

**UNITED  
NATIONS**

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16-07-2014  
(492 - 479)**

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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 16 July 2014

Original: English

**Before:**

**Judge Theodor Meron, President**

**Registrar:**

**Mr John Hocking**

**PROSECUTOR**

**v.**

**JEAN UWINKINDI**

**PUBLIC REDACTED**

**MONITORING REPORT FOR JUNE 2014**

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## I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Uwinkindi* case before the Rwandan judiciary and the interactions of the reporting monitor of the Mechanism for International Criminal Tribunals (“Mechanism”) with various stakeholders during the month of June 2014 (“Reporting Period”).
2. During the Reporting Period, the reporting monitor (Jelena Gudurić - “Monitor”), made one visit to Rwanda.
3. The Monitor met with Mr Uwinkindi and his Co-Counsel as well as with the Lead Counsel for the Prosecution, the Head of the Witness Protection Unit of the Supreme Court, and the Prison Director.
4. The Prosecution continued its opening statement during the two court hearings held in the Reporting Period.<sup>1</sup> The trial will resume on 2 July 2014, when the Chamber will hear all witnesses who requested protective measures so that it can determine their applications.
5. A detailed report on all activities during the Reporting Period is provided below.

## II. DETAILED REPORT

### A. Meeting with the Prosecution

1. The Monitor met Mr Jean-Bosco Mutangana, Lead Counsel for the Prosecution, on 3 June 2014.
2. Mr Mutangana noted that, at the next hearing, the Prosecution will continue the presentation of its opening statement, including the summary of witness evidence. Mr Mutangana anticipated that before the presentation of evidence stage commences and witnesses start appearing to testify, further oral arguments will be heard to resolve any outstanding issues. In this regard, he noted that the Defence filed an additional brief in response to the Prosecution opening statement wherein it, *inter alia*, raised an issue concerning the historical background of genocide. In relation to the scheduling of

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<sup>1</sup> The Chamber held four trial hearings thus far – on 14 and 15 May 2014 and 4 and 12 June 2014. The presentation of evidence stage is yet to commence.

further hearings in the *Uwinkindi* case, Mr Mutangana noted that an official 30-day summer court recess will commence on 1 August 2014.

### ***B. Judicial Activity***

3. The Chamber held two court hearings during the Reporting Period, on 4 and 12 June 2014.<sup>2</sup> Both hearings were held before the full Chamber. The Prosecution was represented by Mr Jean-Bosco Mutangana and Mr Bonaventure Ruberwa (“Prosecution”); Mr Jean Uwinkindi, also in attendance, was represented by his Co-Counsel Mr Jean-Baptiste Niyibizi (“Defence Counsel”).
4. At the hearing of 4 June 2014, the Prosecution continued with its opening statement, in particular with the presentation of summaries of evidence of the witnesses.
5. While summarising the evidence of one witness, the Prosecution indicated that the witness (who did not testify before the International Criminal Tribunal for Rwanda - “ICTR”) had requested protective measures. This statement triggered the following oral arguments on the issue of protective measures.
6. The Chamber enquired why the witness had not requested protective measures earlier. The Prosecution responded it was their position that all witnesses should benefit from the same protective measures, whether the witness requested them or not. The Prosecution suggested that the Chamber could ask the witnesses, when they appear in court, why they requested protective measures. The Prosecution noted that granting protective measures would have no negative impact on the accused, as he will be aware of the witnesses’ identity. In response, the Defence Counsel said they saw no reason for the Prosecution to insist on protective measures for witnesses who themselves had not made any such request.
7. The Chamber enquired why the Defence objected to protective measures when the witnesses’ identities are known to them. Mr Uwinkindi submitted that witnesses need to demonstrate that their giving evidence places them in some kind of danger, in order to justify the granting of protective measures. In his view, unjustified requests for protective measures raise a suspicion that witnesses will not be truthful. Mr Uwinkindi saw no reason why the witnesses’ security would be jeopardised.

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<sup>2</sup> The Monitor followed the hearings with the assistance of an interpreter.

