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**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-14-77-R

Date: 19 January 2015

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Jean-Claude Antonetti
Judge Patrick Robinson
Judge Alphons Orié
Judge Liu Daqun

Registrar: Mr. John Hocking

Decision of: 19 January 2015

ALOYS NTABAKUZE

v.

THE PROSECUTOR

PUBLIC

**DECISION ON NTABAKUZE'S *PRO SE* MOTION FOR
ASSIGNMENT OF AN INVESTIGATOR AND COUNSEL IN
ANTICIPATION OF HIS REQUEST FOR REVIEW**

The Applicant:

Mr. Aloys Ntabakuze, *pro se*

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Richard Karegyesa
Mr. Takeh B.K. Sendze

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1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of a request for the assignment of an investigator and counsel filed confidentially by Aloys Ntabakuze (“Ntabakuze”) on 23 April 2014.¹ The Office of the Prosecutor (“Prosecution”) responded on 7 May 2014,² and Ntabakuze filed a reply on 12 May 2014.³ The Appeals Chamber is also seised of Ntabakuze’s request filed confidentially on 1 August 2014 to amend the Motion by inserting a new paragraph.⁴ The Prosecution responded to the Motion to Amend on 11 August 2014,⁵ and Ntabakuze filed a reply on 18 August 2014.⁶ The Appeals Chamber hereby renders its decision publicly.⁷

I. BACKGROUND

2. Ntabakuze was the Commander of the Para-Commando Battalion of the Rwandan army from June 1988 to July 1994.⁸ In its Judgement of 8 May 2012, the Appeals Chamber of the International Criminal Tribunal for Rwanda (“ICTR”) affirmed Ntabakuze’s convictions for genocide, extermination and persecution as crimes against humanity, and violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for the killings of Tutsi civilians at Nyanza hill on 11 April 1994 and at the *Institut africain et mauricien de statistiques et d’économie* (“IAMSEA”) around 15 April 1994.⁹ In particular, the ICTR Appeals Chamber upheld the Trial Chamber’s findings that Para-Commando Battalion

¹ Ntabakuze *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 23 April 2014 (confidential) (“Motion”), para. 51. See Order Assigning Judges to a Case before the Appeals Chamber, 6 May 2014 (confidential). The Appeals Chamber notes that Ntabakuze has not complied with the requirement to include a word count at the end of his submissions. See Practice Direction on Lengths of Briefs and Motions, 6 August 2013 (MICT/11) (“Practice Direction”), para. 18. Nonetheless, taking into account that Ntabakuze is proceeding *pro se*, the Appeals Chamber has considered Ntabakuze’s submissions as validly filed. However, the Appeals Chamber reminds Ntabakuze that, in order for any future filings to be considered valid, he must comply with the requirements of the Practice Direction.

² Prosecution’s Response to Ntabakuze’s *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 7 May 2014 (confidential) (“Response”).

³ Ntabakuze’s Reply to the Prosecution’s Response to Ntabakuze *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 12 May 2014 (confidential) (“Reply”).

⁴ Ntabakuze’s Amendment of his *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 1 August 2014 (confidential) (“Motion to Amend”), para. 5.

⁵ Prosecution’s Response to Ntabakuze’s Amendment of his *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 11 August 2014 (confidential) (“Response to Motion to Amend”).

⁶ Ntabakuze’s Reply to the Prosecution’s Response to Ntabakuze’s Amendment of his *Pro Se* Motion for Assignment of Investigator and Counsel in Anticipation of his Request for Review Pursuant to Article 24 MICT St., 18 August 2014 (confidential).

⁷ The Appeals Chamber recalls that under Rules 92 and 131 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) all proceedings before the Appeals Chamber, including the Appeals Chamber’s orders and decisions, shall be public unless there are exceptional reasons for keeping them confidential. The Appeals Chamber considers that there are no exceptional reasons for issuing the present decision confidentially.

⁸ *Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012 (“Appeal Judgement”), para. 2, referring to *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Judgement and Sentence, delivered in public and signed 18 December 2008, filed 9 February 2009 (“Trial Judgement”), para. 61.

soldiers under Ntabakuze's effective control participated in the killings at Nyanza hill and IAMSEA.¹⁰ Having reversed some of the Trial Chamber's findings in relation to Ntabakuze's remaining convictions, the ICTR Appeals Chamber set aside Ntabakuze's sentence of life imprisonment and imposed a sentence of 35 years of imprisonment.¹¹ Ntabakuze is currently serving his sentence in Benin.¹²

3. Subsequent to the filing of the Motion, Ntabakuze requested on 29 April 2014 the disclosure of a confidential decision issued by the ICTR Appeals Chamber in the *Kajelijeli* case, asserting that the decision was very important to his own request for the assignment of an investigator and counsel.¹³ Following the Presiding Judge's decision granting Ntabakuze access to the *Kajelijeli* Decision of 12 November 2009,¹⁴ Ntabakuze filed his Motion to Amend.

