

UNITED
NATIONS

MICT-12-25
24-11-2014
(676 - 662)

676
ZS



Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 14 November 2014

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

MONITORING REPORT FOR OCTOBER 2014

Monitors:

Ms. Jelena Gudurić
Prof. Zbigniew Lasocik
Ms. Xheni Shehu

Received by the Registry
Mechanism for International Criminal Tribunals
24/11/2014 13:44

Ana Marouf

CONTENTS

I.	INTRODUCTION.....	3
II.	DETAILED REPORT.....	3
	<i>A. First Monitoring Mission</i>	3
	<u>Court Hearing of 1 October 2014</u>	3
	<u>Court Hearing of 2 October 2014</u>	5
	<u>Review of the Case File on 2 October 2014</u>	6
	<u>Meeting with Lead Counsel for the Prosecution on 2 October 2014</u>	6
	<u>Meeting with Lead Counsel for the Defence on 3 October 2014</u>	7
	<i>B. Second Monitoring Mission</i>	7
	<u>Court Hearing of 15 October 2014</u>	7
	<u>Court Hearing of 16 October 2014</u>	8
	<u>Impromptu meeting with Mr. Uwinkindi's Lead Counsel during court break</u>	11
	<u>Court Hearing of 16 October 2014 (continued)</u>	11
	<u>Review of the Case File on 16 October 2014</u>	11
	<u>Meeting with Mr. Uwinkindi and his Lead Counsel on 16 October 2014</u>	12
	<i>C. Third Monitoring Mission</i>	13
	<u>Court Hearing of 22 October 2014</u>	13
	<u>Court Hearing of 23 October 2014</u>	14
III.	CONCLUSION.....	14

I. INTRODUCTION

1. This monitoring report pertains to the activities in the *Uwinkindi* case before the Rwandan judiciary and the interactions of the monitors appointed by the Mechanism for International Criminal Tribunals with various stakeholders during the month of October 2014 (“Reporting Period”).
2. During the Reporting Period, the appointed monitors – Ms. Jelena Gudurić, Prof. Zbigniew Lasocik and Ms. Xheni Shehu (individually “Monitor”, collectively “Monitors”) each made one visit to Rwanda.¹
3. Six court hearings were held in this period: on 1, 2, 15, 16, 22 and 23 October 2014. All hearings were held before the full Chamber. Mr. Uwinkindi was in attendance and was represented by his Lead Counsel Mr. Gatera Gashabana and Co-Counsel Mr. Jean-Baptiste Niyibizi (“Defence”). The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa (“Prosecution”). At the six hearings, the Defence presented its submissions in response to the Indictment and the Prosecution opening statement, alleging both legal and factual defects in the Indictment. The Monitors followed all hearings with the assistance of the interpreter.
4. The Court will resume on 12 November 2014, when the Prosecution is expected to reply to the Defence’s submissions.
5. In addition to observing the hearings, the Monitors met with Mr. Uwinkindi, his Lead Counsel, and Prosecution Counsel, and examined the Case File.²
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. First Monitoring Mission

Court Hearing of 1 October 2014

7. The Chamber commenced the hearing by indicating that, as a preliminary matter, it would examine the matter of protective measures for Defence witnesses. The Chamber ordered all persons present, except the parties, to leave the courtroom. Following this order, the Monitor left the courtroom.
8. When the hearing resumed in public, the Chamber summarised the matters it discussed in closed session.³ The Chamber announced its oral decision regarding the protective measures for Defence witnesses. It noted that of the 11 witnesses submitted by the Defence, one witness did not wish to testify without meeting counsel for Mr. Uwinkindi and two witnesses were not at home when the Registrar sought their

¹ Ms. Shehu’s mission to Rwanda was from 1 to 3 October 2014; Ms. Gudurić’s from 14 to 16 October 2014; Prof. Lasocik’s from 21 to 23 October, 2014. Each Monitor prepared the part of this report corresponding to their respective mission.

² The Monitors met with Mr. Uwinkindi and examined the Case File with the assistance of the interpreter.

³ The Monitor notes that the summary corresponds to what was recorded in the minutes of the closed session, which the Monitor reviewed on 2 October 2014. See para. 28 *infra*.

information. Pursuant to Article 15 of the Transfer Law,⁴ the Chamber ordered protective measures for the remaining eight Defence witnesses. Further, the Chamber ordered the competent authorities to locate the remaining witnesses, ascertain whether they need protective measures and report to the Chamber.

