THE SECRETARY-GENERAL

ICTR

16 July 2010

Dear Judge Park,

I have the pleasure to inform you that, in accordance with Article 12 *ter*, paragraph 2, of the Statute of the International Criminal Tribunal for Rwanda ("Tribunal"), I have decided, upon the request of the President of the Tribunal, to appoint you to serve as an *ad litem* judge in the Tribunal for the trial of *The Prosecutor v. Nizeyimana*, which is expected to commence in October 2010. This appointment is with immediate effect and will be for the period of your term of office or the completion of the trial, whichever is sooner.

In accordance with Article 12 *quater*, paragraph 1 (a), of the Statute of the Tribunal, *ad litem* judges shall, during any period in which they are appointed to serve in the Tribunal, benefit from the same terms and conditions of service, *mutatis mutandis*, as the permanent judges of the Tribunal. Pursuant to Article 12 *bis*, paragraph 3, of the Statute, the terms and conditions of service of permanent judges are those of the judges of the International Tribunal for the former Yugoslavia ("ICTY"). Pursuant to Article 13 *bis*, paragraph 3, of the Statute of the ICTY, the terms and conditions of service of permanent judges of the ICTY are those of the judges of the International Court of Justice.

During such time as they may be appointed to serve in the Trial Chambers of the Tribunal for specific trials, *ad litem* judges are required to serve on a full-time basis and may not, during that time, exercise any political or administrative function or engage in any other occupation of a professional nature.

Judge Seon Ki Park
International Criminal Tribunal for Rwanda
Arusha

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I should also like to take this opportunity to note that, as an *ad litem* judge of the Tribunal, you will be entitled only to the benefits stipulated in General Assembly resolution 55/249 of 12 April 2001 and in any subsequent relevant resolutions or decisions of the General Assembly. In accordance with General Assembly resolution 55/249, should the cumulative period of your service as an *ad litem* judge of the Tribunal amount to three years or more, that will not result in any change in your entitlements and benefits and, in particular, will not give rise to any additional entitlements or benefits other than those that already exist and which will, in such an eventuality, be extended pro-rata by virtue of the extension of service.

Please accept, Judge Park, the assurances of my highest consideration.

Ki-Moon Ban

BAN Ki-moon

THE SECRETARY-GENERAL

16 July 2010

Dear Judge Fremr,

I have the pleasure to inform you that, in accordance with Article 12 *ter*, paragraph 3, of the Statute of the International Criminal Tribunal for Rwanda ("Tribunal"), I have decided, upon the request of the President of the Tribunal, to appoint you to serve as an *ad litem* judge in the Tribunal for the trial of *The Prosecutor v. Nizeyimana*, which is expected to commence in October 2010. This appointment is with immediate effect and will be for the duration of the trial.

In accordance with Article 12 *quater*, paragraph 1 (a), of the Statute of the Tribunal, *ad litem* Judges shall, during any period in which they are appointed to serve in the Tribunal, benefit from the same terms and conditions of service, *mutatis mutandis*, as the permanent judges of the Tribunal. Pursuant to Article 12 *bis*, paragraph 3, of the Statute, the terms and conditions of service of permanent judges are those of the judges of the International Tribunal for the former Yugoslavia ("ICTY"). Pursuant to Article 13 *bis*, paragraph 3, of the Statute of the ICTY, the terms and conditions of service of permanent judges of the ICTY are those of the judges of the International Court of Justice.

During such time as they may be appointed to serve in the Trial Chambers of the Tribunal for specific trials, *ad litem* judges are required to serve on a full-time basis and may not, during that time, exercise any political or administrative function or engage in any other occupation of a professional nature.

Judge Robert Fremr
c/o Permanent Mission of the Czech Republic
to the United Nations
New York

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Please accept, Judge Fremr, the assurances of my highest consideration.

Ki-Moon Ban

BAN Ki-moon

THE SECRETARY-GENERAL

16 July 2010

Dear Judge Muthoga,

I have the pleasure to inform you that, in accordance with Article 12 *ter*, paragraph 2, of the Statute of the International Criminal Tribunal for Rwanda ("Tribunal"), I have decided, upon the request of the President of the Tribunal, to appoint you to serve as an *ad litem* judge in the Tribunal for the trial of *The Prosecutor v. Nizeyimana*, which is expected to commence in October 2010. This appointment is with immediate effect and will be for the period of your term of office or the completion of the trial, whichever is sooner.

