



Mechanism for International Criminal Tribunals

Case No: **MICT-12-25**

Date: October 1st, 2014

Original: English

Before: Judge Theodor Meron,
MICT President

Registrar: Mr John Hocking

Monitor: Zbigniew Lasocik, prof.

PROSECUTOR

v.

JEAN UWINKINDI

**MONITORING REPORT
SEPTEMBER 2014**

PUBLIC

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A handwritten signature in black ink, appearing to read 'McCall Carter'.

INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, particularly part “C” of the Annex II to the MOU between MICT and ISLP (Europe), I respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring Report pertains to the activities in the *Uwinkindi* case before the Judiciary in the Republic of Rwanda and the interactions of the Monitor of the Mechanism for International Criminal Tribunals (MICT) with various stakeholders during the month September 2014.

VISIT TO PRISON, SEPTEMBER 16TH (with support of the interpreter)

3. On September 16th I visited Central Prison in Kigali to check prison conditions and to discuss with the Accused the future of the document which was handed over to me in July (in Kinyarwanda). In Monitoring Report for August 2014 I informed that the document which Mr. Uwinkindi handed over to me last time had already been translated. According to Mr. Uwinkindi this document was addressed to President of the Mechanism and it contained several complains. I asked UN Office in Kigali to transfer this letter accordingly.
4. I was informed that Mr. Murenzi was longer director of the prison due to his enrolment to international educational program. I briefly met with new director and with Mr. Uwinkindi.
5. In July Mr. Uwinkindi and Mr. Munyagishari complained that there was no water in two taps located closely to the cells. I checked that and noticed that there was still no water there. Second issue raised by the Accused in July was uncomfortable tables in the dining room. I noted the same tables. Additionally I was demonstrated lack of light in the toilet. Finally, prisoners informed me that the roof, nearby the entrance, was not proof enough and during the rain water was leaking into the building.

COURT HEARINGS AND COURT FILES

COURT HEARING, SEPTEMBER 17TH (with support of the interpreter)

6. During the Reporting Period there have been two court hearings: on September 17th and September 18th 2014. Both the hearings were held before the Chamber of three Judges. But it has to be noted that two of them were recently changed, as it was declared by the Court at the last hearing in August 2014.
7. The composition of the Chamber is as follows: Judge Alice NGENDAKURIYO (Presiding Judge), Judge Timothy KANYEGERI and Judge Fidel NSANZIMANA.

8. At both court hearings Mr. Jean Uwinkindi was present. He was represented by his Lead Counsels Mr. Gatera Gashabana and Co-Counsel Mr. Jean Baptiste Nyibizi. Prosecution was represented by Mr. Jean Bosco Mutangana and Mr. Bonaventura Ruberwa.
9. At the court hearing of September 17th the Presiding Judge has informed that two judges of the previous Chamber had been given another tasks and two new judges has been appointed instead. Presiding Judge informed also that the new judges had been briefed and the proceedings would be continued.
10. Presiding Judge informed also that the protective measures for Prosecution witnesses had been granted and from now on only acronyms of the witnesses must be used.
11. The Defense expressed deep concern that the change of the judges and continuation of the proceedings was in conflict with at least two rules: Article 19 of the Rwandan Constitution and Article 14 of the Transfer Law. Defense argued that according to Transfer Law continuation of the proceedings is possible only if accepted by the accused. In this case Accused was not consulted.
12. The Prosecution argued that Article 19 of the Constitution is irrelevant here as it refers to assumption of innocence. Also, there is no provision in Rwandan law requiring restarting the proceedings in such a case, which means that no rule had been violated. Prosecution argued also that Transfer Law had no effect and cannot be used directly as there is no national legislation allowing this legal action.
13. Mr. J. Uwinkindi expressed his concern that the trial would not be fair. He expressed his respect for Judges but at the same stated that reading the file is not enough. The new Judge, he said, would never understand the dynamic of the court hearings so far.
14. The Defense supporting opinion of Mr. Uwinkindi underlined that it is not known to the public and the Parties how the new Judges were briefed. Is reading file equivalent of being in the courtroom, the Defense has asked.
15. The Prosecution repeated that there is no legislation to allow using Transfer Law directly, that is why the Court has to apply Rwandan Law.
16. Mr. Uwinkindi stated that if the Court would again accept the position of the Prosecution, ignoring arguments of the Defense, it would violate the fair trial standards.
17. The Defense opposed stating that the Transfer Law is to be used for the proceedings as this one and should be interpreted with necessary flexibility. As to Rwandan Law it refers to change of one judge while here two Judges had been changed.
18. The Presiding Judge adjourned the hearing to next day at 8.00 when the decision of the Court would be proclaimed.

COURT HEARING, SEPTEMBER 18TH (with support of the interpreter)