9. The Defence proceeded to present its opening statement.⁵ First, Mr. Uwinkindi addressed the Chamber, denying all the allegations made by the Prosecution. He stated that he will present sufficient evidence to prove his case and handed the presentation to his Counsel.
10. Counsel for Mr. Uwinkindi summarised the charges in the Indictment objecting to the specific crimes and the evidence presented by the Prosecution in its opening statement. The Defence submitted the following preliminary objections: (1) the Prosecution improperly charged Mr. Uwinkindi with complicity to commit genocide and improperly added an allegation in the Indictment that Mr. Uwinkindi failed to act to prevent genocide,⁶ and (2) the Indictment and the Prosecution's opening statement fail to set out with appropriate specificity the place and time of the alleged crimes.⁷
11. The Defence further claimed that the Prosecution improperly added new accusations during its opening statement that are not included in the Indictment, namely that Mr. Uwinkindi actively sent killers to look for Tutsi. Citing Article 14 of the Transfer Law,⁸ the Defence maintained that Mr. Uwinkindi has not been informed of these charges and asked the Chamber to dismiss them. Additionally, citing Article 18 of the Constitution of Rwanda,⁹ the Defence submitted that the Prosecution may not rely on the Penal Code of Rwanda for the definition of the crimes of genocide and crimes against humanity (namely Articles 114-115 and 120-121 of the Penal Code) as the Code was adopted after the alleged commission of the crimes.¹⁰
12. During the presentation by Defence Counsel, Mr. Uwinkindi sought permission to address the Chamber and clarify certain issues on several occasions. The Chamber instructed Mr. Uwinkindi that if he wishes to add to the submissions of his lawyers, he has to prepare a separate brief.
13. The Chamber adjourned and scheduled the next hearing for 2 October 2014.

⁴ 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."

⁵ The Monitor notes that, during its opening statement, the Defence referred primarily to two documents: the "Defence Conclusions" filed on 13 January 2014 (also referred to by the parties as "Defence Response Brief to the Indictment") and "Supplementary Submissions to the Conclusions" filed on 3 June 2014.

⁶ See Monitoring Report for the Uwinkindi Case (January and February 2014).

⁷ See Monitoring Report for the Uwinkindi Case (January and February 2014).

⁸ Article 14 of the Transfer Law, titled "Rights of an accused person", in paragraph 3 provides: "[the accused person shall] [...] be informed promptly and in detail in a language which he/she understands, of the nature and the cause of the charge against him".

⁹ Article 18 of the Constitution of the Republic of Rwanda of 4 June 2003, in paragraph 2 provides: "No one shall be subjected to prosecution, arrest, detention or punishment unless provided for by laws into force at the time the offence was committed".

¹⁰ See Organic Law Instituting the Penal Code, No. 01/2012/OL of 2 May 2012. Articles 114 and 115 provide the definition and punishment of the crime of Genocide, respectively. Articles 120 and 121 provide the definition and punishment of the Crime Against Humanity, respectively. See fns.12 and 15*infra*.

Court Hearing of 2 October 2014

14. At the commencement of the hearing, in response to the Chamber's enquiry, the Defence confirmed that they had submitted the list of eight witnesses who were granted protective measures at the previous day's hearing, to the Court.
15. The Defence continued to present its opening statement, highlighting in particular alleged inconsistencies in the Indictment and in Prosecution witness statements in relation to the charges concerning the crime of genocide.
16. While making submissions regarding one of the charged crimes, Mr. Uwinkindi sought permission to address the Chamber to clarify certain facts. The Chamber noted that Mr. Uwinkindi's pleadings were not consistent with the written submissions of his Counsel. Defence Counsel responded that Mr. Uwinkindi was merely clarifying what is in the written brief. After the Chamber reiterated that Mr. Uwinkindi's version of events was not the same as that of Counsel, Defence Counsel submitted that they would put on the record the version presented by Counsel.
17. After an adjournment, the Chamber noted that during Counsel's presentation of only a few pages of the Defence brief, Mr. Uwinkindi had asked to make a number of clarifications. The Chamber enquired as to whether Mr. Uwinkindi wished to explain the facts himself, noting that it is for the Counsel to make submissions.
18. The Prosecution asked permission to address the Chamber and enquire as to the procedure that is being followed with respect to the presentation of the Defence submissions. Citing Article 153(5) of the Criminal Procedure Code of Rwanda,¹¹ the Prosecution submitted that Mr. Uwinkindi should present his defence and his Counsel should assist him. According to the Prosecution, the opposite procedure is being followed – Mr. Uwinkindi's Counsel are defending him while he is assisting them.
19. Mr. Uwinkindi responded that he did not understand why the Prosecution is concerned about the procedure noting that he has already defended himself when the accusations were read to him. He indicated that he did not know where the crimes have happened and that the Prosecution is delaying the procedure.
20. The Chamber expressed concern about the structure and length of submissions and noted that Mr. Uwinkindi should be able to present his position. The Chamber indicated that the Accused should explain the facts, and Counsel should assist him with the legal arguments.
21. Defence Counsel responded that while Article 153(5) of the Criminal Procedure Code applies when the accused admits culpability, it is silent when the accused denies the accusations. Counsel indicated that they did not understand the Prosecution's submissions regarding the presentation of the defence as the line and method of defence is a matter for Counsel and client to determine as a team. Noting that Counsel have prepared the response to the Indictment, Counsel further submitted that an accused who is not aware of the law cannot defend him/herself.