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Judge Lee Gacuiga Muthoga
International Criminal Tribunal for Rwanda
Arusha

I should also like to take this opportunity to note that, as an *ad litem* judge of the Tribunal, you will be entitled only to the benefits stipulated in General Assembly resolution 55/249 of 12 April 2001 and in any subsequent relevant resolutions or decisions of the General Assembly. In accordance with General Assembly resolution 55/249, should the cumulative period of your service as an *ad litem* judge of the Tribunal amount to three years or more, that will not result in any change in your entitlements and benefits and, in particular, will not give rise to any additional entitlements or benefits other than those that already exist and which will, in such an eventuality, be extended pro-rata by virtue of the extension of service.

Please accept, Judge Muthoga, the assurances of my highest consideration.

Ki Moon Ban

BAN Ki-moon

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTÉRIEUR

RECEIVED
JUL 13 2010
10-06671
OFFICE OF THE SECRETARY-GENERAL

TO: The Secretary-General
A:

ACTION COPY

DATE: 9 July 2010

REFERENCE:

THROUGH: Mr. Vijay Nambiar
S/C DE: Chef de Cabinet

FROM: Patricia O'Brien
DE: Under-Secretary-General for Legal Affairs, The Legal Counsel

SUBJECT: **Appointment of *ad litem* judges to a trial before the ICTR**
OBJET:

1. In the attached letter dated 6 July 2010, President Dennis Byron of the International Criminal Tribunal for Rwanda ("ICTR") requests that the Secretary-General appoint Judge Lee Gacuiga Muthoga (Kenya), Judge Seon Ki Park (Republic of Korea) and Judge Robert Fremr (Czech Republic) to serve as *ad litem* judges at the ICTR in the case of *The Prosecutor v Nizeyimana,* which is expected to commence in October 2010.

2. Judge Muthoga and Judge Park were elected as *ad litem* judges in 2003. The Security Council recently extended their term of office to 31 December 2011 or until the completion of the cases to which they are assigned, if sooner, by resolution 1932 (2010) adopted on 29 June 2010.

3. Judge Fremr was also elected as an *ad litem* judge in 2003. He left the ICTR in December 2008 on the completion of the final case to which he was assigned. In resolution 1932 (2010), the Security Council amended the Statute of the ICTR to authorize the Secretary-General to appoint former judges of the ICTR or the International Tribunal for the former Yugoslavia to serve as *ad litem* judges at the ICTR when the judges at the ICTR or on its roster are not available.

4. Under the ICTR Statute, it falls to the President of the ICTR to assess whether it is necessary to appoint an *ad litem* judge to conduct a trial and, when there is such a need, to identify a particular *ad litem* judge for the trial.

5. In identifying the *ad litem* judge, the President is required by the Statute to bear in mind:

- the desirability of achieving, both among the judges as a whole and within the particular teams of judges sitting in specific cases, an appropriate balance of expertise in the fields of criminal law, general international law, international humanitarian law and human rights law;
- the desirability of achieving on the bench adequate representation of the principal legal systems of the world;

Central

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

RECEIVED
JUL 14 2010
10-06671
EXECUTIVE OFFICE
OF THE SECRETARY-GENERAL

ICTR

TO: The Secretary-General
A:

DATE: 9 July 2010

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cc UN
Kwa

REFERENCE:

THROUGH: Mr. Vijay Nambiar
S/C DE: Chef de Cabinet

FROM: Patricia O'Brien
DE: Under-Secretary-General for Legal Affairs,
The Legal Counsel

SUBJECT: **Appointment of *ad litem* judges to a trial before the ICTR**
OBJET:

1. In the attached letter dated 6 July 2010, President Dennis Byron of the International Criminal Tribunal for Rwanda ("ICTR") requests that the Secretary-General appoint Judge Lee Gacuiga Muthoga (Kenya), Judge Seon Ki Park (Republic of Korea) and Judge Robert Fremr (Czech Republic) to serve as *ad litem* judges at the ICTR in the case of *The Prosecutor v Nizeyimana,* which is expected to commence in October 2010.

