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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

OFFICE OF THE PRESIDENT

Before: Judge Khalida Rachid Khan, *President*

Date: 14 September 2011

Siméon NCHAMIHIGO

Case No. ICTR-01-63

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**DECISION ON SIMÉON NCHAMIHIGO'S REQUEST FOR REVIEW OF
REGISTRAR'S DECISION**

Siméon Nchamihigo, *pro se*

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INTRODUCTION

1. On 14 June 2011, I received a letter from Siméon Nchamihigo dated 9 June 2011.¹ Annexes are attached to the letter. This letter relates to a dispute Nchamihigo had with the Registry regarding the payment of fees while he was employed by the Tribunal as an investigator for the Defence of Samuel Imanishimwe prior to his arrest by the ICTR. Nchamihigo was convicted of genocide and crimes against humanity and sentenced to imprisonment to the remainder of his life by Trial Chamber III on 12 November 2008.² The Appeals Chamber affirmed parts of the convictions and sentenced Nchamihigo to 40 years of imprisonment on 18 March 2010.³

DELIBERATIONS

2. Siméon Nchamihigo alleges that he previously submitted a request for payment of fees to the Registry which was denied on 22 July 2005 by the Registrar.⁴ Further to the 22 July 2005 Decision, Nchamihigo alleges that he filed a request for review of the Registrar's Decision before the President of the Tribunal on 22 July 2005.⁵ However, the records of the Office of the President do not contain such a correspondence from Nchamihigo on the issue. I also note that while the present request contains a copy of the said 2005 Request to the President, it does not bear the stamp from the Office of the President indicating that it would have been received by it. Moreover, it is the first time in six years that Nchamihigo inquires about the said request. Bearing in mind that the present request relates to the exact same issue as the alleged 2005 Request before the President, I will only address Nchamihigo's request for review of the Deputy Registrar's 2011 Decision.

3. On 9 May 2011, Siméon Nchamihigo reiterated his request for payment of fees before the Deputy-Registrar who dismissed it on 12 May 2011.⁶ Nchamihigo is now requesting a

¹ Letter from Siméon Nchamihigo to the President of the ICTR, re: *Demander la suite reserve à ma requite du 25 juillet 2005*, dated 9 June 2011, received on 17 June 2011.

² *The Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63 ("Nchamihigo"), Judgement and Sentence (TC), 12 November 2008.

³ *Nchamihigo*, Judgement (AC), 18 March 2010.

⁴ Letter from Siméon Nchamihigo to the President of the ICTR, re: *Demander la suite reserve à ma requite du 25 juillet 2005*, dated 9 June 2011, received on 17 June 2011.

⁵ Letter from Siméon Nchamihigo to the President of the ICTR, re: *Demander la suite reserve à ma requite du 25 juillet 2005*, dated 9 June 2011, received on 17 June 2011.

⁶ Response to Siémon Nchamihigo's Letter of 9 May 2011 by the Deputy-Registrar, Chief of the Defence Counsel and Detention Management Section, Ref.: ICTR/JUD-11-5-11-612-lw, 12 May 2011.



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review of the Deputy-Registrar's 2011 Decision rejecting the applicant's request for payment of fees.⁷

4. The Registrar has the primary responsibility in the determination of matters relating to the remuneration of counsel.⁸ I consider that this applies *mutadis mutandis* to the remuneration of members of defence teams such as investigators. According to Article 30 of the Directive on the Assignment of Defence Counsel ("Directive"), the Registrar decides any disagreement on questions relating to the calculation and payment of remuneration or to the reimbursement of expenses. Pursuant to Rules 19 and 33 of the Rules of Procedure and Evidence, the President of the Tribunal has inherent authority to review decisions from the Registrar regarding such disputes as the payment of fees to members of defence teams appointed pursuant to the Directive. I therefore have jurisdiction in the matter.

5. Siméon Nchamihigo was assigned Counsel pursuant to Articles 6 to 9 of the Directive. During his case as an accused person before the Tribunal, Nchamihigo enjoyed the assistance of several counsel through the legal aid program of the Tribunal. It is to note that for each appointment it was clearly indicated that if it was established that Nchamihigo had the financial means to contribute to his Defence, legal aid could be revoked pursuant to Article 18 (B) of the Directive.⁹

6. The consequence of the combined reading of Article 18 of the Directive and Rule 45 (G) is that when it is established that an accused person before this Tribunal who has previously received legal aid for his defence has the financial means to participate fully or in part in the financing of his own defence, the Tribunal has the ability to recover all of or part of the spending engaged for the payment of his Defence,

7. I note that the Registrar does not deny that Nchamihigo's work program as an investigator had been approved by the Tribunal and that therefore he is entitled to payment. However, due to the services provided by the ICTR for his Defence when Nchamihigo became an accused person before this Tribunal and was later convicted, the outstanding amount due to Nchamihigo from his investigative work for the defence of Samuel

⁷ Letter from Siméon Nchamihigo to the President of the ICTR, re: *Demander la suite reserve à ma requite du 25 juillet 2005*, dated 9 June 2011, received on 17 June 2011.

⁸ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Ferdinand Nahimana's Motion for Assistance from the Registrar in the Appeals Phase, 3 May 2005, para. 4; *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-2007-91-A, Decision on Request for Judicial Review of the Registrar's and President's Decisions concerning Payment of Fees and Expenses, 13 April 2010, para. 12.

⁹ See e.g., *Votre commission d'office pour la défense des interest de M. Siméon Nchamihigo accusé du Tribunal*, 24 August 2001 ; Your assignment as Counsel to represent the accused mr. Siméon Nchamihigo, 10 October 2001.



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Imanishimwe only covers a tiny part of the sum of money spent by the Tribunal for the Defence of Nchamihigo, which cost more than nine hundred thousand American dollars (US\$900.000).¹⁰ Consequently, Nchamihigo has not demonstrated that the Registrar's Decision of 12 May 2011 is erroneous.

8. In this situation, I therefore have to defer to the position of the Registry.

FOR THESE REASONS, THE PRESIDENT

DENIES Siméon Nchamihigo's Request for Review.

Arusha, 14 September 2011, done in English.



Khalida Rachid Khan
President

[Seat of the Tribunal]



¹⁰ Response to Siémon Nchamihigo's Letter of 9 May 2011 by the Deputy-Registrar, Chief of the Defence Counsel and Detention Management Section, Ref.: ICTR/JUD-11-5-11-612-lw, 12 May 2011: "Faisant suite à notre dernier entretien, j'ai procédé au décompte de vos arriérés ainsi qu'au décompte des sommes engagées par le Greffe pour assurer votre défense. Il appert que vos arriérés de paiement ne couvrent qu'une infime partie des sommes engagées par le Greffe dont le montant s'élève à plus de neuf cent mille dollars américains. Il serait difficilement justifiable que le même greffe vous rétribue des heures couvrant vos prestations avant votre arrestation alors que ce dernier a dépensé un montant substantiel pour assurer votre défense et dont l'issue a abouti à votre condamnation en appel à 40 années d'emprisonnement."