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Sebikotane, 12 February 2024  
**Reference: 002/DT-SN/2024**

**Your Excellency the President of the Security Council  
of the United Nations  
828 Second Avenue New York  
NY 10017 USA**

Subject: *Open letter to the Judges of the ICTR/MICT*

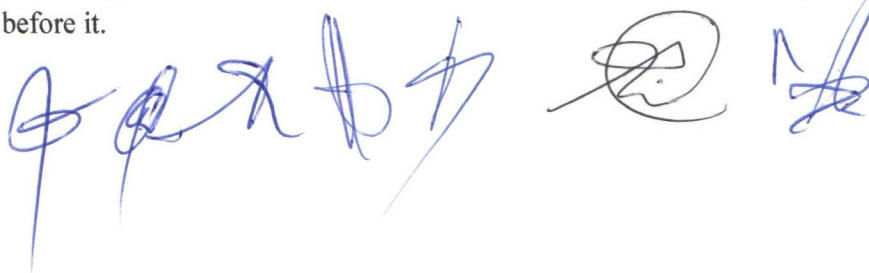
Your Excellency Mr. President,

We have the honor of transmitting to you an open letter in which we take the liberty of addressing with deference to the Honorable Judges of the International Criminal Tribunal for Rwanda (ICTR) and of the Mechanism which carries out its residual functions (those still in office and those who have retired), in order to remind them that the mission entrusted to them by the supranational body over which you preside has not been accomplished.

While acknowledging that the Tribunal has ruled on the question of the planning of the Rwandan genocide and on the innocence of a few accused, our open letter summarizes some of the reasons explaining why the ICTR has failed: it has enshrined impunity for criminals from one side of the conflict, it has convicted innocent people from the assaulted country and from the losing side of the war, and it has in no way been an instrument of reconciliation between Rwandans.

Our most fervent wish is that the Judges join with the three Chief Prosecutors of the Tribunal who succeeded one another between 1995 and 2003 (Richard Goldstone, Louise Arbour and Carla del Ponte) and who stated unequivocally that justice has not been done regarding the Rwandan tragedy because the current Rwandan government has prevented them from doing their work by systematic obstruction.

We would also be grateful if you could revisit the correspondence from the Heads of the Permanent Missions of the United States, the United Kingdom and the European Union Delegation to the United Nations in New York addressed to His Excellency the President of the United Nations General Assembly in June 2020 in relation to the Draft Resolution entitled "International Day of Reflection on the 1994 Genocide against the Tutsis in Rwanda" in conjunction with the commemoration of the 26th anniversary of the 1994 Genocide. The diplomatic notes suggest that during the period covered by the jurisdiction of the ICTR, i.e. the year 1994, the genocide against the Tutsis and the genocide against the Hutus were indisputable, something that the international court has refused to conclude despite the irrefutable evidence before it.



It is in this spirit that we ask you, Excellency Mr President, to refer the matter to the United Nations Security Council, which mandated the Judges to render justice in the Rwandan tragedy of 1994, so that it can take cognizance of the salient elements that characterized the failure of the ICTR/MICT with a view to correcting and repairing the errors committed. We also ask the Judges, to whom this open letter is addressed, to be aware of this resounding failure and to consider ways and means of helping the people to benefit from fair justice, which is a prerequisite for lasting reconciliation.

In the hope of a positive response, and thanking you in advance, please accept, Excellency, the assurance of our highest consideration.

Ntahobari A. Shalom

Ngirabatware Augustin

Kamuhanda Jean de Dieu

Renzaho Tharcisse

Ndayambaje Elie

Kambanda Jean

Nyiramasuhuko Pauline

Ngirumpatse Matthieu

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called to exercise the residual functions of the Criminal Tribunals  
THE HAGUE - THE NETHERLANDS
- Prosecutors of the ICTR/MICT (All)
- Judges of the ICTR/MICT (All)
- Defence Counsel of the ICTR/MICT (All)



Sebikhotane, 12 February 2024

Reference: 001/DT-SN/2024

**Open Letter to the Judges of the ICTR/MICT**  
**(Serving and retired Judges)**

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Honorable Judges,

At the beginning of the year 2024, we, the UN detainees in the Republic of Senegal, would, first of all, like to send you our best wishes for happiness, prosperity, good health and success in your activities.