19. The Presiding Judge has presented the decision of the Court: the proceedings would be continued with new judges.
20. The Presiding Judge informed that the Court has rejected legal arguments of the Defense and presented legal grounds of the decision. First of all the Court decided that in this case Rwandan Law would apply, which gives grounds the proceedings to continue. The Court stated also that this decision did not violate rights of the Accused as he has not presented any evidence yet but the proceedings are at early stage (Opening Statement).
21. Mr. Uwinkindi appealed the decision of the Court to the Supreme Court.
22. The Presiding Judge decided that the hearing would be continued and asked the Prosecution to present the Opening Statement.
23. The Defense opposed referring to Article 18 of the Transfer Law and stating that the hearing should be adjourned until the decision of the Supreme Court is known. The Defense repeated that the Transfer Law must be treated as part of national legislation. But in this very special situation it should be also considered as *lex specialis* and with conformity with Article 27 of the TL should be given priority before Article 163 of the Rwandan Code of Procedure. The Defense raised also the fair trial standards: the Accused has the right to know the decision of the Supreme Court before any other legal action is taken.
24. The Defense remained that when Mr. Uwinkindi was transferred to Rwanda he was assured that all fair trial standards and safeguards would be observed. At this stage of the proceedings Mr. Uwinkindi is denied the right to know the result of his lawful appeal. According to the Defense this is against Article 18 of the Rwandan Constitution and it presents serious violation of Article 14 of the International Covenant on Civil and Political Rights.
25. The Presiding Judge requested the jurisprudence mentioned by the Defense to support its claims.
26. The Defense quoted the Decision of the Supreme Court no 0020/14/CS of April 4th, 2014 and supplemented the argument by quoting Article 180 of the Code of Criminal Procedure, which allows suspending the proceedings until the appeal is considered.
27. The Prosecution stated that the Defense wrongly interprets the Transfer Law, especially Article 18 which lists reasons for the appeal but has nothing to do with the sequence of legal actions. Additionally Transfer Law could not be treated as *lex specialis* and by this could not modify national legislation. According to Prosecution there is no conflict between provisions of Article 27 of the Transfer Law and Article 163 of the Code of Procedure. The Defense required the Court to act against the Rwandan Law.

28. The Prosecution referred also to fair trial standards stating that continuation of the proceedings did not violate rights of the Accused. Article 180 of Code of Criminal Procedure should be read and interpreted in relation to Article 175 of this Code. According to Prosecution that particular part of the Code is regulating the appeals. The Prosecution requested the Court to dismiss all motions of the Defense, stating that the real purpose of those submissions was to delay the proceedings.
29. The Defense insisted that in this case Article 18 of the Transfer Law should apply.
30. The Presiding Judge adjourned the hearing for one hour.
31. After the brake the Presiding Judge ordered that the proceedings would continue. The Presiding Judge stated: 1. There was no ground for suspension of the hearing; 2. Article 18 of the Transfer Law did not give grounds to adjourn the hearing; 3. There was no conflict between Article 163 of the Code of Procedure and Article 27 of the Transfer Law; 4. Article 163 is very much in line with The Decision of the Supreme Court of April 4th, 2014 evoked by the Defense.
32. In this situation National Prosecutor Mr. J.B. Mutangana continued Opening Statement by presenting evidence based on testimonies of the witnesses. As all of them were granted protective measures acronyms were used instead of names.
33. After Opening Statement the Presiding Judge asked the Defense to present reply to the Indictment and to inform the Court about potential defense witnesses to be called.
34. The Defense informed the Court that it had difficulties to contact witnesses as some of them were in prisons and some were abroad. The Defense informed the Court that 10 witnesses asked for protection and were given special acronyms by the Defense.
35. The Presiding Judge ordered that all those witnesses should appear before the Court and that the same procedure should apply as for the prosecution witnesses (including acronyms). The Presiding Judge asked the Head of the Witness Protection Unit to make sure that all information is gathered and all logistics is taken care of.
36. The Presiding Judge ordered that the issue of defense witnesses would be dealt with before the reply of the Defense to Indictment.
37. The Presiding Judge informed that the next hearing is scheduled for October 1st.

REVIEW OF THE FILE, SEPT. 19TH (with support of the interpreter)

38. There were several new documents in the file:
 - the Decision of the President of the High Court of September 1st, 2014 appointing new judges,
 - submission of Mr. Uwinkindi dated September 12th, 2014 in which he requested minutes of all hearings in his case,
 - minutes of the hearing of September 17th, 2014 (4 pages),
 - minutes of the hearing of September 18th, 2014 (7 pages), including the decision of the Court, page 3.

39. REDACTED

MEETING WITH PRESIDENT OF THE HIGH COURT, SEPTEMBER 17TH

40. On September 17th, I meet briefly Judge Charles Kaliwabo Munyantore the President of the High Court. I used this opportunity to introduce myself and to present to the President Orders of the MICT Registrar Appointing myself as ICTR/MICT Monitor in *Uwinkindi* and *Munyagishari* cases as well as Note Verbal.

SECOND VISIT TO PRISON, SEPTEMBER 18TH

MEETING WITH NEW PRISON DIRECTOR

41. I met with Mr. Mugisha new Prison Director. It appeared that he was appointed that particular day. I introduced myself and briefly informed the Director about mandate of the ICTR/MICT Monitors and their obligations.

42. New Prison Director kindly accompanied me to the Special Unit where Mr. Uwinkindi is imprisoned.

43. REDACTED

MEETING WITH MR. UWINKINDI (with support of the interpreter)

44. Mr. Uwinkindi stated that as far as prison conditions are concerned although he mentions occasionally different shortages nothing has changed since April/May 2014.

45. Mr. Uwinkindi stated that after last hearing when all his motions were overruled by the Court he had no reasons to believe that he would have fair trial in Rwanda.

46. REDACTED

47. REDACTED

48. According to Mr. Uwinkindi Code of Civil Procedure should not apply to his case, instead Transfer Law should be given priority.

CONCLUSIONS

49. REDACTED

50. The Opening Statement by the Prosecution had been completed and the reply of the Defense is expected very soon. For that reason the monitoring process would be more challenging as the hearings might be scheduled on more regular basis.

Respectfully submitted,



Zbigniew Lasocik, prof.
Monitor for the *Uwinkindi* case

Dated: October 1st, 2014
Warsaw, Poland



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
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Case Name/ Affaire :	Uwinkindi	Case Number/ Affaire n° :	MICT-12-25
Date Created/ Daté du :	01/10/2014	Date transmitted/ Transmis le :	13/10/2014
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	Monitoring Report September 2014		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
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Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
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