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Mechanism for International Criminal Tribunals

MICT-12-25-R14.1
25 August 2015
Original: FRENCH

THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr John Hocking

PROSECUTOR

- v. -

JEAN UWINKINDI

PUBLIC

REPLIQUE AUX CONCLUSIONS DU PROCUREUR RECEPTIONNEES
LE 25 AOUT 2015 A 14H30.»

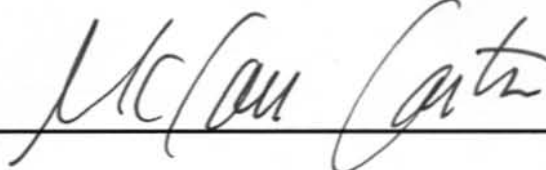
Office of the Prosecutor:

Hassan Bubacar Jallow

Counsel for Jean Uwinkindi:

Gatera Gashabana

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26/08/2015 15:08



I. FORCLUSION DES DELAIS

1. Le requérant avait demandé à la Chambre de prendre acte du non dépôt par les parties adverses de leurs écritures dans les délais .¹

2. Le 25 Août 2015 à 14h30, le requérant a accusé réception des conclusions du Parquet, après l'épuisement des délais.²

3. Ainsi, par la faute du Procureur, le requérant a été amené à présenter ses écritures en quelques heures .

4. Il plaira à la Chambre de rejeter ces écritures pour forclusion .

II. SUBSIDIAIREMENT QUANT AU FOND

1. De la position du Procureur

5. Le Mécanisme n'a reçu aucun mandat pour interférer dans les procédures internes. L'Article 6 (6) du statut évoque une procédure de désaisissement et l'Article 28 la coopération avec les états . Uwinkindi Jean ne saurait fonder sa demande sur le rejet de sa requête par la Haute Cour, le Mécanisme n'étant pas une juridiction d'appel .³

6. Uwinkindi n'a pas apporté la preuve d'un préjudice qu'il risque de subir si la procédure devant la Haute Cour poursuivait son cours normal. Sa requête est introduite dans un but dilatoire.⁴

¹ Requête tendant à obtenir suspension de l'instruction de la cause inscrite sous le RP0002/12/HCCI en cause UWINKINDI JEAN contre l'Organe National des Poursuites Judiciaires pendante devant la Haute Cour.

² Prosecution's submissions opposing UWINKINDI'S request for stay of Rwandan proceedings.

³ Prosecutions submission op cit no 1050 page 1,2 et 3

⁴ Prosecutions submission op cit no 1049 et 1050 page 4 et 5

2. De la réplique du Requéant

7. La saisine du Mécanisme repose sur les arguments de droit ci après :

- L'Ordonnance de renvoi de l'Accusé au Rwanda du 28 Juin 2012 qui prévoit que la saisine du Tribunal n'implique pas la suspension de *l'Instance en cours devant les juridictions nationales à moins d'une décision expresse du Tribunal*⁵
- La primauté du Mécanisme sur les juridictions nationales .⁶
- La Constitution rwandaise en son article 190 qui confère aux accords internationaux une autorité supérieure à celles des lois.⁷
- L'Article 119 du Code d'Organisation et de compétence judiciaires , prévoit qu'en cas de saisine par deux juridictions compétentes des mêmes faits, les causes sont renvoyées par l'une des juridictions à une autre, selon les règles suivantes, la juridiction du rang inférieur décline sa compétence au profit de la juridiction la plus élevée.⁸
- L'Article 22 de la loi no 47/2013 du 16 Juin 2013 sur le transfert concernant le dessaisissement de la Haute Cour au profit du Mécanisme.⁹

3. Observations juridiques.

- Le Procureur n'est pas fondé de dénier au Mécanisme le pouvoir de suspendre l'instruction au niveau de la Haute Cour. Il ne saurait en même temps reconnaître au Mécanisme le pouvoir d'annulation et ignorer sciemment celui de suspension sous peine de violer un principe fondamental de droit bien connu selon lequel « *qui peut le plus peut le moins* »
- La jurisprudence tirée du dossier Peter Erlinder poursuivi à l'époque sur base des faits relevant du droit positif rwandais ne devrait pas concerner l'Accusé .

⁵ Point 14 du dispositif de l'Ordonnance de renvoi, Affaire ICTR-2001-R11BIS page 68 paragraphe 14

⁶ Le Mécanisme a primauté sur les juridictions nationales

⁷ Constitution de la République du Rwanda du 04 Juin 2003, Ministère de la Justice, édition Janvier 2011

⁸ Loi Organique no 51/2008 portant Code d'Organisation Fonctionnement et Compétence Judiciaire, Official Gazette année no 47 no special du 10 Septembre 1908

⁹ Official Gazette no special du 16 Juin 2013

- Le procès devant la Haute Cour est à un stade très avancé. La phase cruciale de l'audition des témoins sera examinée le 10 Septembre 2015. Le Requéant ne peut contre interroger les témoins à décharge à l'intérieur du pays car ¹⁰ il n'a plus d'emprise depuis sur eux depuis que ses Conseils ont été remerciés sur décision des pouvoirs publics. Peut on dans ces conditions invoquer l'absence d'un quelconque préjudice dans son chef? La question des témoins en dehors du pays a fait l'objet de nos productions antérieures
- L'Accusé n'est à même de faire face à deux instances, pendantes devant deux juridictions différentes avec des conseils différents. Devant la Haute Cour, il risque de se retrouver seul sans défense, abandonné à triste en face des adversaires puissamment armés ses demandes étant chaque fois interrompues par le Président du siège.

8. Selon un expert du Procureur MARTIN WITTEVEEN UWINKINDI Jean a été privé du droit à l'assistance des Conseils pendant toute la période cruciale de l'audition de ces témoins.¹¹(paragraphe 21)

9. L'égalité des armes est également évoquée : (paragraphe 51)

....Additionally , unlike the NPPA and the Judiciary ,received extensive assistance capacity building from donors , *the Rwanda Bar Association hardly received any assistance....*

...There is no neutral Magistrate to conduct serious trialfinds by both parties (point 56).

10. Au point 63 : la question des fonds à allouer à la défense pour les enquêtes nécessaires dans les procès du Génocide par le Ministère, afin de garantir un procès équitable est bien cernée.

11. Toute les points soulevées dans nos mémoires sont bien circonscrits par l'expert. Venant du camp du Procureur, la Chambre devrait y réserver une attention particulière pour apprécier à sa juste mesure l'imperieuse nécessité d'ordonner la suspension de l'instruction devant la Haute Cour en attendant l'issue de la procédure renvoi

¹⁰ Arrêt avant dire droit du 09 Juin 2015 rendu par la Haute Cour renvoyant la cause au 10 Septembre 2015 pour audition des témoins et plaidoiries

¹¹ Extradition proceedings re: Government of Rwanda v Dr.Vincent Bajinya .

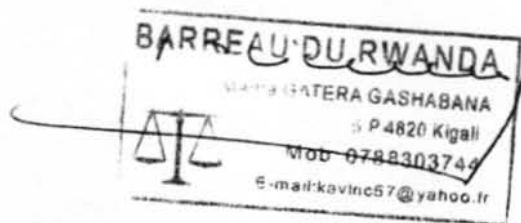
12. Il plaira à la Chambre de déclarer non fondé la réplique du Procureur

Word count: 1000

Daté et signé le 26 Août 2015

Maitre Gatera Gashabana

CONSEIL PRINCIPAL



**ADDITIONAL
EXPERT REPORT**

BY

MARTIN WITTEVEEN

ADVISOR INTERNATIONAL CRIMES TO

THE NATIONAL PUBLIC PROSECUTION AUTHORITY, NPPA, IN RWANDA

Prepared for

Extradition Proceedings re: Government of Rwanda v Dr. Vincent Bajinya and others

Kigali, Rwanda
June 3rd, 2015

Introduction and personal circumstances

1. This additional expert report builds on my expert report dated September 19th, 2014 [hereafter: "the expert report"]. Since I submitted the expert report, almost nine months have passed.

I am still an advisor international crimes to the National Public Prosecution Authorities, the NPPA, in Rwanda, advising on their transfer genocide cases. Generally, the circumstances of my position and work, as described in detail in the expert report, have not changed.

2. Regarding my responsibilities outside the scope of my official work, I have assumed a position in a Panel of Experts for a research project, conducted by two non-governmental organizations: International Corporate Accountability Roundtable, ICAR, and Amnesty International, AI. The topic of the research is to find an answer to the question why there are so few prosecutions of corporations for international crimes or any other serious human right abuse.

Secondly, I have conducted a two-day seminar for students in the Master International Crimes at the *Vrije Universiteit* in Amsterdam on the topic "Truth finding in international crimes" in April 2015. For the seminar I drafted a course book.

3. During the eleven months of my tenure at the NPPA in Kigali, Rwanda, I have almost exclusively focused my attention on the work conducted in the Genocide Fugitive Tracking Unit, the GFTU, in the NPPA. From September 2014 onwards I have studied and analyzed the work processes in and in relation to the GFTU and produced an extensive analysis recorded in an assessment report, which I finalized in December 2014. I have presented these findings to the Prosecutor-General and the Minister of Justice in Rwanda. Based on this analysis and my recommendations in the assessment report, I have advised the GFTU/NPPA on a number of selected topics in 2015. Except from a few issues, analyzed in the assessment report, which I will reference hereunder, this report has, in my opinion, no relevance for the topics addressed in the expert report.

4. For the purpose of the study of the work processes of the GFTU and the drafting of the assessment report, I have interviewed around 40 staff members from various organizations, including all the members of the GFTU. I also reviewed a number of documents relevant for the study and examined various websites.

5. Moreover, I have attended a number of court proceedings in the transfer cases, notably the cases against Uwinkindi, Munyagishari, Mbarushimana, Bandora and Mugesera. I

have not logged each court session individually, but it is fair to say that I have attended at least a dozen trial sessions.

6. As I have been integrated in the NPPA from the beginning, I have attended a few conferences of the NPPA as well as the regular weekly meetings of the GFTU.
7. For my work, I also maintain regular contacts with some of the staff in the Ministry of Justice. To analyze the situation of the defence attorneys I have spoken to staff in the Rwanda Bar Association, RBA, individual defence attorneys and the Director of the Legal Aid Forum in Rwanda.

