file or a public servant or before any such other officer as may be determined by the magistrate or judge;
- 5° to appear before a public prosecutor in charge of preparation of his or her case file or before a



# ANNEX 24

*Public Prosecution v. Uwinkindi*, The High Court,  
The Specialised Chamber Trying International and  
Cross-Border Crimes, case no. RP 0002/15/HCCI,  
Decision, 16 February 2015

(3)

CASE RP 0005/15/HCCI

PAGE NUMBER 1

THE HIGH COURT, THE SPÉCIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES, SITTING IN KIGALI, TRYING PENAL CASES AT FIRST INSTANCE PRONOUNCED IN PUBLIC ON 16/02/2015, THE FOLLOWING RULING ON CASE RP 0002/15/HCCI:

**Claimant:**

Jean UWINKINDI son of Subwanone and Ntizisigwa, born in 1951 at Rutsiro in former Kibuye Prefecture in the Republic of Rwanda, up to 1994 he was residing in former Kigali Ngali, in Kanzenze Commune, Kayumba Sector, Gatara Cell, married to Kabagwira Rose and they have eight (8) children, pastor, Rwandan, owns no assets, currently detained in Kigali Central Prison after being transferred to Rwanda by the International Criminal Tribunal for Rwanda so that he may be prosecuted for the crimes he is suspected of having committed in Rwanda.

**Accused:-**

**Claim:** Request for Disqualification of the judge NGENDAKURIYO Alice in the trial proceedings of case RP 0002/12/HCCI

**I. THE NATURE OF THE CASE**

1. During the trial proceedings of 06/02/2015, Jean UWINKINDI disqualifies the judge NGENDAKURIYO Alice saying that she is not giving him the floor, doesn't listen to him, answers him threateningly and extreme anger, that she took decisions against the truth aiming at intentionally preventing him from his right, thereby demonstrating the judge's hatred against him.

2. The issue which shall be examined is to know whether the claim related to disqualifying the judge NGENDAKURIYO Alice submitted by Jean UWINKINDI has merit.

**II. ANALYSIS OF CASE ISSUE**

3. Jean UWINKINDI explains his claim saying that during the trial proceedings of 06/02/2015 the judge NGENDAKURIYO Alice demonstrated hate towards him in no uncertain terms because she refused to listen to him but instead listened to the Public Prosecutor only, that she took decisions on the basis of their briefs and evidence only, took various decisions contrary to the reality and the law aiming at preventing him intentionally from enjoying his right. He also claims that it is the habit of this judge chairing the trial proceedings to allow the Public Prosecutor more time and refuse him enough time to express

(3)

his opinion, in addition, she compels him to accept legal counsels who are not of his own choice.

CASE RP 0005/15/HCCI

PAGE NUMBER 2

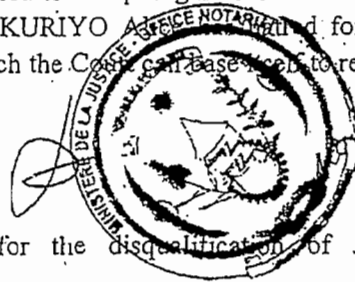
4. Jean UWINKINDI based his allegations on various laws including the National Constitution of the Republic of Rwanda of 4/06/2003 as amended to date, International Conventions, the Organic Law relating Transfer cases in the Republic of Rwanda, Organic Law n° 51/2008 of 9/09/2008 determining organization, functioning and jurisdiction of courts as modified and complemented to-date, Organic Law relating to the civil, commercial, labor and administrative procedure.

5. The Court notes that pursuant to the article 171, 3° of the Organic Law n° 51/2008 of 9/09/2008 determining organization, functioning and jurisdiction of courts as modified and complemented to-date and article 99, 3° of the Organic Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labor and administrative procedure stipulates that a judge can be disqualified in case one of the parties demonstrates the basis of enmity between him/her and the judge. Jean UWINKINDI's declarations related to the refusal to be given the floor, considering one side's evidences, not getting equal time during trial, to be answered threateningly and with extreme anger and to be compelled to accept legal counsels assigned to him, do not demonstrate that the judge NGENDAKURIYO Alice can be held responsible for him because his explanations do not provide grounds on which the Court can base itself to receive Jean UWINKINDI's claim.

### III. COURT'S RULING

6. The Court adopts that the claim requesting for the disqualification of Judge NGENDAKURIYO Alice is rejected.

7. The Court orders that the trial proceedings of case RP 0002/12/HCCI should continue.



(3)

IT IS SO RULED AND PRONOUNCED IN PUBLIC TODAY ON 16/02/2015.

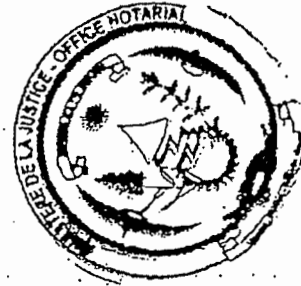
NDAGIJIMANA Eugene  
Judge [Signed]

MUHIMA Antoine  
President[Signed]

MUKAMURENZI Beatrice  
Judge [Signed]

NYAMUTAMA Hypax  
Court Registrar [Signed]

Translated by Nadine NDUWIMANA  
Translator



Vu pour legalisation de la Signature  
de M. *N. NDUWIMANA*  
Apposee ci-contre  
Kigali le 20 Mars 2015

Notaire  
MUKULU Antony. N

DELIVRE GRATUITEMENT  
USAGE ADMINISTRATIF