



Mechanism for International  
Criminal Tribunals

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

Date: 9 October 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'S MOTION FOR SUPPLEMENTAL  
FILING**

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

**Counsel for Jean Uwinkindi:**  
Gashabana Gatera

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

**09/10/2015 16:04**

1. The prosecution submits this supplemental filing to address new developments in Uwinkindi's Rwandan trial proceedings that occurred subsequent to the filing of the prosecution's response.<sup>1</sup> One of Uwinkindi's main arguments in support of revocation is that Rwanda allegedly deprived him of his "right" to select assigned counsel from a list of qualified counsel.<sup>2</sup> There is no such right.<sup>3</sup>

2. Nevertheless, on 23 September 2015, the Rwandan High Court allowed Uwinkindi's repeated request for an opportunity to select assigned counsel from a list.<sup>4</sup> Uwinkindi refused to do so.<sup>5</sup> Therefore, even if an indigent accused had the right to select assigned counsel from a list, Uwinkindi forfeited it, and the High Court reasonably determined that his trial will proceed with the two experienced counsel assigned to represent him in January 2015.<sup>6</sup>

3. The Trial Chamber should take these recent developments into consideration in evaluating Uwinkindi's revocation request, and should allow the prosecution leave to present the annexed materials and these additional submissions.

4. The Trial Chamber may, pursuant to Rule 154(A)(ii), allow supplemental filings when good cause is shown.<sup>7</sup> Good cause requires that (1) a party was unable to

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<sup>1</sup> *Below* para. 5.

<sup>2</sup> *Below* para. 6.

<sup>3</sup> See Prosecution Brief Responding to Uwinkindi's Revocation Request, 4 September 2015 (Response Brief), paras. 20-23 (explaining that an indigent accused has no right to determine which counsel will be assigned to him or her free of charge).

<sup>4</sup> Annex A, Minutes of the Public Hearing Before the Rwandan High Court of 23 September 2015 in the Case N° RP 0002/12/HCCJ, (23 September Minutes), pp. 8-9 of the uncertified translation; Annex B, Letter from the Rwandan Bar Association, dated 14 September, attaching a list of 68 counsel qualified to defend in transfer cases (List of Counsel). Uwinkindi received that list on 23 September in court, Annex C, letter from Jean Uwinkindi to the president of the High Court, dated 24 September 2015, p. 1 (subject line) of uncertified translation.

<sup>5</sup> *Below* para. 8.

<sup>6</sup> Annex D, Decision of the High Court of Rwanda, 29 September 2015 (the prosecution has been unable to obtain a translation of that decision); see Response Brief, para. 9.

<sup>7</sup> Decision on Uwinkindi's Motion for a Stay of Proceedings before the High Court of Rwanda, an Oral Hearing, and Other Related Matters, 1 October 2015, para. 14. See also: *Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-AR11bis.1, Decision on Second Joint Defense Supplement to Joint Appeal

include the supplemental material in its original filing;<sup>8</sup> and (2) the material presented in the supplemental filing is sufficiently important or pertinent.<sup>9</sup>

5. Here, both requirements are met. The prosecution was unable to include the new information about Uwinkindi's waiver and the High Court's subsequent order re-confirming the appointment of assigned counsel in its Response Brief because these events took place after the deadline for filing the prosecution response expired.<sup>10</sup>

6. Uwinkindi's refusal to select counsel from the list also is sufficiently important or pertinent to his pending revocation request. It shows that, contrary to Uwinkindi's repeated claims before the Trial Chamber<sup>11</sup> and the Rwandan authorities,<sup>12</sup> he was never interested in selecting his assigned counsel from a list, and instead used that argument as a means of obstructing trial proceedings. Uwinkindi repeatedly insisted, despite contrary rulings of Rwanda's High Court and Supreme Court<sup>13</sup>, that he had a right to choose his appointed counsel from a list.

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Brief in Support of Notice of Appeal, 16 November 2005, pp. 3-4 (applying ICTY Rule 127); *Prosecutor v. Savo Todović*, Case No. IT-97-25/1-AR11bis.1, Decision on Savo Todović's Supplemental Submission Concerning the Rule 11bis Appellate Proceedings, 23 February 2006 (*Todović Decision*), p. 2 (applying ICTY Rule 127); *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record, 9 January 2007 (*Bralo Decision*), para. 9 (applying ICTY Rule 127); *Prosecutor v. Mićo Stanišić et al.*, Case No. IT-08-91-A, Decision on Župljanin's Second Request to Amend His Notice of Appeal and Supplement His Appeal Brief, 14 April 2014 (*Župljanin Decision*), para.12 (applying ICTY Rule 108); *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's Request for Leave to File a Second Notice of Supplemental Authority, 10 July 2007 (*Orić Decision*), pp. 2-3.

<sup>8</sup> *Bralo Decision*, para. 13; *Orić Decision* pp. 2-3; *Župljanin Decision*, para. 13.

<sup>9</sup> *Bralo Decision*, para. 9, 13; *Orić Decision* p. 3; *Župljanin Decision*, para. 13; *Todović Decision*, pp. 2-3.

<sup>10</sup> Response Brief; Scheduling Order, 22 May 2015, in conjunction with Decision on Jean Uwinkindi's Request for Extension of Time and for Extension of the Word Limit, 22 July 2015.

<sup>11</sup> Brief in Support of Jean Uwinkindi's Request for Revocation of Referral Order, 5 August 2015, paras. 154 *et seq.*

<sup>12</sup> *Below* para. 7.

<sup>13</sup> Response Brief, paras. 9 *et seq.*

7. Indeed, on 5 February 2015, Uwinkindi “requested the [High] Court ... to issue an order to the [Rwandan Bar Association] to provide [him] with the list of counsel so that he may indicate a counsel of his choice.”<sup>14</sup> At the time, Uwinkindi stated that, “if the Rwandan Bar Association provided him with the list of counsel, he would choose his counsel quickly and the issue would be resolved.”<sup>15</sup> Uwinkindi repeated these statements over the following weeks.<sup>16</sup>

8. On 23 September 2015, Uwinkindi’s trial resumed. Once again, the High Court was confronted with Uwinkindi’s demand to select appointed counsel from a list and his refusal to accept the services of assigned counsel.<sup>17</sup> To avoid further disruption, the High Court decided to provide Uwinkindi with the opportunity he requested to select counsel from a list prepared by the Rwandan Bar Association. The list comprises 68 experienced counsel enrolled in the new legal aid scheme.<sup>18</sup> Uwinkindi refused to make any selection from the list.<sup>19</sup>

9. In a letter dated 24 September 2015, a copy of which is attached as Annex C, Uwinkindi attempts to justify his refusal. But his arguments either constitute far-reaching and unsubstantiated speculation or are demonstrably wrong. For example, he speculates that all 68 lawyers on the list must be controlled by the prosecution or the Rwandan Ministry of Justice.<sup>20</sup> As the party alleging a conflict of interest or other sort of professional incompetence, Uwinkindi bears the burden of coming forward

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<sup>14</sup> Public Monitoring Report for February 2015, 17 March 2015, paras. 4, 9, 23.

<sup>15</sup> Public Monitoring Report for February 2015, 17 March 2015, para. 23.

<sup>16</sup> Public Monitoring Report for March 2015, 30 April 2015, paras. 17, 56 *et seq.*; Public Monitoring Report for April 2015, 18 June 2015, paras. 33 *et seq.*, 42; Public Joint Monitoring Report for May and June 2015, 7 August 2015, para. 48.

<sup>17</sup> Annex A, 23 September Minutes, pp. 4 *et seq.* of the uncertified translation.

<sup>18</sup> Annex A, 23 September Minutes, p. 7 of the uncertified translation; Annex B, List of Counsel; Uwinkindi received that list on 23 September in court. In Annex C, Uwinkindi’s Letter, he also referred to a previous version of the list comprising 66 counsel (attached as Annex 19 to the Response Brief) which he had received earlier.

<sup>19</sup> Annex C, Uwinkindi’s Letter, para. 18.

<sup>20</sup> Annex C, Uwinkindi’s Letter, paras. 12 *et seq.*

with concrete evidence to support his claims.<sup>21</sup> Uwinkindi's mere allegation that all 68 counsel on the list are allegedly biased or incompetent is insufficient to discharge this burden.

10. Uwinkindi also mistakenly claims that, during his 2011 referral proceedings, the Rwandan Bar Association represented that it had approximately 686 members with "international" experience.<sup>22</sup> The Bar Association, however, made no such claim. It simply stated that it had approximately 686 members.<sup>23</sup> It did not claim that all 686 members had "international" experience. Nor, in all events, is there any requirement that counsel for accused transferred from the ICTR have "international" experience.<sup>24</sup>

11. Uwinkindi's refusal to select counsel from the list is therefore unjustified and represents just his or his counsel's most recent effort to obstruct the Rwandan trial proceedings. This pattern of obstruction includes his original counsel's deliberate boycott of the proceedings, which resulted in his sanction and removal;<sup>25</sup> Uwinkindi's own deliberate refusal to cooperate with replacement counsel appointed to represent him;<sup>26</sup> his repeated requests for a list of counsel from which to choose; and now his refusal to make any selection from the list he demanded. Confronted with this refusal, the High Court reasonably directed that Uwinkindi would continue to be represented by the two assigned counsel appointed in January 2015.<sup>27</sup>

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<sup>21</sup> *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-A, Judgement, 18 March 2010, para. 21; *Prosecutor v. Édouard Karemera et al.* Case No. ICTR-98-44-A, Judgement, 29 September 2014, para. 78.

<sup>22</sup> Annex C, Uwinkindi's Letter, paras. 9(C), 11.

<sup>23</sup> *Amicus Curiae* Brief of the Kigali Bar Association. In the Matter of the Prosecutor's Request for the Referral of the Case of Uwinkindi Jean, 26 April 2011, paras. 13-14.

<sup>24</sup> *Prosecutor v. Bernard Munyagishari*, 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 11bis, 3 May 2013, para. 107.

<sup>25</sup> Response Brief, paras. 8-9.

<sup>26</sup> Response Brief, paras. 24 *et seq.*

<sup>27</sup> *Above* para. 1.

12. It is entirely up to Uwinkindi whether he will accept the services of these assigned counsel, retains counsel of his choice at his own expense, or opts for self-representation.<sup>28</sup> His refusal to accept the services of assigned counsel violates no international fair trial right.

13. The Trial Chamber should take these recent events into consideration in evaluating Uwinkindi's revocation request. The prosecution's supplemental filing and the annexed materials should accordingly be allowed.

Word Count: 1599

Dated this 9<sup>th</sup> day of October 2015 at Arusha, Tanzania.

A handwritten signature in black ink, appearing to read 'James J. Arguin', is written over a horizontal line.

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>28</sup> Monitoring Report for February 2015, 17 March 2015, para. 21 (citing the High Court of Rwanda).