II. SUBMISSIONS

4. In the Motion, Ntabakuze requests the appointment of an investigator and counsel at the Mechanism's expense in order to complete a preliminary investigation and file a request for review related to his convictions for the attack and killings at Nyanza hill and IAMSEA.¹⁵ In particular, Ntabakuze contends that preliminary investigations thus far have shown that soldiers, who were not under his effective control, were operating in these areas.¹⁶

5. With respect to the Nyanza hill killings, Ntabakuze argues that there is evidence that a Muvumba Battalion company was officially reassigned to the Light Anti-Aircraft Battalion Detachment on 10 April 1994 close to the area of Nyanza hill, that its members were involved in the killings, and that they wore camouflage berets like the members of the Para-Commando Battalion who were under Ntabakuze's command.¹⁷ With respect to the IAMSEA killings, Ntabakuze argues that his preliminary investigations indicate that Presidential Guard soldiers were present in the area and that the Para-Commando Battalion soldiers seen near IAMSEA were reassigned in March 1994 to the Presidential Guard and thus were not under Ntabakuze's command

⁹ Appeal Judgement, paras. 5, 313, 317.

¹⁰ See, e.g., Appeal Judgement, paras. 5, 189, 202, 218, 226, 313.

¹¹ Appeal Judgement, paras. 314, 316-317.

¹² *The Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41-T, Decision on the Enforcement of Sentence, 21 June 2012 (confidential), p. 3.

¹³ Ntabakuze *Pro Se* Motion for Disclosure of Confidential Decision in *Kajelijeli* Case, 29 April 2014 (confidential and *ex parte*) ("Motion of 29 April 2014"), para. 5. See also *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-R, Decision on Request for Assignment of Counsel, 12 November 2009 (confidential) ("*Kajelijeli* Decision of 12 November 2009").

¹⁴ Decision on Ntabakuze *Pro Se* Motion for Disclosure of Confidential Decision in the *Kajelijeli* Case, 22 July 2014 (confidential) ("Decision of 22 July 2014"), p. 2. The Appeals Chamber also instructed the Registrar of the Mechanism to lift the *ex parte* status of Motion of 29 April 2014. See Decision of 22 July 2014, p. 2.

¹⁵ Motion, paras. 44, 48, 51. See also Motion, paras. 37-39.

¹⁶ Motion, paras. 27, 31.

from then onwards.¹⁸ Ntabakuze states that the foregoing information, which he was unaware of during the trial and appeal proceedings, *prima facie* demonstrates that the criteria for review under Rule 146(A) of the Rules have been met.¹⁹

6. Ntabakuze submits that the following exceptional circumstances justify the assignment of an investigator and counsel at the expense of the Mechanism: the complexity of the investigation; the remote location of the witnesses and the related security risks; his indigent status, place of imprisonment, and lack of legal expertise to properly assess and weigh the new facts; and the impact of these facts, if proven, on his convictions.²⁰ Ntabakuze therefore requests that the Appeals Chamber: (i) authorize the assignment of an investigator and counsel under the Mechanism's legal aid system; (ii) direct the Registrar of the Mechanism to appoint Mr. Jean-Chrysostome Ntirugiribambe as an investigator to complete the investigation and Ms. Sandrine Gaillot as counsel to assist Ntabakuze with the preparation of his request for review; and (iii) approve the allocation of a lump sum equivalent to at least six months of work to Mr. Ntirugiribambe and a lump sum equivalent to three months of work to Ms. Gaillot.²¹

7. In addition, in the Motion to Amend, Ntabakuze seeks to complement his Motion by presenting further arguments in support of his submission that exceptional circumstances justify the assignment of an investigator and counsel.²² In particular, he argues that, compared to the *Kajelijeli* Appeal Decision of 12 November 2009, where the ICTR Appeals Chamber allowed for the assignment of counsel following witness recantation and claims of false testimony, in his case there are even more compelling circumstances as there are new witnesses who are ready to testify in relation to "new facts".²³ Ntabakuze claims that locating and gaining the trust of these witnesses increases the complexity of his case.²⁴ He thus requests that the Appeals Chamber accept the amendment to the Motion.²⁵

8. The Prosecution responds that the Motion should be denied in its entirety as Ntabakuze fails to demonstrate that exceptional circumstances justify the assignment of an investigator and counsel at the Mechanism's expense.²⁶ In particular, the Prosecution argues that the alleged new

¹⁷ Motion, paras. 20, 22-23, 25-29, *referring to* Motion, Annexes 3-7; Reply, paras. 12-18.