¹¹ Article 153 of the Criminal Procedure Code, titled "Modalities for Conducting the Hearing", in paragraph 5 provides: "the accused presents his/her defence and explains the circumstances in which he/she committed the offense if he/she pleads guilty".

22. Reiterating that Mr. Uwinkindi has intervened on several occasions and noting that it is not in the interest of the Defence if there is confusion in relation to their submissions, the Chamber indicated that Mr. Uwinkindi has to make submissions as to the facts while his Counsel should submit the legal provisions supporting his arguments.
23. The Prosecution reminded the Chamber that according to Article 153(5), the accused has to defend himself by addressing each alleged fact said to constitute the charged crimes, while his Counsel should assist him. Stating that it is a fundamental principle that the accused must defend himself on the facts, the Prosecution maintained that the hearing should proceed in the ordinary manner prescribed in the Criminal Procedure Code.
24. The Defence responded that Article 153(5) applies only generally to the right to a defence, and does not prescribe the presentation method of defence submissions.
25. After hearing submissions from the parties, the Chamber decided that firstly, the Accused will give his position in relation to each of the alleged crimes, and Counsel will subsequently present the legal arguments.
26. Mr. Uwinkindi continued to present his case. The Chamber drew attention to the fact that some of the names were protected witnesses and that Mr. Uwinkindi should use pseudonyms. Mr. Uwinkindi apologised, and stressed the need for his Counsel to make submissions.
27. Mr. Uwinkindi continued with his submission and answered a number of Chamber's enquiries concerning facts relevant to the charges.
28. The Chamber scheduled the next hearing for 15 October 2014.

Review of the Case File on 2 October 2014

29. On 2 October 2014, the Monitor reviewed the Case File in a private room arranged by the Chief Registrar of the High Court. The Monitor reviewed the following documents: the minutes of the hearing held on 18 September 2014; the minutes of the hearings held on 1 and 2 October 2014; the "Supplementary Submission to the Conclusions" filed by the Defence on 3 June 2013; and the List of Protected Witnesses filed by the Defence on 2 October 2014.

Meeting with Lead Counsel for the Prosecution on 2 October 2014

30. Mr. Mutangana, Lead Counsel for the Prosecution, noted that the proceedings in the *Uwinkindi* case are at an advanced stage. He indicated that he expected the Defence to "take time" with the presentation of its detailed response to the Indictment. Mr. Mutangana anticipated that the Prosecution will make written and oral submissions in response to the Defence's opening statement and that it will complete the presentation of its evidence by the middle of next year.
31. In relation to the presentation of the Defence submissions, Mr. Mutangana noted that the Chamber decided to proceed in the manner prescribed in the Criminal Procedure Code.

32. In relation to the absence of the Monitor in closed session, Mr. Mutangana stated that no submissions were made by the parties in this regard at the *in camera* hearing held on 1 October 2014. He noted that pursuant to Article 21 of the Transfer Law,¹² the Monitors may observe *in camera* proceedings. Mr. Mutangana further noted the need for a court-approved mechanism to assist the Monitors with interpretation facilities.

