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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

22933
S. Mussa

UNITED NATIONS
NATIONS UNIES

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The Registrar
Le Greffier

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**DECISION TO WITHDRAW THE ASSIGNMENT OF MR. JEAN YAОВI
DEGLI AS DEFENCE COUNSEL FOR GRATIEN KABILIGI**

THE REGISTRAR of the International Criminal Tribunal for Rwanda (hereinafter ICTR);

MINDFUL of Article 16 of the Statute of ICTR, as amended on 30 April 1998;

MINDFUL of Articles 10, 19 and 20 of the Directive on the Assignment of Defence Counsel (hereinafter the Directive) and Articles 11 and 20 of the Code of Professional Conduct for Defence Counsel;

Factual background

1. Mr. Jean Yaovi Degli was assigned as Defence Counsel for Gratién Kabiligi on 8 August 1997. On his recommendation, the Registry appointed Mrs. Sylvia Olympio as his Legal Assistant on 17 January 1998. Among other documents submitted to the Registry, in support of the candidacy of Mrs. Olympio, was an attestation from the Paris Bar that Mrs. Olympio had been sworn in as an advocate on 15 June 1991 and called to the Bar on 15 June 1993. As Legal Assistant, Mrs. Olympio was paid USD 25 per hour, the applicable rate for legal assistants and investigators, with a ceiling of 100 hours per month.

2. In 1999, Mr. Degli requested the Registry to appoint Mrs. Olympio as his co-counsel, which would have entitled her to an hourly payment of USD 80 with a billing ceiling of 100 to 175 hours per month. The Registry did not grant his request because Mrs. Olympio had only eight years' experience, based on the documents submitted. However, ICTR relevant instruments require a candidate to have at least 10 years' experience before he or she can be appointed as counsel. Mr. Degli then suggested that the Registry upgrade the status of Mrs. Olympio who, in fact, was acting as co-Counsel. He proposed that she be paid an hourly rate of USD 50, and that her monthly billing ceiling be reduced to 150 hours, in return for which he would not hire a co-Counsel, which would have cost the Tribunal more. The Registry accepted this proposal, which took effect from 1 September 1999. On 15 February 2002, Mrs. Olympio could formally satisfy the requirement of 12 years' experience and was appointed co-Counsel on Mr. Degli's recommendation. From this date, she could be entitled to the remuneration applicable to this category of counsel.

3. On 27 April 2003, the Registry received a letter, signed by Mrs. Olympio, in which she pointed out, among other things, that she had never been called to the Bar, and that the relevant attestation was forged. She said that she informed Mr. Degli of this situation only on 26 April 2003, that is, a day before the letter was sent. Mrs. Olympio asked to be withdrawn from the case, and this was done forthwith.

4. In early May 2003, the matter was referred to the Investigations Division of the Office of Internal Oversight Services of the United Nations (ID/OIOS), which opened an investigation. It heard all the parties concerned, including Mr. Degli, Mrs. Olympio, Registry staff in charge of the Lawyers' Section, and the Paris Bar. It received various documents from the parties concerned, as well as from Stanbic Bank in Arusha, by tracing in particular the various transactions operated on Mrs. Olympio's account.

5. Concluding its investigations, ID/OIOS confirmed with the Paris Bar that the attestation submitted on behalf of Mrs. Olympio was indeed forged. Mrs. Olympio explained to the investigators how she used a colour printer to produce the forged attestation. She also

explained the nature of her relationship with Mr. Degli in that both families had long friendship ties in Togo. She explained that she met Mr. Degli in 1996. He then suggested that she work in his practice, without being declared, for a monthly salary of USD 2,000 payable in cash. She accepted the offer because this amount was almost more than double the salary her previous employers paid her. As Mr. Degli was aware that she was not a lawyer, he then suggested that she forge the attestation from the Paris Bar in order to be admitted to practice at ICTR. He allegedly assured her that neither the Tribunal nor the Paris Bar would verify that. That is why she gave him the forged attestation and her *curriculum vitae* to file with the Registry of ICTR.

6. Mrs. Olympio explained that, under pressure from Mr. Degli, she tried to exonerate him in her letter of April 2003. While acknowledging her responsibility in forging the attestation, she explained that, to a large extent, she was only an instrument used by Mr. Degli to swindle the Tribunal of large sums of money.