Thirty years have now passed since you were given the mission of rendering justice to the Rwandan people and to humanity, whose conscience was seriously shaken by the acts of genocide and other serious violations of international humanitarian law whose perpetrators you had to judge and punish. In this open letter, we would like to take a look back at the potholes along the road that was supposed to lead us to the Mount of Truth, but which ultimately proved to be a dead end.

Our approach is not to cover up for those guilty of proven facts, nor to blame the Judges, nor to attack the authority of *res judicata*. We simply want to draw your attention to your actions and decisions, which have obscured the Truth about what happened in our country in 1994 (and even long before and after). In this way, we hope to awaken your conscience so that, being free to express yourselves, you can free your conscience and reveal to the world what, often by force or coercion, you have buried deep inside you. The Rwandan people and future generations will be very grateful, and the judgment of History and future generations will be in your favor.

Honorable Judges,

It should be remembered that following the war of invasion that began on 1 October 1990 and the assassination of President Habyarimana Juvénal on 6 April 1994, our country, Rwanda, was subjected to massacres on a massive scale, war crimes, crimes against humanity and other serious violations of international humanitarian law. Some of these crimes were described as genocide. The crimes committed by the Rwandan Patriotic Front (RPF), currently in power in Kigali, have until now been ignored in order to protect the known perpetrators. The population, fleeing these atrocities, has been pursued even in the most remote regions beyond the borders, in neighboring countries, notably in Zaire (D.R. Congo). Along with the Congolese population, hundreds of thousands of Rwandans perished there, and the survivors were forced to return to Rwanda, to die in their own country, while others wandered into exile. Some were welcomed by their host countries, while others went missing, were murdered or imprisoned. The inconsolable faces of the Rwandan survivors of all these atrocities are eroded by the torrents of tears flowing from their eyes ever since. The shock is heightened when they come into contact with their executioners who have never been brought to justice and when innocent people are mistaken for



guilty criminals while proven criminals are considered innocent. We bow our heads before the memory of all the victims of the Rwandan tragedy.

Concerned by the extent and gravity of these massacres and other serious violations of international humanitarian law, the United Nations Security Council adopted Resolution 955 (1994) of 8 November 1994, creating the International Criminal Tribunal for Rwanda *to try persons responsible for acts of genocide or other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such acts or violations committed in the territory of neighboring States between 1 January and 31 December 1994*. It was stated from the outset that the persons from both parties to the conflict would be prosecuted.

The Security Council was convinced that such prosecutions would contribute to the process of national reconciliation, the restoration and maintenance of peace, and the cessation and proper redress of reprehensible acts and other violations. All UN Member States had an obligation to cooperate fully with the Tribunal.


Honorable Judges,

It was in this context that, in 1995, you were called upon to sit on the International Criminal Tribunal for Rwanda, which later became the current Residual Mechanism in 2012. You have done a great deal of work for the person who, out of a sense of conscience, mandated you to prosecute only the party to the conflict that lost the war and was ousted from power. The Rwandan people, who had placed so much hope in the establishment of the ICTR, are still waiting for justice to be fairly done. They had hoped to find out the Truth about what really happened and to understand how such a massacre could have been inflicted on them. The Rwandan people were disappointed by the profusion of lies that poured out before you, session after session, which were the basis of several emotional and clearly unjust convictions.

Some of the Judges have passed away. We owe them a noble tribute. May they rest in peace. That said, we are firmly convinced that your willingness to right wrongs would certainly help to honor their memory.

In the course of your mission, as we have seen and witnessed, you have certainly encountered certain obstacles that are difficult to overcome. This includes pressure from all sides to take decisions that are contrary to your convictions and to the laws and regulations in force. Conditioned and influenced by certain rogue experts, you have assimilated a biased narrative underlying the tragic events we experienced. This narrative was designed to ensure the skewed approach to the events. Consciously or unconsciously, you bought into it.

We salute the courage of some of you who dared to stay the course in the search for Truth, at the risk of losing your jobs. These judges distanced themselves from their colleagues by showing their reasoned dissent from clearly erroneous majority decisions. They publicly exposed the lies and other malpractices of the Office of the Prosecutor, and they denounced arbitrary arrests (without indictment) and other violations of the rights of the accused to a full and complete defense, at a time when others were turning a blind eye to the flagrant injustice which they should have reversed.

