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(79 bis - 76 bis)

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MICT-12-25
16 September 2013
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From:

Gatera Gashabana
Jean Baptiste Niyibizi
Lawyers

Received by the Registry
Mechanism for International Criminal Tribunals
11/10/2013 10:43

McCauley Carter

Kigali, 14 September 2013

Received by the Registry
Mechanism for International Criminal Tribunals
16/09/2013 15:35
/a signature/

To: Judge Theodor Meron
President of the Mechanism
of the International Criminal
Tribunal for Rwanda

Subject: REQUEST TO REMOVE *THE PUBLIC PROSECUTOR V. JEAN UWINKINDI* CASE, RP 0002/12/HCCI, FROM THE HIGH /COURT's/ EXTERRITORIAL CHAMBER RESPONSIBLE FOR INTERNATIONAL AND CROSS-BORDER OFFENCES

Dear Mr. President,

We are writing to you in our capacity as Defence Counsel for the Accused Jean Uwinkindi who was transferred to Rwanda on 19 April 2012 following a court decision rendered by the Trial Chamber of the International Criminal Tribunal for Rwanda and confirmed by the Tribunal's Appeals Chamber.

Pastor Jean Uwinkindi sent us a request written in the national language, a copy of which is attached, requesting that his case no. **RP 0002/12/HCCI** pending before the High Court's Exterritorial Chamber responsible for international and cross-border offences be removed from the Court.

He asked us to transmit it to you immediately through the monitoring mechanism in Kigali.

Given the urgency, we would like to apologise for not having had enough time to have it translated but we promise to have the translation sent to you as soon as possible.

We would nevertheless like to draw your attention to the obstacles and difficulties both our client and we faced following his transfer to the Rwandan court on 19 April 2012. They are the following:

- The non-compliance by the Government of the Republic of Rwanda with the obligations jointly agreed upon with the International Criminal Tribunal.
- The Ministry of Justice refuses, without reason, to allocate the necessary funds to the defence team that would allow it to contact defence witnesses. This obstruction is a violation of Rule 11 *bis* of the Rules of Procedure and Evidence which states that **the accused must receive a fair trial in the courts of the State concerned.**
- Our client has only one defence team which has been reduced to merely two lawyers and which has no legal assistants or investigators. The Ministry of Justice threatens to reduce his defence to one lawyer under the pretext of budgetary difficulties which is contrary to what it had agreed to prior to the transfer.
- Since February 2013, Defence Counsel have not been paid their fees in spite of the agreement on relevant practical modalities such as payment time limits. They are working without compensation under conditions that do not meet the minimum required standards. This is a clear violation of the Basic Principles on the Role of Lawyers **which under item 4 recommends to governments to plan sufficient funds and other resources to provide judicial services to disadvantaged persons.**
- Further, the defence team has been openly subjected to acts of intimidation by the Prosecution and with the knowledge of the Judges ruling in this case, contrary to the basic principles on the profession of lawyers in Rwanda. To prove this, at the public hearing on 5 September 2013, Defence Counsel requested to have the case postponed so as to obtain the necessary funds in order to contact defence witnesses in Rwanda and abroad.
- When called upon to submit its arguments on the request, the Prosecution made serious threats towards Defence Counsel, claimed that these were stalling tactics in order to spend Rwandan taxpayers' money and went as far as to call them crooks. **Such conduct is a serious impediment to the exercise of a lawyer's profession which requires that lawyers, as essential agents in the administration of justice, constantly maintain the honour and dignity of their profession.**
- In spite of our vehement protests, the bench remained impassive before such a situation and seemed rather inclined towards the Prosecution's elaborate insinuations as it completely disregarded the rights of the defence which, in accordance with Article 18(3) of our Constitution, are absolute in all respects and at all stages of the proceedings.
- Following this, local and even foreign media carried these false allegations in their columns.
Defence Counsel were presented to the Rwandan society as stealing from the

77 bis

Rwandan taxpayer. These serious allegations had as their aim to tarnish our reputation and honour.

- As a result of another intervention by the Prosecution during the hearing, our client was deprived of the right to contact his Counsel. Once again our protests were in vain.

We made certain to inform your observers present at the hearing as well as the bench about our complaints.

Nevertheless, given the gravity of these acts, we consider it necessary to call upon your wisdom and high authority and seek that this case be removed from the High Court and transferred to the Mechanism since our client is being denied guarantees that would ensure a fair trial.

We wish to recall that the Rwandan Criminal Code is governed by the principle of presumption of innocence as stipulated under Article 19 of the Constitution, Article 3(2) of the Law on Transfer and Article 45 of the Law on the Code of Criminal Procedure.