7. She explained to the investigators that Mr. Degli helped her to open an account at Stanbic Bank Arusha to receive the funds transferred by ICTR as payment for fees. Mr. Degli also provided a sample of his signature and had a power of attorney on the account. It was only on 15 April 2003, during a transaction operated on this account, that she was informed by chance that some major transactions (USD 43, 000 and USD 32, 000) had been operated on her account. The said sums had been paid in by the Tribunal and transferred into another account by Mr. Degli, now opened in the name of Félicienne D'Almeida, his spouse. After verifying with the Registry, Mrs. Olympio was informed that the amounts that had been paid in by the Tribunal were fees that were due her, such as certified by Mr. Degli. She immediately revoked the power of attorney given to Mr. Degli over her account.

8. ID/OIOS investigated and confirmed with Stanbic Bank that Mr. Degli had a power of attorney on the said account, that major transactions were operated on the account, and that the power of attorney was revoked. Mrs. Olympio explained to the investigators what she understood Mr. Degli's strategy to be: over-billing co-Counsel's fees at the time of submission of claims to the Registry, and deducting from Mrs. Olympio's account the over-billed amount, which he then transferred to the account opened for his spouse.

9. OIOS investigators showed Mrs. Olympio sixteen bills prepared on her behalf by Mr. Degli. After examining them, she confirmed that they were all forged, and that she had never worked for the hours mentioned therein. She also pointed out to the investigators that she did sign a blank form that she gave to Mr. Degli who, undoubtedly, had photocopied it as many times as necessary to submit the forged bills on her behalf. According to her, the total amount of money that she received from the Tribunal was at most USD 80,000.

10. OIOS investigators heard Mr. Degli, who acknowledged having helped Mrs. Olympio to open her account at Stanbic. He also admitted that he had a power of attorney on the said account, and that Dédé Félicienne d'Almeida, holder of the account at Stanbic and on whose behalf he made transfers from Mrs. Olympio's account, was indeed his spouse. Mr. Degli also admitted that, as Lead Counsel, he was responsible for certifying bills submitted by members of his team, including Mrs. Olympio.

11. OIOS investigators noted that when asked why he made the transfers from Mrs. Olympio's account to that of his wife, Mr. Degli was very evasive, and seemed to suggest that the money only transited through that account before being given to Mrs. Olympio when he saw her in Paris. The investigators then showed Mr. Degli a cheque of USD 32,000 drawn on Mrs. Olympio's account and paid to Mr. Degli's wife on 7 April 2003. The investigators pointed out to him that on this date Mrs. Olympio was actually in Arusha. Mr. Degli then claimed that this amount was an exceptional reimbursement of a debt that Mrs. Olympio owed him. He did not provide the investigators with any justification for the said debt. The investigators showed him five cheques amounting to a total of USD 119,265.63 drawn on Mrs. Olympio's account between April 2002 and April 2003. Mr. Degli replied that these were debts for which he did not keep any relevant documentary evidence.

12. Mr. Degli explained to the investigators that he was informed that Mrs. Olympio had usurped the qualification of a lawyer only on 20 April 2003 when he went to the Paris Bar to enquire about professional liability insurance relating to two cases that Mrs. Olympio had poorly handled. Mrs. Olympio reiterated the confessions she made on 26 April 2003 in the presence of a witness called d'Almeida (the brother of Mr. Degli's spouse) regarding her usurpation of the qualification of a lawyer. The investigators reminded Mr. Degli that in the written application of 4 November 1997 that he had sent to the Tribunal for the appointment of Mrs. Olympio as a Legal Assistant, he had pointed out that she used to work in his practice and that he was quite aware that she was conversant with legal work. However, in Mrs. Olympio's CV, which he had filed for her appointment as co-Counsel, this fact had changed. Mrs. Olympio was presented therein as having worked for the law firm Campbell & Labruinie from March 1996 to May 1999. Mr. Degli responded that he was not aware of that change. Questioned by the investigators as to the checks that he had to carry out with the Paris Bar before hiring Mrs. Olympio, Mr. Degli responded that he never carried out such checks. He also told the investigators that he was not aware of the startling difference between the signature at the bottom of the attestation allegedly provided by the Paris Bar to Mrs. Olympio and that on his personal attestation, presumably of the same person, Mr. Loup Monnot de Angles.

13. Questioned on the revocation by Mrs. Olympio of the power of attorney on her account, Mr. Degli explained to the investigators that it was because he had discovered that Mrs. Olympio was usurping the qualification of a lawyer. The investigators then pointed out to him that he had previously explained that he was informed of the forgery only on 20 April 2003, whereas the revocation was made at least three days prior to that date. The investigators noted that Mr. Degli prevaricated before changing his account, explaining that Mrs. Olympio got angry when she learned that USD 32,000 had been withdrawn from her account, which caused her to revoke the power of attorney.

