

MICT-13-33  
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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE No. MICT-13-33

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 7 October 2015

THE PROSECUTOR

v.

JEAN DE DIEU KAMUHANDA

*Public*

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MOTION TO COMPEL DISCLOSURE OF  
WITNESS GEK EXCULPATORY MATERIAL

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Office of the Prosecutor:

Mr. Hassan Jallow

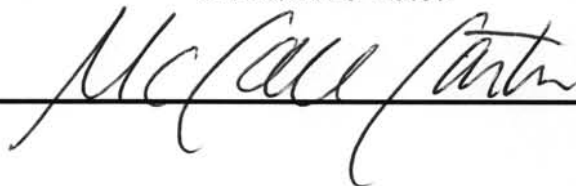
Mr. Richard Karegyesa

Jean de dieu Kamuhanda:

Mr. Peter Robinson, Counsel

**Received by the Registry**  
**Mechanism for International Criminal Tribunals**

**07/10/2015 20:59**



1. Jean de dieu Kamuhanda respectfully requests that the President designate a Single Judge to order the prosecution to disclose exculpatory information pertaining to Prosecution Witness GEK which it refuses to disclose.

### **Background**

2. Jean de dieu Kamuhanda is an innocent man serving a sentence for a crime he never committed.

3. Mr. Kamuhanda was charged with leading an attack on the Protestant Parish in his native commune of Gikomero on 12 April 1994 in which many Tutsis were killed.<sup>1</sup> From the day of his arrest in November 1999 to the present day, Mr. Kamuhanda has denied being present in Gikomero after the death of President Habyarimana on 6 April 1994 or having anything to do with the Gikomero Parish attack.<sup>2</sup>

4. After a trial before Judges Sekule, Ramoroson, and Maqutu, Mr. Kamuhanda was convicted of genocide and extermination for ordering the attack on Tutsis at Gikomero Protestant Parish and sentenced to life imprisonment.<sup>3</sup> Among the witnesses who testified against him was Prosecution Witness GEK, who testified that she had personally heard him incite others to attack the Tutsis and personally observed him deliver weapons prior to the attack.<sup>4</sup>

5. During the appeal proceedings, Mr. Kamuhanda produced statements from Prosecution Witness GAA and Prosecution Witness GEX, who claimed that their testimony and statements that Mr. Kamuhanda had been present at the Gikomero Parish were false and that Witness GEK had encouraged persons to falsely say that they had seen or heard that Mr. Kamuhanda was present there.<sup>5</sup>

6. The Appeals Chamber held a hearing at which Witnesses GAA and GEX testified that they had falsely accused Mr. Kamuhanda.<sup>6</sup> The prosecution called Witness GEK to testify in rebuttal.

7. On 19 May 2005, Witness GEK testified that two Tribunal employees had approached her at the United Nations safe house in Arusha while she was testifying in

<sup>1</sup> *Prosecutor v Kamuhanda*, No. ICTR-99-54-I, *Indictment* (27 September 1999)

<sup>2</sup> Trial Transcript of 30 January 2003, pp. 43-47, 61; Exhibit D40; Transcript of 20 August 2002, p. 90

<sup>3</sup> *Prosecutor v Kamuhanda*, No. ICTR-99-54A-T, *Judgement* (22 January 2004) (“*Trial Judgement*”)

<sup>4</sup> *Trial Judgement*, paras. 254-56, 314

<sup>5</sup> Exhibit ARP1 (Witness GAA) and ARP4 (Witness GEX)

<sup>6</sup> Appeals Transcript of 18 May 2005

another case and offered to pay her money and give her other substantial assistance if she would recant her trial testimony in the *Kamuhanda* case.<sup>7</sup> The prosecution argued that this conduct showed how vulnerable prosecution witnesses were to pressure from accused persons and their associates to falsely recant their testimony.<sup>8</sup>

8. After hearing Witness GEK's testimony, the Appeals Chamber expressed its extreme concern that "there may have been attempts to pervert the course of justice with respect to this appeal in the form of the solicitation of false testimony". It stated:

The Chamber wishes to make it very clear to the parties, to the witnesses, who have appeared before us during the past two days, and to future witnesses, as well as to all others connected to these proceedings, that the Tribunal will not tolerate such occurrences. The giving of false testimony before the Court, as well as the interference with the testimony of other witnesses who may appear before the Court, are unacceptable practices, both for the impact that they have on the trial as well as the impact that they have on the Tribunal's mission to seek justice and establish the truth.<sup>9</sup>