# Annex A

Minutes of the Public Hearing before the  
Rwandan High Court of 23 September 2015 in the  
Case N° RP 0002/12/HCCI  
and uncertified translation

**OTP – UNCERTIFIED TRANSLATION**

REPUBLIC OF RWANDA

1900

**THE HIGH COURT'S SPECIALISED CHAMBER TRYING INTERNATIONAL AND CROSS-BORDER CRIMES****PUBLIC HEARING OF 23 SEPTEMBER 2015 IN THE CASE N° RP 0002/12/HCCI:****IN THE MATTER****THE PUBLIC PROSECUTION V. JEAN UWINKINDI**

Jean UWINKINDI appeared before this Court assisted by Counsels Joseph NGABONZIZA and Isaacar HISHAMUNDA and the Prosecution was represented by Jean-Bosco MUTANGANA and Bonaventure RUBERWA, both Public Prosecutors.

The Court

We are apologizing for starting the hearing with a delay. This was due to other unexpected and urgent court functions that we had to perform.

Last time we requested the counsels to acquaint themselves with the case file and in the event they have submissions to present before the Court, they could do so or if they have other submissions that they wish to submit to complement those of their colleagues that worked in this case. As we said that in the event they are prepared, we will then hear the witnesses because we had ruled that they should be heard again.

Uwinkindi

I am informing the Court that I appeared before it without any judicial and legal assistance, those counsels are not mine and I am not ready to proceed because I do not have any counsel. I have 5 issues I want to present:

1. A letter of 7 September 2015 that I submitted to the court. I am not going to talk about its content since you have the letter. I am going to talk about the obstacles that I am facing at this juncture of the proceedings;
2. In addition, the counsels and the witnesses are still facing problems that have not yet been resolved. The court made several rulings and I have been appealing against them.
3. The case has been facing several problems and this is why it was filed before the Mechanism
4. Even if I said that I was not going to plead, I am here to make sure that my case does not fall into the hands of unknown people who are not providing me with judicial and legal assistance.



**OTP – UNCERTIFIED TRANSLATION**

1899

5. These counsels should not come into my case because they are not my counsels. I am not ready to put my signature next to theirs and in the event they sign, the document they signed is not related to me. The Court should write on a separate sheet of paper for me and should prepare a separate one for them to sign on.

The Court

We are reminding Uwinkindi the following:

That the case does not belong to Uwinkindi; that the dossier belongs to the Court; that he should not force the Court to do what he wants to be done in his file

In relation with the counsels, the Court talked about it several times. The counsels that you have are the right ones and they have to perform their duties in accordance with the law. We have been addressing the doubts that you have expressed.

To the counsels, we gave you a timeline to enable you prepare the file, can you tell us how far you are? The file contains the conclusions of your colleagues; can you tell us if you have anything to add? And if there is no question to ask, we could move to the step of hearing witnesses.

Counsel Joseph Ngabonziza

It is true we saw the file which was handed over to us by the Court. We prepared it and we read it. But we encountered the problem of preparing the submissions because we could not talk to the person we are assisting. The submissions should contain the wishes of the Accused to whom we provide judicial and legal assistance. On 3 August 2015 we went to visit Uwinkindi who is our client, the prison warder went to look for Uwinkindi but the latter refused to come out saying that he did not know those counsels because they were not his counsels. We could not talk to him; this is the main issue that we were facing. But we said that we will prepare the submissions according to the way the proceedings will go, that is according to Uwinkindi's position.

Counsel Isaacar Hishamunda

The counsel provides legal and judicial assistance. The facts are provided by the Accused but not talking to the person we are assisting constitutes a problem because we cannot know well the facts if the person does not talk about them.

The Court

**OTP – UNCERTIFIED TRANSLATION**

1898

The court is aware of the issue raised. We have reached the step of hearing the Prosecution witnesses.

Prosecution, we are going to hear again the witnesses. We will start with the Prosecution witnesses, and we will start with four witnesses. Please tell us if we will follow the order of last time.

Public Prosecutor Bonaventure RUBERWA

Before answering your question, we have some doubts first of all with regard to what has been said. We will highlight it before the Court without forgetting that there are some decisions that have been taken. Our work should be done knowing that the trial is fair. We will provide our observations on how the trial could run smoothly.

Starting from the way Uwinkindi says that he does not believe that he has counsels. On 29 January 2015, after Counsels Gatera Gashabana and Jean Baptiste Niyibizi who were providing judicial and legal assistance to Uwinkindi withdrew themselves from the case, the Bar Association assigned Counsels Joseph Ngabonziza and Isaacar Hishamunda to replace them. Uwinkindi did not like Counsels Joseph Ngabonziza and Isaacar Hishamunda because he did not play any role in choosing them.

The Prosecution requested the Court, even if Uwinkindi does not recognize Counsels Joseph Ngabonziza and Isaacar Hishamunda, to let them remain in the case for the sake of fair trial. The decision was taken, even if Uwinkindi did not want them, they continued providing him with judicial and legal assistance.

The two counsels have already highlighted that they encountered obstacles in preparing their submissions since they did not have the facts from Uwinkindi to whom they were providing judicial and legal assistance and could not establish the facts which were known to the client as they cannot apply the law to facts that are unknown to them. They requested to be allowed to prepare their submissions as the proceedings would move on and in accordance with Uwinkindi's statements, considering that they would not write anything if Uwinkindi does not plead as he was insisting that he did not have any counsel. If the situation remains as it is, we will find that no cross-examination will happen because we will not be able to examine witnesses without knowing the facts because Uwinkindi will not have asked them so that they know them.

The Prosecution wishes to have a fair trial in this case. The issue arose when the Bar Association assigned counsels when Counsels Gashabana and Niyibizi left the case. This was related to the counsels who do not specify clearly those who accept the fees paid by the Ministry of Justice for cases transferred by the ICTR or other foreign jurisdictions.

## OTP – UNCERTIFIED TRANSLATION

1897

The Bar Association and the Ministry of Justice moved forward, the Bar Association sent out a notification for expression of interest to all the counsels so that the one accepting the fees offered, could provide judicial and legal assistance to the indigent. The list was published on 14 September 2015 and contained the names of 68 counsels. This development is good for cases transferred to Rwanda.

We know that decisions were taken and for the sake of fair trial. We believe that in this case of Uwinkindi, some issues emerged and anything that can allow a fair trial should be done to resolve them.

We find that, since they do not know the facts, the counsels cannot cross-examine the Prosecution witnesses and examine the Defence witnesses.

We are requesting the Court that, in addition to the many decisions rendered in relation to this development on the list of counsels who agreed to provide judicial and legal assistance to the indigent whose cases were transferred by the ICTR or other foreign jurisdictions, Uwinkindi should choose those who can cooperate with him and provide him with judicial and legal assistance so that the trial can proceed. Counsels Joseph Ngabonziza and Isaacar Hishamunda are already working on the case, in the event he chooses them, this would be fantastic.

If Uwinkindi refuses to choose anyone from the list, then he will not enjoy his right to defence, the Court would assign counsels as a protocol to monitor how a fair trial is respected because such cases also exist before foreign jurisdictions.

With regard to the decision that could be rendered by the Court if it decides to hear the witnesses despite the abovementioned concerns, that is hear Uwinkindi without his cross-examination, the counsels will examine them, despite the concern expressed on the issue of not learning the facts from the person they are assisting. In this case, they would be heard as they were heard previously.

Uwinkindi

I have requested that my counsels, the ones who provide me with judicial and legal assistance, should remain in my case. In the event the Court and the Public Prosecution Authority do not want them, I wish to be given a list of experienced counsels and I will not hesitate to choose from that list. However, in the event the list contains names that were deliberately selected, I will hesitate in choosing them. Currently, I cannot say anything about the list as I have not yet seen it.

The Court

Which list are you talking about?

## OTP – UNCERTIFIED TRANSLATION

1896

Uwinkindi

The list of counsels from the Bar Association.

The Court

Who are on that list?

Uwinkindi

The list I was given contains few names of counsels and I did not come with it.

The Court

We would like to see the list from which you would like to choose before taking a decision on the Prosecution requests.

You are telling us that in the event they follow the first list you will agree to choose from it but that if they give you a list containing counsels that you do not want, the problem will remain as it is.

Uwinkindi

On this matter, I said that I will not comment because I have not yet seen it.

The Court

Counsels do you have anything to say on what the Prosecution has said? But before saying anything, the Prosecution has just said that you do not know the facts but you told us that you have prepared the file. Isn't it?

Counsel Isaacar Hishamunda

We have read the facts contained in the case file and we have read the submissions of our colleagues.

The Court

You are saying that since you are not talking to Uwinkindi, you will not be able to do cross-examination to enlighten the Court.

Counsel Isaacar Hishamunda

The information is not sufficient unless we get clarifications from the person to whom we are providing judicial and legal assistance.

The Court

With the information in your possession, do you believe you can enlighten the court?

Counsel Isaacar Hishamunda

Unless we are collaborating with the person to whom we are providing legal assistance, otherwise we will not be of any help to the court

## OTP – UNCERTIFIED TRANSLATION

1895

Counsel Joseph Ngabonziza

Unless we cannot do anything unless, we talk with the person to whom we are providing legal assistance we cannot do anything, we will not be able to talk to the defence witnesses because it is Uwinkindi who will tell them what they can do to assist him before the court. You may understand that we cannot say anything to the Defence witnesses when they are going before the court to exculpate him without talking to Uwinkindi.

Even us we are not comfortable in this case because of the way the person to whom we are providing judicial and legal assistance is treating us.

We have seen the email from the Bar Association that talks about the conditions required for a counsel to be admitted? That is why it contains very few name. It did not have a wide circulation because there are some applicants who applied but could not be admitted. Uwinkindi can choose who he wants so that he can get fair justice.

The Court

How much time do you need to choose [counsels] from the list you were given?

Uwinkindi

Currently, I cannot have anything to say about it.

The Court

Thirty minutes after the break, Uwinkindi will tell us his position on the list of counsels and if he does not have anything to say about it, he will also tell us so.

The Court

Before going for the break, we requested Uwinkindi to look at the list of counsels in his possession. Can he now tell us if he made his choice?

Uwinkindi

I had responded before leaving. Now I cannot say about it because I cannot make any choice as I do not know them, to know that they have the capacities of pleading in my case.

The Court

How would you know about those capacities at the time you are saying that you do not know them, you have not yet met? Can you tell us the criteria you would rely on?

Uwinkindi

I cannot talk about them today.

**OTP – UNCERTIFIED TRANSLATION**

1894

Public Prosecutor Bonaventure RUBERWA

After Counsel Joseph Ngabonziza told us that there are criteria that the Bar Association should rely on to admit counsels that would provide judicial and legal services to the indigent and need persons accused of genocide who are transferred to Rwanda by the ICTR and other foreign jurisdictions, we find that they were selected because they respond to the conditions and have the relevant capacities. The court should also know that they will provide judicial and legal assistance because they meet the relevant requirements have the relevant experience.

We have seen the Announcement. There are conditions that were set (see Email from the Bar Association to all the counsels) we find that the counsels are on the approved list, Uwinkindi could choose from it from those who have long experience in providing judicial and legal assistance.