¹⁸ Motion, paras. 31-34, *referring to* Motion, Annexes 1-2, 8; Reply, paras. 19-24.

¹⁹ Motion, paras. 36-39. *See* Reply, paras. 25-29.

²⁰ Motion, paras. 43-45, 48. Ntabakuze explains that his former counsel provided *pro bono* legal and financial assistance in relation to the preliminary investigation but that, for various reasons, he is unable to continue providing such assistance. Motion, paras. 24, 42-44, 50.

²¹ Motion, para. 51. *See* Motion paras. 42, 46.

²² Motion to Amend, paras. 5-6.

²³ Motion to Amend, para. 5.

²⁴ Motion to Amend, para. 5.

²⁵ Motion to Amend, para. 6.

²⁶ Response, paras. 1, 6, p. 5.

information offered by Ntabakuze merely repeats his core contentions already advanced at trial and on appeal and does not amount to new facts for the purpose of review proceedings.²⁷ With respect to the Motion to Amend, the Prosecution does not oppose Ntabakuze's request to complement his Motion by presenting additional arguments.²⁸ However, it argues that the *Kajelijeli* Appeal Decision of 12 November 2009 does not support Ntabakuze's claim that exceptional circumstances justify the assignment of an investigator and counsel at the Mechanism's expense.²⁹

III. APPLICABLE LAW

9. As a matter of principle, it is not for the Mechanism to assist a convicted person whose case has reached finality with any new investigation he would like to conduct or any new motion he may wish to bring by assigning him legal assistance at the Mechanism's expense.³⁰ The Appeals Chamber recalls that review is an exceptional remedy and that an applicant is only entitled to assigned counsel at the expense of the Mechanism if the Appeals Chamber authorizes the review, or, before such an authorization, if it deems it necessary to ensure the fairness of the proceedings.³¹ This necessity is, to a great extent, assessed in light of the potential grounds for review put forward by the applicant.³² In previous cases, the ICTR Appeals Chamber has confirmed such necessity where it found itself to be unable to exclude that the potential grounds for review invoked by the applicant may have a chance of success and where the particular complexity of the matter justified the granting of legal assistance in order to ensure the fairness of the proceedings.³³ It is only in exceptional circumstances that a convicted person will be granted legal assistance at the expense of the Mechanism after a final judgement has been rendered against him.³⁴

²⁷ Response, para. 6. *See* Response, paras. 7-12.

²⁸ Response to Motion to Amend, para. 1.

²⁹ Response to Motion to Amend, paras. 1-3.

³⁰ *François Karera v. Prosecutor*, Case No. MICT-12-24-R, Decision on Request for Assignment of Counsel, 4 December 2012 ("Karera Decision of 4 December 2012"), para. 10. *See also* *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka's Request for Assignment of Counsel, 6 November 2014 ("Niyitegeka Decision of 6 November 2014"), para. 7; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-R, Decision on Requests for Review and Assignment of Counsel, 28 February 2011 ("Karera Decision of 28 February 2011"), para. 39.

³¹ *Karera* Decision of 4 December 2012, para. 10, referring to *Karera* Decision of 28 February 2011, para. 38. *See also* *Niyitegeka* Decision of 6 November 2014, para. 7.

³² *Niyitegeka* Decision of 6 November 2014, para. 7, referring to *Karera* Decision of 4 December 2012, para. 10, *Karera* Decision of 28 February 2011, para. 39.

³³ *See, e.g.,* *Kajelijeli* Decision of 12 November 2009, para. 13; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R, Decision on Motion for Legal Assistance, 21 July 2009 ("Kamuhanda Decision of 21 July 2009"), paras. 18-20.

³⁴ *Niyitegeka* Decision of 6 November 2014, para. 7, referring to *Karera* Decision of 4 December 2012, para. 10. *See also* *Karera* Decision of 28 February 2011, para. 39.