This principle implies that any person accused of an offence will be presumed innocent until his guilt has been established legally and finally **in a fair trial during which he has been granted all the necessary guarantees for his defence.**

The fair trial requirement is also a *sine qua non* condition set out under Rule 11 *bis* of the Rules of Procedure and Evidence adopted in keeping with the dispositions of Article 14 of the Statute of the Tribunal of 29 June 2005 which states that when examining whether to refer a case under the conditions laid down in paragraph A, the Trial Chamber must be convinced that the accused will have a fair trial before a court of the State concerned.

Furthermore, the Organic Law Concerning Transfer of Cases to the Republic of Rwanda from the INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA AND FROM OTHER STATES makes mention of other guarantees available to defence counsel and their support staff in the exercise of their profession.

Article 13(4) and (9) stipulates:

Without prejudice to other rights guaranteed under the laws of Rwanda, including the Constitution of the Republic of Rwanda of June 4, 2003 as amended to date, or the Code of Criminal Procedure /of Rwanda/ and the International Covenant on Civil and Political Rights, as ratified by the Decree Law No. 08/75 of February 12, 1975, the accused person in a case transferred by ICTR to Rwanda is guaranteed the following rights:

4. **The accused shall be given adequate time and facilities to prepare his defence....**

76 bis

9. To obtain the attendance and examination of the witnesses on his behalf under the same conditions as witnesses against him or her....

A fair number of persons who should be heard as defence witnesses in this case reside abroad. It is to this effect that the High Court rendered the Decision on conducting investigations aimed at gathering their testimony.

Articles 9 and 11 of this Law determine that the statements of testimony of witnesses obtained out of court and made in accordance with the Rules of Procedure and Evidence are admissible provided that they are relevant to the facts at issue. It also provides for the admissibility as evidence of signed statements given during investigations ... in a manner that similar evidence would be admitted under the Code of Criminal Procedure of Rwanda as transcripts of investigations.

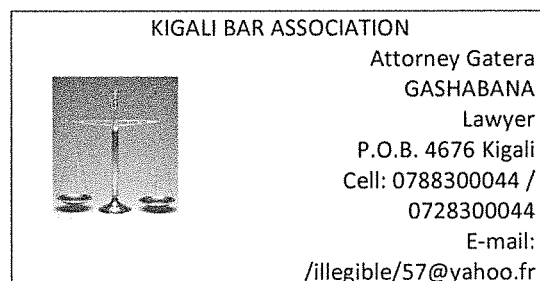
From the above, it is evident that regarding the administration of evidence in Rwandan law, the Law on Transfer does not prohibit compliance with the dispositions of the Rules of Procedure and Evidence.

All these principles are being constantly violated and trampled on in the case of our client and of us who have been charged with assisting him.

Consequently, in the interest of the proper administration of justice and, moreover, in order to guarantee our client a fair trial, there are grounds to order the removal of the case from the High Court and its transfer to the Mechanism.

We remain at your disposal for any additional information you may deem necessary and we thank you for the attention you will bring to the issue.

**Yours faithfully,
Gatera Gashabana
Jean Baptiste Niyibizi
Lawyers
/signatures/**



cc.: Chairman of the Bar Association



**TRANSMISSION SHEET FOR FILING OF TRANSLATIONS
WITH THE ARUSHA BRANCH OF
THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**

To	MICT Registry		
From	<input checked="" type="checkbox"/> ICTY CLSS	<input type="checkbox"/> ICTR LSS	
Original Submitting Party	<input type="checkbox"/> Chambers	<input type="checkbox"/> Defence	<input type="checkbox"/> Prosecution <input checked="" type="checkbox"/> Other Transferred Accused
Case Name	Uwinkindi	Case Number	MICT-12-25 No. of Pages 4
Original Document No.	MICT-12-25-0014/1		Translation Reference No. REG38130
Date of Original	14/09/13	Original Language	<input type="checkbox"/> English <input checked="" type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Date Transmitted	11/10/13	Language of Translation	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of original document	Demande de dessaisissement de la haute chambre détachée chargée de statuer sur les infractions internationales et transfrontalières dans le dossier opposant UWKINDI Jean au Ministère Public RP 0002/12/HCCI		
Title of translation	Request to Remove The Public Prosecutor v. Jean Uwinkindi Case, RP 0002/12/HCCI, from the High Court's Exterritorial Chamber Response for International and Cross-Border Offences		
Classification Level	<input checked="" type="checkbox"/> Unclassified <input type="checkbox"/> Strictly Confidential <input type="checkbox"/> Confidential <input type="checkbox"/> Ex Parte (specify): <input type="checkbox"/> Ex Parte Defence excluded <input type="checkbox"/> Ex Parte Prosecution excluded <input type="checkbox"/> Other Ex Parte (specify):		
Document type/ Type de document:	<input type="checkbox"/> Indictment <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Warrant <input type="checkbox"/> Affidavit <input checked="" type="checkbox"/> Submission from non-parties <input type="checkbox"/> Motion <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from parties <input type="checkbox"/> Decision <input type="checkbox"/> Judgement <input type="checkbox"/> Book of Authorities		

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