Uwinkindi is a Rwanda national, he could be not knowing Counsels but he has his family which is living in Rwanda which could enquire about the way those counsels perform their duties.

However, it would be difficult for him to choose now.

The Court

We did not ask him to choose counsels. He told us that he has another list. Now we have a new list that has been presented. The Prosecution told us that in the event he does not make a choice he will have renounced his right to defence. He should tell us if the list in his possession is the same as the one he has now. He should not make the choice here. He should tell us if he will choose from the first list or from the list that he has now.

Public Prosecutor Bonaventure RUBERWA

We have the same understanding as the court. In the two cases, if one makes a comparison, looking at the list, or looking that those who are on the first list to see if they are the same or not compared with the list he has now, we find that to immediately choose in 30 minutes would be difficult. However, we believe he should be given time to choose and come and tell the court the names of those he would have chosen.

The Court

Prosecution, you said that in the event he refuses this list, he should plead without judicial and legal assistance.

## OTP – UNCERTIFIED TRANSLATION

1893

Public Prosecutor Bonaventure RUBERWA

Yes, that is what we said

The Court

We are asking him to tell us from those lists which one he would like to choose from. Uwinkindi said that he does not want to give us a response.

Public Prosecutor Bonaventure RUBERWA

We understood that you will make a ruling after we have given our position, but saying that 30 minutes are enough to compare the first list of counsels with the list that you have given him now, as Prosecutors we find that this time is too short to make a comparison. On the contrary, you should give him reasonable time to look at them and then later provide his reaction.

Uwinkindi

I did not say that I do not want to provide a response to the court. I said that I cannot say anything on that list before examining it. I said that I do not have the first list. I will examine it once I have it.

The Court

Since you do not have that list, what is it you are requesting from us?

Jean Uwinkindi

This list of Rwandan counsels I will give it back.

The Court

Not later than Friday at 11.00, we should receive your response.

Counsel Joseph Ngabonziza

I am saying that this is the only list from the Bar Association approved for these transfer cases. Please give him time as he requested to examine it.

## OTP – UNCERTIFIED TRANSLATION

1892

The Court

Uwinkindi if you are saying that there is no other list, what are you going to compare?

Uwinkindi

I have responded that I cannot tell you now, I said that I will examine properly this list. I said that the issue related to my judicial and legal assistance is before the Mechanism.

The Court

We did not ask you to choose defence counsel. The list from ICTR?

Uwinkindi

The list from the ICTR, I did not mention it here, they did not give it to me.

The Court

Why are you asking for some time? You had asked us time to see if this list is the same as the list that you have, now that question was not there. Now we have to take a decision on whether you should be assigned other counsels or stay with those you have.

Uwinkindi

I said that I cannot say anything about this list now, I am asking to be given time to examine it and I will give you my position.

The Court

We have told you that we need the response on Friday at 11:00 and we will make a ruling on 29 September 2015 at 11:00.

**Jean UWINKINDI**

(Refused to sign)

**Counsel Joseph NGABONZIZA**

(Signed)

**Counsel Isaacar HISHAMUNDA**

(Signed)

1891



**OTP – UNCERTIFIED TRANSLATION**

**Prosecutor Jean-Bosco MUTANGANA**

**(Signed)**

**Prosecutor Bonaventure RUBERWA**

**(Signed)**

**The Bench**

**Fidèle NSANZIMANA,**

**Judge**

**(Signed)**

**R. Alice NGENDAKURIYO**

**Presiding Judge**

**(Signed)**

**Timothee KANYEGERI**

**Judge**

**(Signed)**

**Zita UWASE**

**Court reporter**

**(Signed)**

REPUBLIKA Y'U RWANDA

URUKIKO RUKURU

URUGEREKO RWIHARIYE RUSHINZWE KUBURANISHA IBYAHA

MPUZAMAHANGA N' IBYAMBUKA IMBIBI.

PV D'AUDIENCE DU 23/09/2015 à 9h03

RP 0002/12/HCCI : MP C/ UWINKINDI Jean

Urubanza ruhamagawe n'Urukiko rusungu UWINKINDI Jean yitabye, yunganirwe na Me NGA BONZIZA Joseph na Me HISHAMUNDA Isaacar. Ubushinjacyaha buhamagariwe na PN MUTANGANA Jean Bosco na PN RUBERWA Bonaventure.

Urukiko

Turabiseguraho dutangiye iburannisha dutanze kuhera imirimo y'urukiko itunguranye kandi yihutirwa nwanjye gukora.

Ubushize twari nvasabye abavoka ko babanza kugira Connnaissance ya dossier, haba hari imyanzuro bashyikiriza urukiko bakayitanga cyangwa bakaha bafite indi bifuzwa gutanga yuzuzwa iya bagenzi babo iri muri dossier. Kuko twari twavuze ko mu gihe baba biteguye twakurikizaho kumva abatangabuhamyu kuko icyemezo cyari cyafashwe ko bazatagera bakumirwa.

Uwinkindi

Ndamenyeshya urukiko ko nitabye urukiko ariko ntabwo mpagarariwe aba abavoka si abanjye kandi sinateguye kuburana kuko nta bavoka mfite. Nkuba mfite ingingo 5 nshaka kuvuga :

1. ni ibarurwa yo kuva 7/9/2015 nashyikirije urukiko sinavuye ibirimo murayifite, mvuga inzitizi zaho urubanza rugeze.

2. ikindi ni kuba abavoka na batangabuhamyu bagifite ibibazo bitarasohanyuka neza. Urukiko rwafashe ibyemezo byinshi kandi nagiyeye mbijuririra.

3. urubanza rwajemo ibibazo byinshi ari nayo mpamvu rwageze muri mecanisme

4. Nubwo navuze ko ntaburana, ndashinganisha dossier yanjye kugirango itajya mu baboko y'abantu utazi batanyunganira.

5. ko aba bantu babavoka batajya muri dossier yanjye kuko atari abavoka banjye. Ko ntiteguye gusinya aho basinye, igihe basinye ibyo basinyiyeho bikaba bitandeba. Ubuho urukiko ruranyandikira urupapuro rwanjye ndusinyeho nabo ruhakurere urwabo barusinyeho.

Urukiko

Tuributsa Uwinkindi ibi bikurikira.

Ko urubanza atari urwa Uwinkindi, ko dossier ari iy'urukiko, ntabwo wadutegeka ibyo dukora muri dossier.

Ikijyanye n'abavoka twakivuzeho inshuro nyinshi, abavoka ufite ni aho kandi bagomba gukora inshingano zabo uko amategeko abiteganyye. Impungenge zawe wagaragaje twagiye tuzisubizaho.

Abavoka hari igihe twababonye cyo gutegura dossier niwatumwira aho nugeze, muri dossier harimo n'inyanzuro ya bagenzi banjye, niwatumwira ko hari ibyo mwongeraho noneho turaba nta kibazo mu gifite tukajya kuri elapeyo kumva abatangabuhanywe.

Mc Joseph

Nibyo dossier twaranyibonye tuyihawe n'urukiko. Twaranyiteguye, twarayisomye. Ariko twagize ikibazo cyo gutegura umwanzuro kuko tutabashishye kuvugana nuwo twunganira, kandi umwanzuro uba ugomba kujyamo ibyifuzo by'uwu twunganira. Ku 3/8/2015 twagiye kureba Uwinkindi twunganira, umucungagereza agiye kumureba yanga gusohoka avugako aho bavoka atabazi kuko atari abavoka ba, ntitwabashije kuvugana nawe nicyo kibazo gikomeye twagize. Ariko twavuze ko umwanzuro twazawukora tugendeye uko ihuramishye rizajya rigenzwe, dukurikije ibyo Uwinkindi azaba yavuze.

Mc Isaacar

Umwavoka ni umwunganizi mu rwego rw'amategeko, les faits niza prevendu, ariko kuvugana nuwo twunganira ni ikibazo kuko tutabasha kumenya les faits neza atazitubwiye.

urukiko

icyo kibazo mwigize urukiko ruri conscientiyacyo . etape tugezeho ni ukumva abatangabuhanyya b'ubushinjacyaha.

Ubushinjacyaha ubutugiye kongera kumva abatangabuhanyya, tuzahera kubatangabuhanyya b'ubushinjacyaha turahera kuri bane, mwatubwira niba twakurikiza rwa rutonde rwa mbere.

Pn Ruberwa

Mbere yo gusubiza ikibazo mwari mutubajije, hari impungenge dufitse kubanza bijyanye n'ibinyuze kuvugwa, twazigaragariza urukiko tutayobewe ko hari ibyemezo byafashwe, ibyo dukora tukabikora tuzi ko dukora urubanza runyuzwemo mu mucyo fair trial tukaba twatanga ibitekerezo ko urubanza rwagenda neza.

Duhereye kubyo Uwinkindi avuye abavoka afitse. Ku itariki 29/1/2015 urugaga nyuma yuko Me Gashabana na Me Niyibizi bunganiraga Uwinkindi bikuye mu rubanza, rwangennye Me NGABONZIZA Joseph na Me HISHAMUNDA Isaacar ngo babasimbure. Uwinkindi ntabwo yishiniye Me NGABONZIZA Joseph na Me HISHAMUNDA Isaacar ngo kuko ntagize uruhare mu kubahiramo.

Ubushinjacyaha bwashyize urukiko kubwa uwinkindi atemeraga Me NGABONZIZA Joseph na Me HISHAMUNDA Isaacar ko baguma mu rubanza mu nyungu z'ubutabera, icyemezo kirafatwa, nubwo atabemeragabukomeza kumwunganira.

Nkuko bamaze kubigaragaza ko bahuye n'imbogamizi zo gutegura imyanzuro mu gihe budafite ibitekerezo byawo bunganira, aho badushobora kwetabirira les faits kuko zizwi muwo bunganira, kuko les faits zigomba guhuzwa na mategeko. Basabye ko bazakora conclusions bijyanye nuko urubanza rwagenda bukurikije nibyo uwinkindi azavuye urebye mu mucyo bazandika mu gihe uwinkindi atazaba yaburanye kuko avuye ko atunganiye. Tugumye aho dusanga nta close examination izabaho kuko batazabasha kubaza abatangabuhanyya kuko hatari les faits kuko uwinkindi atazaba yababajije kugirango bazimenye.

Ubushinjacyaha bufitse icyifuzo, mu rwego rw'urubanza ruciye mu mucyo rw'intabera. Ikibazo cyavutse igihe urugaga rugenera uwinkindi abavoka igihe Me Gashabana na Me Niyibizi bavuye mu rubanza, byari bishingiye ku abavoka batagaragaza abemeraga igihembo minisitiri y'ubutabera ibagenerako bantu bahorejwe na TPIR ce n'ibindi

bihugu. Urugaga rw' abavoka na minisitiri y'ubutabera banyuze intambwe, urugaga rwatanzwe appel d'offre ku bavoka hose kugirango uwenyere icyo gihembo, kugirango utishoboye azabashye kunganirwa. Urwo rutonde rwabonetse ku itariki 14/9/2015 ruriho abavoka 68. Iyi developpement ni nziza mu manza zoherezwa mu Rwanda.