Purpose of this additional report

8. The purpose of this additional report is to provide an update on my expert opinion on the critical topics addressed in the expert report. Additionally, I wish to provide expert opinion on the status and work of the defence attorneys in the genocide transfer cases, currently adjudicated before the High Court in Kigali, Rwanda. In this respect I wish to refer to what I have stated in the expert report, when I highlighted the need not to criticize Rwanda, but assist them in building the justice system¹.

Update

9. On the basis of my experiences and the information and knowledge I accrued during my tenure in Kigali, I maintain what I have stated in the expert report. I believe I made no factual mistakes in the expert report and in my opinion there is no need to correct any statement.
10. I specifically maintain my main expert opinion² that, in the genocide transfer cases that I have witnessed, Rwanda has a functioning justice system, capable of investigating, prosecuting and adjudicating cases of genocide, transferred from other jurisdictions, applying international standards and providing fair trial rights for defendants.
11. More specifically, I have witnessed professional prosecutors, litigating the cases before the High Court, who are knowledgeable, dedicated and conversant both with the substance of the case as well as the legal issues in the case. Based on how the prosecutors have litigated the case, I have no doubt that the prosecution intends to prosecute the

¹ See the Expert Report dated September 19th 2015, par. 129 – 137.

² *Ibid.*, par. 120.

transfer cases both expeditiously and with respect for the rights of the defendants as enshrined in the Rwandan laws and the international conventions.

12. During the court proceedings I witnessed, and based on other information I gathered³, I assessed that the parties, but specifically the defendants as well as the defence attorneys, were given generous time and opportunity to comment on the proceedings, present views and bring forward motions. With a few exceptions, I have never seen the judges to be unfriendly or even rude to the defendants or the defence attorneys or to have cut them short. Throughout the proceedings the judges have maintained a professional, knowledgeable and composed attitude, free from bias. I profoundly believe that the judges in the High Court have a sincere intent to adjudicate these transfer cases according to international standards and that they are genuinely pursuing this in a role that is, to a degree, new to them.
13. I especially highlight the fact that, from witnessing the court proceedings, there is no indication whatsoever, that the defendants were considered as political opponents of the government, who had to fear for their safety. Nor did politics play any part in the proceedings. I have never heard or seen the defendants or attorneys invoke anything in court that was political of nature or suggest that their lives or that of their families were in danger. Obviously, they are unharmed and in good condition and none of the allegations made against the government of Rwanda on the issues of safety and security prior to the transfers, have become reality.

The position of the defence in transfer cases

14. In spite of these positive findings, I have a deep concern on the status and quality of the defence attorneys acting for their clients in the genocide transfer cases. In the cases I witnessed, none of the defence attorneys performed at a level that meets any international standard. In summary: in some cases there is currently no defence, either officially or materially, in other cases the defence attorneys act or acted substandard and even irresponsible.
15. I realize that this opinion may be considered as sensitive or even inappropriate, but I find it inevitable. I equally realize that this opinion has not often been expressed, although some of the issues have also been raised during the referral trials in Uwinkindi and Munyagishari before the ICTR⁴. I have noted that both in Uwinkindi as well as in

³ See paragraphs 16 – 18 hereafter for my explanation which sources of information I used.

⁴ See for the case of Uwinkindi: *Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, dated June 28th 2011, Chapter 9: "Right to an Effective Defence" at: <http://www.unictc.org/sites/unictc.org/files/case->

Munyagishari, the defence has lodged applications for the deferral of the cases and raised issues of fair trial⁵. In my opinion, what has been lacking in these applications is a reflection of the functioning of the individual defence attorneys in these cases as well as in other referral cases in Rwanda.

The cases

16. My observations and opinions on the defence attorneys, expressed in this report, are based on my observations during trial in the cases of Uwinkindi, Munyagishari, Bandora, Mugesera and Mbarushimana⁶, my personal encounters and discussion with the defence attorneys⁷ as well as discussions within the NPPA and with other actors.

17. As noted earlier, I have attended a limited number of trial sessions. However, a legal officer of the Embassy of the Kingdom of the Netherlands has attended almost all of the

documents/lctr-01-75/trial-decisions/en/110628.pdf. And for the case of Munyagishari: *Decision on Prosecutor's Request for Referral to the Republic of Rwanda*, dated June 6th 2012, Chapter 10: "Right to an Effective Defence" at <http://www.unict.org/sites/unict.org/files/case-documents/lctr-05-89/trial-decisions/en/120606.pdf>.

The Referral Chamber explicitly took into account the fact that the work of the defence in the case of Munyagishari would entail considerable work outside Rwanda. The Chamber then considered [par 148] that, given the unique challenges posed by this case, the Accused should be assigned a defence attorney with previous international experiences especially in eliciting evidence from witnesses abroad and made the referral conditional to a guarantee by the President of the Rwanda Bar Association that such a defence lawyer would be assigned. However, the Appeals Chamber overturned this decision. See: *Decision on Bernard Munyagishari's Third and Fourth Motions for Admission of Additional Evidence and on the Appeal against the Decision on Referral under Rule 11Bis*, dated May 3rd 2013, Chapter III, C, 1 "First Condition", par. 101 and further. Found at: <http://www.unict.org/sites/unict.org/files/case-documents/lctr-05-89/appeals-chamber-decisions/en/130503.pdf>.

The Referral Chamber found the assertion that the Accused's case is too complex for pro bono lawyers in Rwanda baseless speculation [par.155].

⁵ See Uwinkindi's request for deferral, dated December 28th 2014: "Jean Uwinkindi's Request to Revoke Referral Order", found at: <http://www.unmict.org/sites/default/files/casedocuments/mict-12-25/defence-submissions/en/141228.pdf>.

By his decision, dated May 13th 2015, the President of the MICT decided to refer the deferral request to a full chamber of the MICT rather than dismissing the request himself. See: <http://www.unmict.org/sites/default/files/casedocuments/mict-12-25/president%E2%80%99s-decisions/en/150513.pdf>. Apparently, the March 2015 monitoring report was the ground for this decision.

See Munyagishari's request for deferral, dated March 3rd 2015: "Bernard Munyagishari's Request to Revoke Referral Order", found at: <http://www.unmict.org/sites/default/files/casedocuments/mict-12-20/defence-motions/en/150303.pdf>.

⁶ I have not logged these observations and not always made notes, at least not when notes were taken by another person [see hereafter]. I made notes during trial sessions of Bandora [October 10 and 15, 2014], Mugesera [March 18 and 26, 2015 and April 15 2015] and Mbarushimana [March 25 2015 when I also briefly spoke to him during a break].

⁷ I have spoken in length with the former defence attorney of Uwinkindi, Mr. Gashabana, the defence attorney of Bandora, Mr. Bakotwa and the new defence attorney of Uwinkindi, Mr. Ngabonziza. The defence attorneys of Munyagishari and Mugesera, Mr. Niyibizi and Mr. Rudakemwa made appointments with me but cancelled them and since have avoided me. Generally, the defence attorneys were not comfortable speaking to me except Mr. Ngabonziza.

trial sessions during the period September to December 2014. She was accompanied by a local staff member of the embassy who translated for her and me and typed the translation on his computer. Most, but not all, of these notes have been preserved and I have received them and included them in my analyses for the purpose of this additional report.

18. Lastly, I have read all reports drafted and submitted by the monitors of the ICTR in the cases of Uwinkindi and Munyagishari. They are published on the website of the ICTR and the MICT. I have spoken occasionally to the monitors about their monitor work⁸. I have additionally spoken to the monitor⁹ of the Office of the Prosecutor, OTP, of the ICTR, who has regularly attended court sessions in the cases against Uwinkindi and Munyagishari. The reports of this monitor have not been made public.

Uwinkindi

19. The defendant Jean Uwinkindi was the first transfer case to Rwanda. The ICTR referred the case of Uwinkindi on June 28th, 2011¹⁰. He was transferred to Rwanda in April 2012 and his trial started in June of 2012. The decision to refer the case of Uwinkindi to Rwanda has a long history, dating back to 2007 and beyond¹¹.
20. My aim is not to describe and analyze the court proceedings in the case against Uwinkindi before the Special Chamber of the High Court in Kigali, Rwanda. These proceedings, the views of the parties and others involved as well as the backgrounds have been reported by the ICTR court monitors in their continuing reporting¹².
21. The notion I need to make and find relevant for my expert opinion is that, since January of 2015, and during the most critical phase of the trial, the hearing of witnesses, Uwinkindi is without any defence.
22. The origin of this situation is a conflict between Uwinkindi's two defence attorneys and the Minister of Justice about the fees to be paid to the attorneys and certain provisions in the contract. In summary, at the start of the case in Rwanda, the attorneys were paid 30.000 RwFr per hour. This was later changed into 1 million RwFr per attorney per month.

⁸ I met the new ICTR monitoring team during a lunch on March 16th 2015 in Kigali.

⁹ Vincent Eyo, a retired Tanzanian judge.

¹⁰ <http://www.ainict.org/sites/unict.org/files/case-documents/ict-01-75/trial-decisions/en/110628.pdf>

¹¹ See for an overview of that history and earlier attempts to refer cases: Jennifer Wren Morris, *The Trouble with Transfers: An Analysis of the Referral of Uwinkindi to the Republic of Rwanda for Trial*, 90 Wash. U. L. Rev. 505 (2012). Available at: http://openscholarship.wustl.edu/law_lawreview/vol90/iss2/6

¹² All reports can be found here: <http://www.unmict.org/en/cases/mict-12-25>

As the case in court dragged on, the budget available for paid legal aid got depleted and in 2014 the Minister decided to fix the attorney's fees to 15 million per case, including the appeals phase and regardless the number of attorneys. In the case of Uwinkindi, the Minister unilaterally¹³ terminated the contract between him and the defence attorneys in November 2014 and presented them a new contract in which he offered to pay 15 million RwFr. By this time the Minister had paid the attorneys around 80 million RwFr in the case. The defence attorneys refused the new contract and also opposed a number of provisions in the contract¹⁴.

23. In trial, the attorneys requested to postpone the trial till a new contract was signed. When the court rejected the request and decided to move on with the trial, the attorneys appealed the decision and argued that during the appeal the trial should be stayed. When the court rejected also this request and continued the case, the attorneys ceased to appear in court leaving the defendant without defence¹⁵. The court then punished the attorneys for misconduct and delaying the trial, imposed a fine and ordered the Rwandan Bar Association to appoint new attorneys. When the RBA appointed these attorneys, Uwinkindi refused them and requested to re-appoint his old defence team. The court refused that and continued with the case. The new defence attorneys, although present in the court room, never represented Uwinkindi and are not in the possession of the case file¹⁶.