9. The Appeals Chamber went on to order the prosecution to investigate (1) allegations to the effect that Tribunal employees may have attempted to interfere with the witness who had given evidence in proceedings before this Tribunal; and (2) the possibility of false testimony given at the Appeals hearing.<sup>10</sup>

10. The prosecution retained an American lawyer, Loretta Lynch, to serve as Special Counsel to carry out the investigations ordered by the Appeals Chamber.<sup>11</sup>

11. On 4 March 2010, the Appeals Chamber issued a decision on a motion by Mr. Kamuhanda alleging that the prosecution had failed to disclose exculpatory information obtained during Ms. Lynch's investigation.<sup>12</sup>

12. The Appeals Chamber first noted that the Prosecution was obliged to disclose any exculpatory material obtained during the course of the Special Counsel's investigation, notwithstanding that the report itself would not be subject to disclosure.<sup>13</sup>

<sup>7</sup> Transcript of 19 May 2005, p. 49 (The actual testimony was given in closed session at pp. 6-9)

<sup>8</sup> Transcript of 19 May 2005, p. 43

<sup>9</sup> Transcript of 19 May 2005, p. 50

<sup>10</sup> Transcript of 19 May 2005, p. 51

<sup>11</sup> Appointment of Special Counsel by the Prosecutor, ICTR/INFO-9-2-442.EN, 12 July 2005, available at <http://www.unictt.org/en/news/appointment-special-counsel-prosecutor>

<sup>12</sup> *Kamuhanda v Prosecutor*, No. ICTR-99-54A-R68, *Decision on Motion for Disclosure* (4 March 2010)

<sup>13</sup> *Id.*, para. 17, citing *Decision on Jean de dieu Kamuhanda's Request related to Prosecution Disclosure and Special Investigation* (7 April 2006), para. 7, fn. 20

13. Relying on the Prosecution's representation that it had reviewed the material in its possession from the Special Counsel's investigation and disclosed the material that is potentially exculpatory, the Appeals Chamber denied Mr. Kamuhanda's blanket request for all witness statements obtained during the investigation. It said that "in the absence of evidence from Kamuhanda to the contrary, the Appeals Chamber will assume that the Prosecution's representation is made in good faith."<sup>14</sup>

14. The Appeals Chamber concluded by saying:

The Appeals Chamber expects the Prosecution to act in good faith and comply with its positive and continuous disclosure obligations. Because it can only assume that the Prosecution does so where there is no evidence to the contrary, the Appeals Chamber is seriously concerned by the Prosecution's violations of its disclosure obligations towards Kamuhanda. The Prosecution is reminded that its disclosure obligations are as important as its obligation to prosecute.<sup>15</sup>

15. In 2015, Mr. Kamuhanda obtained a new counsel to investigate potential grounds for review of his conviction.

16. On 29 June 2015, his new counsel wrote to the MICT Prosecutor and requested, *inter alia*, copies of all reports reflecting information provided by the Tribunal employee concerning the allegation of Witness GEK that he attempted to convince her to recant her testimony against Mr. Kamuhanda.<sup>16</sup> He did so after having been told by that Tribunal employee that he had been interviewed about this matter on two or three occasions by Loretta Lynch, and had told Loretta Lynch that there was no truth to the allegation that he had tried to influence Witness GEK to recant her testimony in the Kamuhanda case.<sup>17</sup>

17. On 27 July 2015, Prosecution Senior Legal Officer Richard Karegyesa responded that "a diligent search of our records has not yielded any disclosable material responsive to your request."<sup>18</sup>

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<sup>14</sup> *Id.*, para. 18

<sup>15</sup> *Id.*, para. 46

<sup>16</sup> Mr. Kamuhanda's counsel's letter is Annex "A" to the *Motion for Appointment of Amicus Curiae Prosecutor to Investigate Witness GEK* (3 August 2015). The name of the VWSS employee is contained in Confidential Annex "E" to that motion.

<sup>17</sup> A report of counsel's report of his interview with the Tribunal employee is attached as Annex "C" to that motion.

<sup>18</sup> Mr. Karegyesa's letter is attached as Annex "B" to that motion.