Tuziko hari ibyemezo byafashwe kandi mu nyungu z'ubutabera. Dutakereza komuri uru rubanza rwa Uwinkindi rwajemo ibibazo, ko ikintu cyose cyatumye habaho urubanza rwa fair trial cyakorwa kugirango ibibazo bikemuke.

Dusanga abavoka batashobora gukora close examination ku batangabuhanyira b'ubushinjacyaha nab'uregwa kuko batari les faits.

Turashya urukiko ko hejuru y'ibyemezo byinshi byagiye bifatwa, biturutse kuri iyi developpement y'urutonde rwa bavoka bemeye kunganira abashoboye boherejwe na TPIR cy' ibindi bihugu. Uwinkindi yahitanye n'abo bagirana cooperation bakamwunganira kugirango urubanza rukomeze. Aba Me Joseph na Me Isaac baruriho, aramutse abahisemo byaha ari amahire.

Uwinkindi yanze kugira uwo ahitamo kuri aba bavoka bari ku rutonde, icyo gihe Uwinkindi akaba yivukije uburenganzira ahahwa hwo kugenerwa abamwunganira, urukiko rukagena abavoka bahabwa nku protocol bo kureba uko fair trial yubahirizwa kuko bene izo manza zibaho no hanze.

Ku bijyanye n'ibyemezo urukiko rwafata, rusanze kumva abatangabuhanyira malgre y'izi mpungenge tugaragaje, bakumvwa Uwinkindi atabakorera close examination, abavoka bababaza malgre y'impungenge bagaragaje zuko batamenye les faits bazibwiwe muwo bunganira, icyo gihe tukumva bakumvwa akuko bumvishwe mbere.

Uwinkindi

- \* \* Icyo nasabye nuko abavoka banjye banyunganiraga baguma mu rubanza rwanjye, urukiko rutabashyamba n'ubushinjacyaha, bakampa liste y' abavoka binzobere nyabo, nta mpungenge narira, ariko ije ijogowe nabo nabagiraho impungenge, ariko nako nacyo ubu bayivugaho kuko ntarayihona.

Urukiko

Iyo lisiti uvuga ni iyihe?

Uwinkindi

Liste ya bavoka bo mu rugaga.

Urukiko

Lisiti uvuze yarimo hande?

Uwinkindi

Iyo lisiti bumpaye iriho abavoka hake ntacyo nazanye.

Urukiko

Dukeneye kubona icyo liste wifuzaga guhitamo mbere yuko dufata icyemezo kubisabwa n'ubushinjacyaha.

Utubwiye ko mu gihe bakurikiza icyo liste ya mbere wakwemeraga guhitamo, ariko baguhaye liste iriho abavoka utashakira, ikibazo cyakomeza kwa kundi?

Uwinkindi

Aho navuze ko ntacyo nayivugaho kuko ntarayibona.

Urukiko

Abavoka niwagira icyo muvugaga ku byo ubushinjacyaha buvuye? Ariko mbere yo kugira icyo muvugaho, ubushinjacyaha bumaze kuvugaga ko mutamenye les faits, kandi niwubwiye ko niwateguye dossier, niko himeze?

Me Isaacar

Izo muri dossier twarazisomye, twasomye n'inyanzuro ya bagenzi bacu.

Urukiko

Murabwirira ko kuba mutavuganye na Uwinkindi mutabashu gukora close examination kugirango havemo ukuri kwafashya urukiko?

Me Isaacar

InformationS ntabwo zihagiye mu gihe tutabonye ibisobanura duhawe nuwo twunganira.

Urukiko

Mwumva avec les données mufite, mushobora kw'clairer urukiko?

Me Isaacar

Tudacollabora nuwo twunganira ntacyo twamurira urukiko.

Mc Joseph

Igihe tutazashobora kuganira nuwo twunganira ntacyo twakora, ntacyo twabasha kuvugana na batangabuhanya he kuko Uwinkindi niwe uzabwirira icyo bazamumarira imbere y'urukiko, murumuna ko ntacyo twabwirira batangabuhanya he baba kumumarira imbere y'urukiko, tutavuganye n' Uwinkindi.

Natwe natwowe turi comfortable muri iyi dossier byanywe nuko uwo twunganira adufata. icyifuzo cy'ubushinjacyaha ntacyo kidutwaye kuko aduhisemo cyangwa ataduhisemo na kibazo, icyangombwa nuko Uwinkindi agira ubutabera nyabwo.

Iyo email y'urugaga twarayibonye yavugaga conditions zishyamba kugirango umwawoka aho yakwemererwa niyo mpamvu iriho abavoka bako, natwowe byabonye uwariwe wese kuko hari abasabye nibabibona. Uwinkindi yakwihitiramo aho ashaka kugirango abone ubutabera.

Urukiko

Urubona wafata igihe kingana gute ngo uhitemo kuri icyo liste baguhaye?

Uwinkindi

Ubu natwowe hishoboka ko nagira icyo nyivugaho.

Urukiko

Nyuma y'iminota 30 y'ikiruhuko, Uwinkindi aratubwirira icyo avugaga kuri icyo liste y'abavoka kandi niba ari icyo nyivugaho natwowe arabitubwirira.

Urukiko

Mbere yo kujya muri pause, nari twasabye Uwinkindi kureba kuri liste ya bavoka aho. Ubu yatubwirira niba hari aho yahisemo bamufasha ?

Uwinkindi

Mbere yo kugenda nari nagisubijeho. Ubu ntacyo nyivugaho kuko sinavugaga ngo uyu, kuko sinarinabamenya ngo menya ko bafite ubushobozi bwo kuza mu rukundo rwanywe

Urukiko

Ubu hushoboye wabamenya aho, mu gihe uvugaga ko utabazi, mutarabonye. Watubwirira criteria wagenda aho?

Uwinkindi

Natwowe uyu munsi natwowe.

PN Ruberwa

Nyuma yuko Me Joseph atubwiye ko hari criteres zagendeweho n'urugaga mukwemeza abavoka bazajya bunganira abakurikirananyweho jenoside batishoboye boheretwira na TPIR cyg n'ibindi bihugu, turasanga baruhahisemo kuko bujuje conditions kandi babifitiye ubushobozi, n'urukko ruzamenye ko bazabunganira kuko bujuje ibisabwa, koko babifitiye ubunararibonye.

Itangazo twaribonye hari conditions zagendeweho (cfr email y'urugaga rw'abavoka yoherejwe abavoka bose), dusanga ahavoka hari ku rutonde ryemejwe, Uwinkindi yahitamo haba afiti uburamba, ubunararibonye bwo kunwunganira.

Uwinkindi ni umunyarwanda, ashobora kuba atazi abavoka ariko afiti umuryango we uha mu Rwanda, wabasha gukurikirana ukamenya abavoka uko bakora.

Naho kumusaba guhitamo ubu byaba bigoye.

Urukiko

Icyo nyamusabye si uguhitamo abavoka, yatubwiye ko afiti indi liste ya mbere, uha hari indi liste fixé yatanze. Uhushinje cyaha mwatubwiye ko mu gihe aramutse atayihisemo yaha yivukije amahirwe yo kunganirwa. Yatubwirako niba liste afiti ihuye niyo afiti hano, Ntabwo guhitamo yabikorera hano, Atubwire ko ahitamo iyo afiti cyangwa iyo afiti uhu.

PN Ruberwa

Natwe uko urukiko ruhisobanuye niko twari twabyumvishe. Muri izo deux cas comparativement kureha izo liste, cyangwa kureha ubari kuri liste ya mbere ko bahuye cyangwa badahuye nabari kuri iyi afiti uhu, dusanga mu minota 30 bigoye ko yahita abikora. Ahubwo dusanga yababwira igihe akajya guhitamo akazaza abwirako urukiko aho yahisemo.

Urukiko

Uhushinje cyaha nimwe mwabisabye ko mu gihe yanze iyi liste, mwavuze ko yaburana atunganiwe.



PN Ruberwa

Niko rwavuze.

Urukiko

Icyo tumusaba ni ukureba muri izo liste afitse iyo yumva ko yahitamo. Uwinkindi we yavuze ko ashakaga kudasubiza.

U'u Ruberwa

Twahyumvishe ko muzaafata icyemezo natwe dutanze position yacu, ariko kuvuye ko mu minota 30 yareba ko abavoka hari kuri liste afitse bahuye na bari kuri iyi liste mu mubonye nonaha nk'uhushinjacyaha dusanga uwu mwanyu ari mutoya guhita ahagereranyu, ahubwo ko mwamubuha igihe kiri raisonnable akajya kuzireba akazabaha igisubizo.

Uwinkindi

Ntabwo navuze ko ashakaga gusubiza urukiko. Nababwiye ko iyi liste ntacyo nayivugaho ubu ntabwo kuyireba. Iyo liste ya mbere navuze ko nayo nifite, nayo nayibona nkayireba nkayiga.

Urukiko

Ko icyo liste nayo afitse ubwo icyo udusaba niki ?

Uwinkindi

Iyi liste y'abavoka ba banyarwanda azayisuhiza.

Urukiko

Bitarenze kuwo gatanu saa tano tuzabwo kwabonye igisubizo cyanditse.

Me Joseph.

Icyo mvuye nuko liste y'urugaga yemejwe kuri izi transfer cases niyi ntabwo.  
Mwamubuha igihe nkuko yabisabye ngo ajye kuyirebaho.

Urukiko

Uwinkindi niba utubwiru ko nta yindi liste ihari icyo wajya gucompara niki?

Uwinkindi

Nasubije ko ntashobora kugitanga hano, navuze ko ngenda nkareba neza iyo liste.

Navuze ko icyo kibazo cy'ubunganizi cyageze muri mecanisme.

Urukiko

Ntabwo twagusabye guhitamo abunganizi. Iyo liste ya TPIR?

Uwinkindi

Iyo liste ya TPIR ntayo navuze hano, ntayo yampaye.

Urukiko

Igihe udusaba niki iki? Wari wadusabye umwanya wo kujya kureba ko iyo liste isa niyo wari usanganywe, none icyo kibazo nagihuri. Ubwo hasigaye ko dufata icyemezo cyuko ushakirwa abandi bunganizi cyangwa ukomezanya naho ufile.

Uwinkindi

Navuze ko ntacyo navuye kuri iyi liste nonaha, ko mumpya umwanya nkajya kuyirebaho nkazaba igisubizo.

Urukiko

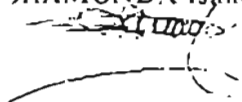
Twakubwiye ko igisubizo rugishaka kuwa gatanu saa tanu, tukazafata icyemezo kuwa 29/9/2015 saa tanu.

