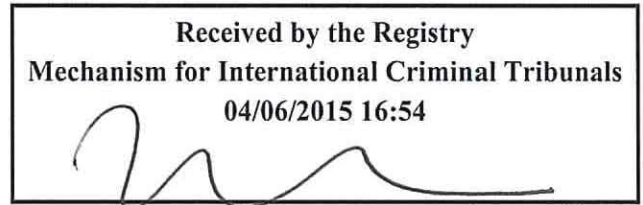


TO: Judge Theodor Meron, President
Assisted by Mr John Hopkins, Registrar
Mechanism for International Criminal Tribunals (MPTI)

DATE: 16 January 2015

CASE: *Jean Uwinkindi*, MICT-12-25



Subject: - Request for revocation of an order referring Case No. MICT-12-25
- Urgent request for an order to suspend hearings in Case No.RP0002/12/HCCI

I. INTRODUCTION

1. On 30 December 2014, I sent you, in your capacity as President of the Mechanism for International Criminal Tribunals, a request for revocation of an order referring the case *National Public Prosecution Authority v. Jean Uwinkindi*, Case No. RP0002/HCC/2013, to the Exterritorial Chamber of the High Court [of Rwanda] responsible for cases related to international offences.

2. That request was based on your Decision of 12 March 2014 in which you declined to grant my request for revocation of the order referring my case to Rwandan courts without, nevertheless, prejudice to the filing of a new request for revocation should circumstances so warrant.

3. It is in this context that I am reiterating my request for revocation of the order referring my case to Rwanda, all the more so as, clearly, the Tribunal did not consider all the issues relating to investigations, lawyers' fees and other related issues that may seriously impact the adequacy of time and facilities for the preparation of my defence as well as my ability to obtain the attendance of prosecution witnesses [*sic*],¹ before issuing that order.

¹ Decision on Request for Revocation of an Order Referring a Case to the Republic of Rwanda, 12 March 2014, p. 3, 428 Bis, Case No. MICT-12-25, taken following my previous request.

4. As indicated in my last request, the problems I raised have not been resolved, more than ten months after your decision was taken. Rather, the situation has worsened.
5. My lawyers were later surprised by the inapposite and unfair decision to terminate the contract by which they were assigned to my case, signed between them and the Rwandan Bar Association in the presence of the Ministry of Justice on 1 November 2013.²
6. The matter was referred to the Bar Association in its capacity as party to the contract, but it failed to take any action.
7. I personally wrote to the President of the Chamber assigned to my case to request suspension of hearings so that the issues mentioned above may be resolved, and so that I may be assisted, as is proper, by counsel duly assigned from the commencement of proceedings. I told her, as I have indicated above, that I find no fault with my Counsel and that they have not, to my knowledge, acted in contempt of the court.
8. In that letter, I also indicated that my Counsel could not continue to assist me while finding themselves in an impasse created by a notice served on them by the Ministry of Justice. I requested the Chamber to exercise patience and suspend hearings pending a definitive resolution of the problem my Counsel were facing.
9. However, instead of asking for the reasons for my request, the President of the Chamber interrupted me and ordered resumption of proceedings in my case on 15 January 2015. She even added that hearing should hold in my absence, even though I was in the courtroom.
10. We appealed against that decision before the Supreme Court and requested suspension of hearings, to no avail. My Counsel were ordered to pay a fine of RwF 500,000 each before the hearing of 21 January 2015.

² In this regard, see Letter No. 2185/08 MOK/LSD addressed to the Minister of Justice by the Permanent Secretary/Solicitor-General.

11. For all the foregoing reasons and pending your decision on my request for revocation of the order referring my case, Case No. MICT-12-25, to Rwanda, I am requesting that you order provisional suspension of hearings.

II. LEGAL BASIS

12. Pursuant to Law No. 47/2013 of 16 June 2013 relating to transfer of cases to the Republic of Rwanda, where a referral order is revoked by the Mechanism pursuant to Rule 11 *bis* of its Rules of Procedure and Evidence, the accused is transferred without delay to the Mechanism along with all the case records, exhibits and other additional materials specified in the revoking order.

13. In the instant case, we have established that the Chamber failed to satisfy the conditions for a fair trial in Case No. RP0002/12/HCCI.

14. The decision taken by the Ministry of Justice and affirmed by the Chamber assigned to the case shows that Rwanda is seeking to forcefully appoint counsel that will do no more than follow the Prosecutor's instructions.

15. Attempts are therefore being made at depriving me of my right to be assisted by counsel of my choosing so that I should not be in a position to prepare my defence. This amounts to violation of my right to obtain the attendance of defence witnesses living abroad. As a result, my trial will not be fair.

16. If hearings in my case continue as desired by the Chamber, many things will go irreparably wrong in violation of my fundamental rights.