IV. DISCUSSION

10. In relation to the Motion to Amend, the Appeals Chamber accepts Ntabakuze's additional arguments as validly filed and will consider them in deciding upon the merits of the Motion.

11. In relation to the killings of Tutsi civilians at Nyanza hill on 11 April 1994, the Appeals Chamber observes that Ntabakuze's arguments pertain to the identification of the Para-Commando soldiers involved in the killings, a matter which was strongly contested both at trial and on appeal. In particular, in his testimony at trial, Ntabakuze explained that other units in the Rwandan army also wore camouflage berets similar to those worn by the Para-Commando soldiers.³⁵ While the Trial Chamber accepted evidence that the *Interahamwe* and possibly a member of the Light Anti-Aircraft Battalion were also involved in the Nyanza hill killings, it concluded that the soldiers who participated in the attack "included members of the Para-Commando Battalion."³⁶ The Appeals Chamber further notes that, during the appeal proceedings, Ntabakuze specifically argued that the soldiers involved in the Nyanza hill killings were from units, other than the Para-Commando Battalion, wearing camouflage.³⁷ In his Motion, Ntabakuze attempts to reargue this by newly alleging that members of the Muvumba Battalion wearing camouflage berets were deployed in the area of Nyanza hill as reinforcement of the Light Anti-Aircraft Battalion Detachment and were involved in the killings.³⁸ The Appeals Chamber is not satisfied at this stage that this potential ground of review amounts to a "new fact" and therefore has a chance of success. Accordingly, it does not justify the assignment of an investigator and counsel under the auspices of the Mechanism's legal aid system.

12. The Appeals Chamber is also not persuaded that Ntabakuze's potential ground of review in relation to the IAMSEA killings satisfies the requirements for the assignment of an investigator and counsel at the expense of the Mechanism. The Appeals Chamber notes that this is the first time that Ntabakuze specifically raises the argument that the Para-Commando soldiers who were involved in the crimes at IAMSEA might have been under the control of another battalion, and specifically that in March 1994 they might have been reassigned to the Presidential Guard.³⁹ However, the issue of

³⁵ Trial Judgement, para. 1345.

³⁶ Trial Judgement, para. 1355.

³⁷ Appeal Judgement, para. 179. In upholding the Trial Chamber's finding that the only reasonable inference to be drawn from the evidence was that Para-Commando soldiers were among the assailants at Nyanza hill on 11 April 1994, the ICTR Appeals Chamber considered various factors, including: the attire worn by the soldiers, the proximity of the Sonatube junction where the Para-Commando Battalion was stationed, the fact that there has been no suggestion that other units of the Rwandan army wearing camouflage berets were operating in the area, and the fact that the refugees had been stopped at the junction before being escorted to Nyanza by Para-Commando soldiers. Appeal Judgement, para. 186. See Appeal Judgement, para. 184.

³⁸ Motion, paras. 22-23, 25, 28-29. See also Reply, paras. 17-18.

³⁹ The ICTR Appeals Chamber observed that Ntabakuze had not argued that the members of the Para-Commando Battalion involved in the killings at IAMSEA could have been members of a Battalion unit under the authority of the

whether Ntabakuze had effective control over the Para-Commando soldiers who participated in the killings was litigated both at trial and on appeal.⁴⁰ Ntabakuze's intention to pursue additional evidence in relation to the alleged presence of the Presidential Guard in the vicinity of IAMSEA and the possibility that the Para-Commando soldiers involved in the crimes might have been under the Presidential Guard's command,⁴¹ does not appear to constitute a "new fact" that may have a chance of success on review.

13. In any event, the Appeals Chamber considers that the matter at hand is distinguishable from the matter addressed by the ICTR Appeals Chamber in the *Kajelijeli* Appeal Decision of 12 November 2009. In the latter case, the ICTR Appeals Chamber granted Kajelijeli's request for the assignment of counsel for the purpose of exploring witness recantation and allegations of manipulated or fabricated testimony.⁴² The ICTR Appeals Chamber emphasized that the complexity of this particular matter required that Kajelijeli be assisted by counsel.⁴³ In contrast, the circumstances surrounding Ntabakuze's potential ground of review in relation to the IAMSEA killings, including the need to contact witnesses and pursue new leads, are common features in the context of the preparation of a review request and are not, *per se*, particularly complex.