UWINKINDI Jean, *Jean de G...*

Me NGABONZIZA Joseph

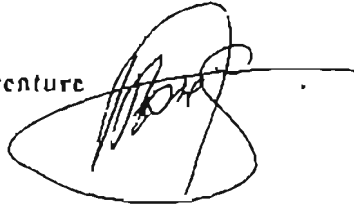


Me HISHAMUNDA Isaacar



  
PN MUTANGANA Jean Bosco

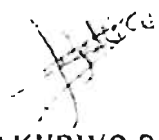
PN RUBERWA Bonaventure



INTEKO

  
NSANZIMANA Fidèle


Umucamanza

  
NGENDAKURIYO R. Alice

Perezida

  
KANYEGERI Timothée

Umucamanza

  
UWASF. Zita

Umwanditsi

# Annex B

Letter from the Rwandan Bar Association, dated 14 September 2015, attaching a list of 68 counsel qualified to defend in transfer cases and uncertified translation

OTP – UNCERTIFIED TRANSLATION

**Rwanda Bar Association**

Kigali 14 September 2015

O/Ref. Let 379/DO/MA/09/2015

**To the Honourable Minister of Justice/****Attorney General****KIGALI****Subject: List of Counsels whose services may be relied upon in criminal cases of indigent and needy Accused persons transferred to Rwanda.**

Honourable Minister,

Please refer to my letter ref: Let 368/DO/MA/2015 of 9 September 2015 forwarding a list of 66 counsels that are ready to provide judicial and legal assistance to indigent Accused persons transferred before Rwandan courts, in accordance with the agreement between our two institutions related to providing judicial and legal assistance to Accused persons and signed in May 2015.

Allow me to inform you that an error was committed while preparing the said list as two lawyers who had submitted their applications were inadvertently not put thereon. These are namely: **Counsel Isacaar Hishamunda** and **Counsel Abubakar Gashirabake**

I am therefore forwarding the present list of 68 lawyers in replacement of the former one.

Thanking you for your understanding and collaboration.

Yours sincerely

**Counsel Anita MUGENI****President of the Council of the Bar Association**

c.c.:

- The President of the Supreme Court/President of the Supreme Council of the Magistracy
- The Prosecutor General
- The President of the High Court
- The Commissioner General of the Rwanda Correctional Service (R.C.S)
- The Director General, Criminal Investigation Department (CID).



2015

*[Handwritten signature]*

Kigali, ku wa 14/09/2015

N/Ref.: Let. 368/DO/MA/09/2015

Nyakubahwa Minisitiri w'Ubutabera/  
Intumwa Nkuru ya Leta  
**KIGALI**

*[Handwritten signature]*

**Impamvu:** Urutonde rw'Abavoka bazajya biyambazwa mu manza nshinjabyaha z'abatishoboye boherezwa kuburanira mu Rwanda

H.C. Greffe  
Reçu le 14/09/2015

Nyakubahwa Minisitiri,

Nshungiyeye ku ibaruwa N/Ref.: Let 368/DO/MA/2015 nabandikiye tariki 09/9/2015 ibashyikiriza Urutonde rw'abavoka 66 bazajya biyambazwa mu kunganira abatishoboye boherezwa kuburanira mu Rwanda mu manza nshinjabyaha hashingiwe ku masezerano inzego zacu zombi zifitanye apanye n'ubufasha mu by'amategeko ku batishoboye yashyizweho umukono mu kwezi kwa Gicurasi 2015;

Ndabamenyesha ko habayeho kwibeshya mu gutegura urwo rutonde kuko hari abavoka babiri bibagiranye kuri urwo rutonde kandi bari basabiye gushyirwa kuri urwo rutonde u gihe. abo akaba ari **Me Hishamunda Issacar na Me Gashirabake Abubakar.**

Akaba ariyo mpamvu nongeye kubashyikiriza Urutonde ruvuguruye ruriho n'abo bari bibagiranye ubwo bose hamwe bakaba 68.

Mbashiniye uburyo mwihanganira izo mpinduka ndetse n'ubufatanye mudahwema kutogaragariza.

Mugire amahoro.

**Me MUGENI Anita**  
Umukuru w'Inama y'Urugaga

URUGAGA RW ABAVOKA  
P.O. Box 3762 KIGALI - Tel: 252580600  
E-mail: info@rwandabar.org.rw  
www.rwandabar.org.rw

14/09/15  
*[Handwritten signature]*

**Bimenyeshejwe:**

- Nyakubahwa Perezida w'Urukiko rw'Ikirenga/Perezida w'Inama Nkuru y'Ubucamanza ;
- Bwana Umushinjacyaha Mukuru ;
- Bwana Perezida w'Urukiko Rukuru ;
- Bwana Umuyobozi Mukuru w'Urwego rw'Igihugu Rushinzwe Imfungwa n'abagororwa (RCS) ;
- Bwana Umuyobozi Mukuru w'Ubugenzacyaha muri Polisi y'Igihugu (CID).



**URUTONDE RW'ABAVOKA BAZAJYA BIYAMBAZWA MU MANZA Z'ABATISHOBOYE BOHEREZAWA  
KUBURANIRA MU RWANDA**

	LAST NAME	FIRST NAME	TELEPHONE	E-MAIL
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4	SHEMA T	Gerald	+250788304732	shemger@yahoo.com
5	RWABIGWI	Augustin	+250788505577	ruhunga@yahoo.fr
6	UMUTESI	R. Jeanne d'Arc	+250788468471	maitre.jeannedarc@gmail.com
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13	BIZIMANA SHOSHI	Jean Claude	+250788562554	jeanclaudebiz@yahoo.fr
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17	BUGABO	Laurent	+250788409295	bugalaurent@yahoo.fr

2014

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19	KABERA	Johnson	+250788302432	<a href="mailto:johnsonkabera@gmail.com">johnsonkabera@gmail.com</a>
20	MUREKATETE B	Marguerite	+250788754071	<a href="mailto:mbmuleka@yahoo.fr">mbmuleka@yahoo.fr</a>
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22	NTAGANDA KABARE	Ficsto	+250788531136	<a href="mailto:ntakafe@yahoo.fr">ntakafe@yahoo.fr</a>
23	BIGARABA RWAKA	John	+250788444869	<a href="mailto:bigarabajohn@gmail.com">bigarabajohn@gmail.com</a>
24	KABASENGA	Berthilde	+250788531743	<a href="mailto:uwonizeye@yahoo.fr">uwonizeye@yahoo.fr</a>
25	NDENGEYINGOMA	Louise	+250788511559	<a href="mailto:ndemalou@yahoo.fr">ndemalou@yahoo.fr</a>
26	MUBANGIZI	Frank	+250788302502	<a href="mailto:mubafra2002@yahoo.fr">mubafra2002@yahoo.fr</a>
27	TUGANUMUREMYI	Donata	+250788676762	<a href="mailto:donatug@yahoo.fr">donatug@yahoo.fr</a>
28	BIKOTWA	Bruce	+250788470696	<a href="mailto:brucebik@yahoo.fr">brucebik@yahoo.fr</a>
29	KARAMIRA	Jacques	+250788442258	<a href="mailto:jacqueskaramira@yahoo.fr">jacqueskaramira@yahoo.fr</a>
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35	HABINSHUTI	Yves	+250788290546	<a href="mailto:yveshuti@yahoo.fr">yveshuti@yahoo.fr</a>
36	RWAKAYIJAM	John	+250788511570	<a href="mailto:thaica_jr@yahoo.com">thaica_jr@yahoo.com</a>
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2013

A



39	RWISUMBURA UMUTONI	The,ese	+250788791133	<a href="mailto:theddy002@yahoo.fr">theddy002@yahoo.fr</a>
40	NGABONZIZA	Joseph	+250788757121	<a href="mailto:ngabo_jeff@yahoo.fr">ngabo_jeff@yahoo.fr</a>
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2012

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# Annex C

Uwinkindi's letter to the president of the High Court, dated 24 September 2015 (attachments deleted)  
and uncertified translation

**OTP – UNCERTIFIED TRANSLATION**

Kigali 24 September 2015

To the Honourable President of the Bench

in the case n° 0002/12/HCCI

B.P. 101, Kigali, Rwanda

E-mail: info.highcourt@judiciary.gov.rw

Through: The Director of Nyarugenge Prison (Prison 1930)

B.P. 14 Kigali, Rwanda

E-mail: pck1930@yahoo.com

**Subject:** Reaction to the List of counsels received from the Bench at trial on 23 September 2015  
in the case n° RP 0002/12/HCCI

Honourable President,

I. PREAMBLE

In the framework of the implementation of the directives given to me by the High Court during the recent hearing of 23 September 2015, when I was given a List of counsels to choose from, I am writing this letter to present my position thereon.

1. I would like to highlight once again that the National Public Prosecution Authority which is a party to my case, also played an important role in forcing on me counsels on whom it has influence to protect its own interest.
2. I would like to remind you again that the List of 66 counsels arose from the directives of the Ministry of Justice as prescribed in the Announcement (Annex 1). These directives

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caused the removal of some counsels (their names do not appear on the List) from the documents forwarded to the ICTR on 22 January 2012 by the Rwanda Bar Association.

3. Honourable President, the List of 66 counsels finds its roots from the Ministry of Justice which is also the heart of the challenges I am facing in relation to my judicial and legal assistance (Annex 2).
4. In addition, the Ministry of Justice is also a party to my case against the Prosecutor General (Paragraph 1 of Article 162 of the *Constitution of the Republic of Rwanda*): “The National Public Prosecution Authority shall be under the authority of the Ministry in charge of Justice.”
5. Honourable President, I can see that 66 over 661 counsels on the List are qualified to provide judicial and legal assistance up to the level of the Supreme Court (see para 3). Messrs Ngabonziza and Hisbamunda are among that number and have agreed to collaborate with the Public Prosecution Authority to protect the interest of the latter.
6. During the hearing of 23 September 2015, I was requested more than 10 times to choose a counsel from the List that was handed over to me in court. I responded more than 11 times.
7. It reached a point where I was even given 30 minutes after which I should have responded, as mentioned on page 6 of the hearing records of 23 September 2015.
8. I would like to remind here that even when I was forced to respond, I explained that I came to court to show that I did not have any judicial and legal assistance, one of the major obstacles to my defence in accordance with my rights provided by the law. Other obstacles to judicial and legal assistance were related to the fact that we did not have the same position on the matter. This explains why there is a case file opened before the Mechanism. After providing my responses before the High Court, I was given a List of 68 counsels and was requested to go home with it and then forward to the Court my response.
9. It is in that context that I wanted to inform you the following on Friday 25 September at 11.00.