Meeting with Lead Counsel for the Defence on 3 October 2014

33. Mr. Gashabana, Mr. Uwinkindi's Lead Counsel, raised the issue of Defence witnesses residing outside Rwanda, indicating that this is one of the key outstanding issues yet to be resolved with the Ministry of Justice. He explained that the Defence submitted its requirements with respect to the financial facilities for witnesses residing abroad to the Ministry of Justice, approximately 18 months ago. The Ministry of Justice did not agree to these requirements and has not yet responded with a new proposal. He further explained that the defence remuneration contract signed by Defence Counsel and the Ministry of Justice stipulates that the issue will be discussed between the parties.
34. Mr. Gashabana stated that the Prosecution has exerted pressure on the team by arguing that the Defence "want[s] the State to spend a lot of money". He stressed, however, that the Defence is seeking to ensure that adequate resources and sufficient time are allocated to the Defence team in order to guarantee his client's right to a fair trial. He further noted that consultations and preparations involving a complex international criminal trial take significant time and effort.
35. In relation to the proceedings, Mr. Gashabana noted improvements in the procedure in the Uwinkindi case, citing the Chamber's decision to give the Defence time to present its detailed submissions. Mr. Gashabana anticipated that the issue of witnesses residing outside Rwanda would be a "big test" for the case.

B. Second Monitoring Mission

Court Hearing of 15 October 2014

36. The Chamber opened the hearing announcing that it would continue to hear the Defence's comments on the Indictment, specifically on the crime of genocide.
37. As a preliminary matter, Mr. Uwinkindi addressed two issues. First, he expressed his wish for the media to correct their reporting that people, who had gathered at his house, were killed by *Interahamwe* as he had not said that. Second, he addressed the Prosecution's contention that he had failed to meet his obligations as a pastor, and submitted that that had not been the case.
38. The Chamber indicated that it had no authority over journalists and how they report, and asked Mr. Uwinkindi to continue with his submissions.
39. Mr. Uwinkindi did not make any further submissions. His Counsel thereafter continued to address factual allegations in the Indictment.

¹² Article 21 of the Transfer Law, titled "Monitoring of the Proceedings," in paragraph 1 provides: "The Mechanism Prosecutor shall have the right to designate individuals to observe the progress of cases transferred to Rwanda in accordance with article 11(bis D) iv) of the Mechanism Rules of Procedure and Evidence".

40. During Counsel's submission, the Chamber interjected with several factual questions addressed to Mr. Uwinkindi directly (*e.g.*, how many people, who had taken refuge at his house, died) to which he responded.
41. Counsel continued with his submissions concerning facts set out in the Indictment, and reiterated the argument that certain incidents in the Indictment have not been described sufficiently to allow Mr. Uwinkindi to defend himself against those charges.¹³
42. The court adjourned to resume the day after and continue hearing the Defence submissions.

Court Hearing of 16 October 2014

43. Following the opening of the hearing, the Chamber indicated that it had heard Mr. Uwinkindi's comments on the crime of genocide the day before, and that it would proceed to hear his comments on the charged crimes against humanity that day. The Chamber specified that Mr. Uwinkindi would initially address the Court, because he knows exactly what happened, and then his Counsel would make additional submissions.
44. Counsel indicated that, in relation to submissions made before the Court earlier, he wanted to supplement them by informing the Court about Mr. Uwinkindi's moral beliefs. The Chamber granted Counsel's request to hand over the supplemental submissions in writing, and he served copies of the submission to the Chamber and the Prosecution.
45. Counsel then moved to address the crimes charged in the Indictment. Whilst acknowledging that the Defence completed their submission on the crime of genocide, he wanted to add a point on that crime before moving to the next. Namely, the Prosecution stated that the crime of genocide, as charged in the Indictment, is based on Articles 114 and 115 of the Penal Code.¹⁴ However, the Indictment also refers to Article 3(c) of the Convention on Genocide,¹⁵ which criminalises incitement to commit genocide. In support of this charge, the Indictment states that Mr. Uwinkindi was supporting roadblocks and organising people. As these acts do not support the charge under Article 3(c) of the Genocide Convention, Counsel for the Defence submitted that they should not be considered.

¹³ See para. 10 *supra*.

¹⁴ Organic Law Instituting the Penal Code, No. 01/2012/OL of 2 May 2012, in Articles 114 and 115 provide: "**Article 114: Definition of crime of genocide** The crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, whether in time of peace or in time of war: 1° killing members of the group; 2° causing serious bodily or mental harm to members of the group; 3° deliberately inflicting on the group harm calculated to bring about physical destruction in whole or in part; 4° taking measures intended to prevent births within the group; 5° forcibly transferring children of the group to another group. **Article 115: Punishment of the crime of genocide** Any person, who commits, in time of peace or in time of war, the crime of genocide as provided in the preceding Article, shall be liable to life imprisonment with special provisions."