8. The Chamber enquired if the Prosecution was requesting protective measures for witnesses who did not give evidence before the ICTR (“Non-ICTR Witnesses”) merely because other witnesses, who did give evidence at the ICTR (“ICTR Witnesses”), benefited from protective measures – in other words, whether the Prosecution was seeking to ensure the same protection for all ICTR and Non-ICTR Witnesses.
9. The Prosecution responded that their request was based on Article 15 of the Transfer Law which prescribes the court’s task of ensuring protective measures.<sup>3</sup> The Prosecution contended that protective measures should be granted in advance of the witness’s testimony. Otherwise, once a witness appears in court, his or her identity will become known to the public and it will be too late to protect them.
10. The Chamber enquired if the Prosecution was submitting that every witness should be protected. The Prosecution acknowledged that protective measures are not automatic but pointed out that Article 15 of the Transfer Law does require the Court to take appropriate measures to protect the witnesses. The Prosecution added that it is possible that a protected ICTR Witness will submit he or she does not need protective measures for testimony in Rwanda. They contended that the Court should ask each witness whether he or she requires protective measures, but that it would be counter-productive if a witness was only asked about protective measures at the point he or she is appearing publicly before the court. The Prosecution request for protective measures for all witnesses was, therefore, a preventive measure until a proper determination in respect of each witness could be made.
11. The Defence Counsel submitted that the Prosecution request for protective measures was based on unknown considerations. They added that the Prosecution should have asked the witnesses if they needed protective measures, and for those who said they did, the Prosecution should show that their security would be endangered by testifying. The Defence Counsel stressed that, as a principle, all hearings should be public.

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<sup>3</sup> The Monitor notes that Article 15 of the “Law N°47/2013 of 16/06/2013 relating [sic] Transfer of Cases to the Republic of Rwanda” (“Transfer Law”), titled “Protection and assistance to Witnesses”, in paragraph 1 provides: “In the trial of cases transferred from the ICTR, the Mechanism or other States, the High Court shall provide appropriate protection for witnesses and shall have the power to order protective measures similar to those set forth in Articles 53, 69 and 75 of the Mechanism Rules of Procedure and Evidence.”

12. The Court enquired whether the Prosecution's application for protective measures referred to all witnesses. The Prosecution submitted that in line with Article 15 of the Transfer Law, all witnesses have to be heard on the matter of protective measures.
13. After an adjournment, during which the Chamber deliberated the matter, the Chamber ordered the Prosecution to file – before the next hearing – a list of all witnesses who want to be protected and to include reasons for each request so that the Chamber can decide at the next hearing. The Defence was required to do the same for their witnesses. The Chamber scheduled the next hearing for 12 June 2014.
14. At the hearing of 12 June 2014, the Prosecution submitted that Article 15 of the Transfer Law, as well as Rules 75 and 69 of the ICTR Rules of Procedure and Evidence, prescribe an obligation to protect witnesses. The Prosecution submitted that it would be contrary to these rules to first publicly disclose witnesses' identities and then request protective measures for their testimony before the Chamber. The Prosecution informed the Court that they had contacted five Non-ICTR Witnesses to ascertain whether they require protective measures. Out of the five, three said they need protection, while two agreed to testify publicly. The Prosecution asked the court to order protection for those three witnesses. The Prosecution added that the witnesses will provide reasons when they appear in Court. The Prosecution also asked for protective measures for 19 witnesses who have been granted protective measures by the ICTR.
15. Mr Uwinkindi submitted that he had not discussed the matter with his Defence Counsel, as he had only just received the list from the Prosecution. Regarding the five Non-ICTR Witnesses, Mr Uwinkindi noted that three of them had stated that they will testify in public and thus saw no reason for them to be granted protective measures. Similarly, according to Mr Uwinkindi, 17 out of the 19 ICTR Witnesses agreed to give testimony publicly in court.
16. As a separate matter, Mr Uwinkindi asked for the death certificates of two witnesses who are reportedly deceased. Mr Uwinkindi also noted that for one witness a death certificate exists, but it was not issued by a medical doctor. Mr Uwinkindi observed that in respect of one witness who died in 2010, the Prosecution said that they had asked the witness if the witness wanted protective measures.