24. Unfortunately, after the court decided to continue with the trial and without any defence present, within a few days all the prosecution witnesses have been heard without being cross examined. A few defence witnesses¹⁷, which the defence team had already

¹³ Invoking his right to do so under the then valid contract.

¹⁴ See for the attorney's summary of the version of the conflict: monitor report March 2015, par. 31 – 40, monitor 2nd report December 2014, par 64 and monitor report January 2015, par 30. See for the Prosecution summary of the version of the conflict, monitor report February 2015, par. 10 – 25.

¹⁵ Although the contract between the attorneys and the Minister stipulates that the defence attorneys are obliged to continue providing legal services to the defendant for three months after termination of the contract, which the attorneys ignored.

¹⁶ For a full account of this episode see the monitor reports December of 2014 (2x), January, February and March of 2015. At the time of signing of this additional report the April report had not yet been published.

¹⁷ The defence had submitted a list of defence witnesses to the court in 2014. Nine of these witnesses live in Rwanda, in fact most are incarcerated, and were heard during two mornings in March 2015. Most of the other witnesses reside abroad. The defence attorneys had requested the Minister a budget to travel to the countries where they reside and speak to these witnesses and obtain personal information. The Minister had rejected this budget as unrealistic and requested an amended, specified budget, which the attorneys never submitted. Thus, the court was not able to pursue these defence witnesses without further information to be provided by the defence attorneys. A request by the defence to hire an investigator was denied as inconsistent with Rwandan law. It has to be noted however, that during the referral trial before the ICTR, the defence presented 49 signed affidavits by potential defence witnesses.

submitted to the court earlier, were also heard but not examined by the defence. Closing arguments have been postponed¹⁸.

25. When the trial of Uwinkindi reopened on June 2nd, 2015, Uwinkindi requested the court to postpone the trial till the MICT has taken a decision on his request to defer the case¹⁹. The prosecution is now taking the position that Uwinkindi cannot be without defence and requested the court to have the newly appointed lawyers to stay in the case and represent Uwinkindi. The High Court will take a decision on Uwinkindi's request for postponement on June 5th 2015.

Munyagishari

26. On June 6th, 2012 the ICTR Referral Chamber decided to transfer the case against Bernard Munyagishari to Rwanda. He was ultimately transferred to Rwanda on July 24th 2013.
27. Since his arrival in Rwanda, the case against Munyagishari has not made much progress²⁰. There have been endless debates on interpretation after Munyagishari refused to speak in Kinyarwanda and his right to have translation of documents in French and have translation during trial with which he was afforded. Furthermore, there have similar debates about Munyagishari's fair trial rights and his refusal to engage in the proceedings. Currently, the case has reached a stage where Munyagishari has been given the opportunity to respond to the indictment and to present his plan for his defence including the submission of a witness list. Munyagishari positions himself at trial as a defendant who cannot defend himself, does not have the support of defence attorneys as they are not paid and is not able to give any submissions as he does not have the means to do so.
28. The stall in the trial is largely due to the position that Munyagishari's two defence attorneys take in this case. The lead counsel for Munyagishari is the co-counsel in the case against Uwinkindi. Subsequently, the counsel for Munyagishari has refused to accept a contract offered by the Minister of Justice to take the case for the 15 million RWF fee and there are no negotiations ongoing. As a result, the defence attorneys appear in court trials

¹⁸ In the meantime proceedings at the Supreme Court have started to deal with the appeals by Uwinkindi against the decisions of the High Court, notably the decision to appoint new defence attorneys and the decision not postpone trial. The Supreme Court first did not want to hear the appeals as the defence attorneys had not paid the fines yet, that were imposed by the High Court after they did not appear in court. On April 24th 2015 the Supreme Court has rejected the defence appeal, ruling that Uwinkindi does not have a free choice of a defence attorney when he is indigent and that the High Court was right to request the Rwanda Bar Association to appoint new attorneys. See <http://www.newtimes.co.rw/section/article/2015-04-27/188219/>.

¹⁹ See footnote 5.

²⁰ All proceedings as well as backgrounds of the [lack of] developments in the cases can be found in the ICTR monitoring reports at: <http://www.unmict.org/en/cases/mict-12-20>.

as pro bono attorneys²⁴. In trial Munyagishari is largely defending himself, his counsel is most of the time quiet in court and his contributions are limited to a few procedural issues and his complaint about the refusal of the Minister to present another contract²².

29. In summary: Munyagishari at this stage is in fact not represented by a professional legal counsel and refuses to get engaged in any proceedings. Munyagishari's defence attorney seems to take the position that he is not capable of defending Munyagishari at this point. In the February 25th 2015 court session, the counsel for Munyagishari is quoted as having stated that the court should ensure that Munyagishari is assisted by a professional lawyer that is enumerated, implying he is not one²³.

Mugesera

30. Leon Mugesera was deported from Canada to Rwanda on January 23rd 2012, after a long legal battle in various Canadian courts. Canada stipulated that Mugesera be tried under the Rwandan Transfer Law and his case is, indeed, adjudicated in the Special Chamber of the High Court in Kigali.

31. It has taken very long for the case against Mugesera to develop. At this stage 23 prosecution witnesses have been heard. Mugesera is provided the opportunity by the court to comment on these witnesses. So far Mugesera has not provided the court with a list of defence witnesses.

32. Mugesera is represented in court by one defence attorney. Initially, Mugesera paid his own defence attorney but later claimed indigence. As he has refused to fill in the necessary forms he has not benefitted from paid legal aid thus far.

33. What is remarkable about the defence attorney is the fact that he maintains complete silence during the court sessions and he seems to have been maintaining this posture all along the trial. It is only Mugesera that addresses the court. In conclusion, also Mugesera is not defended in court by a professional defence attorney.

Bandora

²⁴ In the last two court sessions, the last one on June 3rd 2015, the defence attorneys were not present with Munyagishari unable to explain where his defence attorneys are. The court will take a decision how to proceed.

²² A summary of his view can be found in the monitoring report of January 2015, par. 24 – 28.

²³ See Monitor report Munyagishari, February 2015, par. 42. Found at: <http://www.unmict.org/sites/default/files/casedocuments/mlct-12-20/submissions-non-parties/en/150326.pdf>

34. Charles Bandora was extradited from Norway to Rwanda on March 9th, 2013 after the District Court in Oslo, Norway, authorized the extradition on July 11, 2011. His first appearance in the High Court was on November 4th, 2013.
35. Bandora's case has also been tried before a gacaca court at the time the gacaca courts were active. In first instance Bandora was acquitted, but the victims and their representatives appealed the verdict²⁴ and in appeal Bandora was convicted in absentia²⁵. That verdict was later nullified because of the rule that Category I defendants cannot be tried by a gacaca court.
36. Although Bandora is one of the last of the five current defendants in the five transfer cases to have been transferred from abroad, he is the first whose case has been concluded by the High Court²⁶. Bandora has been represented by two defence attorneys, who he has selected himself independently from the Rwanda Bar Association. First he paid his lawyers from his own pocket. When he said he was no longer able to do so, he applied for paid legal aid. On September 14th 2014 a contract was signed between the defence attorneys and the Minister of Justice, in which the defence attorneys accepted the 15 million RWF fee.
37. In June of 2014 both defence attorneys were fined by the High Court for contempt of court and delaying the trial after they had not shown up for the court session. The attorneys had sent a letter to the court requesting to adjourn the case, after their client had allegedly run out of financial resources to pay his lawyers personally, which led the attorneys to apply for paid legal aid at the Ministry of Justice²⁷.
38. During trial, on various dates between September and December 2014, witnesses were heard in court. The prosecution presented twelve witnesses, the defence fourteen. Some of the fourteen defence witnesses exonerated Bandora for the crimes he is charged with. Many of these witnesses were themselves convicted of participating in these crimes and were incarcerated. The prosecution witnesses were very different in nature. Some

²⁴ One of the witnesses in the trial against Charles Bandora testified that he was a judge in the gacaca court and composed a file against Bandora. He was in charge of cases of theft and was not a member of the gacaca court who acquitted Bandora in the criminal case of genocide. He testified that victims and *ibuka*, the umbrella organization that represents victims of the genocide, came to him and requested him to appeal the acquittal which he did.

²⁵ Information provided by the legal counsel of the Dutch embassy indicates it is not certain whether Bandora was convicted for genocide crime or theft.

²⁶ On May 15th 2015 Bandora was convicted by the High Court in Kigali to a 30-years imprisonment sentence for his role in the genocide. The 40-page verdict is being translated into English. The court ruled that they found a mitigating circumstance in the fact that Bandora was cooperative with the court throughout the trial.

²⁷ See: <http://www.newtimes.co.rw/section/article/2014-06-26/76993/>.

incriminated Bandora, some witnesses retracted their earlier, incriminating statements, two witnesses were ten and fourteen years old at the time of the alleged crimes. Another important incident happened during testimony which will be explained hereunder.

39. These hearings have been the first opportunity to watch and analyze how witnesses were examined. In general, the parties made a serious attempt to solicit from the witnesses what they had witnessed and other information. The judge was very active in the hearing of the witnesses. He asked the witness many questions and often interrupted the questioning by the parties. All parties showed basic knowledge about witness' testimony such as the difference between an eye witness and a hearsay witness.

40. However, evaluating the overall conduct of especially the defence, their performance was in many ways problematic.

- a. In the first place, the hearing of the witnesses by the defence, either in cross examination of the prosecution witnesses or in examining the defence witnesses, went chaotic. The defendant personally led much of the questioning without any guidance or direction from his attorneys, who were silently sitting next to him. The two defence attorneys did not seem to have any agreement on a structure, strategy or line of questioning, constantly taking over the questioning from each other and interrupted by Bandora.
- b. The questions by the defence were very brief and superficial²⁸. Most of the times, when the witness made a point, it wasn't followed up and the attorneys constantly switched topics with the witness.
- c. Many questions by the defence were irrelevant, or seemed to be, and repetitious. The presiding judge interrupted the defence attorneys occasionally on this.
- d. The defence attorneys as well as Bandora repeatedly mentioned the name of a protected witness, whose name was supposed to be not used in public court. At one point, the presiding judge threatened the defence by sanctioning them for this.