A series of handwritten signatures in blue ink. From left to right, there are four distinct signatures. The fifth element is a circle containing the number '2'. The sixth element is another signature.



### 1. Arbitrary Arrests

As guarantors of international humanitarian law, you approved arrests of former political, administrative and military authorities, clerics, progressive peasants, businessmen and any other Hutu elite on the basis of their Hutu identity. Without you being moved by the situation, several defendants before the ICTR, arrested and detained for a long time at the detention center under your supervision, appeared before you without being duly notified of any indictment. This is in violation of the generally accepted principle of law: *"Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."*

### 2. Untimely Amendments to Indictments

Once the indictment was confirmed and served on the accused, it was amended by the Prosecutor, always with your approval and encouragement. Arguments put forward by the Defense that would have made it possible to dismantle the false testimony on which the Prosecutor had based his indictment led to the amended indictments. Indictments have sometimes undergone politically motivated amendments in response to strong pressure from the powerful in this world. It will be recalled that the odious crime of rape was introduced in the middle of the Akayesu trial, at the instigation of Mrs Hilary Clinton, who visited the ICTR in March 1997 and offered 600,000 dollars to add the crime of rape to the Akayesu indictment at a time when the Prosecutor was completing his evidence and when rape was not charged.

As a result of these ill-timed amendments to the indictments, some of the defendants navigated by sight through their defense without knowing exactly what they were accused of. The defendants had no opportunity to investigate the evidence against them thereby tainting their trials with unfairness. Some Judges even joined forces with the Prosecutor to make up for his weaknesses and confuse the Defense in order to ensure a conviction. They even went so far as to change the Rules to suit their odious manipulation. For some of the Judges, any accusation, no matter how false and spurious, was automatically tantamount to a conviction. And the Prosecutor, Ms Carl Del Ponte, expressed her gratitude to them at a press conference back in 2000: *"our judges are very good judges, because they can correct the errors of the Prosecution"*.

### 3. Fabricated Evidence

Throughout the trials, you received mainly oral evidence. Some of you dared to go to the scene of the crime, others refused despite the insistent requests of the accused. In some judgements, you detected lies fabricated by the Prosecutor in order to convict innocent people. But other obviously fabricated evidence was tolerated and formed the basis of your often contradictory decisions, from one trial to the next. You ordered investigations into lying and contempt as well as witness tampering; but the reports of these investigations were not used when they implicated the Office of the Prosecutor, for fear of running out of witnesses. As one of the Judges put it: *"if we have to follow each person who gives a false testimony in court then we'll hardly have any witness come because at one stage some of them will stop coming"*. The Prosecutor's witnesses who went back on their false testimony were instead tried and convicted for contempt when they wanted to re-establish the Truth; others, if not murdered, were intimidated and discouraged from



doing so when their conscience was still tormenting them for having convicted innocent people. A witness protected by the Tribunal, a prosecution witness in the *Karemera et al* case, who was going back on his false statements, disappeared on the very morning of his appearance. The falsity of the telegram of 11 January 1994, the famous "genocide-fax" on which the whole narrative of the planning of the genocide is based, came to light when, right before the Tribunal, it was proven that this famous telegram never existed in the form brandished by the Prosecutor. You did not draw the necessary conclusions in this regard because you had to protect the thesis on which convictions were based.

#### **4. Extortion of Confessions**

Some defendants were approached and forced to confess to crimes in open court, sometimes on the basis of promises of a possible reduction in sentence and other benefits. In return, they were encouraged to cooperate with the Prosecutor in fabricating charges against colleagues who had already been arrested or were still wanted. We remember the guilty plea of the Head of Government, Jean Kambanda, who was asked to provide evidence against almost all the former military and political-administrative leaders. The Tribunal was embarrassed when he denounced the psychological torture he had endured during his long solitary detention in a private residence far from the Arusha Detention Centre. But you kept your eyes closed and your ears shut for Mr Kambanda. Bordering on a scandal, you sentenced him to life imprisonment without allowing him to explain his true version of events to the Rwandan people. His confession and his many accusations against his colleagues, made under the influence of torture, certainly shook the inner conviction that guided your deliberations. How can the Truth be uncovered if the Head of the Interim Government is silenced? How do you explain the fact that a third of the members of his government, senior members of the political and administrative administration, generals and other senior military officers were acquitted at the same time as you are convicting their colleagues of a fictitious conspiracy to commit genocide? How can we move towards national reconciliation in Rwanda without first establishing the Truth about the Rwandan tragedy and if justice is not done fairly and justly?