¹⁵ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, in Article III provides: "The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide."

46. In response to the Chamber's invitation to comment on the Defence's argument, the Prosecution asked for the argument to be made writing, to help them better understand the issue.
47. The Chamber invited written submission on the issue, but also asked Counsel to repeat the point.
48. Counsel indicated that he would submit written arguments in a week. He continued his submissions stating that – first – the Indictment charges Mr. Uwinkindi with inciting and directing others to commit genocide, based on Articles 114 and 115 of the Penal Code.¹⁶ However, it is not Articles 114 and 115 of the Penal Code that criminalise incitement to commit genocide but rather Article 132.¹⁷ For this reason, the Indictment is flawed. Secondly, Counsel argued that, for the crime of genocide to be proven, the Prosecution must show that the accused had specific intention. While the Prosecution had pleaded material acts such as killings, it cannot prove the crime based only on the material elements. To prove specific intention, the Prosecution only refers in the Indictment to other cases before International Criminal Tribunal for Rwanda ("ICTR") which found that genocide was committed in Rwanda. However, there is no relation between Mr. Uwinkindi's case and those other cases when it comes to establishing specific intention. According to Counsel, the Prosecution therefore failed to show that Mr. Uwinkindi had specific intention to commit the crime of genocide.
49. Counsel then argued that the witnesses' evidence is inconsistent. There are contradictions in evidence as to the number of victims and other particulars. Counsel noted that the Defence addressed this issue the day before.
50. The Chamber then invited Mr. Uwinkindi to "defend himself" on the second crime – extermination as a crime against humanity.
51. The Prosecution interjected before Mr. Uwinkindi proceeded, and stated that the Defence should be using the new term for the charged crime against humanity that was adopted by law.
52. Counsel objected indicating that the Prosecution based the charged crime against humanity on Articles 120 and 121 of the Penal Code.¹⁸ However, despite the new term

¹⁶ See fn. 14 *supra*.

¹⁷ Organic Law Instituting the Penal Code, No. 01/2012/OL of 2 May 2012, **Article 132: Other acts punished as the crime of genocide, crimes against humanity and war crimes** "Without prejudice to other provisions of this Organic Law relating to attempt and criminal participation, the following acts shall be punished by penalties provided under this Chapter: 1° an order, even when not followed by the commission, to commit any of the crimes provided under this Organic Law; 2° a proposal or an offer to commit a crime and the acceptance of such a proposal or offer; 3° incitement, either by speech, image or writing, to commit such a crime, even when not followed by the commission; 4° conspiracy to commit a crime, even when not followed by the commission; 5° abetment to commit a crime, even when not followed by the commission; 6° the fact of knowing the existence of conspiracy to commit such an offence or that of acts which constitute the start of its commission and omitting to act as far as one is personally able to prevent its completion or put an end to it; 7° attempt to commit a crime."

¹⁸ Organic Law Instituting the Penal Code, No. 01/2012/OL of 2 May 2012, **Article 120: Definition of the crime against humanity** "The crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population because of its national, political, ethnic or religious affiliation: 1° murder; 2° extermination [Monitor's note: the Penal Code – in Kinyarwanda - uses the term *kurimbura* for extermination; see paras. 56-57 *infra*]; 3° enslavement; 4° deportation or forcible transfer of population; 5° imprisonment or other severe deprivation of physical liberty in violation of law; 6°

for the charged crime against humanity, which had been promulgated by law before the Indictment was issued, the Prosecution used the old term. In so doing, the Prosecution did not respect the provisions of Article 20 of the Rwandan Constitution,¹⁹ as well as Article 15 of the International Covenant on Civil and Political Rights.²⁰ Counsel added that the Prosecution cannot now rectify that mistake, and asked the Chamber to take a decision on the issue of the new term for the crime.