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- the desirability of achieving, both among the judges as a whole and within the particular teams of judges sitting in specific cases, an appropriate balance of expertise in the fields of criminal law, general international law, international humanitarian law and human rights law;
- the desirability of achieving on the bench adequate representation of the principal legal systems of the world;

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- the desirability of achieving equitable geographical distribution on the bench;
- the importance of achieving a fair representation of female and male judges;
- the votes the *ad litem* judges obtained during the elections in the General Assembly.

6. Upon receiving a request from the President for the appointment of an *ad litem* judge to a specific trial, the Secretary-General decides whether or not to accede to the President's request and to appoint the particular *ad litem* judge.

7. It is our view that the present request complies with the Statute of the ICTR. The Secretary-General may therefore appoint Judge Muthoga, Judge Park and Judge Fremr to serve as *ad litem* judges at the ICTR for the trial of *The Prosecutor v Nizeyimana*.

8. Accordingly, the letters appointing the judges are attached for the consideration and signature of the Secretary-General.

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 1 212 963 7365
E-mail ictr_president@un.org

UNITED NATIONS
NATIONS UNIES

Office of the President
Cabinet du Président

6 July 2010
ICTR/PRES/028/10

Dear Mr. Secretary-General,

I am writing to you to request the appointment of three *ad litem* judges in accordance with Article 12*ter* (2) and (3) of the ICTR Statute to the case of *Idelphonse Nizeyimana* (ICTR-2000-55) with immediate effect. The case is expected to start around October 2010, and the bench should comprise Judge Muthoga (presiding), Judge Park and former ICTR *ad litem* Judge Fremr. The judgement is anticipated to be delivered in November 2011.

Judge Lee Gacuiga Muthoga (Kenya) is currently also member of the bench in three other trials, *Bizimungu et al.*, *Gatete* and *Ntawukulilyayo*. However, in two of these trials, *Ntawukulilyayo* and *Gatete*, judgement will be delivered in August and December 2010, respectively. In *Bizimungu et al.*, judgement delivery is expected for May 2011. During the ongoing judgement drafting in this multi-accused trial, Judge Muthoga can accommodate additional trial work.

Judge Seon Ki Park (Republic of Korea) is currently assigned to two trials. In the *Kanyarukiga* case, judgement delivery is expected in September 2010, in the multi-accused trial *Ndindiliyimana et al.* by the end of the year. Even if in the latter case due to staffing constraints, some additional delay in the judgement delivery cannot be excluded, Judge Park will be in a position to focus almost exclusively on the *Nizeyimana* trial in 2011.

Finally, I request the appointment of former ICTR *ad litem* Judge Robert Fremr (Czech Republic) in accordance with Article 12 *ter* (3) of the Statute, as amended by Security Council Resolution 1932 (2010).

The Tribunal currently has no longer a roster of non-serving judges. In 2009, all the judges that remained on the *ad litem* judges roster expressed that they were no longer available, and one judge had passed away. Therefore, the Tribunal refrained from asking for extension of their terms of office as non-serving judges.

H.E. Mr. Ban Ki-Moon
Secretary-General
United Nations
New York

6 July 2010
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NO.

There is no currently serving *ad litem* judge who could sit on the bench. Most other judges are contaminated due to their work on other cases with factual links to the *Nizeyimana* trial. The two non-contaminated judges should not be given another assignment due to their workload and their specific situation. Their assignment to the *Nizeyimana* trial would risk further delays on the cases they are already working on.

Judge Fremr was a judge at the ICTR from September 2006 until December 2008. Having served on several cases, he has the necessary experience to work effectively together with the other judges from the beginning. He has expressed his willingness to return to Arusha. In the best interest of the Completion Strategy, I therefore request that he be appointed to join the bench.

Please be assured, Mr. Secretary-General, of my highest consideration.

Yours sincerely,

Dennis Byron
President

cc: Ms Patricia O'Brien, Under-Secretary-General, The Legal Counsel