#### **5. The Triggering Event**

Before the Prosecutor had to change his approach, he always stated that the assassination of President Habyarimana on 6 April 1994 was the trigger for the genocide of the Tutsis, the planning of which was blamed on Hutu extremists who did not want to share power with the Tutsis. The Prosecutor vowed to prosecute the perpetrators of this criminal act and bring them before you, as recommended by the Special Rapporteurs and the Secretary General of the United Nations. To date, you have shown no willingness to expose to the entire world this criminal who, on that fateful date of 6 April 1994, gave the order to shoot down the plane carrying Presidents Juvénal Habyarimana of Rwanda and Cyprien Ntaryamira of Burundi and their entourages, as well as the French crew, thus triggering the genocide and the subsequent massacres. At the same time, the RPF launched murderous attacks on all fronts against an army it had just decapitated, killing defenseless civilians as it advanced towards undivided power. On the other hand, when the investigations carried out by the Prosecutor himself implicated the real perpetrators of this terrorist act, you used every subterfuge to protect them. The judges ran to the aid of the panicking Prosecutor to proclaim loud and clear that this crime did not fall within the repertoire of crimes that you were called upon to judge.



Your sudden pirouette raised many suspicions and still raises many questions. What could have motivated your stubborn refusal to take an interest in the man who triggered and fuelled the apocalypse in Rwanda? If, for example, a fire breaks out in a forest and decimates the houses in the vicinity, it is only logical that the person who started it and his motives should be investigated and held to account. Even more so, this applies to the person who assassinated President Habyarimana and his entourage, thereby creating a vacuum of political and military power at the top of the State. The man who ordered the assassination should have been and still is answerable for this terrorist act and should bear all the consequences. Why does he continue to benefit from so much protection, enjoying an impunity that you have endorsed by refusing to prosecute him?

It is high time that you denounced all the pressures that have weighed on you and that have led you to abandon your responsibilities as magistrates entrusted with applying the law and dispensing justice. Ms Carla Del Ponte, Prosecutor of the ICTR (1999-2003), revealed to the world the pressure exerted on her until she was ousted from the post. Like her predecessors, now free of constraints and able to express themselves freely (Richard Goldstone (1994-1996) and Louise Arbour (1996-1999)), Ms Carla Del Ponte is calling for the investigation into the assassination of President Habyarimana to be reopened and for the prosecution of crimes against humanity committed by members of the RPA because they fall within the ambit of the ICTR/MICT and are linked to the genocide. She claims that the person who shot down President Habyarimana's plane was primarily responsible for the genocide. She is entirely right, because there is no legal justification or explanation for you continuing to protect and ensure impunity for the man who started the genocide in Rwanda.

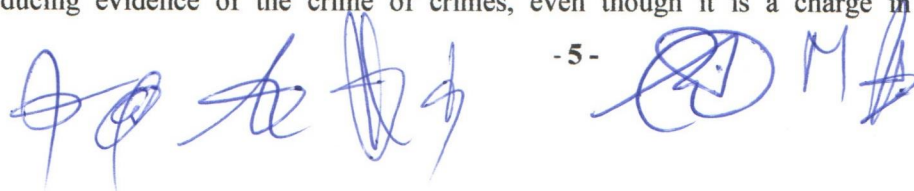
It is worth reminding you that all the investigations into the assassination of President Habyarimana, initiated by national courts with universal jurisdiction (Belgium, Spain and France), were nipped in the bud by the RPF and the virtually invisible hand of its sponsors. Who has an interest in not revealing this Truth? Why are you covering it up? When will you be free to corroborate the claims of these three prosecutors whom you have supported in the past with the evidence presented to you in court? When will you finally demonstrate your independence and free yourself from the stranglehold of the pressure still weighing on you, and break your silence before it's too late? When will you stop wallowing in lies?

Paradoxically, the genocide that began on 6 April 1994 is currently commemorated on 7 April every year in Rwanda and in all the UN bodies, including the Mechanism. Why has the date for commemorating the genocide been changed from 6 to 7 April? And why not on 1 October, when the Organic Law of 30 August 1996 of Rwanda provides for the prosecution of offences constituting the crime of genocide or crimes against humanity committed on or after 1 October 1990?