17. On 15 January 2015, the Chamber assigned to my case declined to take into consideration the concerns raised in my letter of 12 January 2015. In fact, when the Chamber sat, the judges had already decided that my case would be heard on the merits that day [15 January 2015]. Prosecution witnesses were heard whereas we had not yet finished reviewing each of the crimes alleged against me.

18. After the decision was taken to continue with the hearing on the merits, I immediately filed an appeal against the decision but the appeal was not successful and the Chamber promptly imposed fines on my Counsel.

19. It therefore should be noted that continuing with hearings under the circumstances would be in violation of Rule 11 *bis* of the Rules of Procedure and Evidence, the provisions of which are reproduced in Articles 18(3) and 19 of the Constitution.

20. For all these reasons, I pray that before considering our request for revocation of the order referring my case to Rwanda, you should take a provisional decision to suspend hearings in this case before the High Court.

RELIEF SOUGHT

- Provisional suspension of hearings before the Exterritorial Chamber of the High Court responsible for international and cross-border offences, given that my rights continue to be violated.

Kigali, 15 January 2015

[Signed]

Jean Uwinkindi

ANNEX 1

THE EXTERRITORIAL CHAMBER OF THE HIGH COURT RESPONSIBLE FOR INTERNATIONAL AND CROSS-BORDER OFFENCES SITTING IN KIGALI AND HEARING CRIMINAL CASES AT FIRST INSTANCE, HEREBY DELIVERS THE PRESENT INTERLOCUTORY RULING IN CASE NO. 0002/12/HCCI, THIS 15 JANUARY 2015

IN THE MATTER OF

THE NATIONAL PUBLIC PROSECUTION AUTHORITY

v.

THE ACCUSED

Jean Uwinkindi, son of Subwanone and of Ntizisigwa, born in 1951 in Rutsiro in the former Kibuye *préfecture*, Republic of Rwanda, residing, up till 1994, in the former Kigali rural *préfecture*, Kanzenze commune, Kayumba *secteur*, Gatare *cellule*, married to Rose Kabagwira with whom he has eight children, pastor, of Rwandan nationality, without property, in detention in the Kigali Central Prison after his transfer to Rwanda by the International Criminal Tribunal for Rwanda to be tried for the offences he allegedly committed in Rwanda. He is assisted by Messrs Gatera Gashabana and Jean-Baptiste Niyibizi.

OFFENCES

1. Genocide, defined and punishable under Articles 114 and 115 of the Penal Code of Rwanda as well as under Article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide.¹
2. Extermination as crime against humanity, as stipulated and punishable under Articles 120.2 and 121 of the Rwandan Penal Code.

¹ Resolution No. 206(iii) of the United Nations General Assembly on 9 December 1948 and ratified by Rwanda by Legislative Decree No. 08/75 of 12 February 1975 and published in the Official Gazette of Rwanda (1975), p.230.

I. STATEMENT OF FACTS

1. On 13 January 2015, Jean Uwinkindi submitted a written motion to the Chamber according to which, even if it was decided that he would continue to be assisted by Messrs Gatera Gashabana and Jean-Baptiste Niyibizi and that hearings on the merits should accordingly continue, he was requesting suspension of the hearings pending resolution of the problem between his Counsel and the Ministry of Justice regarding fees. He explained that in his opinion, the stalemate did not allow his Counsel to continue to assist him.

2. After noting that in the course of the previous hearing and that of 8 January 2015 the Chamber had rendered its decision on Jean Uwinkindi's motion, on 15 January the Chamber informed the Parties that hearing was going to continue. Messrs Gatera Gashabana and Jean-Baptiste Niyibizi immediately appealed against that decision and requested provisional suspension of hearings so that the Supreme Court could make a determination on the appeal. Nevertheless, the Chamber decided that their appeal had no suspensive effect.

3. Messrs Gashabana and Niyibizi forthwith informed the Chamber that, even if they were to continue to assist and represent Jean Uwinkindi in court, they were going to leave the courtroom to go and file their appeal with the Supreme Court. Consequently, Jean Uwinkindi remained in the courtroom without the assistance of his Counsel.

4. The Chamber therefore should consider the impact of Counsel's decision to withdraw from the courtroom.

II. DELIBERATIONS

5. Jean Uwinkindi has indicated to the Chamber that even if the Chamber has decided to continue with the hearing, he was not in a position to defend himself absent the assistance of his Counsel. He has therefore asked that Article 18(3) of the Constitution of Rwanda be respected.

6. The Prosecutor is of the view that Jean Uwinkindi cannot indeed defend himself without the assistance of a counsel. However, he has added that the conduct of Jean

Uwinkindi's Counsel amounted to a stalling tactic in respect of which the Chamber should take a decision.

7. Article 1 of Law No. 21/212 of 14 June 2012 relating to civil, commercial, labour and administrative procedure provides that that Law shall also apply to all other cases in the absence of specific laws governing such procedures, unless the principles provided for by this Law cannot be applied to other cases.