41. More problematic, in my opinion, is the fact that the defence left many opportunities unused, especially in reaction to prosecution witnesses. This in particular happened when two detained prosecution witnesses, who had earlier incriminated Bandora during gacaca, retracted their statements in court, claiming they were visited by the prosecutors in the case in prison, prior to their testimony in court, who promised they would be

²⁸ Usually, the defence took not more than 15 to 20 minutes to examine their witnesses and on one occasion the defence asked a defence-witness only roughly ten questions.

released when they testified against Bandora. Asked why they had testified against Bandora during the appeals phase in gacaca, they said they were forced by businessmen to testify against Bandora, after his acquittal, as these businessmen wanted to take Bandora's possessions.

42. Although it is a well-known phenomenon that witness tampering has taken place in gacaca trials and, at a minimum, allegations of this nature have often been made²⁹ without knowing the veracity, it is incomprehensible that the defence attorneys did nothing with this information: no additional investigation was requested, nor did the defence submit an additional list of witnesses to clarify these allegations, that, if proven true, could have an impact on the outcome of the case. One of the businessmen, who had allegedly influenced the witness, was himself a witness in the trial before the High Court but was not questioned by the defence about this issue.
43. Equally worrisome is the fact that such a limited number of witnesses were heard, while, during the testimony of the witnesses who were heard in trial, many other names surfaced who allegedly were present during the charged crimes and attacks, while the defence made no attempt to hear those witnesses, at least not noticeably. Lastly, the defence attorneys have made no attempt to locate witnesses living abroad³⁰ and never requested the Minister a budget to investigate the case for the defence.
44. In sum: I believe the defence's performance in trial, especially in hearing the witnesses³¹, although there are no signs of bad intent or intentional negligence, is indicative of the lack of knowledge and experience in cases of genocide crime as well as the immaturity of the state of the defence in serious criminal cases. They simply were not capable of building a credible defence case that could have impacted on the outcome of the case.

Mbarushimana

45. Emanuel Mbarushimana was extradited to Rwanda from Denmark on July 3rd, 2014 after the Supreme Court in Denmark rejected his appeal against extradition in November 2013. He has since been detained, but his case has not been tried as yet.

²⁸ In fact another witness testified that the same had happened to him but this time by the defence attorneys.

²⁹ When I asked the lead counsel later why he had not made any attempt as described above, he said it was not necessary, leaving me with the impression that the case had already burdened him enough in time and resources.

³¹ Unfortunately, I was not in a position to hear their closing arguments or read them.

46. Up to the date of this additional report, Mbarushimana has not yet chosen his defence counsel. Upon arrival in Rwanda, he was led before a local court of Kanombe, Kigali as the local court where he was arrested, the airport. The local court ordered to supply to him a list of all defence attorneys in Rwanda after Mbarushimana claimed he had not received a full list of the attorneys to choose from. Since these initial appearances, Mbarushimana has not chosen a defence attorney, while this issue has been the subject of many court sessions by various judges.
47. Mbarushimana appeared before the High Court on March 25th, 2015³². Again, the discussion was about the list of attorneys, supplied to him. Mbarushimana claims he was provided a list of 500+ attorneys by the Rwandan Bar Association, but he pointed out that the Government of Rwanda, when they litigated the extradition case in Denmark, claimed that there were more than 800 attorneys in Rwanda, that could defend him. He asked the court for that list. In the end the court ordered to supply him a full list³³.
48. At the date of the closure of this report, I understand Mbarushimana still has not chosen a defence attorney. However, there are two defence attorneys, who negotiated with the Rwanda Bar Association to assign to him a defence team of six persons, including a monitor, an investigator and two foreign defence attorneys³⁴.

Conclusions

49. Firstly, I would like to note that the assessment of the performance by the defences in the five transfer cases, is not to determine responsibility for the current situation with the defence in transfer cases, nor do I wish to point fingers. I simply want to opine that in the transfer cases there is either no defence, formally or materially, or largely insufficient and/or unqualified defence.
50. However, I do believe it is an inevitable conclusion that nor the defendants, nor the [majority of the] defence attorneys have any trust in the government institutions. It either leads to complacency or animosity and confrontational attitudes and some of the defence attorneys and defendants seem to be determined to fight every possible fight and will use any tactics to frustrate the trials, including obstruction of the proceedings.

³² Where I was present and I understood this was his first appearance in High Court.

³³ This decision is remarkable as the Supreme Court decided in the case against Uwinkindi that he does not have the right to choose an attorney from a list, if he is provided the status of indigence.

³⁴ Information supplied by Victor Mugabe, Executive Director of the Rwandan Bar Association on May 14th 2015.

51. Based on my observations and the information I collected, it is fair to say that the defence is by far the weakest link in the justice sector in Rwanda. The main reason probably is that it began developing only very recently. Rwanda has no history or extensive experiences with defence in criminal cases and no well-developed system of government financed legal aid. Additionally, unlike the NPPA and the Judiciary, that both received extensive assistance in capacity building from donors, the Rwanda Bar Association hardly received any assistance³⁵. This has resulted in an organizational immaturity and incapability dealing with genocide cases at this level, which are considered as the most serious and complex criminal cases the world has ever seen. This is certainly true when international standards are required.
52. I have in particular serious doubts whether defence attorneys in Rwanda are capable of conducting a robust and credible defence investigation aimed at establishing exonerating evidence. Given the reality of the Rwandan genocide cases, such will involve extensive investigations abroad as many of the potential defence witnesses are living outside Rwanda, sometimes in places as far as Northern America and Australia. These are time consuming, resource intense and expensive investigations, that require the support of the government of Rwanda in brokering international bilateral or multilateral judicial cooperation. At this stage and without any support, I cannot envision that defence attorneys in Rwanda are capable or even in a position to perform such investigations³⁶.
53. To conclude, when the transfer cases were decided, Rwanda was still in the process of developing a legal aid system. Amendments have been made along the way, conflicts have arisen, improvements are still being implemented and not all disputes are settled. These are all healthy signs that the justice system is in action, that the intent is to guarantee that defence attorneys will be up to the task and I have no doubt that a balance will be found in the future, that is accepted by all parties³⁷.

Relevance of defence in genocide cases

³⁵ The Dutch embassy initiated a project for the training of defence attorneys in Rwanda that deals with genocide cases through the RBA and made funds available, but the Dutch Bar Association declined to assist, probably not to undermine their defence in trials and extradition cases in the Netherlands.

³⁶ See also footnote 4 where I made reference to ICTR's referral decision in Munyagishari, specifically the court's decision to make the referral conditional to a guarantee by the President of the Rwandan Bar Association that the Accused will be assigned a defence attorney with proven experience in international investigations.

³⁷ It is worth noting that the Minister of Justice promulgated his legal aid policy in September 2014 and started to supply a budget for legal aid in Rwanda, including some funds for paid legal services in transfer genocide cases. At: http://www.minijust.gov.rw/fileadmin/Documents/MoJ_Document/Legal_Aid_Policy_-_JMCC_Feedback.pdf

54. The role and importance of qualified, well performing defence attorneys in these genocide transfer cases cannot be underestimated or undervalued. It is my opinion that the right to be represented by a defence attorney is not merely a procedural right, but in fact what it should represent is the need, as in any criminal case for that matter, to bring fairness and balance to the investigation and trial. The defence's role is to test the evidence presented by the prosecution and build the strongest possible defence case for the defendant, with the aim to present the court alternatives for the case that is presented by the prosecution. If the defence is capable of doing that, then the judges can make a real determination on the truth in the case, based on alternative scenarios. If the defence is not capable of presenting [strong] evidence pointing in another direction than the prosecutor's case, at least the judges can safely assume the prosecution case is a better case for the truth. In that sense a defence investigation is always useful, when conducted professionally, even in case it does not yield much result.
55. In this respect, it has to be borne in mind the nature of the criminal proceedings under Rwandan law. While Rwanda's legal system is based on the legal system brought to the country by its colonizer and therefore is more inquisitorial in character, after the promulgation of the Transfer Law and the transfers of the cases from the ICTR, Rwanda has definitely chosen that the trials in the transfer cases are accusatorial in nature.
56. In an inquisitorial legal system the judges assume responsibility for assessing the facts in the case. The court will adjudicate the case based on the investigation by an investigation magistrate³⁸, who will compile a dossier with all the results of the investigation. This comes on top of what the criminal investigation conducted under the authority of the prosecutor has yielded. During the investigation by the magistrate, the defence attorney is a full party and can request any type of investigation to be carried out by that magistrate. However, during an accusatorial proceedings, as it is the case in transfer cases in Rwanda, there is no neutral magistrate to conduct serious trial or pre-trial fact-finding for both parties³⁹ and the burden to prove and present a probable case and alternative scenario than the prosecution presents, is solely in the hands of the defence attorney⁴⁰.

³⁸ Under Rwandan law, there is no investigation magistrate to conduct pre-trial judicial investigations.

³⁹ Equally, the trial judges in the transfer cases in Rwanda adopt a similar attitude as judges in international tribunals where they leave the hearing of the witnesses during trial to the parties, including the cross examination and may ask additional questions at the end of the hearing of a witness.

⁴⁰ The principle of fairness in regard of the need for defence investigations was eloquently described by ICC Judge Christine van den Wijngaert in her dissenting opinion in the case of the *Prosecutor v. Katanga*, par. 92. The subsequent paragraphs are equally worth reading where she describes the unreasonableness of the decision of the Majority not to grant the defence time to conduct additional investigations after the Chamber had decided to re-characterize the charge against Katanga. Found at: <http://www.icc-cpi.int/lcrdocs/doc/doc1744372.pdf>

57. Given the accusatorial nature of the proceedings in the transfer cases, there is a clear need for a strong and qualified defence.
58. An additional circumstance that needs to be adduced here, is the fact that the case file presented by the prosecution is rather basic. This file consist almost completely on the criminal investigation carried out by a unit of the NPPA by investigators on loan from the Rwanda National Police. This investigation, as I have assessed in my study of the working processes of the GFTU, is normally carried out over the period of two weeks on the average, during which a limited number of witnesses are briefly interviewed⁴¹.
59. As I have pointed out earlier, genocide cases are the most complex and time consuming criminal cases, I know. Certainly when the investigation is carried out many years after the events have taken place, as is the case now in Rwandan genocide cases, and the case is exclusively built on witness testimony⁴², the investigators and other fact finders, in their quest to ascertain the truth, face many obstacles: falling and fading memories, source amnesia and source blending, trauma and stress that has impeded on the quality of what witnesses remember, the inability of witnesses to provide basic information about the crime and the perpetrators, such as time, place and geography as well as any numerical information such as distances, numbers, heights, etc. These inability are often credited to illiteracy and the lack of education of many witnesses as well as cultural backgrounds. By now there is an impressive and important body of academic research that analyzes and describes these problems in detail⁴³.