## **6. Judicial Notice**

Although you had quite rightly resisted considering the genocide as a matter of common public knowledge, you suddenly gave in to pressure on 16 June 2006 and you took judicial notice of the genocide of the Tutsis, the planning and execution of which you attributed to the Government of 9 April 1994 and to the entire Hutu elite. In this way, you exempted the Prosecutor from producing evidence of the crime of crimes, even though it is a charge in almost all the

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indictments confirmed by the Tribunal. In order to cover up the real perpetrator and planner of this genocide, no adversarial debate was allowed to dissect the evidence that the Prosecutor had been required to produce. This had serious repercussions on the trials. It was necessary to reinforce, at all costs, the official thesis of how the genocide had been carried out, as narrated by Kigali, inoculated into public opinion and repeated in the indictments. And the convictions followed. As a result, no one will know who planned the genocide, when, why or how. The perpetrators and planners of this crime, which shocked the conscience of humanity, remain covered up and unpunished. The Tribunal wrongly focused only on the scapegoats, defeated at the end of a war that had been imposed on them.

In your judgements, you have admitted that the genocide of the Tutsis was not prepared by any political or military authority. Rather, it was the result of the ferocious and atrocious violence that occurred following the chaos created by the war imposed by the RPF and the assassination of President Habyarimana. Since genocide is generally known as the crime of the State or of any organization that behaves like a State, it would have been interesting to know how and when the State planned this genocide in order to pinpoint who was responsible. What caused you to make this about-face in 2006, when the major trials of the major structures of the Rwandan State (military, members of the government, politicians) were in progress in the first instance and you were demanding that the Prosecutor produce evidence of the planned genocide? Why did you hastily draw up a judicial notice, in total contradiction with your previous decisions, if it was not only to protect the initiators of the war imposed on the Rwandan people and the perpetrators of the assassination of President Habyarimana?

There are still objections to this judicial decision. Very recently, in April 2020, the representatives of the United States and the United Kingdom at the United Nations, who are also permanent members of the UN Security Council, as well as the representative of the European Union, questioned this judicial notice on the genocide against the Tutsis. In their letters to the President of the UN General Assembly, they assert that the genocide was not committed only against the Tutsi and that *"the importance of the violations committed against other [ethnic] groups should also be taken into account. Many Hutus and other members of other groups were also killed during the genocide"*. The Rwandan authorities reacted by accusing these diplomats of trying to attack your decision of 16 June 2006 on the judicial notice. A fact that is one of common public knowledge is not generally contested. What value could be placed on the rulings you made on the basis of a judicial notice that is continually called into question by the most informed?

## **7. The Truth: Judgments Versus True Facts**

In light of the above, we are entitled to wonder whether, by consulting the judgments you handed down after lengthy trials, we could discover the Truth. What truth can we expect from judgments handed down with excessive delay, on the basis of false statements and other fabricated evidence? *"Not only must justice be done; it must also be seen to be done. Justice delayed is justice denied."* It is undeniable that some of your judgements are built on a sand-heap of lies that collapse on their own once confronted with the reality of the facts on the ground. How can you protect the truth of your judgements if the people concerned, the victims and the public see them as being out of touch with the reality of the facts as experienced in the heat of the moment? Repressive instruments are deployed here and there to forcibly protect the "truth" of your



judgements. Those who defy the ban and question this truth are immediately labelled negationists-revisionists and prosecuted as such.

The President and the Prosecutor of the Mechanism recently requested the support of the United Nations Security Council, on 12 December 2023, to protect the truth of the judgements. Why all this determination if there are no flaws in your judgements? What is the truth that deserves "armored" protection? Is it the fragmented and contradictory truth of your judgements, or the truth that you have knowingly and deliberately concealed, and which could hurt the Institution and its sponsors if it were revealed in broad daylight? Now that the narrative once supported by human rights experts, journalists and NGOs has changed as they disavow themselves on the basis of their discovery of the Truth, isn't it high time that you adapted to the latest developments so as not to bring your judgements, and hence yourselves, into permanent disrepute? Why don't you dare to reverse yourselves outright, so that you can embark on the path of Truth, the true foundation of Reconciliation for the Rwandan people?