18. Mr. Kamuhanda thereafter filed his *Motion for Appointment of Amicus Curiae Prosecutor to Investigate Witness GEK* (3 August 2015), taking at face value the prosecution's representation that it had no information from Loretta Lynch's interviews with the Tribunal employee. That motion was denied by the Single Judge,<sup>19</sup> and is being appealed.<sup>20</sup>

19. At the same time, considering the possibility that Ms. Lynch had made a report of the interview with the Tribunal employee and it had not been transmitted to the Office of the Prosecutor, or had been misplaced, Mr. Kamuhanda's counsel wrote to Ms. Lynch's law firm and requested that it furnish the information from its files relating to her investigation to the Office of the Prosecutor.<sup>21</sup>

20. On 1 September 2015, the law firm responded that it could not release that material absent written permission from the Office of the Prosecutor.<sup>22</sup>

21. On 2 September 2015, counsel for Mr. Kamuhanda requested the Office of the Prosecutor to request the material from the law firm.<sup>23</sup>

22. On 6 October 2015, Prosecution Senior Legal Officer Richard Karegyesa responded by e-mail and indicated that "the OTP has the documents but has determined that that they are not exculpatory and therefore not disclosable to your client."<sup>24</sup>

### **Argument**

23. The Appeals Chamber has stated that the initial determination as to whether an item is required to be disclosed pursuant to ICTR Rule 68 (MICT Rule 73) is to be made by the Prosecution, and that judicial review of that determination will only be undertaken where the defence: (1) specifically identifies the material sought; (2) presents a *prima facie* showing of its probable exculpatory nature; and (3) proves that the material requested is in the custody or under the control of the Prosecution.<sup>25</sup>

24. Mr. Kamuhanda can satisfy all three requirements.

<sup>19</sup> *Decision on Motion for Appointment of Amicus Curiae Prosecutor to Investigate Witness GEK* (16 September 2015)

<sup>20</sup> *Notice of Appeal* (1 October 2015)

<sup>21</sup> This letter is attached as Annex "F" to this motion.

<sup>22</sup> The letter from Hogan Lovells law firm is attached as Annex "G" to this motion.

<sup>23</sup> This letter is attached as Annex "H" to this motion.

<sup>24</sup> Mr. Karegyesa's e-mail is reproduced as Annex "I" to this motion.

<sup>25</sup> *Kamuhanda v Prosecutor*, No. ICTR-99-54A-R68, *Decision on Motion for Disclosure* (4 March 2010), para. 14

25. He has specifically identified the material sought as copies of all reports reflecting information provided by a specified Tribunal employee concerning the allegation of Witness GEK that the employee attempted to convince her to recant her testimony against Mr. Kamuhanda.

24. He has made a *prima facie* showing that the material is exculpatory. The employee has advised counsel for Mr. Kamuhanda that he told Loretta Lynch that Witness GEK's testimony that the employee had attempted to convince Witness GEK to recant her testimony against Mr. Kamuhanda is absolutely false. Therefore, the information from the Tribunal employee is information affecting the credibility of prosecution evidence. Information affecting the credibility of prosecution evidence is specifically required to be disclosed by the plain language of ICTR Rule 68(A) and MICT Rule 73(A).<sup>26</sup>

25. Mr. Kamuhanda has now established that the material is in the possession of the prosecution, as confirmed by the e-mail from Mr. Karegyesa on 6 October 2015.

26. Frankly, Mr. Kamuhanda is completely at a loss to understand how the prosecution justifies its failure to disclose information from the Tribunal employee that Witness GEK had lied under oath at Mr. Kamuhanda's Appeals hearing.

27. Mr. Kamuhanda requests that if the prosecution maintains its position that the information from the Tribunal employee is not exculpatory, it submit the information to the Single Judge *in camera* for his review.

28. Therefore, it is respectfully requested that the Single Judge order the Prosecution to disclose to Mr. Kamuhanda all reports reflecting information provided by the Tribunal employee concerning the allegation of Witness GEK that the employee attempted to convince her to recant her testimony against Mr. Kamuhanda.