14. The investigators then showed Mr. Degli different bills that were suspected of being inflated. For example, they drew his attention to the September 2002 bill in which Mrs. Olympio pointed out that she had worked for 64 hours and 50 minutes. However, the bill that he had certified and submitted to ICTR showed that she had worked for 185 hours and 35 minutes. For the weekend of 14 to 15 September 2002 alone, he had certified 18 hours and 20 minutes. Mr. Degli admitted before the investigators that the number of hours reported were not plausible, and that he should have been more careful. However, he claimed that such over-billing was due to error, and, in any case, did not benefit him as the money was actually

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paid to his colleague. After this hearing, Mr. Degli spontaneously appeared anew before the investigators to explain that there was indeed over-billing. He explained that such over-billing enabled other persons, who had done the work that Mrs. Olympio had not done, to be paid. Mr. Degli did not reveal the identity of such persons to the investigators.

15. The sums transferred to Mrs. Olympio's account during the time she rendered legal services at ICTR amounted to USD 380,266.90. Mrs. Olympio stated that of that amount, she received no more than USD 80,000. The difference, that is more than USD 300,000, would be the amount of money that Mr. Degli misappropriated.

Procedure

16. The Registrar received the OIOS report in August 2004. He carried out broad-based consultations with a view to sanctioning any abuse of the legal aid scheme if such abuse is established, while also making sure not to abruptly interrupt the course of justice. The Registrar was equally keen to fully respect the adversarial principle by affording the counsel concerned an opportunity to freely make precise representations on the forgery and subsequent misappropriation of funds of which he is suspected to be the kingpin. Thus, when OIOS informed the Registrar that it was neither necessary nor usual to share its report with persons other than the few people who had received copies¹ thereof, the Registrar did everything he could to produce a summary of the said report stating the specific acts imputed to Counsel, after expunging therefrom issues alien to the case. The summary was served on Mr. Degli on 15 October 2004; in the summary, Mr. Degli was invited to make his observations and defence within 8 (eight) days.

17. In his response dated 18 October 2004, but received at the Registry only on 22 October 2004, Mr. Degli dwelled at length on issues that were completely alien to the facts he had been requested to explain. He speaks of a conspiracy against him, a phrase that invariably occurs in all his letters to the Registry since the beginning of investigations into this matter. However, the response bears some indications as to Mr. Degli's stand. In paragraph 9 of the said response, he states that he can provide an adequate response only if the complete report, and not a summary thereof, is communicated to him. The request for the complete report is reiterated in paragraphs 10, 11 and 12 of his response. He, however, mentioned that he would reserve his response for other authorities because "the Registry and its head [are] highly interested parties in this case". In conclusion, he called on the Registry to make its decision as soon as possible to enable him to appeal.

18. The Registrar takes cognizance of Mr. Degli's stand as expressed in his response of 18 October 2004. The Registrar believes that he gave him ample opportunity and time to defend himself by informing him of the specific acts with which he is charged. The information is as complete as any report he could have received from OIOS. Mr. Degli chose not to respond to it. Moreover, by asserting in his response that the Registry is, in his own

¹ The OIOS report is an internal document intended for the exclusive use of the UN decision makers. He was heard whenever necessary, including at his request. He disclosed to the investigators documents he deemed favourable to his case, particularly the written confessions of Mrs. Olympio made in the presence of his brother-in-law.

words, an interested party in this matter and that he reserves his defence arguments for “the next step of the proceedings in this case”, Mr. Degli clearly shows that his refusal to provide a response on the merits is driven by personal motives which, in any case, have nothing to do with the disclosure of charges.

Reasons for the Decision

19. Article 19(A)(iii) of the Directive provides that the Registrar may withdraw the assignment of Counsel in the case of a serious violation of the Code of Professional Conduct. Article 11 of the said Code requires Counsel to set his bills and fees with moderation and to account in good faith for the time spent working on a case. Article 20(c) of the same Code provides that conduct involving dishonesty, fraud, deceit or misrepresentation shall amount to professional misconduct by Counsel.

20. In the light of the facts described above, there is overwhelming evidence that Mr. Degli played a major role in what appears to be a veritable fraud scheme that was well planned, orchestrated and carried out. In fact, he has not contested the reality of the fraudulent acts which, moreover, are established through documentary evidence. By helping Mrs. Olympio to open an account with Stanbic Bank, by requesting and obtaining a power of attorney on the account, by opening another account in his spouse’s name with the same bank and with the same powers on this account, even though his wife is neither resident in Arusha nor linked to the Tribunal by any contract whatsoever, by systematically transferring into his wife’s account huge sums of money transferred by the Tribunal into Mrs. Olympio’s account, Mr. Degli was carefully and knowingly putting together the various parts of a very elaborate, fraud mechanism. These undisputed facts are consistent with Mrs. Olympio’s account with respect to over-billing - an act by which Mr. Degli swindled the Tribunal out of its resources before making use of the bank device that he set up in order to withdraw the said sums. Moreover, Mr. Degli eventually admitted before OIOS investigators, who had even confounded him, that he indulged in over-billing, which he sought to justify by advancing a false claim that it was aimed at paying persons who did the work Mrs. Olympio was supposed to do. It is obvious that such a justification, even if established, would be unacceptable. Mr. Degli cannot justify the unlawful practice of over-billing by the need to pay people who were alien and unknown to the Tribunal.