17. The Defence Counsel submitted, in relation to Article 15 of the Transfer Law, that Rwanda is a peaceful country and that there are no grounds for the court to order protective measures.
18. The Prosecution informed the Court that they are still awaiting death certificates for the two deceased witnesses, which will be provided to the Defence once received. The Prosecution argued that in the case of deceased witnesses, protective measures are not for the witness but can be required for the benefit of members of the deceased's family.
19. The Prosecution explained that if a witness is protected, he or she will still testify publicly, but the public will not be aware of the witness's identity and will not be able to see him or her. The Prosecution further submitted that Article 15 of the Transfer Law cannot be read in isolation as it relates to Rules 69 and 75 of the ICTR Rules of Procedure and Evidence, which regulate protective measures. The Prosecution argued that it is not enough for the Defence Counsel to state that Rwanda is a peaceful country, as attacks occur even in peaceful countries. They added that the accused and his Defence Counsel will be able to see all witnesses in court and that, accordingly, the accused's rights will not be violated. In line with ICTR Rule 75, according to the Prosecution, the burden is on the accused to show that protective measures violate his rights. This rule does not require witnesses to show that they need protective measures but rather the accused needs to show that the measures violate his rights. In conclusion, the Prosecution maintained that the three Non-ICTR Witnesses should be protected.
20. The Defence Counsel responded that the Chamber must determine if protective measures are needed, based on the Prosecution's reasoned request. At present, there are no witness statements providing reasons for the requests. Because public hearings are the rule and protective measures the exception, the witnesses should be required to show why they fear testifying in public.
21. Mr Uwinkindi submitted that if the witnesses said they will testify publicly, that means that their identity should not be concealed. He added that, in accordance with Article 14 of the Transfer Law, the proceedings are not fair if witnesses are hidden. Mr Uwinkindi suggested that the Prosecution wants to conceal witnesses because the testimony they will give will not be their own. He explained that the Chamber, as well as the public, should be able to assess the credibility of testimony through the

witnesses' reactions and gestures. He concluded that this will not be possible if the witnesses are hidden from public view.

22. The Prosecution responded that the Court order required them only to report which witnesses asked for protective measures. They did not go into reasons underlying the requests, as the Court can explore them when the witnesses appear in court. The Defence will also have an opportunity to ask questions at that time. The Prosecution asked the Court to remind Mr Uwinkindi that he will see all witnesses, question them and know their identity. He will also be able to see their behaviour and gestures.
23. Mr Uwinkindi submitted that the law provides that hearings have to be public and that only exceptionally can the public be excluded. This is in line with Article 19 of the Constitution and Article 14, paragraph 1 of the Transfer Law.
24. The Chamber confirmed that it had received the Prosecution list of witnesses who request protection, and held that they will be required to appear before the Court and explain why they need protective measures. This also will apply to the ICTR Witnesses who are protected, as they may inform the court that they no longer require protection. As for the deceased witnesses, the Court suggested that their relatives may wish for the previously granted protective measures in respect of their now-deceased family member to continue.
25. The Prosecution noted that in respect of the now-deceased witnesses, it would be difficult to revisit the decision that previously granted them protective measures. The Court would not know which relatives to call to make the enquiry as to whether the family wished for the protective measures to remain in place, nor could the Court call the family council to decide who would speak on behalf of the family.
26. The Defence Counsel submitted that there is no presumption that protective measures continue following a witness's demise. They added that a witness's relatives should not benefit from protective measures, unless they themselves need them. The Prosecution responded that even if a witness dies, the decision continues to be in force. The Prosecution maintained that deceased witnesses should continue to benefit from protective measures.



27. Mr Uwinkindi submitted that the Court should determine whether there is good reason to grant protective measures to the 19 ICTR Witnesses and three Non-ICTR Witnesses.
28. The Chamber conferred and decided that all witnesses from both parties must appear before the Court at the next hearing so that the Chamber can decide who will benefit from protection. The Chamber scheduled the next hearing for 2 July 2014.
29. The Defence Counsel indicated that they did not have contact with all defence witnesses. They added that the time given to contact them was too short. In addition, they have no financial means to perform that task. As a result, the Defence Counsel asked for an extension of time. The Prosecution did not object to this request. The Chamber granted the request and indicated that the Defence witnesses would be called at a later stage.

*C. Meeting with Mr Uwinkindi*

30. The Reporting Monitor met Mr Uwinkindi at the Kigali Central Prison (“Prison”) on 6 June 2014. The meeting was conducted with the assistance of an interpreter.
31. Mr Uwinkindi expressed concern about the interpreter. The Monitor explained that the interpreter has taken an oath before the Mechanism to perform functions impartially and to respect the duty of confidentiality.
32. With reference to the monitoring reports and decisions of the President of the Mechanism, Mr Uwinkindi stated that he does not want to receive any documents in English or in French. He wishes to receive only translations into Kinyarwanda.
33. Mr Uwinkindi was concerned that he had never received a response to issues that he raised in previous meetings with monitors.
34. [REDACTED]
35. [REDACTED]
36. [REDACTED]
37. [REDACTED]
38. [REDACTED]

39. [REDACTED]

40. [REDACTED]

41. As a separate issue, Mr Uwinkindi stated that the Court had not allowed argument on the central issue of his identity. He noted that the Prosecution used the name Jean-Bosco in the arrest warrant. Even the Presiding Judge called “the case of Jean-Bosco” at the previous hearing. Mr Uwinkindi submitted that he is not Jean-Bosco and argued that instead of correcting the name of the accused to match his own, the Prosecution should have withdrawn the charges against him.