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<sup>26</sup> *Ngirabatware v Prosecutor*, No. MICT-12-29-A, *Decision on Augustin Ngirabatware's Motion for Sanctions for the Prosecution and for an Order of Disclosure* (15 April 2014) at para. 15; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Notices of Rule 68 Violation and Motions for Remedial and Punitive Measures* (25 October 2007) at para. 15; *Prosecutor v Ndindiliyimana et al*, No. ICTR-00-56-T, *Decision on Defence Motions Alleging Violations of the Prosecution's Disclosure Obligations Pursuant to Rule 68* (22 September 2008) at para. 33

Word count: 1973

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive, flowing style with large, rounded letters.

PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda

## **ANNEX "F"**

**PETER ROBINSON**

*Defence Counsel*  
*Residual Mechanism for International*  
*Criminal Tribunals*  
Churchillplein 1  
2514 JW The Hague  
Netherlands  
**E-mail: [peter@peterrobinson.com](mailto:peter@peterrobinson.com)**

24 August 2015

Mr. Dennis H. Tracey III  
Managing Partner  
Hogan Lovells

No. MICT-13-33



675 Third Avenue  
 New York, NY 10022  
[Dennis.Tracey@hoganlovells.com](mailto:Dennis.Tracey@hoganlovells.com)

Re: *Prosecutor v Jean de dieu Kamuhanda*  
No. MICT-13-33

Dear Mr. Tracey,

I am an American criminal defence lawyer serving as counsel to Jean de dieu Kamuhanda, the former Minister of Higher Education of Rwanda at the Residual Mechanism for International Criminal Tribunals ("MICT"). Mr. Kamuhanda was convicted of genocide for leading an attack on a church in the village of Gikomero on 12 April 1994 and sentenced to life imprisonment. I am writing to ask you to search the records of your firm to locate some exculpatory material that is relevant to his case.

In 2005, Loretta Lynch and Vincent Cohen of your firm traveled to Rwanda and conducted an investigation on behalf of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda ("ICTR"). They interviewed several witnesses in Rwanda and Arusha.

The ICTR Appeals Chamber had ordered the investigation after testimony at the Appeals hearing in Mr. Kamuhanda's case. The investigation led to the indictment of a prosecution witness, with the pseudonym of GAA, for giving false testimony at the Appeals hearing. However, the Appeals Chamber had also ordered the prosecution to investigate allegations made by another prosecution witness, with the pseudonym GEK, that employees of the Tribunal's Victims and Witnesses Section had tried to persuade her to recant her testimony against Mr. Kamuhanda.

Mr. Dennis Tracey  
 --page two--

Nothing came of this part of the investigation and, on behalf of Mr. Kamuhanda, I had requested the prosecution to disclose as exculpatory material, the transcripts or reports of any interviews by Ms. Lynch with the Tribunal employees or Witness GEK. When the prosecution responded that it had no such material in its possession, I filed a motion for a new investigation. That motion is now pending.

However, inasmuch as one of the Tribunal employees, Etienne Hakizimana, has told me that he was interviewed on more than one occasion by Ms. Lynch, and given the possibility that the ICTR Office of the Prosecutor has an imperfect record retention system, I am requesting that your firm search its records for any recordings, reports, or transcripts of interviews between Ms. Lynch and Mr. Hakizimana, and between Ms. Lynch and Witness GEK, and produce copies of any such material to the Office of the Prosecutor, who can decide whether they can be further disclosed to me.

The material can be sent to:

Richard Karegyesa  
Senior Trial Attorney  
Office of the Prosecutor  
International Criminal Tribunal for Rwanda  
P.O. Box 6016  
Arusha, Tanzania  
[karegyesa@un.org](mailto:karegyesa@un.org)

By way of background on me, I am a former Assistant United States Attorney and Department of Justice Senior Litigation Counsel and criminal defense attorney in the San Francisco Bay Area. In 2000, I started working in the international criminal tribunals and defended the former President of the Rwandan National Assembly at the ICTR from 2002-2010. Since 2008, I have served as Legal Advisor for former Bosnian Serb President Radovan Karadzic at the International Criminal Tribunal for the former Yugoslavia ("ICTY").

When I was a defense attorney in California, I played a small part, working along with Centurion Ministries, in freeing a man who had served 25 years of a life sentence for a murder he had nothing to do with. That experience was the most significant and worthwhile in my career as a defense counsel. I had the idea that after the *Karadzic* trial ended, I would use my experience at the international criminal tribunals towards freeing an innocent person who had been wrongfully convicted. After a great deal of research, I became convinced that Jean de dieu Kamuhanda had nothing to do with the killings in Gikomero and was indeed an innocent person who was wrongfully convicted at the ICTR. So I have now undertaken to represent him *pro bono* in an effort to have his conviction reviewed and overturned at the Residual Mechanism that has taken over the cases of the ICTR.