53. The Chamber stated that it would take a decision on that issue in due course. It then invited Mr. Uwinkindi to continue to “defend himself” on the second crime, and to tell the Court about the actions he had been accused of.
54. Mr. Uwinkindi stated that the crimes against humanity have been expanded in the new Code. He added that the Prosecution should specify the time frame of the crimes as there is no temporal precision in the Indictment. The Prosecution just gave a certain time frame which only shows, according to Mr. Uwinkindi, that the Prosecution does not know when the acts were done. Nor did the Prosecution specify the number of victims (*e.g.* they said, many people died).
55. The Chamber instructed Mr. Uwinkindi to limit his submissions to the facts of the case and not to address legal issues. In particular, the Chamber asked Mr. Uwinkindi to start with his explanation as to what happened at the roadblocks, then to continue with events of 7 and 8 April and address all other events individually. During Mr. Uwinkindi’s submissions, the Chamber interjected with specific questions (*e.g.*, how many roadblocks existed, where were they, where he was on a certain date). Mr. Uwinkindi denied personal, direct knowledge of and participation in the events. Noting Mr. Uwinkindi’s right to deny direct knowledge of and participation in the events, the Chamber invited him to provide information he had heard from others about those events.

torture; 7° rape, sexual slavery, forced prostitution, forced sterilization, or any other form of sexual violence of comparable gravity; 8° persecution against a person on political, racial, national, ethnic, cultural, religious grounds or any other form of discrimination; 9° enforced disappearance of persons; 10° the crime of apartheid; 11° other inhuman acts of a similar character intentionally causing great suffering, or serious injury to mental or physical health.” **Article 121: Punishment of the crime against humanity** “Any person who commits a crime against humanity provided under items 1°, 2°, 3°, 6°, 7° and 9° of Article 120 of this Organic Law shall be liable to life imprisonment with special provisions. Any person who commits a crime against humanity provided for under items 4°, 5°, 8°, 10° and 11° of Article 120 of this Organic Law shall be liable to a term of imprisonment of ten (10) years to twenty five (25) years. When the crime against humanity provided under paragraph 2 of this Article is accompanied by inhuman and degrading treatments, the offender shall be liable to life imprisonment with special provisions.”

¹⁹ The Constitution of the Republic of Rwanda, in Article 20, provides: “Nobody shall be punished for acts or omissions that did not constitute an offence under national or international law at the time of commission or omission. Neither shall any person be punished with a penalty which is heavier than the one that was applicable under the law at the time when the offence was committed.”

²⁰ International Covenant on Civil and Political Rights, in Article 15, provides: “1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”

Impromptu meeting with Mr. Uwinkindi's Lead Counsel during court break

56. During the court break, the Monitor approached Mr. Gashabana, Mr. Uwinkindi's Lead Counsel, to clarify her understanding of his submissions on the new term for the charged crime against humanity. Mr. Gashabana explained that, previously, the charged crime was called *itsembatsemba* whereas the new Penal Code titles it *kurimbura*,²¹ both as crimes against humanity. While the new Penal Code provides for the crime of *kurimbura*, the Prosecution charged Mr. Uwinkindi with *Itsembatsemba*, despite the Indictment being issued after the new Penal Code had been adopted.
57. Mr. Gashabana expressed his view that, if the new Code provides for a new crime and the Prosecution charged the accused with the old crime, it is irrelevant whether the elements of the two crimes are identical or whether the change concerns only the title of the crime. Mr. Gashabana explained that the Prosecution now asked the Chamber to treat this as a minor error and to simply start referring to the new crime as the one charged.

Court Hearing of 16 October 2014 (continued)

58. After the break, Mr. Uwinkindi continued with his comments on the incidents charged in the Indictment.
59. Once he completed his submissions, the Chamber invited Counsel to make any further submissions.
60. Counsel continued to address certain factual defects in the Indictment, reiterating that the Prosecution, in providing only a time frame in the Indictment – from 7 April 1994 until the middle of May 1994 – failed to clarify when the crimes were committed.
61. Following the conclusion of Counsel's submission, the Court indicated that it would proceed to deal with the issue of two defence witnesses who had asked for protective measures, and ordered everyone to leave the courtroom apart from the parties. The Monitor accordingly left the courtroom.

Review of the Case File on 16 October 2014

62. After the hearing, the Monitor sought and obtained access to that day's hearing minutes from the Registrar.
63. Paragraphs 64-70 *infra* include information from the closed session.
64. [REDACTED]
65. [REDACTED]
66. [REDACTED]
67. [REDACTED]
68. [REDACTED]

²¹ See the term in Kinyarwanda in Article 120 of the Penal Code in fn. 18 *supra*.