⁴¹ In most cases I assessed found approximately 10 – 15 witnesses and the average time spent with one witness is around 1 – 2 hours including drafting the account and the read back of the statement to the witness. Additional investigations may be carried out after the arrest and transfer of the defendant but I have seen no substantial investigations at this stage. Obviously, the transferred cases from the ICTR are an exception as these cases were fully investigated by the ICTR.

⁴² Unlike the Holocaust during World War II, during which the Nazis meticulously recorded everything they did, the Rwandan genocide is known for its stunning lack of documentation, largely the result of the oral cultures in Rwanda.

⁴³ I present here just a few examples of this literature: Nancy Combs: *Fact Finding Without Facts, The Uncertain Evidentiary Foundations of International Crimes Convictions*, Cambridge University Press, 2010. Alexander Zahar, *Witness memory and the manufacture of evidence at the International Criminal tribunals. Future Perspectives on International Criminal Justice*, Carsten Stahl & Larissa van den Herik, eds., pp. 600 - 610, T.M.C. Asser/Cambridge University Press. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1323979; Alexander Zahar, *The problem of false testimony at the International Criminal Tribunal for Rwanda. Annotated Leading Cases of International Criminal Tribunals*, Vol. 25: International Criminal Tribunal for Rwanda, 2006-2007, André Klip And Göran Sluiter, Eds., Pp. 509-522, Intersentia, 2010. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1448124, Timothy Longman & Théoneste Rutagengwa, *Memory, Identity & Community in Rwanda*, In *My Neighbor, My Enemy: Justice And Community In The Aftermath Of Mass Atrocity* (Eric Stover & Harvey M. Weinstein eds., 2004).

60. Another factor that has been highlighted in literature is the prevalence of perjuring witnesses. It is sure that in every jurisdiction, witnesses occasionally perjure themselves and every investigator, prosecutor, judge and defence attorney can attest to that. Indeed, Rwandan genocide cases have had their share of perjuring witnesses and in general the prevalence and nature of perjuring witnesses before tribunals have been described⁴⁴. An additional example of perjuring witnesses in a Rwanda genocide case can be found in the national jurisdiction of Canada where the Superior Court in Ontario in the case against Jacques Mungwarere acquitted the defendant in July 2013 after a number of witnesses confessed to have lied to the court⁴⁵.

Final conclusions

61. I make all these notions and put them together in this context, not to assert that establishing the truth in Rwanda genocide cases is not possible. In fact, based on my years of experience in criminal cases of mass atrocities in Africa and elsewhere, including Rwanda genocide cases, I am certain and convinced that the facts can be established but only under the condition of high quality and professional investigations, applying internationally accepted standards. Part of this professionalism and these standards is the necessity to have defence attorneys who possess the knowledge, experience and the resources to conduct investigations for the defence, including the capabilities to conduct investigations abroad.

62. Based on my observations in the last year in Rwanda, I have profound doubts whether the Rwandan defence attorneys, currently assigned to the transfer cases, can do that. It is a fact that, so far, only one defence attorney has presented some local witnesses to the court. None of the defence attorneys has conducted any investigation abroad and it is highly doubtful if any of them has both the knowledge, experience or is in the position to conduct such an investigation. What the consequences for the outcomes of the cases are, is still to be assessed. Until today only in the case against Bandora the High Court has given its verdict⁴⁶.

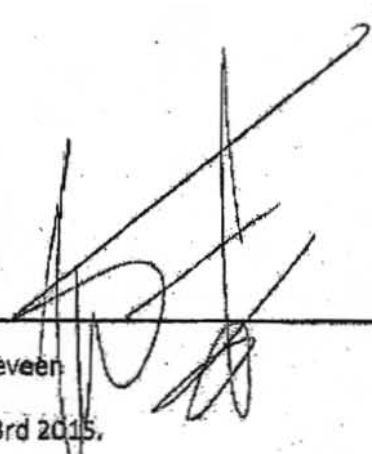
63. It is for all these reasons that I recommend the jurisdictions that extradite or transfer defendants to Rwanda for trial, to provide the defendant with a defence attorney who

⁴⁴ See Combs: *Fact finding without Facts*, Chapter 5. In Chapter 5C, Combs describes a fairly large number of examples of perjuring witnesses before the ICTR. It leads her to state: "The importance of adequate investigations cannot be overestimated" [page 148].

⁴⁵ I have not been able to locate the verdict. I know there is no English translation of the French version. See for a summary of the case: <http://www.internationalcrimesdatabase.org/Case/1026/Mungwarere/>. The prosecutors in the case of Mungwarere did not appeal the verdict.

⁴⁶ See footnote 24.

has proven to be capable of what I have described here. When this defence attorney is then coupled to a Rwandan defence attorney, funded by the Minister of Justice in Rwanda and provided funds for conducting investigations, which is on offer by that same Minister, it seems to me that it ensures the necessary and adequate defence capabilities for the defendant that meet the required standard and guarantees not only a procedural fair trial but also a fairness to the trial.



Martin Witteveen

Kigali, June 3rd 2015.

[End of text]

MICT-12-25-R14.1
21-08-2015
(1051 - 1049)

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UNITED
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Mechanism for International Criminal Tri-
bunals

Case No: MICT-12-25-R14.1

Date: 21 August 2015

Original: English

THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**PROSECUTION'S SUBMISSIONS OPPOSING
UWINKINDI'S REQUEST FOR STAY OF
RWANDAN PROCEEDINGS**

Office of the Prosecutor:
Hassan Bubacar Jallow
James J. Arquin
François Nsanzuwera

Counsel for Jean Uwinkindi:
Gatera Gashabana

Received by the Registry
Mechanism for International Criminal Tribunals
21/08/2015 15:42

Ngibonye ku 25/08/2015 saa 2h30 zumuyaraba
Ndasaba icyi kinyarwanda juko ibintazi byuridi tseme
Luf

1. The Trial Chamber should reject Uwinkindi's request¹ for a stay of the High Court of Rwanda proceedings because the Security Council has not authorized the Mechanism for International Tribunals (MICT) to issue any orders to national courts with regard to their domestic proceedings.

2. Only Article 6 and Article 28 of the MICT Statute authorize binding requests to States, and neither of those provisions apply to Uwinkindi's request. Article 6 deals with cases, such as Uwinkindi's, which are referred to national jurisdictions. But the MICT's power in such cases is limited, under Article 6(6), to revocation of the referral and issuance of a formal request for deferral to the MICT's competence. Uwinkindi's request for stay cannot, therefore, be entertained under Article 6.

3. Article 28 allows the MICT to request a State's cooperation, but only in order to guarantee the fairness of proceedings that are before the MICT.² Uwinkindi, however, does not and cannot argue that the requested stay is necessary to guarantee the fairness of his revocation proceedings before the MICT. He simply claims that his Rwandan proceedings—including the High Court's refusal of his request for stay—were unfair, and seeks to use the MICT as an appeals court to challenge that decision.³ Since Uwinkindi's request concerns not the fairness of MICT proceedings, but rather the alleged unfairness of the Rwandan proceedings, Article 28 does not apply. Indeed, in *Bagosora et al*, the ICTR Appeals Chamber refused to issue any request to Rwanda that was not relevant to the fairness of the case before the Tribunal.⁴

4. In any event, even if the MICT did have the power to issue an order to stay to guarantee the fairness of the Rwandan proceedings, Uwinkindi does not provide reasons as to why such an order is necessary. In particular, he does not explain how he

¹ Mémoire à l'appui de la requête de Jean Uwinkindi en annulation de l'ordonnance de renvoi, 5 August 2015, paras. 171–177, 181 (Brief); Order for Expedited Responses and Reply to Jean Uwinkindi's Request for Stay of Proceedings, 11 August 2015.

² See *Prosecutor v. Théoneste Bagosora et al.*, case no. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motion for Injunctions against the Government of Rwanda Regarding the Arrest and Investigation of Lead Counsel Peter Erlinder, 6 October 2010 (*Erlinder Decision*), pp. 28–31.

³ Brief, paras. 172–177.

⁴ *Erlinder Decision*, pp. 28–31.

would be prejudiced if his trial in Rwanda continues as scheduled. Indeed, he cannot be prejudiced by his Rwandan trial continuing in parallel with the revocation proceedings, because if his transfer is revoked, the proceedings in Rwanda will be largely irrelevant, as his case will then be tried before the MICT. If his transfer is not revoked, the requested stay will have delayed his Rwandan trial further.

5. The prosecution therefore asks the Trial Chamber to reject Uwinkindi's request for an order staying proceedings before the High Court of Rwanda.

Word Count: 404

Dated and signed this 21st day of August 2015 at Arusha, Tanzania.



James J. Arguin
Chief, Appeals and Legal Advisory Division
(Pursuant to the MICT Prosecutor's 26 July
2012 Interim Designation)



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
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FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

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Other/ Autre :			
Case Name/ Affaire :	Prosecutor v. Jean Uwinkindi	Case Number/ Affaire n° :	MICT-12-25-R14.1
Date Created/ Daté du :	21 August 2015	Date transmitted/ Transmis le :	21 August 2015
No. of Pages/ Nombre de pages :	3		
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	<input type="checkbox"/> Confidential/ Confidentiel	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ Art. 86 H) requérant exclu	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ Amicus curiae exclu
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Document type/ Type de document :	<input type="checkbox"/> Motion/ Requête	<input checked="" type="checkbox"/> Submission from parties/ Écritures déposées par des parties	<input type="checkbox"/> Indictment/ Acte d'accusation
	<input type="checkbox"/> Decision/ Décision	<input type="checkbox"/> Submission from non-parties/ Écritures déposées par des tiers	<input type="checkbox"/> Warrant/ Mandat
	<input type="checkbox"/> Order/ Ordonnance	<input type="checkbox"/> Book of Authorities/ Recueil de sources	<input type="checkbox"/> Notice of Appeal/ Acte d'appel
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Rev: April 2014/Rév. : Avril 2014

**UMUTWE WA II : IBYEREKEYE
INAMA
Y'URUBYIRUKO**

Ingingo ya 188:

Hashyizweho Inama y'Igihugu y'Urubiruko.