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- A. Taking into account the List of 68 counsels who can provide judicial and legal assistance to accused persons transferred to Rwanda by the ICTR or other foreign jurisdictions;
  - B. Taking into account also the Announcement of 22 September 2015, related to providing judicial and legal assistance to the indigent and signed by Counsel Jean Vianney Nduwamungu, President of the Rwanda Bar Association;
  - C. Referring to paragraph 13 of the Amicus Curiae Brief of 26 April 2011, forwarded by the President of the Rwanda Bar Association under reference n° 147, where he highlighted having 686 counsels endowed with international experience and 360 counsels who had just started practicing;
  - D. Referring also to the List forwarded by the President of the Rwanda Bar Association to Emmanuel Mbarushimana, through a letter dated 6 April 2015, following the Decision of 25 March 2015 of the High Court's Specialised Chamber trying international and cross-border crimes ;
10. For the aforementioned, it is clear that:
- A. The Court itself publicly recognized that choosing one's counsels pursuant to the law is the very basis of the List of 68 counsels given to me to choose from and then provide a response, in accordance with the Decision of 25 March 2015 in relation to Mbarushimana, as indicated in the abovementioned Amicus Curiae Brief;
  - B. The List and the Announcement lead to the issue of FRW fifteen (15) million. This is not the question of choosing one's counsels because it is the High Court that forced me to choose from the List of counsels who would provide me judicial and legal assistance, and this constitutes the main reason of this letter. This List cannot constitute the basis of depriving me of my counsels and then become an instrument of fulfilling their objective of denying me the right to defence, which is provided by paragraph 3 of Article 18 of the Constitution of the Republic of Rwanda which stipulates that: "*the right to be informed of the nature and cause of charges and the*

**OTP – UNCERTIFIED TRANSLATION**

*right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs”;*

C. The List contains names of counsels who were deliberately selected from the Amicus Curiae Brief that was used at the time of requesting for the transfer of ICTR cases to Rwanda and constitutes the basis of the Decision to transfer my case to Rwanda;

D. The reason of deliberately selecting them is related to the entire content of the Affidavit of the Ministry of Justice of 15 February 2011, reference n° 108. The Affidavit explains that there would not be any problem and that funds were available to ensure the successful conduct of these proceedings.

**II. COMMENTS ON THE LIST**

11. The List does not contain the names of the counsels of the international category that were mentioned in the Amicus Curiae Brief. This is the first aspect showing the deliberate selection. The Announcement also mentioned other counsels that are providing or have been providing legal assistance to accused persons transferred before Rwandan courts by international courts or other foreign jurisdictions. Here it is known that the counsels that pleaded in cases like ours are the defence counsels of a certain Charles Bandora. These counsels were initially paid by the Accused himself, but when the proceedings were half way, the Accused's financial position weakened and an additional amount of RFW 15 million mentioned by the President of the Rwanda Bar Association was later paid. Those counsels from the list have not pleaded in any known case which is similar to mine. Only the counsels they are forcing on me have pleaded in such cases.

12. The List clearly shows that some or all the counsels mentioned are counsels who are assigned. The Announcement diverts attention so that they should write to apply but taking into account the way the Prosecution was insisting before the High Court that Pastor Jean Uwinkindi will be assisted by these counsels; whether he likes it or not, this implies that these people agreed to follow to the letter the directives of the Public Prosecuting Authority and of those who appointed them.

**OTP – UNCERTIFIED TRANSLATION**

13. It is evident that such counsels do not defend the interests of the Accused except just standing in court, without saying anything, without asking any question or without challenging the Prosecution arguments while they should do the contrary when examining the witnesses or following their depositions to be able to rely on the witness statements when defending the accused and providing judicial and legal assistance to their client. This is how counsels perform their functions. For example, during the proceedings of Charles Bandora, some of the Prosecution witnesses mentioned the names of the Prosecutors who prepared them by telling them what they should accuse him with in court and who even promised them a reward. Surprisingly, his counsels did not take it up from those controversial depositions that clearly talked about the Prosecution rewards, but decided to keep quiet as reported several times by different radio stations here in Rwanda. This was mentioned again by Martin Witteveen, an expert in the Rwandan Prosecution General Office, in paragraphs 41 to 44 of his report of 3 June 2015.
14. With regard to the abovementioned, the counsels constitute an obstacle to the interest of the Accused, starting from the counsels that were present in one case they managed to plead of *Bandora*. These counsels are criticized by Martin Witteveen and I did not stop highlighting it, and I am once again insisting that none from the counsels mentioned on the List can provide me with judicial and legal assistance.
15. Pursuant to paragraph 3 of Article 18 of the Constitution of the Republic of Rwanda, I have the right to judicial and legal assistance. The Defence should rely on the Prosecution depositions but up to now, this has become a very major obstacle. This goes together with the right to a counsel of one's choice as was publicly acknowledged by the Court and as it appeared in paragraph 12 of the Amicus Curiae Brief of 26 April 2011 of the President of the Rwanda Bar Association, filed before the ICTR in Arusha under reference n° 147. In addition, the Announcement of the Bar Association also insists on judicial and legal assistance.
16. Judicial and legal assistance provided by counsels of one's own choosing was also acknowledged by Counsel Mugabe, Secretary General of the Rwanda Bar Association



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before the Monitor in paragraph 39 of the monitoring report of 27 January 2015 under reference n° 840.

17. Withdrawing my experienced counsels for unfounded grounds is one of the elements that bring undue delay to the proceedings that is the very basis of the submission of the issue to the Mechanism

**III. CONCLUSIONS**

18. Honourable President of the High Court, I am reiterating my statements made at trial. First of all, I am being stripped off my right to defence and then I am forced to plead while this is why my response was not in detail. On this issue, I am insisting that I cannot choose from the List given to me because of the abovementioned obstacles. I am referring again to the way this issue is not seen in the same way by the Prosecution and the Court. This is the reason why the matter is now before the Mechanism and we are waiting for its ruling. I am once again requesting Rwanda to fulfil its commitments made before the transfer of my case to Rwanda, in this way I will be given a fair trial.

c.c.:

- The President of the Mechanism
- President of the High Court's Specialised Chamber  
trying international and cross-border crimes
- The National Public Prosecution Authority
- The Monitor of the Uwinkindi Case

Kigali, kuwa 24/09/2015

Nyakubahwa Prezida w'inteko mu rubanza n° RP 0002/12/HCCI

B.P 101 Kigali, Rwanda

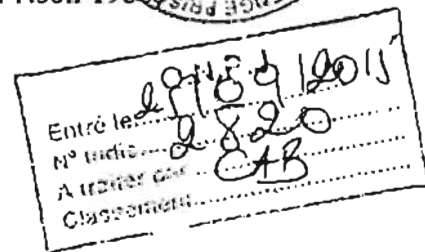
Courriel (E-mail) : [info.highcourt@judiciary.gov.rw](mailto:info.highcourt@judiciary.gov.rw)



Binyujijwe ku buyobozi bwa gereza ya Nyarugenge (Prison 1930)

B.P 14 Kigali, Rwanda

Courriel (E-mail) : [pck1930@yahoo.com](mailto:pck1930@yahoo.com)



**Impamvu:** Igisubizo ku rutonde rw'abavoka nahamwe n'inteko y'abacamanza mu iburanisha ryo kuwa 23/09/2015, mu rubanza RP 0002/12/HCCI

Nyakubahwa Prezida,

### I. INTANGIRIRO

Mu rwego rwo kubahiriza ibyo nasabwe n'Urukiko Rukuru mu iburanishwa riheruka ryo kuwa 23/09/2015, aho nahawe lisiti y'abavoka ngo ngomba guhitamo. Muri urwo rwego mboherereje iyi baruwa ijyanye n'icyo mbivugaho.

1. Ndifuzza kongera kubagaragariza ko Ubushinjacyaha Bukuru mburana nabwo bufite uruhare rukomeye mu kumpatira abavoka Ubushinjacyaha bufite ho ijambo mukurengera inyungu zabwo.
2. Nagiraga ngo mbibutse kandi ko urwo rutonde rw'abavoka 66 rukomoka ku mabwiriza ya Minisiteri y'Ubutabera nk'uko tubisanga mw'itangazo riri ku mugereka (umugereka wa 1). Amabwiriza yatanzwe yatunye aheza bamwe mu bavoka (amazina yabo ntaboneka kuri urwo rutonde) bari mu nyandiko Urugaga rw'abavoka mu Rwanda rwoherereje Urukiko mpanabyaha mpuzamahanga rwashyiriwe ho u Rwanda (TPIR) ku ya 22/01/2012.

3. Bityo rero, Nyakubahwa Prezida. urwo rutonde rw'abavoka 66 rufite inkomoko ya rwo muri Ministeri y'Ubutabera kandi akaba ari nayo shingiro ry'ibibazo mu birebana n'ubwunganizi bwanjye (reba umugereka wa 2).
4. Ikindi kandi Minisiteri y'Ubutabera nayo ni umuburanyi mu rubanza mburana n'Ubushinjacya Bukuru (Ingingo ya 162 igika 1 y'*Itegekoshinga rya Repubulika ya Rwanda*) : « Igira iti. Ubushinjacyaha bukuru bwa Repuburika bugengwa mu mirimo. Yabwo na Minisitiri ufite ubutabera mu nshingano ze. »
5. Nyakubahwa Prezida, ndabona urwo rutonde rw'abavoka (abunganizi) 66 kuri 661 bafite ubushobozi bwo kunganira kugeza mu Rukiko rw'Ikirenga (reba umugereka wa 3) ari uruherekane rw'abavoka (abunganizi) 66 nk'uko Ngabonziza na Hishamunda bari mu bagize uwo mubare biyemeje gufatanya n'Ubushinjacyaha mu kurengera inyungu z' Ubushinjacyaha.
6. Mu iburanisha ryo kuwa 23/09/2015 nasabwe incuro zirenga icumi 10 ngo mpitemo umwavoka mururwo rutonde nari mperewe mu rukiko. Nasubije incuro zirenze cumi nimwe 11
7. Byageze naho mpabwa iminota mirongwitatu 30 ngombe maze gusubiza nkuko biri ku Rupapuro rwa gatandatu. Mu nyandiko mvugo y'urukiko yo kuwa 23/09/2015.
8. Aha nakwibutsa ko n'ubwo nahatirwaga gusubiza, nari natangiye mvuga ko nitabye kugira ngo mbagaragarize ko ntafite ubwunganizi, kimwe mu nzitizi zikomeye kugira ngo mbashe kwiregura mu burenganzira mpabwa n'amategeko. Izindi nzitizi zijyanye n'ikibazo cy'ubwunganizi, zari zikubiye mu kwerekana ko, uko kutabibona kimwe aribyo byatumye hari dosiye iri muri Mecanisme Nyuma y'ibisubizo natangiye mu Rukiko Rukutu. nahawe LISITI iriho abavoka 68. Nsabwa ko nyitahana ngo nkazaboherereza igisubizo.
9. Ni muri urwo rwego nituje kubagezaho ibi bikurikira:kuwagatanu tariki ya 25/09/2015 saa 11h00
  - A. Maze kwitegereza iyo lisiti y'abavoka 68. ngo bo kuburanira abantu boherejwe n'Urukiko mpanabyaha Mpuzamahanga ku rwanda TPIR, n'ibindi bihugu ;
  - B. Maze kubona itangazo ryo kuwa 22/09/2015, ryerekeye kuburanira abatishoboye, ryashyizweho umukono na Me Jean Vianney NDUWAMUNGU, umukuru w'Urugaga rw'Abavoka mu Rwanda ;
  - C. Nshingiye kuri Amicus Curiae yo kuwa 26 April 2011. yatanzwe n'umukuru w'urugaga rw'abavoka mu Rwandakuri cote 147, igika cya 13,

aho yagaragaje ko afite abavoka 686 b'inzobere mu manza ku rwego mpuzamahanga, hamwe n'abavoka 360 b'abatangizi ;

D. Nifashishije urutonde umukuru w'urugaga rw'abavoka mu Rwanda yoherereje Emmanuel MBARUSHIMANA, mu ibaruwa yo kuwa 06/04/2015, bitegetswe n'unukiko Rukuru, urugereko ruburanisha abyaha mpuzamahanga n'ibyambukiranya imbibi. mu cyemezo cyarwo cyo kuwa 25/03/2015.