69. [REDACTED]

70. [REDACTED]

Meeting with Mr. Uwinkindi and his Lead Counsel on 16 October 2014

71. At the meeting, Mr. Uwinkindi raised several issues concerning his conditions of detention.
72. Mr. Uwinkindi reported that he had flu for a week. The medical doctor saw him on that day, before court, and promised medication the same day. However, Mr. Uwinkindi had not received any medication.
73. As a general comment, Mr. Uwinkindi noted that conditions of detention had deteriorated after the previous Prison Director Mr. Murenzi left, and gave several specific examples in support of this statement.
74. Mr. Uwinkindi said that the cells at the Special Enclosure of the Prison²² are no longer cleaned. He explained that, in 2011, the Prison administration appointed a special person (another prisoner) to help the detainees of the Special Enclosure with chores (cleaning, ironing, preparing breakfast). This is because the detainees of the Special Enclosure are busy preparing their cases and submissions before the Court, which does not leave them time to attend to chores. Upon his appointment, Mr. Murenzi continued with this arrangement. With the new Prison Director, however, this arrangement has ceased, approximately two weeks earlier, and the Prison administration has not provided any reasons for this. In Mr. Uwinkindi's view, the cessation of assistance affects not only his fair trial rights, but also his wellbeing. First, attending to chores minimises the time he can dedicate to the preparation of his defence case. Second, as he no longer has the assistance to prepare breakfast before court, and he is not provided with any food or drinks, including water, during court hearings – the first meal he has in the day is after the hearing adjourns and on his return to the Prison, usually after 2 p.m.
75. Mr. Uwinkindi further indicated that he cannot fully enjoy his freedom of religion. While he goes to church every Sunday he is unsatisfied with the way the detainees are treated. As an example, Mr. Uwinkindi stated that the detainees are no longer allowed to speak with the pastor. The Previous Prison Director allowed the detainees to talk with, and confess to, the pastor albeit with a guard present nearby (to which the detainees did not object) but, according to Mr. Uwinkindi, this is no longer the case.
76. In relation to food, Mr. Uwinkindi reported that the Prison administration no longer allows his family members to bring him additional food such as fruit. This is a particular concern to him as he receives fruit as part of prison meal roughly once a month, despite the prison menu detailing that fruit is to be provided on daily basis.
77. Concerning his right to visits, Mr. Uwinkindi stated that he has no private space to talk with his friends and family when they visit. Similarly, Mr. Uwinkindi reported that, despite the newly built premises for visits, there is no privacy for his meetings with

²² Special Enclosure is a separate section of the Kigali Central Prison (Nyarugenge Prison) ("Special Enclosure" and "Prison", respectively) where Mr. Uwinkindi, as well as other detainees whose cases have been referred to Rwandan courts, are held.

Counsel. Mr. Uwinkindi added that the prison administration does not respect the fixed time for visits by friends and family. During the tenure of the previous Prison Director, the total time for visits was 30 minutes but the Director would allow additional time, if there were facilities. Now, the guards arbitrarily allow shorter times for visits, between 5 and 20 minutes.

78. The Monitor notes that the new facility for visits is a roofed, but open, gazebo-type structure with no fitted doors and windows, located right outside the Special Enclosure in a communal area within the Prison compound. It provides neither sound insulation nor visual cover from passers-by *i.e.* other prisoners, guards and visitors.
79. Mr. Uwinkindi is also concerned that the new Prison Director is from a military background. According to Mr. Uwinkindi, he introduced himself as Lieutenant Colonel.
80. Mr. Uwinkindi reported that, on 10 October 2014, the detainees of the Special Enclosure asked to meet the new Director but they received no response.
81. On 5 September 2014, the spokesperson of the Prosecution visited the detainees. They discussed with him Rwanda's commitments towards referred detainees. According to Mr. Uwinkindi, the Prosecution spokesperson responded that Rwanda would respect their national laws rather than its undertakings made before the ICTR in connection with the referral proceedings. Mr. Uwinkindi indicated that this statement caused great concern among the detainees whose cases have been referred to Rwanda.
82. Mr. Gashabana, Mr. Uwinkindi's Lead Counsel, joined the meeting at a later time, before Mr. Uwinkindi discussed trial related issues. Mr. Uwinkindi raised one such issue but, upon consulting Counsel, indicated that it is premature to report the issue at this stage. He will raise the issue again in due course, if necessary.