Itegeko rigena imiterere, inshingano, imikorere, n'imikoranyire yayo n'izindi nzego za Leta.

**INTERURO YA X:
IBYEREKEYE AMASEZERANO
MPUZAMAHANGA**

Ingingo ya 189 :

Perezida wa Repubulika ni we ufite ububasha bwo gukora amasezerano mpuzamahanga no kuyemeza. Iyo amaze kwemezwa, ayo masezerano amenyeshwa Inteko Ishinga Amategeko.

Icyakora, amasezerano mpuzamahanga arangiza intambara, ay'ubucuruzi, ayerekeye imiryango mpuzamahanga, afite ingaruka ku mari ya Leta, ahindura amategeko y'igihugu cyangwa yerekeye

**CHAPTER II: THE NATIONAL
YOUTH COUNCIL**

Article 188:

There is hereby established a National Youth Council.

A law shall determine its organization, functions, operation and its relations with other state organs.

**TITLE X: INTERNATIONAL
TREATIES AND AGREEMENTS**

Article 189:

The President of the Republic negotiates international treaties and agreements and ratifies them. The Parliament is notified of such treaties and agreements following their conclusion.

However, peace treaties and treaties or agreements relating to commerce and international organizations and those which commit state finances, modify provisions of laws already adopted

**CHAPITRE II: DU CONSEIL
NATIONAL DE LA JEUNESSE**

Article 188:

Il est créé un Conseil National de la Jeunesse.

Une loi détermine son organisation, ses attributions, son fonctionnement ainsi que ses rapports avec les autres organes de l'Etat.

**TITRE X: DES TRAITES ET
ACCORDS INTERNATIONAUX**

Article 189:

Le Président de la République négocie et ratifie les traités et accords internationaux. Le Parlement en est informé après leur conclusion.

Toutefois, les traités de paix, les traités de commerce, les traités ou accords relatifs aux organisations internationales, ceux qui engagent les finances de l'Etat, ceux qui modifient des dispositions de nature

abantu kwemezwa n'Inteko Ishinga Amategeko.

Ntibyemurikira icyacyo Rwanda batabyemurikira.

Perezida wa Repubulika ni we ufite ububasha bwo gukora amasezerano mpuzamahanga no kuyemeza. Iyo amaze kwemezwa, ayo masezerano amenyeshwa Inteko Ishinga Amategeko.

Ingingo ya 189 :
Perezida wa Repubulika ni we ufite ububasha bwo gukora amasezerano mpuzamahanga no kuyemeza. Iyo amaze kwemezwa, ayo masezerano amenyeshwa Inteko Ishinga Amategeko.

Icyakora, amasezerano mpuzamahanga arangiza intambara, ay'ubucuruzi, ayerekeye imiryango mpuzamahanga, afite ingaruka ku mari ya Leta, ahindura amategeko y'igihugu cyangwa yerekeye

CHAPITRE XI DU CONSEIL NATIONAL DE LA JEUNESSE

Article 188. Le Conseil National de la Jeunesse, en collaboration avec l'Etat, a pour mission de promouvoir son organisation, ses activités et son fonctionnement ainsi que ses rapports avec les autres organes de l'Etat.

RE X DES TRAITES ET ACCORDS INTERNATIONAUX

Article 189. Le Président de la République négocie et ratifie les traités et accords internationaux. Le Parlement en est autorisé par sa loi de ratification.

Les traités de paix, les traités de commerce, les traités ou accords relatifs aux finances de l'Etat, ceux qui contiennent des dispositions de nature

apantu ku giti cyabo ntashobora kwemezwa burundu atabanje kwemerwa n'Inteko Ishinga Amategeko.

Ntibyemewe gutanga cyangwa kugurana igice cy'u Rwanda cyangwa se komeka ku Rwanda igice cy'ikindi gihugu abaturage babayemeye muri referendumu.

Perezida wa Repubilika n'Inteko Ishinga Amategeko bamenyeshwa amazezerano mpuzamahanga yose agitegurwa ariko atagomba kwemezwa na Perezida wa Repubilika.

Ingingo ya 190:

Iyo amaze gutangazwa mu Igazeti ya Leta, amazezerano mpuzamahanga yemejwe burundu mu buryo buteganywa n'amategeko, agira agaciro gasumba ak'amategeko ngenga n'ak'amategeko asanzwe keretse iyo adakurikiye n'urundi ruhande.

by Parliament or relate to the status of persons, can only be ratified after authorisation by Parliament.

It is not permitted to cede or exchange part of the territory of Rwanda or to join to Rwanda part of another country without the consent of the people by referendum.

The President of the Republic and Parliament shall be notified of all negotiations relating to treaties and international agreements which are not subject to ratification by the President of the Republic.

Article 190:

Upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non compliance by one of parties.

législative, ceux qui sont relatifs à l'état des personnes ne peuvent être ratifiés qu'après autorisation du Parlement.

Nulle cession, nul échange, nulle adjonction d'un territoire n'est permise sans le consentement du peuple rwandais consulté par referendum.

Le Président de la République et le Parlement sont informés de toutes les négociations d'accords et traités internationaux non soumis à la ratification.

Article 190:

Les traités ou accords internationaux régulièrement ratifiés ou approuvés ont, dès leur publication au journal officiel, une autorité supérieure à celle des lois organiques et des lois ordinaires, sous réserve, pour chaque accord ou traité, de son application par l'autre partie.

Umwaka wa 47 n° idasanze
10 Nzeri 2008

Year 47 n° special
10 September 2008

47^{ème} Année n° spécial

10 septembre 2008

Igazeti ya Leta ya Repubulika y'u Rwanda	Official Gazette of the Republic of Rwanda	Journal Officiel de la République du Rwanda
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Ibirimo/Summary/Sommaire

Page/Urup.

A. Itegeko Ngenga /Organic Law/ Loi Organique

N° 51/2008 ryo kuwa 09/09/2008	
Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Inkiko.....	2
N° 51/2008 of 09/09/2008	
Organic Law determining the organisation, functioning and jurisdiction of Courts.....	2
N° 51/2008 du 09/09/2008	
Loi Organique portant Code d'organisation, fonctionnement et compétence judiciaires.....	2
Umugereka wa mbere : Inkiko z'Ibanze.....	92
Umugereka wa kabiri : Inkiko Zisumbuye.....	121
Annex 1: Primary Courts.....	92
Annex 2: Intermediate Courts.....	121
Annexe 1 : Tribunaux de Base.....	92
Annexe 2 : Tribunaux de Grande Instance.....	121

<p>bafatanijije gukora icyaha kinwe cyanywa byinshi by'urusobe. cyanywa ko babihayemo ibyishe. Urukiko rufite ububasha bushingye ku itasi hwo kuburamisha urubanza ku cyaha kinushye ibindi kuramena, ni na rwo rufite ububasha hwo kuburamisha imanza z'ibindi byaha.</p>	<p>offenders or accomplices of one or several offences arising from the same transaction, the Court with territorial jurisdiction to try the most serious offences shall be competent to try the other offences.</p>	<p>conjointement comme auteurs ou complices d'une infraction ou d'infractions connexes, la juridiction compétente au point de vue territorial pour juger l'infraction la plus grave, est compétente pour juger toutes les autres infractions.</p>
<p>Ingingo ya 119: Urubanza rwaregwe inkiko ebyiri zibifitwe ububasha</p> <p>Uretse mu gihe byaha bitanyijwe ukundi n'ingingo yihariye y'iri tegeko ngenza cyanywa iz'andi mategeko, icyo inkiko ebyiri ziregwe urubanza rumwe kandi zombi zirufitwe ububasha, rumwe muri zo rwohereza urundi, bahitamo :</p>	<p>Article 119: Matter filed in two different Courts with the same jurisdiction</p> <p>Unless provided otherwise in a particular provision of this Organic Law or of any other laws, when a matter is filed in two different Courts with the same jurisdiction, one of the Courts shall send the case to the other in accordance with the following rules and order :</p>	<p>Article 119: Litispendance</p> <p>Sous réserve des dispositions particulières résultant de la présente loi organique ou d'autres lois, lorsque deux juridictions compétentes se trouvent saisies des mêmes faits, les causes sont renvoyées par l'une des juridictions à une autre, selon les règles et dans l'ordre ci-après :</p>
<p>1° urukiko rusanzwe ku rukiko rwihariye ;</p> <p>2° urukiko rwaregwe mu rwego rw'ubujurire ku rukiko rwo mu rwego rwa mbere;</p> <p>3° urukiko rwisumbuye ku Rukiko rwo hasi ;</p> <p>4° urukiko rwagize icyo rukara ku rubanza kurusha urutaragira icyo rurukoraho;</p> <p>5° urukiko rwaregwe mbere y'urundi.</p>	<p>1° an ordinary Court shall take precedence over a Special Court;</p> <p>2° an Appellate Court shall take precedence over a Court of First instance;</p> <p>3° a superior Court shall take precedence over an inferior Court;</p> <p>4° a Court which has commenced Court process shall take precedence over the one that has not yet made a decision on the case;</p> <p>5° a Court before which the case was filed first shall take precedence over other Courts.</p>	<p>1° la juridiction ordinaire est préférée à la juridiction spécialisée ;</p> <p>2° la juridiction saisie au degré d'appel est préférée à la juridiction du premier degré;</p> <p>3° la juridiction du rang le plus élevé est préférée à la juridiction du rang inférieur;</p> <p>4° la juridiction qui a rendu une décision sur l'affaire est préférée à la juridiction qui n'a pas rendu de décision;</p> <p>5° la juridiction saisie la première.</p>
<p>Ingingo ya 120: Kohereza urubanza mu rukiko rubifitwe ububasha</p> <p>Iyo Urukiko rwaregwe icyaha rufitwe ububasha hwo kuburamisha ariko rugasanga bigize icyo cyaha bigize ahubwo icyaha kinwe gifitwe ububasha n'urundi</p>	<p>Article 120: Transfer of a case to a competent Court</p> <p>If a competent Court before which a criminal case is brought establishes that the facts of the commission of the offence places the case within the jurisdiction</p>	<p>Article 120 : Renvoi d'une affaire devant une juridiction compétente</p> <p>Si une juridiction saisie d'une infraction de sa compétence constate que les faits ne constituent qu'une infraction dont la compétence est attribuée à</p>