Mr. Dennis Tracey  
--page three--

You can find out more information about me, and the *Kamuhanda* case, at [www.peterrobinson.com](http://www.peterrobinson.com). I am also enclosing the motion that is relevant to the material that I am asking your firm to search for and produce.

I apologize for the long-winded nature of this letter, and hope that I have provided sufficient information for your firm to locate the material and to understand its importance to my client and to justice.

Please feel free to contact me by e-mail if you have any questions about this request. You can also reach me at 1 707 575 0540.

Thank you very much for your consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Peter Robinson". The signature is written in a cursive style with large, rounded letters.

PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda

cc: Richard Karegyesa, OTP

## ANNEX "G"



Hogan Lovells US LLP  
 Columbia Square  
 555 Thirteenth Street, NW  
 Washington, DC 20004  
 T +1 202 637 5600  
 F +1 202 637 5910  
 www.hoganlovells.com

September 1, 2015

**By U.S. Post and E-mail**

Mr. Peter Robinson  
 Defence Counsel  
 Residual Mechanism for  
 International Criminal Tribunals  
 Churchillplein 1  
 2514 JW The Hague  
 Netherlands  
[peter@peterrobinson.com](mailto:peter@peterrobinson.com)

Dear Mr. Robinson:

I am the General Counsel of Hogan Lovells US LLP ("Hogan Lovells"), the successor firm to Hogan & Hartson LLP. I write in response to your communications to Dennis Tracey of Hogan Lovells, dated 24 August 2015, requesting documents from the files of Hogan Lovells that may have been generated in the course of Loretta Lynch's service as Special Counsel to the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR). Any such documents would consist of attorney-client communications and/or attorney work product that Hogan Lovells could not disclose without the written permission of the Office of the Prosecutor. We accordingly will not be providing a further response to your request.

Best regards,



Patricia A. Brannan

General Counsel and Partner  
[patricia.brannan@hoganlovells.com](mailto:patricia.brannan@hoganlovells.com)  
 D 202.637.8686

cc: Dennis Tracey  
 Richard Karegyesa

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. "Hogan Lovells" is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in Alicante Amsterdam Baltimore Beijing Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rio de Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Ulaanbaatar Warsaw Washington DC Associated offices: Budapest Jakarta Jeddah Riyadh Zagreb For more information see [www.hoganlovells.com](http://www.hoganlovells.com)

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## **ANNEX “H”**

**PETER ROBINSON**

*Defence Counsel*

**E-mail: [peter@peterrobinson.com](mailto:peter@peterrobinson.com)**

2 September 2015

Mr. Hassan Jallow  
Prosecutor  
Mechanism for International  
Criminal Tribunals  
AICC Complex  
P.O. Box 6106  
Arusha, Tanzania

Re: Prosecutor v Jean de dieu Kamuhanda  
MICT No. 13-33

Dear Justice Jallow,

I hope this letter finds you doing well these days and that you enjoyed your recent trip to the USA.

I am in the USA myself these days, after a brief trip to Arusha, and am continuing my efforts to free Jean de dieu Kamuhanda, who I believe to be innocent of the crimes for which he stands convicted.

You may recall that on 29 June 2015, I wrote to you requesting some material related to the investigation conducted by Loretta Lynch into the *Kamuhanda* case. I was prompted to make such a request after I interviewed a former employee of the ICTR's Victims and Witnesses Support Section who told me Ms. Lynch had interviewed him in the course of her investigation.

On 27 July 2015, I received a letter from Richard Karegyesa indicating that "a diligent search of our records has not yielded any disclosable material responsive to your request".

I thereafter wrote to Ms. Lynch's law firm, now called Hogan Lovells, and asked them if they could share their records of her interviews and investigations with your office, so that your office can review them and disclose any exculpatory material to me. I have attached a copy of my letter.

Mr. Hassan Jallow  
--page two--

I have now received the attached response, indicating that they require a written request from the Office of the Prosecutor. I am therefore asking you to make such a request so that your office can discharge its duty to review and disclose exculpatory material.