C. Third Monitoring Mission

Court Hearing of 22 October 2014

83. At this hearing, the Defense continued the presentation of its response to the Indictment and the Prosecution's opening statement.
84. Mr. Uwinkindi raised several issues.
85. First, he submitted that several witnesses have provided identical testimonies. He referenced a series of such testimonies, and suggested that this shows that the witnesses have been coached.
86. The Chamber required that from now on if there would be any claim or statement of the Defence proper written submission has to be made.
87. Second, Mr. Uwinkindi claimed that the witnesses have testified about facts they have heard about rather than facts they had first-hand knowledge of. This meant that the witnesses were secondary sources of information rather than primary.
88. Third, Mr. Uwinkindi gave a number of examples of witness statements which indicate that they were translated from other languages to Kinyarwanda although the witnesses

who gave the statements spoke only Kinyarwanda. To address this argument, the Prosecution explained that these statements were made to investigators who did not speak Kinyarwanda.

89. Finally, Mr. Uwinkindi stated that the supporting documents to the Indictment did not in fact support the charges against him, and gave an example to illustrate this argument.
90. After the break, Counsel continued with the presentation of the Defence's written response to the Indictment, and systematically addressed many alleged contradictions in the testimonies of particular witnesses.

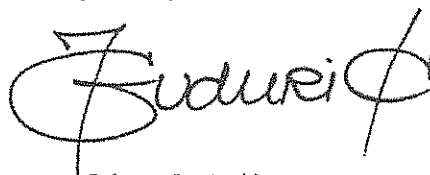
Court Hearing of 23 October 2014

91. The hearing started with the submissions of Mr. Uwinkindi's Counsel who continued presentation of the Defence's written reply to the Indictment.
92. At a certain point, an issue emerged suggesting that a protected witness had been assigned two different pseudonyms. While noting that certain pseudonyms were assigned by the ICTR and others by the Court in Rwanda, the Prosecution undertook to verify the issue and accordingly inform the Court at the next hearing.
93. Upon conclusion of its submissions on the Indictment, the Defence informed the Court that it would present evidence of 72 witnesses in support of its arguments, as well as a map of the crime scene. The Chamber requested the Defence to submit a list of its witnesses to the Prosecution and the Chamber.
94. As a separate issue, the Defence underlined that it did not receive funding for locating witnesses, nor for contacting witnesses who live abroad. As the unavailability of resources affects equality of arms between the parties, the Defence asked the Court to support its efforts in obtaining appropriate funds. The Chamber instructed the Defence to address any financial requests to the Government, not to the Chamber.
95. The Prosecution asked for additional time to prepare a reply to Defence submissions in response to the Indictment.
96. The Chamber scheduled the next hearing on 12 November 2014, at 8.30 a.m.

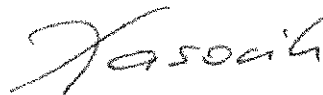
III. CONCLUSION

97. The Monitors remain available to provide any additional information, at the President's direction.

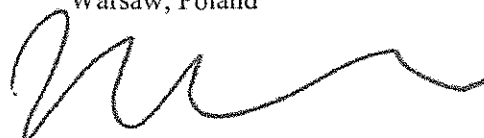
Respectfully submitted,



Jelena Gudurić
Monitor for the *Uwinkindi* case
The Hague, the Netherlands



Prof. Zbigniew Lasocik
Monitor for the *Uwinkindi* case
Warsaw, Poland



Ms. Xheni Shehu
Monitor for the *Uwinkindi* case
Arusha, Tanzania

Dated this 14th day of November 2014

Case No. MICT-12-25

15

14 November 2014



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

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Grefe du MTPI</i>		<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>	<input checked="" type="checkbox"/> Other/ <i>Autre</i> : Monitors
Case Name/ Affaire :	Prosecutor v. Uwinkindi		Case Number/ Affaire n° :	MICT-12-25
Date Created/ Daté du :	14 November 2014	Date transmitted/ Transmis le :	14 November 2014	No. of Pages/ Nombre de pages : 15
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 FOR OCTOBER 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"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>		
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>		
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>		
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :		
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>	
	<input type="checkbox"/> Decision/ <i>Décision</i>	<input checked="" type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>	
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>	
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>		

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>				
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)				
<input type="checkbox"/> English/ <i>Anglais</i>	<input checked="" type="checkbox"/> French/ <i>Français</i>	<input checked="" type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>				
Original/ Original en	<input 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) :
Translation/ Traduction en	<input 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) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>				
<input 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) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*
JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014