42. Mr Uwinkindi reiterated that there is no money to fund an investigation to find witnesses who would testify for the Defence. Before the transfer, the Government had submitted assurances that funds would be made available for the Defence. Mr Uwinkindi noted that, on the other hand, the Prosecution has been contacting and seeking witnesses throughout this time.

43. Financial difficulties are also affecting his legal representation, according to Mr Uwinkindi. His counsel had been promised that they would be paid, but that has not happened. Mr Uwinkindi is also worried about a recently issued ministerial order that requires all accused to pay for all trial expenses, including for the arrival of witnesses and their accommodation. This is a departure from the past regime in which the Government covered these expenses. Mr Uwinkindi also said that, because of the ministerial order, some detainees have stopped signing for meals they are receiving, as they fear that they will be charged for the food in case of conviction.

44. Turning to conditions of his detention, Mr Uwinkindi said he had no complaints about the food in the Prison. He, however, raised two issues. He informed the Monitor that he had asked for a copy of his medical file, both from the ICTR detention facility and from the Prison, but that his request was denied. The medical service, however, assured him that his medical file is complete. Mr Uwinkindi questioned the completeness of the file, particularly because he has been denied access to it. He also complained about being detained in the Special Enclosure of the Prison with only three other people,<sup>4</sup>

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<sup>4</sup> The Special Enclosure houses two accused transferred by the ICTR – Mr. Uwinkindi and Mr Bernard Munyagishari – and two other detainees referred by national courts of other states.

which bothers him psychologically. He added that when he attends religious service, he is escorted and not allowed to talk with other detainees.

***D. Contact with the Head of the Witness Protection Unit***

45. The Monitor met Mr Janvier Bayingana, Head of the Witness Protection Unit of the Supreme Court, on 9 June 2014.

46. Mr Bayingana informed the Monitor that his unit makes contact with witnesses only when witnesses start appearing before the court. Regarding protective measures, Mr Bayingana stated that if the Court has sufficient grounds to determine a request for protective measures, his unit will not be involved. If the Court, however, requires a threat assessment to assist its determination, the Witness Protection Unit stands ready to provide such service. In terms of protective measures ordered by the ICTR, Mr Bayingana's understanding is that such measures will remain in force before Rwandan courts.

47. Following the Court's ruling of 12 June 2014 that all witnesses, including ICTR Witnesses, must appear before the Court and state their reasons for requesting protective measures, the Monitor spoke with Mr Bayingana via telephone on 23 June 2014. Mr Bayingana informed the Monitor that he has taken steps to make the Court aware of protective measures ordered by the ICTR. He clarified that, at the hearing scheduled for 2 July 2014, the Court will decide only on protective measures requested by the three Non-ICTR Witnesses.

***E. Meeting with the Prison Director***

48. The Monitor met with Mr Alex Murenzi, Prison Director, on 11 June 2014.

49. Regarding the transmission of documents, Mr Murenzi explained that for security reasons, all documents sent to or by detainees must be transmitted through the Prison Administration. If a document originating from or addressed to the Mechanism is confidential, Mr Murenzi stated that such document can be handed over in a sealed envelope and marked as confidential. The Prison Administration will not open confidential sealed documents; they will only register the date of transmission and pass the document on to the recipient. Mr Murenzi specified that monitors are allowed to

exchange documents directly with Mr Uwinkindi and Mr Munyagishari after registering the document with the Prison Administration.

50. In relation to access to medical information, Mr Murenzi submitted that all detainees have the right to access their medical files.

#### ***F. Meeting with the Co-Counsel***

51. The Monitor met Mr Niyibizi, Mr Uwinkindi's Co-Counsel, on 12 June 2014. As Mr Niyibizi is also Lead Counsel for Mr Munyagishari, he discussed both cases. He noted that the *Uwinkindi* case is in a more advanced stage of the proceedings than the *Munyagishari* case, which is in the pre-trial stage.