<u>Ingingo ya 183: Igihe iri tegeko ngenza rihangira gukurikizwa</u>	<u>Article 183: Commencement</u>	<u>Article 183 : Entrée en vigueur</u>
<p>Iri tegeko ngenza rihangira gukurikizwa ku munsu rihangariyeho mu Igazeti ya Leta ya Repubilika y'u Rwanda.</p> <p>Kigali, kuwa 09/09/2008</p> <p>Perezida wa Repubilika KAGAME Paul (se)</p> <p>Ministiri w'Intebe MAKUZA Bernard (se)</p> <p>Bibonywe kandi bishyizweho Ikirango cya Repubilika:</p> <p>Ministiri w'Ubutabera/Intumwa Nkuru ya Leta KARUGARAMA Tharcisse (se)</p>	<p>This Organic Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.</p> <p>Kigali, on 09/09/2008</p> <p>The President of the Republic KAGAME Paul (se)</p> <p>The Prime Minister MAKUZA Bernard (se)</p> <p>Seen and sealed with the Seal of the Republic:</p> <p>The Minister of Justice/Attorney General KARUGARAMA Tharcisse (se)</p>	<p>La présente loi organique entre en vigueur le jour de sa publication au Journal Officiel de la République du Rwanda.</p> <p>Kigali, le 09/09/2008</p> <p>Le Président de la République KAGAME Paul (se)</p> <p>Le Premier Ministre MAKUZA Bernard (se)</p> <p>Vu et scellé du Secau de la République :</p> <p>Le Ministre de la Justice/Garde des Secaux KARUGARAMA Tharcisse (se)</p>

Ibirimo/Summary/Sommaire

page/urup

Amategeko / Laws / Lois

N° 02/2013/OL ryo kuwa 16/06/2013

Itegeko Ngenga rihindura kandi ryuzuzza Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu.....2

N° 02/2013/OL of 16/06/2013

Organic Law modifying and complementing Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of courts as modified and complemented to date2

N° 02/2013/OL du 16/06/2013

Loi Organique modifiant et complétant la Loi Organique n° 51/2008 du 09/09/2008 portant code d'organisation, fonctionnement et compétence judiciaires telle que modifiée et complétée à ce jour.....2

-Umugereka wa I / Annex I / Annexe I.....28

-Umugereka wa II / Annex II / Annexe II.....51

N° 09/2013/OL ryo kuwa 16/06/2013

Itegeko Ngenga rikuraho Itegeko Ngenga n° 11/2007 ryo kuwa 16/03/2007 rigena kwimurira muri Repubulika y'u Rwanda imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'izivuye mu bindi bihugu, nk'uko ryahinduwe kandi ryujujwe kugeza ubu.....55

N° 09/2013/OL of 16/06/2013

Organic Law repealing the Organic Law n° 11/2007 of 16/03/2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other states, as modified and complemented to date55

N°09/2013/OL du 16/06/2013

Loi Organique portant abrogation de la Loi Organique n° 11/2007 du 16/03/2007 relative au renvoi d'affaires à la République du Rwanda par le Tribunal Pénal International pour le Rwanda et par d'autres Etats, telle que modifiée et complétée à ce jour.....55

N° 47/2013 ryo kuwa 16/06/2013

Itegeko rigena kwimurira imanza muri Repubulika y'u Rwanda.....59

N° 47/2013 of 16/06/2013

Law relating transfer of cases to the Republic of Rwanda.....59

N° 47/2013 du 16/06/2013

Loi relative au renvoi d'affaires à la République du Rwanda.....59

Ingingo ya 22: Gusubiza urubanza**Article 22: Referral of cases****Article 22: Dessaisissement**

Mu gihe Urwego rukuyeho icyemezo cyo kohereza urubanza wohereje mu Rwanda hashingiwe ku ngingo ya 11 bis y'Amategeko yarwo agenga imburanishirize n'itangwa ry'ibimenyetso, uregwa asubizwa Urwego bidatinze hanwe n'amadosiye yose, inyandiko, ibimenyetso gihanya n'ibindi bintu byose by'inongera bivuzwe muri icyo cyemezo.

In the event that the Mechanism revokes an Order of referral of cases it had transferred to Rwanda pursuant to Article 11bis of the Mechanism Rules of Procedure and Evidence, the accused shall be promptly surrendered to the Mechanism together with any files, documents, exhibits and all other additional materials as stipulated in the order.

En cas d'annulation d'une ordonnance de renvoi d'une affaire par le Mécanisme en vertu de l'article 11 bis de son Règlement de Procédure et de Preuve, l'accusé est remis sans délai au Mécanisme de même que tous les dossiers, documents, pièces à conviction et autres éléments additionnels spécifiés dans l'ordonnance portant annulation.

UMUTWE WA VI: IFATWA N'IFUNGWA**CHAPTER VI: ARREST AND DETENTION****CHAPITRE VI : ARRESTATION ET DETENTION****Ingingo ya 23: Ifatwa n'ifungwa by'uregwa****Article 23: Arrest and detention of an accused person****Article 23: Arrestation et détention d'un accusé**

Uretse aho iri tegeko ribiteganywa ukundi, uregwa afatwa kandi agafungwa nk'uko biteganywa n'igitabo cy'amategeko agenga imburanishirize y'imanza z'inshinjabyaha mu Rwanda.

Except as otherwise provided in this Law, the arrest and detention of the accused persons shall be regulated in accordance with the Code of Criminal Procedure of Rwanda.

Sauf dispositions contraires de la présente loi, l'arrestation et la détention des personnes accusées se fait conformément au Code de procédure pénale rwandais.

Ingingo ya 24: Ifungwa ry'agateganyo**Article 24: Provisional detention****Article 24 : Détention provisoire**

Umuntu wese ukurikiranweho icyaha woherejwe na TPIR, Urwego cyangwa ikindi gihugu aguma afungzwe by'agateganyo cyangwa adafungzwe bitewe n'uburyo yajemo mu gihe cy'yoherereza.

Any person transferred to Rwanda by the ICTR, the Mechanism or any other State shall remain in provisional detention or free depending on the situation in which he/she was transferred.

Toutte personne poursuivie dont l'affaire a été transférée au Rwanda par le TPIR, le Mécanisme ou par un autre Etat demeure dans l'état de détention provisoire ou de liberté selon l'état dans lequel elle a été transférée.

Ikbazo gishyikirizwa urukiko rubifitiye ububasha kugira ngo hafatwe umwanzuro niba uwo muntu woherejwe azakurikiranwa afungzwe cyangwa afunguwe by'agateganyo.

The case shall be referred to the competent Court which shall decide whether the transferred person can be prosecuted being under provisionally detention or not.

L'affaire est soumise à la juridiction compétente qui décide si cette personne sera poursuivie tout en étant à l'état de détention ou de liberté provisoire.

Kigali, ku wa 12/02/2015

MADAMU UMWANDITSI MUKURU W'URUGEREKO RWIHARIYE RUBURANISHA IBYAHA BYO MU RWEGO MPUZAMAHANGA N'IBYAHA BYAMBUKA IMBIBI

B.P 101 Kigali, Rwanda

Courriel (E-mail) : info.highcourt@judiciary.gov.rw

Binyujijwe ku buyobozi bwa gereza ya Nyarugenge (Prison 1930)

B.P 14 Kigali, Rwanda

Courriel (E-mail) : pck1930@yahoo.com

13/02/2015



Impamvu: Gutanga inyandiko itanga ibisobanuro kubwihane bw'umucamanza, Nyakubahwa NGENDAKURIYO R. Alice, mu rubanza RP 0002/12/HCCI

Nyakubahwa Umwanditsi Mukuru,

- [1] Nk'uko bigaragara mu nyandikomvugo y'iburanisha ryo ku wa 06/02/2015, nshingiye ku ngingo ya 99, igika cya 3 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nihanyye umucamanza, Nyakubahwa NGENDAKURIYO R. Alice, mu rubanza RP 0002/12/HCCI.
- [2] Iyo nyandikomvugo y'iburanisha kandi iragaragaza ko «Tuributsa UWINKINDI kugeza ku rukiko imyanzuro ijyanye n'iyihana ry'umucamanza bitarenze ku wa mbere le 09-02-2015 saa tanu.»
- [3] Nyamara kandi nk'uko mu ibaruwa nandikiye urukiko kw'itariki ya 07/02/2015 mu gika cya 6, ngira nti :
« [...] ndabasaba rero ko mwangeza ho byihuse inyandikomvugo y'iburanisha ryo ku wa 06/02/2015 kandi itariki yo gutanga imyanzuro ku kwihana umucamanza ikigizwa yo ku buryo icyo gihe cy'iminsi itatu (3) mwagennye cyabarwa guhera igihe nzaba namaze gushyikirizwa iyo nyandikomvugo y'iburanisha ryo ku wa 06/02/2015[...] »
- [4] Nshingiye kandi ko urukiko rwangejeje ho iyo nyandikomvugo y'iburanisha, nari narusabye, ku wa 10/02/2015 saa sita n'igice (12H30) ; hamwe n'ibaruwa nandikiwe n'urukiko ku wa 11/02/2015, ikangera

ho uwo munsu saa kumi n'ebiri n'iminota cumi n'umwe (18H11), runsaba kurugeza ho imyanzuro ijyanye n'ubwo bwihane;

- [5] Nk'uko kandi biteganywa n'ingingo y'102 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, aho igira iti :
- « Ushaka kwihana umucamanza, aho urubanza rwaba rugeze hose, avuga impamvu ituma amwihana mu iburanisha, bikandikwa kandi agashyikiriza mu biro by'urukiko uwo mucamanza akoramo inyandiko itanga ibisobanuro by'uko kwihana; akabihereza icyemezo ko byakiriwe. [...] »
- [6] Mbandikiye mbageza ho inyandiko itanga ibisobanuro by'ubwihane bw'umucamanza, Nyakubahwa NGENDAKURIYO R. Alice, mu rubanza RP 0002/12/HCCI.