10. Mpereye ku byavuzwe haruguru ndasanga bigaragara ko:

A. Urukiko ubwarwo rwemera ihame ryo kwihitiramo abunganizi umuburanyi ahabwa n'amategeko, ariyo mpamvu haba kubirebana n'iriyi LISITI y'abavoka 68 nahawe ngo nzahitemo nohereze igisubizo, haba ibyakozwe mu cyemezo cyo kuwa 25/03/2015 kuri MBARUSHIMANA, kimwe n'ibivugwa muri Amicus Curiae byose byavuzwe haruguru.

B. Urutonde kimwe n'itangazo byerekeza ku kibazo cy'amafaranga miliyoni cumi n'eshanu.15 Ntabwo ari ikibazo cyo kwihitiramo abunganizi kuko Urukiko Rukuru nirwo rwansabye (rwantegetse) guhitamo kuri iyo lisiti abanyunganira, ari naho haturutse impamvu nyamukuru y'iyi baruwa. Iyi lisiti ntiyaba impamvu yo kwamburwa abavoka banjye ngo hafatwe umugambi wo kuburizamo uburyo bwo kwiregura no kunganirwa mpabwa n'Itegeko Nshinga mu ngingo yaryo ya 18. igika cyaryo cya gatatu, aho rigira riti:kwirigura no kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi iz'ubucamanza n'izindi zose zifata ibyemezo.

C. Urutonde ikiruriho ni abavoka bajogowe mu bavoka Amicus Curiae yakoresheje isaba iyoherezwa ry'imanza mu Rwanda zivuye muri TPIR, ari naho havuye imyanzuro yo kunyohereza hano mu rwanda.

D. Impamvu yo kubajonjora ihabanye n'ibivugwa muri Affidavit ya Ministiri w'ubutabera yo kuwa 15 February 2011. cote 108 yose uko yakabaye. Isobanura ko nta kibazo kizabaho kuko yerekana ko amafaranga ahai kugira ngo habe imigendekere myiza y'izo manza.

## II. INENGE YA LISITI

11. Urwo rutonde ntirugaragaraho abavoka bavuzwe muri Amicus Curiae, bo ku rwego mpuzamahanga, icya mbere kigaragaza ko bajonjowe. Ikindi ni uko mu itangazo havuga ngo hari n'abandi bunganira cyangwa bagiye bunganira abakurikiranyweho ibyaha boherezwa n'inkiko mpuzamahanga cyangwa ibindi

bihugu. Aha ikizwi ni uko abavoka bigeze kuburana imanza nk'izi zacu, ni abavoka buwitwa Charles BANDORA ubwe yihemberaga, ageze mu rubanza hagati, ingufu ziba nkeya, bongererwa miliyoni cumi n'eshanu 15 zivugwa n'umukuru w'urugaga rw'abavoka mu Rwanda. Nta zindi manza zizwi, zaburanyemo abavoka nk'abavugwa uretse abo bampambiraho.

12. Urwo rutonde, icyagaragaye ni uko bamwe mu bariho cyangwa se bose, ni abavoka bagenwa. Itangazo riyobya uburari ngo bazandike babisaba ariko hakurikijwe ukuntu ubushinjacyaha bwabwiraga Urukiko Rukuru ngo Pasteur Jean UWINKINDI abo bavoka bazamuburanira abyemera atabyemera, bivuga ngo ni abantu baba bemeye gukurikiza ibyo ubushinjacyaha n'ababashyiraho bavuga.
13. Icyagaragaye ni uko abavoka nk'abo, ntabwo baharanira inyungu z'uregwa uretse guhagarara mu rukiko. ntibavuge. ntibabaze cyangwa ngo bavuguruzanye n'ubushinjacyaha kandi ariko bigomba kugenda, ngo babaze abatangabuhamya cyangwa ngo bakurikirane ibyo bavuga kugira ngo babyifashishe mu gufasha uwo bunganira bahereye ku byo batangaza maze bamushinjura dore ko ariko kazi kabo nk'abunganizi. Urugero ni aho abatangabuhamya mu rubanza rwa Charles BANDORA bamwe mu batangabuhamya b'ubushinjacyaha bavuze amazina y'abashinjacyaha babateguriye ibyo bazamushinje ndetse bakabemerera n'ibihembo. Icyatangaje ni uko abo bavoka be batahereye kuri izo mvugo zivuguruza kandi zikagaragaza ibihimbano by'ubushinjacyaha. ahubwo bakicecekerank'uko byavuzwe kenshi ku maradiyo atandukanye hano mu Rwanda. Ibi bikaba byaragarutseweho na MARTIN WITTEVEEN, umu EXPERT w'ubushinjacyaha bukuru hano mu Rwanda. muri rappeort ye yo kuwa 03/ June 2015, mu bika bya 41 kugeza kuri 44.
14. Ku bw'ibi bivugwa haruguru, abavoka babangamira inyungu z'uregwa uhereye ku bavoka bagaragaye mu rubanza rumwe bashoboye kuburana rwa BANDORA, bakaba banengwa n'uyu mu MARTIN WITTEVEEN nanjye nkaba ntarahwemye kubigaragaza, nongeye kubishimangira ko ntawamburanira urimo.
15. Kunganirwa ni uburenganzira bwanjye mu kwiregura nk'uko byemezwa n'Itegeko Nshinga mu ngingo yaryo ya 18. igika cya gatatu. Kwiregura kugashingira ku buhamya bushinjura ariko ibyo kugeza ubu bikaba byarabayeho imbogamizi ikomeye. Bijyana kandi n'umwavoka umuntu yihitiyemo nk'uko ikigaragara n'urukiko rwemera iryo hame. bikaboneka no muri Amicus Curiae

yo kuwa 26 April 2011, yatanzwe Arusha n'umukuru w'urugaga rw'abavoka mu Rwanda cote ya 147 igika cya 12. Ikindi ni uko itangazo ry'urugaga rw'abavoka naryo rishimangira ukunganirwa.

16. Kunganirwa n'abavoka umutnu yihitiyemo byongera gushimangirwa na Me MUGABE, umunyamabanga mukuru w'urugaga rw'abavoka mu Rwanda aho yabibwiye Monitor muri Raporo yo kuwa 27 January 2015 cote 840 mu gika cya 39.

17. Kwamburwa abavoka b'inzobere ku mpamvu zidasobanutse bikaba kimwe mu bidindiza urubanza, cyatumye ikibazo kigera muri Mecanisme.

### III. UMWANZURO

Mu gusoza, nyakubahwa Perezida w'Urukiko Rukuru, ndongera kwitsa, ku byo navugiyeye mu rukiko. Mbere na mbere, ndavutswa uburenganzira bwo kunganirwa ahubwo ngahatirwa kuburana ari cyo cyatumye mu bisubizo natanze byabaga bitarambuye. Ku bw'ibyo, ngashimangira ko ntashobora guhitamo ku rutonde nahawe ku mpamvu zijyanye n'inzitizi natanze. Nkagaruka ku kuntu iki kibazo tutavugaho runwe haba ubushinjacyaha n'urukiko aribyo byatumye urubanza ubu ruri muri mecanisme, aho dutegeeje imyanzuro izavamo. Nkongera gusaba ko hakubahirizwa ibyo u Rwanda rwemeye mbere y'uko hafatwa ibyemezo byo kunzana kuburanira hano mu Rwanda, bityo nkabona ubutabera bunyuze mu mucyo.

#### BIMENYESHEJWE:

- Perezida WA MECANISME
- Perezida w'urugereko rwihariye rushizwe kuburanisha urubanza
- Murwego rwa Mecanisme
- ✓ - Ubushinjacyaha bukuru
- Monitor for the Uwinkindi case
- 

Pasteur Jean UWINKINDI 

# Annex D

Decision of the High Court of Rwanda, 29  
September 2015

Icyemezo mu rubanza RP 0002/12/HCCI

URUKIKO RUKURU, URUGEREKO RWIHARIYE RUBURANISHA IBYAHA BYO MU RWEGO MPUZAMAHANGA N'IBYAHA BYAMBUKA IMBIBI, RURI I KIGALI RUHABURANISHIRIZA URUBANZA RW'INSHINJABYAHA MU RWEGO RWA MBERE RUKIJIJE MU RUHAME URUBANZA RUBANZIRIZA URUNDI MU RUBANZA RP 0002/12/HCCI MU RUHAME KUWA 29/09/2015 MU BURYO BUKURIKIRA:

HABURANA

UBUSHINJACYAHA

na

UREGWA:

UWINKINDI Jean mwene Subwanone na Nlizisigwa wavutse mu 1951 muri Rutsiro mu cyahoze ari perefegitura ya Kibuye, muri Repubulika y'u Rwanda, kugeza muri 1994 yari atuye mu cyahoze ari Kigali Ngali, muri komine Kanzeze, secteur Kayumba, selire Gatare; yashakanye na Kabagwira Rose, bafitanye abana umunani(8), umupasitori, umunyarwanda, ntacyo atunze, ubu akaba atungiyeye muri Gereza Nkuru ya Kigali nyuma yo koherezwa mu Rwanda n'Urukiko Mpanabyaha Mpuzamahanga washyirwaho u Rwanda kugira ngo akurikiranwe ku byaha akekwaho yaba yarakoreye mu Rwanda. Yunganiwe na Me NGABONZIZA Joseph na Me HISHAMUNDA Issacar.

IBYAHA AREGWA:

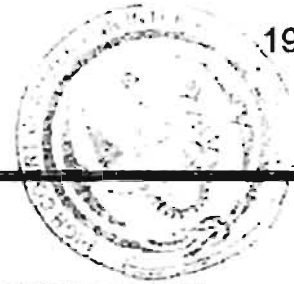
- icyaha cya jenocide giteganywa kandi kigahanishwa ingingo ya 114 na 115 z'igitabo cy'amategeko ahana ibyaha mu Rwanda, n'ingingo ya mbere ndetse n'ya 3(c) ya 'Convention on the Prevention and punishment of the Crime of Genocide';
- icyaha cy'itsembatsemba nk'icyaha cyibasiye inyoko-muntu giteganywa kandi gihanishwa ingingo za 120 agace kayo ka 2 ndetse n'ingingo ya 121 z'igitabo cy'amategeko ahana ibyaha mu Rwanda.