52. In relation to the remuneration of the Defence, Mr Niyibizi submitted that the contract, which provides for payment of 1,000,000 Rwandan Francs per month for each of the two Counsel, had been signed in November 2013. He added that there had been no agreement, however, for the financing of defence investigations. In particular, due to the lack of means, the Defence cannot contact defence witnesses who live abroad. Mr Niyibizi noted that the Defence needed to continue pursuing the matter of legal aid with the Ministry of Justice.

53. Mr Niyibizi observed that because of the lack of resources, the Defence asked the Court to deal with the issue of protective measures for Defence witnesses at a later stage.<sup>5</sup>

54. Mr Niyibizi noted the improvement in procedure in the *Uwinkindi* case. Before, the Defence used to stand for the entire duration of a hearing, which could amount to six hours in a day. The Defence also used to have less time to address the court and was continuously interrupted during its oral submissions. The Defence then filed a submission concerning these issues, which the Chamber granted at the hearing of 14 May 2014.<sup>6</sup> As a result, the Defence is now allowed to be seated when not addressing the court and is given more time for its oral submissions.

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<sup>5</sup> See para. 31 *supra*.

<sup>6</sup> See *Prosecutor v. Uwinkindi*, Case No. MICT-12-25, Monitoring Report for May 2014, public, dated 4 July 2014, paras. 7 and 63.

### **G. Monitor's Independent Observation**

55. The Monitor brings to the President's attention a provision of the Rwandan law which – on its face – appears inconsistent with relevant provisions of the Rules of Procedure and Evidence of the Mechanism ("Rules").

56. Article 10 of the Transfer Law in relevant part provides:

When the testimony or deposition of a witness, who was subject to a protection order of the Mechanism, is admitted into the record, the identity of the witness shall not be disclosed to the public unless the Mechanism or the witness authorizes such disclosure. If such a witness is called for cross-examination, the fact that the individual testified at the ICTR or the Mechanism will not be disclosed to the public unless authorized by the Mechanism or the witness.<sup>7</sup>

57. To the extent this provision allows for a variation of ICTR or Mechanism-ordered protective measures pursuant to the witness's authorisation, it appears inconsistent with Rules 86(H) and 86(J) of the Mechanism Rules.<sup>8</sup>

58. The Monitor notes, however, that Article 29 of the Transfer Law provides:

Provisions of this Law relating to actions taken by ICTR shall remain valid in case they are not contrary to the United Nations Security Council Resolution 1966 of 22 December 2010 and to the Rules of Procedure and Evidence of the Mechanism.

59. The issue of protective measures for witnesses (including those granted by the ICTR) was discussed at the two hearings held in June 2014.<sup>9</sup> While Article 10 of the Transfer Law was not invoked at the time (nor did the parties and other stakeholders otherwise refer to it), the Monitor opines that its seeming inconsistency with the Mechanism

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<sup>7</sup> Transfer Law, Article 10 titled "Evidence provided to ICTR or to the Mechanism by witnesses", paragraph 3.

<sup>8</sup> Rule 86(H) provides:

A judge or bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the ICTY, the ICTR, or the Mechanism may seek to rescind, vary, or augment protective measures ordered in proceedings before the ICTY, the ICTR, or the Mechanism by applying to the President of the Mechanism, who shall refer the application to a Single Judge or to the Chamber remaining seised of the proceedings.

Rule 86(J) of the Mechanism Rules provides:

A victim or witness may waive in whole or in part protective measures granted pursuant to this Rule after being advised by a Trial Chamber or the Victims and Witnesses Section of the consequences thereof. The waiver must be made before a Trial Chamber or in a written statement signed by the victim or witness and an officer of the Victims and Witnesses Section.

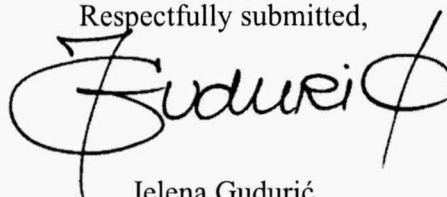
<sup>9</sup> See section B *supra*.

Rules – notwithstanding Article 29 of the Transfer Law – generally warrants the President’s attention.

### III. CONCLUSION

60. The Reporting Monitor remains available to provide any additional information, at the President’s direction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gudurić', with a large, stylized initial 'G'.

Jelena Gudurić  
Monitor for the *Uwinkindi* case

Dated this 16<sup>th</sup> day of July 2014  
At Kigali,  
Republic of Rwanda.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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