14. The Appeals Chamber emphasizes that its findings in this Decision pertain strictly to Ntabakuze's request for the assignment of an investigator and counsel and not to the merits of Ntabakuze's potential request for review. If and when such a request is filed, the Appeals Chamber will make its determination on the merits.

Presidential Guard at the time. Appeal Judgement, fn. 548. The Appeals Chamber notes that, while some of the material submitted by Ntabakuze in the Motion is vague on this point, the statement of NRDP provides specificity as to which companies of the Para-Commando Battalion were sent to the Presidential Guard and about the extent they still communicated with the Para-Commando Battalion. See Motion, Annex 8.

⁴⁰ Trial Judgement, paras. 2057-2062; Appeal Judgement, paras. 220, 225.

⁴¹ Motion, paras. 31-35.

⁴² *Kajelijeli* Appeal Decision of 12 November 2009, para. 13. See also *Kamuhanda* Decision of 21 July 2009, para. 19.


⁴³ *Kajelijeli* Appeal Decision of 12 November 2009, para. 13. The Appeals Chamber notes that the ICTR Appeals Chamber has previously recognised that newly discovered information related to witness credibility may amount to a new fact. See *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-R, Decision on Request for Review, 29 May 2013, para. 24 and references cited therein.

V. DISPOSITION

15. For the foregoing reasons, the Appeals Chamber hereby **GRANTS** the Motion to Amend and **DISMISSES** the Motion.

Done in English and French, the English version being authoritative.

Done this 19th of January 2015,
At The Hague,
The Netherlands



Judge Theodor Meron, Presiding

Judge Jean-Claude Antonetti appends a separate opinion.

[Seal of the Mechanism]



OPINION INDIVIDUELLE

Je souscris pleinement à la décision rendue par la **Chambre d'appel** tendant au **rejet** de la requête du condamné **Aloys Ntabakuze**. J'estime néanmoins nécessaire de faire part de **mon opinion** sur un plan général d'une demande en révision présentée par un **condamné** devant une **juridiction internationale**.

Le fait de permettre à un condamné d'avoir une assistance juridique hors le cas de circonstances exceptionnelles¹ à l'aide d'un avocat **commis d'office** expose la juridiction internationale à des **demandes de révision « en cascade »**. En effet, un **condamné** purgeant sa peine pourra toujours penser qu'il a été mal assisté ou mal représenté par ses conseils antérieurs et que dans ces conditions, il doit refaire l'enquête avec un nouvel avocat qui recherchera des témoins pour établir l'existence de faits nouveaux.

Le fait d'accorder cette assistance juridique me paraît **très dangereux** pour la **sécurité juridique** des jugements rendus par une juridiction internationale après un très long processus qui dure des années où les preuves ayant abouti à la déclaration de culpabilité de l'Accusé ont été présentées par l'Accusation et contestées par la Défense. Il convient également d'ajouter à ce tableau les preuves présentées par la Défense au moment de la présentation de ses moyens.

Il convient de rappeler que ce procès s'est déroulé **sous le contrôle des juges** qui pouvaient en cas de doute ou de moyens de preuve discutables demander aux parties de compléter leurs arguments ou d'elle-même, ordonner la comparution de témoins ou l'amission de nouveaux éléments de preuve en application de l'article 98 du Règlement de procédure et de preuve du TPIR². Compte tenu du professionnalisme des juges de la Chambre de première instance, il serait étonnant qu'ils ne se soient pas posés la question et qu'ils aient conclu qu'il n'y avait aucune raison de compléter les éléments à charge et les éléments à décharge.

Dans le cas d'espèce, il est fort étonnant de constater que le condamné **Aloys Ntabakuze** évoque maintenant la présence d'une unité relevant du bataillon de Muvumba qui a été déployée en avril

¹ *Le Procureur c. Juvénal Kajelijeli*, ICTR-98-44A-R, « Décision relative à la requête aux fins de commission d'office d'un conseil », confidentiel, 12 novembre 2009.

² Selon l'article 98 du Règlement de procédure et de preuve du TPIR, « La Chambre de première instance peut, de sa propre initiative, ordonner la production de moyens de preuve supplémentaires par l'une ou l'autre des parties. Elle peut de sa propre initiative citer des témoins à comparaître ».