#### **8. Alternative Sentencing and Social Reintegration**

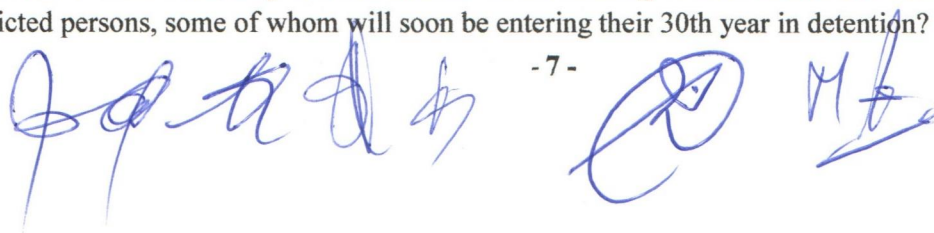
In modern society, a judicial conviction does not mean the total and irreversible removal of an individual. Rather, it aims to make the convicted person aware of his reprehensible acts so that he can make amends, repair the harm he has caused to others and reintegrate into society.

Until a few years ago, the ICTR appeared to be following this logic when it proceeded to the early release of convicts who met the conditions set out in the Directive. A number of convicts have been released before serving their full sentence, the last of whom was released in 2019. Since then, applications for early release have been effectively subjected to the requirement of an admission of guilt on the part of the applicant, a kind of retrial without a trial and without judges! The applications have been systematically rejected by the President of the Mechanism, who has absolute and exclusive power to decide on early release on the basis of vague and subjective criteria, after consultation with, among others, the party who should have been prosecuted for the same crimes.

The problem of the release and reintegration of convicted persons and the relocation of released and acquitted persons to their respective families seems to have been relegated to oblivion. Those convicted, released and acquitted are currently scattered across Benin, Mali, Niger and Senegal. Solving this problem means courageously confronting our detractors, who are confident due to impunity and want us to disappear into prison or into so-called safe houses, far from our families. But it also means making sentencing more humane by helping the individual to reintegrate into the society in whose name justice was done.

Even though national legislation, which is supposed to apply to ICTR/MICT convicts, advocates early release according to objectively defined criteria, in favor of these convicts, the President of the Mechanism has decided to ignore favorable opinions issued by a State for a detainee who met the required conditions and, rather, has consistently opposed early release.

When will the Judges free themselves from the pressure exerted by certain States, principally Rwanda, and act independently and thus take an interest in the future of acquitted persons still in "detention"? When will they dare to address issues relating to the release and rehabilitation of convicted persons, some of whom will soon be entering their 30th year in detention?

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Honorables Judges,

It is worth reminding you that the mission of your Institution was to try those responsible for the crimes committed by both sides in the conflict, in order to put an end to impunity and move towards justice that is fair, equitable and reconciliatory between Rwandans, whatever their ethnic, regional or political affiliation. But it has to be said that during its thirty years of existence and operation, the ICTR/MICT, through you, has failed in its mission to ENFORCE the laws, to RENDER JUSTICE and to RECONCILIATE the Rwandan people, because it has sided solely with the victors and granted them impunity. It is this impunity that encourages them to sow terror in the region.

It is never too late to do some good. We expect you, each in his or her own right, to reveal the Truth that has long been concealed.

Yours sincerely,

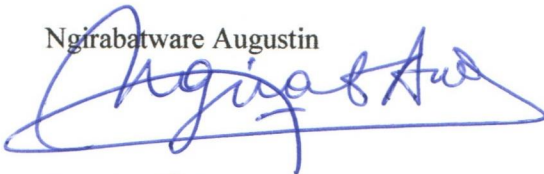
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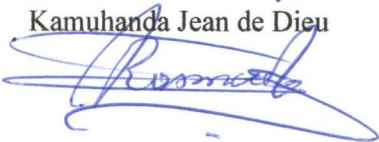
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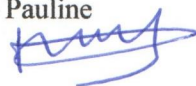
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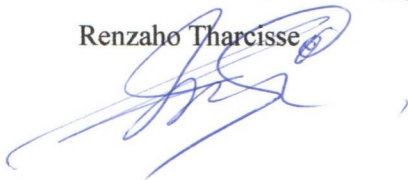
Kamuhanda Jean de Dieu



Nyiramasuhuko Pauline



Renzaho Tharcisse



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