Mugire amahoro y'Imana

Pasteur Jean UWINKINDI



Bimenyeshajwe :

- Nyakubahwa Perezida w'Urukiko Rukuru, Kigali, Rwanda
- Nyakubahwa Perezida wa HCCI, Kigali, Rwanda
- Nyakubahwa Perezida wa MICT
- ✓ Monitoring ya Pasteur Jean UWINKINDI
- Me GATERA GASHABANA, Kigali, Rwanda
- Me Jean-Baptiste NIYIBIZI, Kigali, Rwanda
- Umuryango wa Pasteur Jean UWINKINDI

Inyandiko zometse kuri iyi baruwa :

- Inyandikomvugo y'iburanisha ryo ku wa 05/02/2015, urubanza RP 0002/12/HCCI
- icyemezo mu rubanza RP 0002/12/HCCI cyo ku wa 06/02/2015
- Inyandikomvugo y'iburanisha ryo ku wa 06/02/2015, urubanza RP 0002/12/HCCI
- Inyandiko itanga ibisobanuro y'ubwihane bw'umucamanza
- Ibaruwa yo ku wa 05/02/2015 isaba ko HCCI itakwira imyanzuro y'Ubushinjacyaha nyuma y'iburanisha.

ICYEMEZO CY'URUKIKO RUKURU CYO KUWA 9/06/2015 MU RUBANZA RP0002/12/HCCI

Pasteur Jean Uwinkindi mburana N'ubushinjacyaha bimwe mu bikubiye mur'icyo cyemezo bitumvikana.

1) Mugika cya mbere: kuri . B) Me Ngabonziza na Me Hishamunda **basabye** guhabwa igihe cyo gutegura urubanza.

NB ibisabwa n'aba bavoka ntazi ntigezensaba kandi ntemera, bihayeho gusaba urukiko kwiga urubanza rwanjye ,ntabwo nabatumye. rero bareke kwitwaza izina ryanjye, s'abavoka banjye.

Kuri. C) Ubushinjacyaha **bwasabye** ko hakwemezwa ko mu nyunyu z'ubutabera, bavoka bagenwe kunganira Uwinkindi Jean ba mwunganira n'ubwo yaba atabemera. ?

(Izimvugo, ubushinjacyaha bwuzuzanyaho naba bavoka ,byerekana nezako ahubwo ari abavoka. Bubushinjacyaha, Bukaba baba seseka kugahato murubanza rwanjye, ku girango babangamire bikomeye kwiregura kwanjye) { kuba mbanga kuko ntigeze mbasaba bifete ishingiro ntanubwo byishi . Amategeko akurikizwa} **ITEGEKO RYEREKEYE IMIBURANISHIRIZE Y'IMANZA Z'INSHINJABYAHA No 30/2013 ryo kuwa 24/5/2013 INGINGO YA 39 mugika 2** mumurongo uheruka :kandi afite uburenganzira bwo kumwemera cyangwa kumwanga:

2/ [Mugika cya kabiri gusoma icyogika, harimo amagambo ababajecyane. kwiga uburwo urubanza rwa gorekwa,nku nganirwa na bantu ntemera kubera itegeko. ry'ubushinjacyaha ari nabwo tuburana]

NB /Aba bavoka bampambiraho nta n'uburambe bafite mu mwuga wo kunganira abantu mumanza ku rwego mpuzamahanga, nkuru mburana n'ubushinjacyaha. Dore igihe binjirijwe mu kazi murugaga rwa bavoka.

Me Hishamunda tariki ya 15 avt 2005 Me Ngabonziza tariki ya 6/avt 2010 (iyo byibura bagira uburambe mumwuga wa baburanira abantu ntabwo bajyaga kwemera gukoreshwa amakosa.N'ubushinjacyaha)nkayo bakoze bijira" –urubanza rwu tabatumiye mu rubanzarwe:

IBIVUGWA N'UBUSHINJACYAHA NK'ITEGEKO.

4/ icyakane Ubusinjachaha buvuga ko busanga nta mpavu yatuma urubanza ruhagarikwa kuko ntaho. Urwego rwigeze ruvuga ko uru rubanza ruhagarara, cyaneke icyemezo ruzafata kizubahirizwa ,aho rwabarugezeho n'iyi haba mubujirire. ?

5/igika cyagatunu, Urukiko rwagendeye kwitegeko ry'ubushinjacyaha, nkuko bisanzwe bigenda mu maburanisha yose yabayeho. Kuki aba bavoka bashakwa n'ubushinjacyaha ? mu rubanza rwanjye. Nuko hari ikibyihishe inyuma, uru rubanza n'urwanjye ninanjye wakabaya mbashaka ,none ahubwo barashakwa n'ubushinjacyaha tuburana. Ubwose aba bavoka na bande ? s'abubashakana ingufu zu murengera. Aribwo bushinjacyaha tuburana.

ABAVOKA BABA MURUGAGA RWA BAVOKA NI 1074 bagabanijemo ibyiciro bibiri (2)

Icyiciro cya mbere harimo 542 icyiciro cya kabiri harimo 532 : ikibaza kitumvikana mu bavoka 1074

Habonekamo ,Hishamunda na Ngabonziza gusa ?batagira n'uburambe mumwuga wa abavoka? Igikacya 6/Igika cya gatandatu, UBUSHINJACYAHA BUVUGA KO MUGIHE UWINKINDI Jean akomeje kwanga. Abavoka yagenewe nk'utishoboye, busaba Urukiko gufata icyemezo cyo kubagumishamo. Bagahabwa Ijambo mu rubanza,mu nyungu z'ubutabera. KUBERA KO URU RUBANZA RUKOMEYE ; ibi ngibi byishe Ingingo ya 39 mugika 2 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha NO 30/2013 ryo kuwa 24/5/2013 (kandi afite uburenganzira bwo kwemera cyangwa kutemera umwunganira ahawe.) { ntategeko ubushinjacyaha bwerekana ko umuntu ahambirwa ku mwavoka utari, Munyungu zuwarezwe.}

NB Kubera ko uru rubanza rwa komeranye ubushinjacyaha n'iyompamvu buzanamo abavoka babwo kugahato, kugirango bafashe mu gusibanganya ibimenyetso muburyo bwo kwiregura. Babangamira bikomeye inyungu zanjye murubanza mburanamo n'ubushinjacyaha.

IBYO URUKIKO RUVUGISHA IMVUGO ITARI UKURI:

13/ Mugika cyacumi nagatatu, Urukiko rusanga ari uburenganzira budahungabanywa bwuregwa,bwo kuburana yunganiwe; mubihebyose,no guhabwa uburyo,byose bwangombwa bwo kwiregura, nkuko Biteganywa, Mungingo ya 18 na19 zitegeko nshinga rya Repuburika y'URWANDA.

NB Aha icyo babanje kwica n'itegeko nshinga Ingingo ya 18 igika 3 ahoivuga iti: kwiregura no kunganirwa ni uburenganzira budahungabanywa, mu bihe byose, ahantu hose, mu nzego zose, iz'ubutegetsi, iz'ubucamanza, n'izindi zose zifata ibyemezo."

IBYAPFUYEMO RERO N'IBIBIKURIKIRA:

Icyambere1 nangiwe gushaka abatangabuhamya bogushinjura,nabavoka basaba guhabwa uburyo byo ku bashaka bagahimbirwa ibyaha,n'imvugo ngo bivanye mu rubanza kugirango babone uko babirukana. Bivuze kwamburwa uburenganzira bwo kwiregura.

Icyakabiri 2 Kwirukanwa kwa bavoka banjye bivuze kwamburwa uburenganzira bwo kunganirwa.

Icyagatatu 3 Kwagirwa gusurwa n'abavoka banjye, bisobanura kwamburwa uburenganzira bwo kunganirwa, ahantuhose no mu nzego zose .

Icyakane4 Kwagirwa kuvugana n'abavoka banjye kuri TEFONE, bivuze kwamburwa uburenganzira byoku nganirwa mubihe byose. (ibi bitandukanye cyane n'ibyo urukiko ruvuga, haruguru bitarukuri.)

14/mugika cya cumi nakane, Aho urukiko ruvuga amahame yo kureshya nabyo sukuri. Dore impamvu:

Iyambere1 ubushinjacyaha bwashatse abatanga buhamya bogushinja kuva 1998-kugeza 2012 ariko bagera ku batangabuhamya babo, (ndetse bigeza naho binjira mubarabanjye bakeya bari barigushakwa,basa naba bahinduye ababo.)

Abavoka banjye bo basaba gushaka abatanga buhamya bo gushinjura , bagashakirwa amakosa .
N'umucamanza UTABURANISHA URUBANZA RP 0002/12/HCCI. n'ukuvuga umucamanza uburanisha.
Indinteko ntaburaniramo, atabanje byibura no kuza kumva impandezombi . ukokureshya kurihehe?
Ahubwo ko harimo ku bogama gukabije. Bikaba Byishe INGINGO ya 16 y'itegeko nshinga

15/Mugika cyacumi nagatanu, Bityo rero rusanga Me Ngaboniza na Me Hishamunda bagomba
kunganira Uwinkindi Jean iburanisha ri gakomeza, urukiko rukomeza, kumva abatangabuhamya
b'impande zombie. Uku ni kwakubogama k'urukiko ru sanganywe, nambere ababantu bazanywe
mururu rubanza, kugirango babaze abatanga buhamya (muburyo usanga ahubwo arabwo kunganira
Ubushinjacyaha.)

DORE IMPAMVU N'IZI ZIKURIKIRA:

Iyambere1: ubushinjacyaha n'urukiko bateguye kwi rukana abavoka banjye.

Icyakabiri2: bategura guhamagara na batangabuhamya.

Icygatu3 : bategura na bavoka babo bo kubaza abo batangabuhamya. Byose bikore rwa rimwe.mu
buryo butunguranye

Ubu n'uburyo bwo gufasha ubushinjacyaha gusibanganya ibimenyetso ,byajye byo kwerekana .

Amakosa menshi ari mukirego cy'ubushinjacyaha ,no mubuhamya bwa batangabuhamya babwo.

Harimo kuba barigishijwe kubeshya,basinya ubuhamya batangiwe nabandi bantu. No kwivuguruza.
No kutamenya igihe ibyo barega byabereye. No kunyuranya imvugozabo, byerekana neza ko
babeshya , nokuvuga abantu batabayeho ,

Nababa abatutsi bakicwa .ubundi bakaba abahutu bakica ? nibindi

Aba bavoka mpambirwaho n'ubushinjacyaha , n'urukiko nabo kunza mbiriza urubanza bunganira
Ubushinjacyaha. Nyuma ibintu bibi bavuga barengera ubushinjacyaha bikitwa ko byavuzwe
n'abavoka. B'Uwinkindi Jean

KIGALI tariki ya 22/6/2015

Pasteur Jean Uwinkindi 