8. Under Article 15 of Law No. 21/212 of 14 June 2012 relating to the civil, commercial, labour and administrative procedure, any party who intentionally delays the hearing or who seeks the appeal as a delaying tactic, shall be charged a civil fine of 200,000 (two hundred thousand) to 500,000 (five hundred thousand) Rwandan francs.

9. Based on the provisions cited above, the Chamber finds that after its decision to continue with the hearing, Jean Uwinkindi's Counsel immediately withdrew from the proceedings, which shows that they acted in contempt of the court in order to delay the trial. They are therefore each imposed a civil fine of 500,000 (five hundred thousand) Rwandan francs.

10. Regarding the right of the Accused to be assisted by a counsel, the Chamber notes that in accordance with Article 18 of the Constitution of the Republic of Rwanda which stipulates that the right to defence is an absolute right at all levels of the proceedings, Jean Uwinkindi cannot mount his defence without the assistance of a counsel and, accordingly, hearing should be adjourned.

III. DECISION

11. The Chamber sentences Messrs Gatera Gashabana and Jean-Baptiste Niyibizi to payment of a civil fine of 500,000 (five hundred thousand) Rwandan francs each.

12. Orders that the said fine should be paid once this decision is taken.

13. Orders that hearings in this case should resume on 21 January 2015, at 8.30 a.m.

THUS JUDGED AND PRONOUNCED IN OPEN COURT THIS 15 JANUARY 2015

[Signed]

Alice. R. Ngendakuriyo

Presiding Judge

[Signed]

TimothéeKanyegeri

Judge

[Signed]

FidèleNsanzimana

Judge

[Signed]

ZitaUwase

Registrar

Certified true copy

Done at Kigali, 15 January 2015

Registrar: UwaseZita

[Seal of the High Court]

ANNEX II

Republic of Rwanda
[Seal of the Republic of Rwanda]
MINISTRY OF JUSTICE
P.O. BOX 160 KIGALI
Tel: (250) 252586561 Fax: (250) 252586509

Kigali, 8 January 2015
No. 26/0825/MD/PsO

To: The President of the Bar Association

Subject: Submission of the minutes of the meeting

Mr President,

Please find hereto-attached the minutes of the meeting of Tuesday, 6 January 2015 held between the Minister of Justice, Keeper of the Seals and the President of the Bar Association on Jean Uwinkind's legal assistance contract.

Kind regards.

Johnson Busingye,
Minister of Justice/Keeper of the Seals

Copies to:

- President of the Supreme Court
- Prosecutor-General
- President of the High Court
- Mr GateraGashabana
- Mr Jean-Baptiste Niyibizi

KIGALI

**MINUTES OF THE MEETING ON JEAN UWINKINDI'S LEGAL
ASSISTANCE CONTRACT**

This Tuesday, 6 January 2015, the Minister of Justice, Keeper of the Seals, held a meeting with Mr Athanase Rutabingwa, President of the Bar Association, in the presence of the Permanent Secretary/Solicitor-General. The meeting was held for the purpose of considering the contract signed between the Ministry of Justice, Mr Gatera Gashabana and Mr Jean Niyibizi and the Bar Association in respect of the legal assistance provided to Mr Jean Uwinkindi who is being prosecuted for the crime of genocide and whose case was referred to Rwanda.

In opening the meeting, the Minister of Justice, Keeper of the Seals recalled why there was no consensus between the two parties as concerns the revision of the contract.

He explained that the Ministry of Justice was seeking revision of the contract in order to harmonize it with the legal aid policy and with other contracts so that defence teams in cases referred to Rwanda may have the same treatment.

Participants at the meeting considered the conduct of the hearing of 30 December 2014 and the grounds for the motion for suspension of hearings raised by Uwinkindi's Counsel, arguing that the Counsel no longer had the standing to assist the Accused.

Decisions taken at the meeting

Participants at the meeting noted the following:

1. Article 7 of the contract signed between the Ministry of Justice, Messrs Gatera Gashabana and Niyibizi and the Bar Association provides that the contract may be terminated after a three-month notice. The notice had been given.
2. In its letter of 22 December 2014, the Ministry of Justice gave a three-month notice with effect from the date of receipt of the letter by Uwinkindi's Counsel. In that letter, the Ministry of Justice also reminded counsel that, under contractual provisions, they had to continue to assist Uwinkindi until expiry of the period of notice.

3. The contract shall remain in force until expiry of the three-month period of the notice. Counsel must continue not only to assist Uwinkindi, but also to take part in the negotiations between them and the Ministry of Justice.

4. Messrs Gatera and Niyibizi shall continue to assist Uwinkindi and shall be paid accordingly as provided in the contract.

Kigali, 6 January 2015

Chairperson of the meeting

[Signed; Seal of the Ministry of Justice]

Johnson Busingye

Minister of Justice/Keeper of the Seals