1994 dans la périphérie de la colline de Nyanza³. Selon le condamné, la présence d'une autre unité dans cette zone serait un **fait nouveau**. Il incombait à l'Accusé et à son conseil lors de la phase de première instance ou en appel de se poser la question de savoir quelles étaient les unités présentes sur les lieux susceptibles d'avoir commis des crimes qui étaient reprochés à l'Accusé. De même, même si cette idée n'était pas venue à l'esprit de l'Accusation ou de la défense, elle aurait dû logiquement venir à l'idée des juges.

Par ailleurs, il soutient dans ses écritures que les soldats de la garde présidentielle étaient stationnés près de l'Institut africain et mauricien de statistiques et d'économie (« IAMSEA »)⁴. Le fait que des soldats de la garde présidentielle auraient pu être stationnés près de l'IAMSEA ne peut constituer à mes yeux un fait nouveau justifiant une révision.

Le fait que l'intéressé purge actuellement sa peine au **Bénin** ne saurait également justifier une assistance quelconque pour une révision éventuelle.

A mon avis, il serait très problématique de suivre cette voie car pourquoi accorder une telle demande à un condamné et le refuser à un autre ? J'estime qu'en matière de révision de procès basée sur des faits nouveaux, le condamné, ou le cas échéant son avocat ou tout autre bénévole ou toute autre entité juridique agissant *pro bono* doit pouvoir être en mesure de présenter un dossier suffisant de lui-même afin de permettre aux juges de statuer.

Dans le cas d'espèce, je constate que le condamné dans sa requête du 17 avril 2014 avait constitué ce dossier en joignant en annexe plusieurs témoignages recueillis dans le cadre de l'enquête qu'il avait diligentée de lui-même avec l'aide du Greffe qui avait accordé généreusement des lettres de mission et que ce dossier est suffisant en lui-même pour permettre au Mécanisme résiduel des Tribunaux pénaux internationaux de statuer en application de l'article 147 du Règlement.

Le rôle du Greffe pendant cette phase initiée par le condamné pose un problème de fond touchant à sa place exacte dans cette procédure mi *common law*, mi *civil law*.

³ *Le Procureur c. Aloys Ntabakuze*, MICT-14-77, "Ntabakuze pro se motion for assignment of investigator and counsel in anticipation of his request for review pursuant to article 24 MICT st.", confidentiel, 17 avril 2014, p. 8, par. 20.

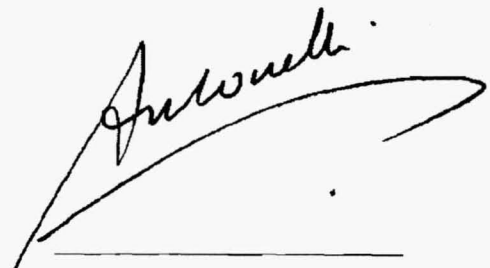
⁴ *Ibid.*, p. 11, par. 31.

Comme on peut le constater, le Greffe a aussi apporté son concours logistique au Bureau du Procureur avant et pendant le procès. Les pièces jointes établissent amplement qu'il a aussi apporté son concours à la Défense jusqu'à un certain point car le Greffe a été placé devant le problème de la rémunération de l'enquêteur ce qui a entraîné un « rétropédalage » comme en témoigne un email échangé entre les services du Greffe et l'avocat du condamné.

Il peut donc y avoir l'existence d'un **conflit d'intérêt permanent** car comment justifier d'une part, un concours total à l'Accusation avant et pendant le procès puis un concours limité au condamné après le procès ? Pour éviter ce type de conflit d'intérêt, j'estime que le Règlement de procédure et de preuve aurait dû prévoir une **procédure spécifique de révision sous le contrôle d'un juge** qui aurait veillé à « l'égalité des armes » pendant cette phase de recueil d'éléments de preuve en vue d'établir « le fait nouveau ».

Faute d'une procédure spécifique, j'estime donc que c'est **premièrement au condamné** de mettre en œuvre cette procédure sans l'aide du Tribunal. En revanche, il peut bénéficier du concours actif de son pays, de celui du pays où il a accompli sa peine dans le cadre d'un système d'aide juridictionnelle, de celui de son avocat, qui avait perçu une rémunération globale pour la défense de son client et qu'ainsi ses prestations dans cette phase ne seraient que les suites normales de son travail, ou de structures diverses de type associatif ou ONG qui viendraient apporter leur concours à un condamné qui se prétend innocent après sa condamnation en voulant une révision de son procès.

Fait en français et en anglais, la version française faisant foi.



Juge Jean-Claude Antonetti

Le 19 janvier 2015
La Haye (Pays-Bas)

[Sceau du Mécanisme]