<sup>1</sup> icyemezo cya General Assembly Numero 206(iii)cyo kuwa 9 december 1948 cyasinywe n'u Rwanda kandi kinjizwa mu mategeko y'u Rwanda n'itegeko-iteka numero 08/75 yo kuwa 13/02/1975. bishyirwa mu Igazeti ya Leta y'u Rwanda(1975), p 230.



Icyemezo mu rubanza RP 0002/12/HCCI



**I. IMITERERE Y'IKIBAZO**

1. Mu iburanisha ryo kuwa 23/09/2015, Ubushinjacyaha ~~bwasabye ko hakwemezwa ko~~ mu nyungu z'ubutabera no mu rwego rwo kugera ku rubanza ruboneye, UWINKINDI Jean yahabwa urutonde rushya rw'abavoka bemerewe kuzajya bunganira abaregwa mu manza zavuye mu Rukiko Mpanabyaha Mpuzamahanga washyiriweho u Rwanda n'izavuye mu bindi bihugu rwatanzwe n'Urugaga rw'abavoka akihitiramo.
2. Hakaba hagomba gusuzumwa niba ari ngombwa ko UWINKINDI Jean ahabwa urutonde rushya rw'abavoka kugira ngo yihitiremo abamwunganira aho gukomeza kunganirwa n'abo yagenewe n'Urugaga rw'abavoka.

**II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA**

3. Ubushinjacyaha, nyuma yo kubona ko UWINKINDI Jean adashaka gukorana n'abavoka yagenewe n'urugaga rw'abavoka ari bo Me HISHAMUNDA Issacar na Me NGABONZIZA Joseph, ~~bwasabye ko hakwemezwa ko~~ mu nyungu z'ubutabera no mu rwego rwo kugera ku rubanza ruboneye, UWINKINDI Jean yahabwa urutonde rushya rw'abavoka bemerewe kuzajya bunganira abaregwa mu manza zavuye mu Rukiko Mpanabyaha Mpuzamahanga washyiriweho u Rwanda cyangwa izavuye mu bindi bihugu rwatanzwe n'Urugaga rw'abavoka akihitiramo.
4. Busobanura ko nubwo hafashwe ibyemezo mu nyungu z'ubutabera by'uko Me HISHAMUNDA na Me NGABONZIZA baguma mu rubanza, nubwo UWINKINDI Jean atabemera, butekereza ko icyaricyo cyose cyatuma haba urubanza ruboneye cyakorwa kugira ngo ibibazo bikemuke. Ubushinjacyaha bukaba busaba ko, nubwo hari ibyemezo byinshi byagiye bifatwa, kuba harabonetse urutonde rw'abavoka rushya, aho Urugaga rwahisemo abavoka babifiliye ubushobozi n'ubunararibonye, UWINKINDI Jean yahitamo abo bashobora gushyikirana nabo bakamwunganira kugira ngo urubanza rukomeze, noneho yaba abahisemo Me HISHAMUNDA na Me NGABONZIZA bayiraho, bikaba amahire.
5. Busaba ko mu gihe yaba yanze kugira abo ahitamo kuri urwo rutonde, byafatwa nk'aho yivukije uburenganzira ahabwa bwo kugenerwa abamwunganira, noneho urukiko rukagena abavoka baba nk'indorezezi (abo ubushinjacyaha bwise abavoka ba 'protocole').
6. UWINKINDI Jean avuga ko kugeza ubu atunganiwe kandi ko adashobora guhitamo abamwunganira ku rutonde rushya rw'abavoka yahawe kuko hatagaragaramo abavoka bo ku rwego mpuzamahanga bavuzwe mu rutonde rwatanzwe n'umukuru w'urugaga rw'abavoka mu Rwanda mu

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rubanza rwabaye kuwa 26/04/2011 mu Rukiko Mpanabyaha Mpuzamahanga washyiriweho u Rwanda aho urugaga rw'abavoka mu Rwanda rwaburanye mu rwego rwa 'amicus curiae', kandi ko urwo rutonde rushya rutaba impamvu yo kwamburwa abavoka be ngo hafatwe umugambi wo kuburizamo uburyo bwo kwiregura no kunganirwa ahabwa n'itegeko Nshinga .

7. Me NGABONZIZA na Me HISHAMUNDA bavuga ko basomye dosiye kandi biteguye kuburana ariko ko bagize imbogamizi bitewe n'uko UWINKINDI Jean yanze gushyikirana nabo.

## UKO URUKIKO RUBIBONA

8. Ku itariki ya 21/01/2015, urukiko rumaze kubona ko UWINKINDI Jean alunganiwe kuko Me GATERA GASHABANA na Me NIYIBIZI Jean Baptiste bivanye mu rubanza, rwafashe icyemezo cyo gusaba inzego zibishinzwe kumufasha kubona ubwunganizi.
9. Ku itariki ya 05/02/2015, UWINKINDI Jean yitabye Urukiko hari na Me NGABONZIZA Joseph na Me HISHAMUNDA Issacar bagenwe n'Urugaga rw'abavoka kugira ngo basimbure Me GATERA GASHABANA na Me NIYIBIZI Jean Baptiste mu kunganira UWINKINDI Jean. UWINKINDI Jean yamenyesheje Urukiko ko Me NGABONZIZA Joseph na Me HISHAMUNDA Issacar atari abunganizi be kuko asanga bagenwe mu buryo bunyuranyije n'amategeko bitewe n'uko atahawe urutonde rw'abavoka ngo yihitiremo.
10. Ku itariki ya 06/02/2015, urukiko rwafashe icyemezo ko Me NGABONZIZA Joseph na Me HISHAMUNDA Issacar bagenwe n'Urugaga rw'abavoka nk'abunganizi b'UWINKINDI Jean mu buryo bukurikije amategeko.
11. UWINKINDI Jean yajurirye icyo cyemezo mu Rukiko RwiKirenga. Ku itariki ya 24/04/2015 mu rubanza RPA 0011/15/CS, urwo rukiko rwemeje ko icyo cyemezo kigumyeho.
12. Ku itariki ya 02/06/2015, Ubushinjacyaha kwasabye ko mu gihe UWINKINDI Jean akomeje kwanga abavoka yagenewe nk'utishoboye, busaba urukiko gutata icyemezo cyo kubagumisha, bagahabwa itabwo mu rubanza, mu nyungu z'ubutabera kubera ko urubanza rukomeye.
13. Ku itariki ya 09/06/2015, urukiko rwafashe icyemezo cy'uko mu nyungu z'ubutabera no mu rwego rwo kubahiriza ihame ry'uko ababuranyi bagomba guhabwa amahirwe angana ajyanye n'uburyo bw'imiburantse (égalité des armes), UWINKINDI Jean agomba kunganirwa n'abavoka yagenewe nubwo atabashaka. Rwemeje ko nubwo atemera abo



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bunganizi, ubumenyi bwabo nk'abanyamwuga buzatuma urukiko rurushaho kugera ku rubanza ruboneye.

14. Urukiko rusanga ibisabwa n'Ubushinjacyaha nta shingiro bifite kubera impamvu zikurikira:

- Ku bijyane no guha UWINKINDI Jean uburenganzira bwo kwihitiramo abunganizi, nk'uko byagaragajwe mu bika bya 10/08/11, urukiko rwabifasheho umwanzuro ndakuka ku buryo rudashobora kubigarukaho.
- Ku bijyanye n'urutonde rushya rw'abavoka bazajya biyambazwa mu manza nshinjabyaha z'abatishoboye boherezwa kuburanira mu Rwanda rwatanzwe n'Urugaga rw'abavoka, urukiko rusanga urwo rutonde nta gishya ruzana muri uru rubanza cyane ko Me HISHAMUNDA na Me NGABONZIZA baruhohotse na UWINKINDI Jean akaba yaranditse avuga ko nta mwunganizi wo kuri urwo rutonde yahitamo kuko hatagaragaramo abavoka bo ku rwego mpuzamahanga bavuzwe mu rutonde rwatanzwe n'umukuru w'urugaga rw'abavoka mu Rwanda mu rubanza rwabaye kuwa 26/04/2011 mu Rukiko Mpanabyaha Mpuzamahanga washyirirweho u Rwanda, aho urugaga rw'abavoka mu Rwanda rwaburanye mu rwego rwa 'amleus curiae'.



- Ku bijyanye no kwemeza ko UWINKINDI Jean yaba yivukije uburenganzira bwo kunganirwa mu gihe yaba atemeye guhitamo abunganizi ku rutonde rushya. Urukiko rusanga rutakwemeza ko UWINKINDI Jean yivukije uburenganzira bwo kunganirwa, kuko mu cyemezo rwafashe kuwa 09/06/2015 rwemeje ko mu nyungu z'ubutabera UWINKINDI Jean agomba kunganirwa yaba abyemeraga, cyangwa atabyemeraga;
- Ku bijyanye n'imbogamizi zishingiye ku kuba UWINKINDI Jean adashyikirana n'abunganizi yagenewe, Urukiko rusanga na byo atari bishya kuko ubwunganizi bwabo budashingiye gusa mu gushyikirana na UWINKINDI Jean ahubwo bushingiye cyane cyane kubunararibonye bafite mu gusesengura ikirego n'ibimenyetso, cyane ko ibikorwa (les faits) n'ubuhamya bunyuranye bishingirwaho n'Ubushinjacyaha burega UWINKINDI Jean byasesenguwe ku buryo burambuye n'abunganizi ba mbere (aribo Me GASHABANA na Me NIYIBIZI Jean Baptiste) UWINKINDI Jean yemeraga kandi bashyikiranaga, bikorwa mu nyandiko no mu iburanisha nk'uko bigaragazwa n'imyanzuro yabo n'inyandiko-mvugo z'iburanisha.
- Kubijyanye no gushyiraho abavoka ba 'protocols' mu gihe UWINKINDI Jean yaba yivukije uburenganzira bwo kunganirwa, Urukiko rusanga amategeko y'u Rwanda nta b'abavoka ba 'protocol' ateganywa, abateganywe ari abunganira cyangwa abahagararira ababuranyi.

Icyemezo mu rubanza RP 0002/12/HCCI

III. ICYEMEZO CY'URUKIKO

15. Urukiko rwemeje ko icyifuzo cy'Ubushinjacyaha nta shingiro gifite;
16. Rutegetse ko iburanisha rizasubukurwa ku itariki ya 15/10/2015 saa mbili n'igice.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE TARIKI YA 29/09/2015.

Sé  
NGENDAKURIYO R. Alice  
Perezida

Sé  
KANYEGERI Timothée  
Umucamanza

Sé  
NSANZIMANA Fidèle  
Umucamanza

Sé  
UWASE Zila  
Greffier

Copie certifiée conforme à l'original  
Fait à KIGALI, le 02/10/2015  
Greffier: U. M. A. S. E. ...