While your duty to disclose exculpatory material is normally limited to items in the possession of the Office of the Prosecutor, Trial Chambers of the ICTR have held that your office also has a duty to obtain such material under certain circumstances, particularly where the defence is unable to obtain the material itself.<sup>27</sup> Trial Chambers

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<sup>27</sup> *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Jerome Clement Bicamumpaka's Motion for Judicial Notice of a Rwandan Judgement of 8 December 2000 and in the Alternative for an Order to Disclose Exculpatory Evidence* (15 December 2004) at para. 22; *Prosecutor v Bizimungu et al*, No. ICTR-

have also issued orders the Office of the Prosecutor to obtain relevant material that was not in its possession.<sup>28</sup>

Mr. Hassan Jallow  
--page three--

Given what I am sure is our mutual respect for the professionalism of Loretta Lynch, I think we can agree that it is unlikely that she failed to document interviews she conducted while acting as Special Counsel. Therefore, it is likely that obtaining the records from her former law firm will result in your office's obtaining the information that I contend is exculpatory. You can then review it, and disclose it to me if appropriate.

I hope that you will voluntarily take this modest step in the interest of justice and fair play. Otherwise, I think you know me well enough to know that I will file a motion with the President of the Residual Mechanism to compel production of the material.

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99-50-T, *Decision on Bicamumpaka's Motion for Disclosure of Exculpatory Evidence (MDR Files)* (17 November 2004)

<sup>28</sup> *Prosecutor v Bagilishema*, No. ICTR-95-1A-A, *Judgement* (3 July 2002) at para. 66; *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on the Request for Documents Arising From Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses* (16 December 2003); *Prosecutor v Karemera et al*, No. ICTR-98-44-PT, *Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records* (14 September 2005) at para. 11; *Prosecutor v Kajelijeli*, No. ICTR-98-44A-T, *Decision on Juvenal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO* (2 November 2001) at paras 20-22; *Prosecutor v Bagilishema*, No. ICTR-95-1A-T, *Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witnesses Y, Z and AA* (8 June 2000); *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Defence Motion for Subpoenas to Prosecution Witnesses* (10 May 2007) at para. 15,18; *Prosecutor v Bagilishema*, No. ICTR-95-1A-T, *Decision on the Request of the Defence Pursuant to Rule 73 of the Rules of Procedure and Evidence for Summons on Witnesses* (8 June 2000) at para. 14. ; *Prosecutor v Nchamihigo*, No. ICTR-01-63-T, *Order for Judicial Records* (12 October 2006); *Prosecutor v Simba*, No. ICTR-2001-76-T, *Decision on Matters Related to Witness KDD's Judicial Dossier* (11 November 2004) at para. 11; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Second Motion to Exclude Testimony of Witness AXA and Edouard Karemera's Motion to Recall the Witness* (4 March 2008) at para. 14; *Prosecutor v Nzabonimana*, No. ICTR-98-44D-PT, *Decision on Callixte Nzabonimana's Motion for an Order Concerning Disclosure of Gacaca and Judicial Material Relating to Prosecution Witnesses* (29 October 2009) at para. 32



Thank you very much for your consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Robinson". The signature is written in a cursive style with large, rounded letters.

PETER ROBINSON  
Counsel for Jean de dieu Kamuhanda

## ANNEX "I"

6 October 2015

Dear Mr Robinson,

**Re: *Prosecutor v Jean de Dieu Kamuhanda* MICT-13-33**

Please refer to yours of 29 June and 2 September 2015 respectively concerning your request for disclosure of exculpatory material to Mr. Kamuhanda.

As earlier indicated in our response of 27 July 2015 a review of our records did not yield any exculpatory material responsive to the specific terms of your request.

Additionally, any material held by Hogan Lovells would comprise copies of material held by the OTP in Arusha which has already been reviewed for exculpatory content in response to your request of 27 July 2015. It is therefore unnecessary for the OTP to request the same material from Hogan Lovells to repeat the exercise.

Finally, contrary to the assertion at paragraphs 12 of your "*Motion for Appointment of Amicus Curiae Prosecutor to Investigate Prosecution Witness GEK*" of 3 August 2015 that the OTP "...had no documents in its possession on those subjects", we advise once again that the OTP has the documents but has determined that that they are not exculpatory and therefore not disclosable to your client.

Thanks and regards

Richard Karegyesa