21. In the final analysis, the only unlawful activity to which Mr. Degli vehemently objects being associated with is that he prepared and subsequently used a false attestation of the Paris Bar Association. However, here again, his bad faith is established, for this initial unlawful act appears to be the cornerstone of the fraudulent device that he set up subsequently. Moreover, the investigators found numerous inconsistencies in Mrs. Olympio’s CV that Mr. Degli himself filed with the Registry and wherein he himself acknowledged to have worked with her. Besides, Mr. Degli cannot claim to have shown good faith after admitting that he employed Mrs. Olympio in his Law Chambers without declaring it, thereby acting outside the purview of French law and of the rules and regulations of his Bar Association. An advocate cannot be an undeclared employee. In any case, after taking the risk of hiring an advocate without declaring her, Mr. Degli cannot subsequently plead good faith as to his not knowing her real status. In the circumstances, OIOS investigators were not impressed by the written

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confessions of Mrs. Olympio made in the doubtful presence of Mr. Degli's brother-in-law, and exonerating Mr. Degli from having had prior knowledge of usurpation. The Registrar, for his part, also declines to credit that assertion, and is rather inclined to believing that it was obtained under duress, then subsequently retracted before OIOS investigators.

22. It appears from the foregoing that Mr. Degli was engaged in conduct involving dishonesty, fraud and deceit, in violation of Article 20(c) of the Code of Professional Conduct. It is also established that he did not account in good faith for the time spent by his defence team on the *Gratien Kabiligi* case, in violation of Article 11 of the Code of Professional Conduct. These serious breaches of the Code of Professional Conduct justify the withdrawal of the assignment of Mr. Degli, pursuant to Article 19(A)(iii) of the Directive, all of these without prejudice to any other action that may be instituted for the recovery of the misappropriated sums.

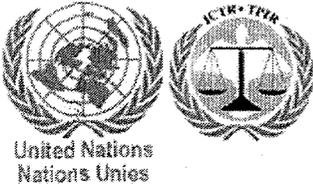
For these reasons

- . Orders the withdrawal of the assignment of Mr. Jean Yaovi Degli;
- . Finds Mr. Degli no longer eligible as Counsel within the framework of the Tribunal's legal aid scheme and orders his withdrawal from the list;
- . Orders that Mr. Jean Yaovi Degli deliver to Accused Gratien Kabiligi or to his co-Counsel, René Saint Léger, within fifteen days of notification of the present decision, all the original documents in the file which are in his possession;
- . Orders notification of this decision to the Accused, Gratien Kabiligi;
- . Orders notification of this decision to the Bar Associations of Paris and Togo;
- . Invites the accused, Gratien kabaligi, to submit, without delay, a list of 3 (three) names of Counsel whose names appear on the list of counsel that may be assigned by the Tribunal;

Adama Dieng
Registrar



Arusha, 26 October 2004



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input checked="" type="checkbox"/> Other: Registry Aminatta L.R. N'gum (names) <i>29/10/04</i>
Case Name:	The Prosecutor vs. Gratien Kabiligi			Case Number: ICTR-98-41-T
Dates:	Transmitted: 29 October 2004		Document's date: 27 October 2004	
No. of Pages:	7	Original Language:	<input type="checkbox"/> English	<input checked="" type="checkbox"/> French
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Title of Document:	Decision to withdraw the assignment of Mr. Jean Yaovi Degli as Defence Counsel for Gratien Kabiligi			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment		
<input type="checkbox"/> Confidential		<input type="checkbox"/> Warrant		
<input checked="" type="checkbox"/> Public		<input checked="" type="checkbox"/> Decision		
		<input type="checkbox"/> Affidavit		
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		<input type="checkbox"/> Judgement		
		<input type="checkbox"/> Motion		
		<input type="checkbox"/> Book of Authorities		
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English

French

Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input checked="" type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English

French

Kinyarwanda

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<input type="checkbox"/> The OTP is over-seeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is over-seeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input checked="" type="checkbox"/> Top priority	COMMENTS The original Document in French was filed on 27 October 2004.	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: