

**UNITED  
NATIONS**

**MICT-12-25  
03-03-2015  
(879 - 861)**

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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 26 February 2015

Original: English

**Before:**

**Judge Theodor Meron, President**

**Registrar:**

**Mr. John Hocking**

**PROSECUTOR**

**v.**

**JEAN UWINKINDI**

**PUBLIC**

**MONITORING REPORT FOR JANUARY 2015**

**Monitors:**

Ms. Jelena Gudurić

Ms. Xheni Shehu

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*McCall Carter*

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## I. INTRODUCTION

1. This monitoring report pertains to the activities in the case of Jean Uwinkindi before the High Court of Rwanda and the interactions of Xheni Shehu, monitor appointed by the Mechanism for International Criminal Tribunals (“Monitor” and “Mechanism”, respectively) with various stakeholders during her two missions to Rwanda, from 14 to 16 January 2015 and 20 to 23 January 2015 (“Reporting Period”).
2. Two court hearings were held during the Reporting Period: on 15 and 21 January 2015. The Monitor followed both hearings with the assistance of an interpreter.
3. In addition to observing the hearings, the Monitor met with Mr. Uwinkindi, his Counsel, the Permanent Secretary of the Ministry of Justice, the Executive Secretary of the Bar, and examined the case file.
4. A detailed report on all activities during the Reporting Period is provided below.

## II. DETAILED REPORT

### A. *Monitoring Mission from 14 to 16 January 2015*

#### Court hearing of 15 January 2015

5. The hearing was held before the full Chamber, in the presence of the Accused, Mr. Uwinkindi, who was represented by his Lead Counsel Mr. Gatere Gashabana and Co-Counsel Mr. Jean-Baptiste Niyibizi (“Counsel”). The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa (“Prosecution”).
6. The Chamber noted that it had received a submission from Mr. Uwinkindi on 14 January 2015, requesting a stay of trial proceedings until outstanding issues related to his case, including those pertaining to the investigation of witnesses, time and facilities for the preparation of his defence, and uncertainty concerning his Counsel and legal representation, were resolved. Noting that these issues have been previously raised and considered, the Chamber rejected the request. The Chamber proceeded to hear submissions from the parties on the contractual status of counsel, as agreed at the last hearing.<sup>1</sup>
7. Counsel reiterated Mr. Uwinkindi’s request to stay the proceedings and stated that the Defence is not ready to plead.

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<sup>1</sup> See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Confidential and *Ex Parte* Special Report of January 2015 (“January Special Report”), 9 January 2015, para. 19.

8. The Chamber reminded Counsel of its decision of 8 January 2015 that the proceedings must continue,<sup>2</sup> and noted that it had received no written submissions from the Defence regarding the status of Counsel.
9. Counsel insisted that the Chamber should consider Mr. Uwinkindi's request for the suspension of the trial, in view of the termination of Counsel's contract and Mr. Uwinkindi's wish that Counsel should not make any pleadings until their status is fully resolved. Counsel further explained that his Client fears that he can no longer obtain effective assistance if he is to be assisted by lawyers who are under notice of termination and are working in a state of uncertainty.
10. With reference to the Prosecution's remarks of the last hearing,<sup>3</sup> that Defence counsel can be replaced if they do not accept the new contract offered by the Ministry of Justice, Counsel opined that such statement improperly suggests that Counsel are easily replaceable and that Mr. Uwinkindi has no control over his legal representation. Counsel further explained that Mr. Uwinkindi thinks that such statements, when combined with the recent decisions of the Chamber, show that his Counsel are not treated well and are subjected to threats and intimidation. In this context, Counsel asserted, his Client does not think that he can have a fair trial, which is one of the conditions for the transfer of the case by the International Criminal Tribunal for Rwanda ("ICTR"). Recognising the Chamber's decision to continue the trial, Counsel submitted that, while Counsel are ready to assist, the Client does not wish to continue the trial under Counsel's current status.
11. Taking note that Counsel are willing to assist and that contractual issues must be resolved between Counsel and the Ministry of Justice, the Chamber invited Mr. Uwinkindi to explain whether he trusts his lawyers. Mr. Uwinkindi indicated that he trusts his lawyers.
12. Noting the competent assistance of Counsel, the Chamber questioned why Mr. Uwinkindi does not wish to proceed with the trial, if he trusts his Counsel and they have accepted the decision of the Chamber to continue the proceedings.
13. Mr. Uwinkindi stated that while his Counsel are technically present, they are not really present because they are no longer motivated and are under psychological pressure. Mr. Uwinkindi emphasised that Counsel should assist him until the proceedings in the case are completed. He reiterated that Counsel's contract has been terminated and the trial should be adjourned until their status is resolved.
14. The Chamber invited the Prosecution to respond. Noting that they have not received a copy of Mr. Uwinkindi's submission, the Prosecution reiterated that the trial should not be adjourned as Counsel are under a duty to assist Mr. Uwinkindi for three months

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<sup>2</sup> See January Special Report, para. 19.

<sup>3</sup> For additional details regarding this hearing, see January Special Report.

following receipt of the Ministry's termination letter, and the Ministry has agreed to pay them for work performed during this time.<sup>4</sup> The Prosecution asserted that Counsel has not informed the Ministry of Justice whether they accept the new contract and observed that the contract is under negotiation. The Prosecution further argued that Counsel should decide whether they accept the new contract and if they intend to reject it, should inform the Ministry of Justice and the Court accordingly. The Prosecution opined that Mr. Uwinkindi's request is another tactic to delay the trial.

15. Mr. Uwinkindi responded that it would not be in his interest to continue with the merits of the case only to have his Counsel replaced in the middle of the presentation of evidence, which would be a consequence of the Prosecution's argument.
16. Noting that the contract is under negotiation and finding that Mr. Uwinkindi no longer wishes to have his Counsel continue the proceedings, the Chamber ruled that Mr. Uwinkindi can either accept the assistance of Counsel and continue the trial or adjourn the hearing and request the appointment of new Counsel.
17. Mr. Uwinkindi responded that he needs his lawyers and trusts them, but the Ministry of Justice has unilaterally terminated their contract and is unwilling to pay them beyond the three months. The Chamber stated that it has no competence over the issue of Counsel's contract for remuneration.
18. In response to the Chamber's inquiry into whether Counsel were surprised by Mr. Uwinkindi's written submission and needed more time to consult with their Client, Counsel noted that they had discussed the issue of termination of contract with Mr. Uwinkindi and shared his views.
19. The Chamber decided to continue the proceedings, but offered an adjournment if Counsel have not prepared their submissions.
20. Counsel stated that the Chamber failed to take into consideration Mr. Uwinkindi's concerns and his rights to a fair trial and expressed dissatisfaction with the decision of the Chamber. He maintained that Mr. Uwinkindi cannot have a fair trial under Counsel's current status and conditions.
21. Counsel announced the intention of the Defence to appeal the decision of the Chamber pursuant to Article 18 of the Law relating to the Transfer of Cases to the Republic of Rwanda ("Transfer Law")<sup>5</sup> and requested the Chamber to adjourn the proceedings

<sup>4</sup> See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Second Monitoring Report for December 2014 ("Second Monitoring Report for December"), 27 January 2015, para. 52.

<sup>5</sup> Article 18 of the "Law N°47/2013 of 16 June 2013 relating [sic] Transfer of Cases to the Republic of Rwanda" ("Transfer Law"), titled "Appeal", provides: "Both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or all of the following grounds: 1) an error on a question of law invalidating the decision; 2) an error of fact which has occasioned a miscarriage of justice. The Supreme Court may uphold or invalidate some or all of the decisions of the High Court. Where necessary, it may order the High Court to review the case."

pending the interlocutory appeal. Noting the Decision of the Supreme Court of Rwanda on 4 April 2014,<sup>6</sup> Counsel argued that Article 162 of the Law Relating to the Civil, Commercial, Labour and Administrative Procedure (“Code of Civil Procedure”)<sup>7</sup> should not apply to the Defence’s request for stay. Counsel asserted that according to Article 27 of the Transfer Law,<sup>8</sup> the Transfer Law acts as *lex specialis* and where its provisions are in conflict with the Code of Civil Procedure, the Transfer Law should prevail. Additionally, Counsel argued that according to Article 180 of the Law relating to the Code of Criminal Procedure (“Criminal Procedure Code”),<sup>9</sup> the execution of the decision of the Chamber and the hearings should be suspended until the decision on appeal is rendered.

22. As Counsel began to explain the reasons for their decision to appeal, the Chamber intervened stating that the appeal must be submitted to the Supreme Court and rejected Counsel’s request for more time to complete submissions.
23. The Prosecution replied that while the accused has a right to appeal the decision of the Chamber, he did not agree with Counsel’s interpretation of the law on the stay of proceedings pending appeal. The Prosecution asserted that the Transfer Law is an ordinary law, similar to the Criminal Procedure Code and the Code of Civil Procedure. The Prosecution further argued that the Transfer Law does not contradict the Code of Civil Procedure as the former is silent on the time frame for appeal. Additionally, Article 180 of the Criminal Procedure Code applies only to appeals of the trial judgment, not interlocutory appeals as claimed by the Defence. The Prosecution concluded that the Code of Civil Procedure should govern the Defence’s request<sup>10</sup> and no grounds exist to justify a suspension in the proceedings.

<sup>6</sup> In this Decision, the Supreme Court held that the Law Relating to the Civil, Commercial, Labour and Administrative Procedure governs the timing of interlocutory appeals and that such appeals may be made once the substantive trial is completed and a judgment is rendered. For additional information, see *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for the Uwinkindi Case (April 2014) (“April Monitoring Report”), 31 May 2014, para. 2. For additional details on the arguments of the parties before the Supreme Court, see *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for the Uwinkindi Case (March 2014), 27 March 2014, paras. 17-30.

<sup>7</sup> Article 162 of the Law No. 21/2012 of 14 June 2012 relating to the Civil, Commercial, Labour and Administrative Procedure (“Code of Civil Procedure”), titled “Party with the capacity to appeal”, provides: “Any person who was a party to the proceedings in the first instance may appeal the judgement if he/she has an interest therein, except when the law provides otherwise. However, the appeal against an interlocutory judgement shall be made only jointly with the final judgement. In this case, the time limit for appealing against the interlocutory judgment starts running from the date on which the final judgment was notified to the party.”

<sup>8</sup> Article 27 of the Transfer Law, titled “Application of this law”, provides: “In the event of any inconsistency between this Law and any other ordinary law, the provisions of this Law shall prevail.”

<sup>9</sup> Article 180 of Law No. 30/2013 of 24 May 2013, Relating to the Code of Criminal Procedure (“Criminal Procedure Code”), titled “Suspension of the execution of judgement in the appeal time limit”, provides: “The execution of a judgement shall be stayed until the expiration of the time limits for appeal and if the appeal is filed, until the decision on appeal is rendered. The appeal against the award of damages shall not stay the execution of criminal convictions.”

<sup>10</sup> Article 1 of the Code of Civil Procedure, titled “Purpose of this law”, provides: “This Law governs the procedure applied by courts in civil, commercial, labour and administrative cases. It 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 apply to other cases.”

24. The Chamber briefly adjourned to deliberate. When the hearing resumed, the Chamber delivered its Decision. Following a recitation of the submissions of the parties and taking note of the decision of the Supreme Court in April 2014,<sup>11</sup> the Chamber rejected the Defence request for an adjournment and ruled that the trial proceedings should resume, in accordance with Article 162 of the Code of Civil Procedure.
25. After seeking permission to speak, Counsel stated that although they will continue to assist Mr. Uwinkindi, they requested to provisionally withdraw from the proceedings in order to prepare the appeal. The Prosecution responded that there is no legal basis for Counsel to provisionally withdraw from the proceedings, as requested by Counsel. The Chamber adjourned the hearing for a thirty minute break and stated that it would resume with the testimony of the Prosecution witnesses.
26. When the hearing resumed, the Chamber observed that Counsel did not appear in court. Mr. Uwinkindi stated that he is not prepared to proceed without his Counsel present and indicated that he agreed with the Counsel's decision to withdraw. The Chamber stated that Mr. Uwinkindi can either have his Counsel withdrawn permanently and new lawyers appointed, or he can have a trial without Counsel being present. Mr. Uwinkindi reiterated that he is present but did not indicate a choice for any of the alternatives offered by the Chamber.
27. Reiterating that there is no legal basis for the provisional withdrawal of Counsel and noting that their conduct is contrary to the code of conduct of lawyers, the Prosecution submitted that the Chamber should inform the Ministry of Justice and the Bar Association about Counsel's conduct. The Prosecution added that Mr. Uwinkindi should not be a victim of Counsel's deliberate obstruction of the proceedings and their disrespect for the decision of the Chamber to proceed with the trial.
28. After a brief deliberation, the Chamber rendered a written Decision. Noting Counsel's decision to withdraw from the proceedings, the Chamber found that Counsel's conduct was deliberate and the decision was made with the intention to delay the trial. Pursuant to Article 15 of the Code of Civil Procedure,<sup>12</sup> the Chamber ordered that each Counsel pay a fine of 500,000 Rwandan Francs to the Court immediately after the hearing. Noting that Mr. Uwinkindi cannot continue to plead without legal assistance, the Chamber adjourned the hearing until 21 January 2015.

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<sup>11</sup> See April Monitoring Report, para. 2.

<sup>12</sup> Article 15 of the Code of Civil Procedure, titled "Punishment for delaying a hearing", provides: "Any party who intentionally delays the hearing or who seeks the appeal as a delaying tactics, shall be charged a civil fine of twenty thousand (20.000) to two hundred thousand (200.000) Rwandan francs. When the intentional delay of a case as per the provisions of the Paragraph One of this Article is caused by a member of the Bar Association or another person representing the party, he/she shall be charged a civil fine of two hundred thousand (200,000) to five hundred thousand (500,000) Rwandan Francs."

Meeting with Lead Counsel on 15 January 2015

29. Mr. Gashabana expressed serious concern with the day's hearing. In his view, the Chamber had already made a decision on Mr. Uwinkindi's request before hearing oral submissions by the parties in public. On the basis of Mr. Uwinkindi's request to stay the proceedings, he explained that Counsel had no other alternative but to provisionally withdraw from the proceedings, which he believed was in his Client's best interest under the circumstances.

30. Turning to the issue of the new proposed contract, Mr. Gashabana reiterated his grave concerns.<sup>13</sup> In particular, he emphasised that the Ministry of Justice does not have the competence to regulate the conduct of lawyers as suggested under Article 3 of the proposed contract, which grants the Ministry the responsibility of monitoring and assessing the professional activities of Counsel.<sup>14</sup> The Bar Association is responsible for assessing Counsel's discharge of duties and monitoring their conduct. In view of the termination provision under Article 6,<sup>15</sup> Mr. Gashabana asserted that the draft contract,

<sup>13</sup> See Second Monitoring Report for December 2014, para. 64.

<sup>14</sup> Article 3 of the proposed contract, titled "Shared mutual obligations" provides:

3.1 Defence Counsel

The Defence Counsel hereby undertake:

- a) to assist the Accused Jean UWIKINDI before Rwanda's courts in all instances and at all stages of the proceedings;
- b) to inform the Ministry of Justice of any and all actions taken by them in the course of rendering their respective services;
- c) to send monthly progress reports to the Bar Association, and the Ministry of Justice, detailing the progress of the case until a final decision, not subject to appeal, is reached.

3.2 Ministry of Justice

The Ministry of Justice hereby undertakes:

- a) to monitor and evaluate Counsel's activities;
- b) to provide the funds for legal aid;
- c) to facilitate communication between Defence Counsel and judicial bodies;
- d) to disburse Counsel's fees according to the payment schedule stipulated in Article 4 of this Contract.

<sup>15</sup> Article 6 of the proposed draft contract, titled "Cancellation of the Contract", provides:

For legitimate reasons, first and foremost in view of the complexity of the litigation involved, each Party reserves the right to unilateral cancellation of the contract, following three (3) months' notice.

The Ministry reserves the right to cancel the contract, following thirty (30) days' notice, in the following cases:

- a) In case of violation by Counsel of the Code of Ethics of the Bar Association;
- b) in case of fraud or corruption;
- c) in case of commission by Counsel of any act of such a nature as to entail their criminal liability;
- d) if Counsel conduct themselves in an inappropriate way at the Tribunal or resort to stalling tactics to draw out the proceedings or inhibit their normal course;
- e) if Counsel make any statements aimed at discrediting the Government or the Ministry in the course of their work, either to the press or during the trial.

Without prejudice to the first paragraph of the present Article, any failure by the Accused to follow the instructions of the Ministry of Justice found in the Annex to this Contract, shall be considered as grounds for its cancellation.

When the Contract is cancelled, Counsel are required to hand over all the exhibits in the case file to the colleagues who will replace them in the same case; the accounts shall be balanced, and one or the other Party shall effect a refund or payment of the outstanding amount, as appropriate. The remaining fees for the case shall be payable to the succeeding legal representative.



on its face, constitutes a flagrant violation of the independence of Counsel, the fundamental freedom of expression and the inviolable constitutional principle of the separation of powers.

31. With respect to the Bar Association, Mr. Gashabana indicated that on 30 December 2014, Counsel wrote a letter to the President of the Bar Association requesting the assistance of the Bar. In particular, he had proposed the establishment of an *ad hoc* commission to review the termination decision of the Ministry of Justice and formulate recommendations to Counsel with a view to assisting them in their negotiations with the Ministry. Mr. Gashabana noted that he has not received a response from the Bar and opined that the Bar has played a *de minimis* role on the matter even though the termination of contract infringes on the powers of the Bar just as much as it does on the rights of the accused and the independence of Counsel.

Meeting with the Permanent Secretary of the Ministry of Justice on 15 January 2015

32. The Monitor met Ms. Isabelle Kaliknogabo, the Permanent Secretary of the Ministry of Justice and Deputy Attorney General of Rwanda to adduce information on the status of Defence Counsel's contract.<sup>16</sup>
33. By reference to discussions held between representatives of the Ministry of Justice and a Monitor on 10 December 2014,<sup>17</sup> the Permanent Secretary reiterated that a new draft contract was developed to ensure compliance with the new legal aid policy adopted in January 2014 by the Government of Rwanda. The remuneration contracts have been harmonised in order to ensure equal treatment of all the transferred accused. The contract provides for a lump sum of 15 million Rwanda Francs to cover the entire case. However, it does not include fees for witness investigations outside the country, if it can be justified that additional funds are necessary. The amount was fixed in consultation with the Bar Association, which has a mandate to determine lawyer's fees, and was agreed to be sufficient to handle a transferred case.
34. The Permanent Secretary noted that the Government of Rwanda made guarantees to the ICTR to provide legal counsel to suspects, but not to pay lawyers unlimited funds. The funds requested must be reasonably justified and documented and must be governed by a standardised framework as provided in the legal aid policy.
35. The Permanent Secretary indicated that the proposed contract is result-oriented as it provides funds for the completion of the entire case, including appeal. It will ensure that remuneration of counsel complies with public finance management and auditing regulations. Specifically, she explained that the prior contract signed with Mr. Uwinkindi's Counsel was not result-oriented as it was based on a monthly payment regime. According to the Permanent Secretary, under this contractual arrangement, it

<sup>16</sup> In this meeting, the Permanent Secretary also discussed the *Munyagishari* case. This report only contains those portions of the discussion that are relevant to the *Uwinkindi* case.

<sup>17</sup> See Second Monitoring Report for December, paras. 12-19.

was very difficult for the Ministry to justify to the public auditors why the case was expending so much more public funds than other cases, such as the *Bandora* case. As the new contract provides a lump sum payment for the entire case, the result is clearly established and funds are *a priori* justified.

36. Turning to the termination of contract of Defence Counsel for Mr. Uwinkindi, the Permanent Secretary informed that subsequent to a meeting held with Counsel on 4 December 2014 and after receiving their observations on the draft contract on 8 December 2014,<sup>18</sup> it became clear that Counsel did not accept the proposed contract. In order to ensure the orderly continuation of the proceedings in the Uwinkindi case, the Ministry terminated the contract with a notice period of three months, during which time Counsel are required to continue to assist their Client.
37. The Permanent Secretary expressed that she was surprised with Counsel's representation at the 30 December 2014 hearing, whereby they sought the suspension of the proceedings on the basis that according to the termination notice they no longer had authority to represent Mr. Uwinkindi.<sup>19</sup> In this connection, the Permanent Secretary informed that the Ministry held a meeting with the President of the Bar Association on 6 January 2015, to discuss the termination of contract of Counsel.<sup>20</sup> At the meeting, the Ministry and the Bar concluded that Counsel have an obligation to continue to represent Mr. Uwinkindi until the end of the three month notice period, pursuant to their contract. The minutes of this meeting also indicate that negotiations on the new draft contract are still possible, however she clarified that the fees are non-negotiable. The Permanent Secretary provided the Monitor a copy of the minutes of this meeting.
38. According to the Permanent Secretary, Counsel has been suggesting that the letter and the minutes are fraudulent as they were signed only by the Minister. She expressed that such representations are not to be expected of a professional and well respected lawyer.
39. Noting her dissatisfaction with the speed of the trial proceedings and emphasising that Counsel have been paid 83 million Rwandan Francs, the Permanent Secretary stressed that it is not the intention of the Ministry to deny legal representation to Mr. Uwinkindi, but to ensure that the proceedings do not suffer any unnecessary delays. The new contract will act as an incentive to Counsel to progress the case expeditiously. She stated that Mr. Uwinkindi has three options: he can continue with the current Counsel if they are willing to accept the terms of the new contract, continue with current Counsel under a private payment arrangement, or choose new counsel to represent him who accepts the terms of the new contract.
40. In this connection, the Permanent Secretary noted that the Ministry sent a letter to Mr. Uwinkindi on 6 January 2015 informing him of his rights and obligations under the new

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<sup>18</sup> See Second Monitoring Report for December, paras. 20-21.

<sup>19</sup> See Second Monitoring Report for December, para. 50.

<sup>20</sup> See January Special Report, para. 9.

legal aid system. The letter further reiterated that if he wished to receive legal aid funds he is required to submit an application in accordance with the instructions provided in the Ministry's letter of 30 July 2014. She noted that there was some confusion about this letter at the 8 January 2015 hearing because according to Mr. Uwinkindi he had no prior knowledge of the 30 July letter.<sup>21</sup> She explained that in July 2014, the Ministry sent a letter to all accused providing instructions for the requirements of the new legal aid framework and attached an application form, which accused were required to submit to the Ministry in order to determine their indigency. The Permanent Secretary acknowledged that Mr. Uwinkindi may have not received the 30 July letter because at the time he was under different contractual arrangements.

41. With regards to payment of Counsel, the Permanent Secretary indicated that payments to Counsel have been made on a regular basis, upon submission of invoices that were reasonably justified and documented. She noted that the last invoice with proper documentation was submitted by Counsel in October 2014, covering the period of March to October 2014. The Permanent Secretary explained that any delays in payment are solely of administrative nature as funds have to be approved by the Ministry of Finance, processed by the National Bank, and transmitted to the Bar Association, which then disburses them to Counsel.
42. Regarding funding for investigation of witnesses, the Permanent Secretary informed that Counsel for Mr. Uwinkindi have already received more than 800,000 Rwandan Francs for witness investigation inside Rwanda. She concluded that the Ministry's consideration of any outstanding proposal that may have been submitted by Counsel in this regard is pending final resolution of the contract.

***B. Monitoring Mission from 20 to 23 January 2015***

*Court Hearing of 21 January 2015*

43. The hearing was held before the full Chamber, in the presence of the Accused. Counsel for Mr. Uwinkindi were absent. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa ("Prosecution").
44. The Chamber noted that Mr. Uwinkindi was not assisted by Counsel and invited Mr. Uwinkindi to explain whether he was pleading without assistance.
45. Mr. Uwinkindi responded that he cannot plead without the assistance of his lawyers and noted that the issue of his legal representation is in the hands of the Ministry of Justice and the Bar Association.

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<sup>21</sup> See January Special Report, para. 10.

46. The Chamber noted that on 20 January 2015, the President of the High Court wrote a letter to the President of the Bar concerning the conduct of Counsel at the hearing of 15 January 2015, and has not yet received a response.
47. Mr. Uwinkindi indicated that on 19 January 2015, his Counsel also wrote a letter to the President of the Bar Association explaining the position of the Defence and reiterating their request for assistance. Mr. Uwinkindi requested that the hearing be adjourned until the Bar Association responds to his Counsel.
48. The Prosecution argued that from their absence it can only be inferred that Counsel have decided to withdraw from the case. The Prosecution submitted that the Chamber should inform the Ministry of Justice and the Bar Association that Mr. Uwinkindi is not represented and that new counsel should be assigned so that the case may proceed without undue delay.
49. Mr. Uwinkindi objected to the Prosecution's request. Noting his Counsel's submissions before the Supreme Court on 19 January 2015,<sup>22</sup> Mr. Uwinkindi stressed that his Counsel have not withdrawn from the case.
50. The Chamber adjourned to deliberate. When the hearing resumed one hour later, the Chamber delivered a written Decision. After noting Counsel's decision to withdraw from the hearing of 15 January 2015 and their absence at the day's hearings without cause, and considering the positions of both parties, the Chamber found that Mr. Uwinkindi no longer had legal representation. Pursuant to Article 18 of the Constitution of Rwanda,<sup>23</sup> the Chamber ordered the entities responsible for appointment of counsel to appoint new counsel for Mr. Uwinkindi. The Chamber adjourned the hearing until 5 February 2015.
51. Mr. Uwinkindi objected to the decision and insisted that he had not requested the assignment of new counsel and that Mr. Gashabana and Mr. Niyibizi continued to assist him.

Meeting with Lead Counsel on 21 January 2015

52. Mr. Gashabana handed over copies of three documents to the Monitor, which he referred to during the meeting.
53. First, he noted that on 19 January 2015, he and Mr. Niyibizi wrote a letter to the President of the Bar Association, reminding him of their correspondence of 30 December 2014, in which Counsel sought the assistance of the Bar Association and proposed the establishment of an *ad hoc* committee to consider the issue of the

<sup>22</sup> According to the Case File, the Defence submitted its appeal to the Supreme Court on 19 January 2015.

<sup>23</sup> Article 18 of the Constitution of the Republic of Rwanda in paragraph 3 provides: "The right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and other decision making organs."

unilateral termination of contract by the Ministry of Justice. In their 19 January letter, Counsel also provided an explanation to the Bar Association regarding developments at the hearings of 8 and 15 January 2015.

54. On 20 January 2015, Mr. Gashabana indicated that he received a copy of a letter from the President of the High Court addressed to the President of the Bar. According to Mr. Gashabana, the President of the High Court complained about the conduct of Counsel before the High Court, considered Counsel's withdrawal on 15 January 2015 as disrespectful to the Court, and requested the Bar Association to take appropriate measures. Mr. Gashabana informed that, on 21 January 2015, Counsel responded to the President of the High Court explaining their position and that of their Client.
55. Mr. Gashabana indicated that thus far he had not received a response from the Bar Association nor had he or Mr. Niyibizi met with any representatives of the Bar. Mr. Gashabana averred that the Bar has *de facto* surrendered its responsibilities to the Ministry of Justice and did not anticipate receiving any assistance from the institution.
56. Turning to their absence from the 21 January 2015 hearing, Mr. Gashabana asserted that they did not view their appearance in Court as a possible option. He explained that if Counsel had appeared at the hearing, the Chamber would have considered any submissions regarding their decision to withdraw as disrespectful to the Court. He stated that he feared that they could have even been intimidated to proceed against their Client's wishes. Mr. Gashabana indicated that Counsel opted for writing to the President of the High Court Chamber, explaining that their withdrawal should not be understood as lack of respect for the Court. He stated that by withdrawing from the proceedings they respected the decision of Mr. Uwinkindi not to proceed with the trial while represented by lawyers who are being intimidated.
57. Mr. Gashabana informed that Mr. Uwinkindi alerted him to the decision of the Chamber to "dismiss the lawyers from the case." Mr. Gashabana noted that Mr. Uwinkindi did not agree with the decision of the Chamber and had asked to meet with his Counsel urgently to discuss possible options. Mr. Gashabana stated that Mr. Uwinkindi is afraid that the Ministry of Justice will appoint lawyers who will not be qualified to defend his case as no lawyer can assure a serious and efficient defence with the meagre and inadequate means proposed by the Ministry of Justice. According to Mr. Gashabana, only the Bar Association may dismiss a lawyer based on grounds provided for in the law or at the request of the Client.
58. With respect to his payment to date, Mr. Gashabana explained that he is not concerned about the payment because he understands that administrative procedures may result in considerable delays. He clarified that since their last payment in February 2014, Counsel submitted an invoice in July 2014. Upon a request for additional information by the Bar, Counsel submitted an updated invoice in October 2014, for the months of March to October 2014.

Meeting with the Executive Secretary of the Rwanda Bar Association on 21 January 2015

59. The Monitor met with Mr. Victor Mugabe, the Executive Secretary of the Rwanda Bar Association to adduce information about the role and position of the Bar concerning Counsel's contract.<sup>24</sup>
60. Mr. Mugabe indicated that the role of the Bar Association is limited to appointing competent counsel for indigent accused and to ensure that counsel provide competent representation. According to Mr. Mugabe, the two parties to a contract, which provides legal aid facilitated by the Government, are the counsel and the Ministry of Justice. The latter provides funding in accordance with government policy on public finance management. The Bar can only intervene on remuneration disputes in the event the paying entity refuses to pay defense counsel the amount due. Other disputes between counsel and the Ministry of Justice in relation to remuneration contracts are primarily resolved between the Ministry and the counsel. The Executive Secretary opined that Counsel for Mr. Uwinkindi and Mr. Munyagishari are well informed of the role of the Bar Association and know that the Bar would only intervene if the profession is threatened.
61. In Mr. Mugabe's view, the new lump sum contract will act as a mechanism for the transferred cases to progress expeditiously. According to Mr. Mugabe, the Uwinkindi case has taken too long and there are no other strategies to expedite the process other than adopt a lump sum regime for remuneration of defense Counsel. On a general note, Mr. Mugabe indicated that in the Rwandan legal system, a case that has exceeded six months is said to be a back log in view of Article 13 of the Code of Civil Procedure,<sup>25</sup> which provides that cases in Rwanda shall be tried in a period not exciding six months.
62. Mr. Mugabe indicated that the Bar Association was consulted in determining the new lump sum amount and that agreeing on the acceptable amount of 15 million Rwandan Francs took time to negotiate. By reference to the *Bandora* case, Mr. Mugabe indicated that the new proposed contract, which has been signed by Mr. Bandora's Counsel, shows that the remuneration provided in that contract cannot be said to be totally insufficient to defend a case of this nature if some of the counsel have accepted the contract.
63. With regard to the termination provisions of the new contract,<sup>26</sup> Mr. Mugabe indicated that the Bar Association would intervene if the new contract compromises the independence of the legal profession and would not allow counsel to sign a contract that may impede professional independence.

<sup>24</sup> In this meeting, the Executive Secretary also discussed the *Munyagishari* case. This report only contains those portions of the discussion that are relevant to the *Uwinkindi* case.

<sup>25</sup> Article 13 of the Code of Civil Procedure, titled "Period of Adjudication for a case", provides: "All cases introduced to the court shall be tried in a period not exceeding six months (6) starting from the date the court received the claim."

<sup>26</sup> See Article 6 reproduced in footnote 15.

64. Turning to the issue of payment, Mr. Mugabe noted that the Bar had just received payment for Mr. Gashabana and Mr. Niyibizi but had not yet processed it.

Meeting with the Prison Director on 22 January 2015

65. The Monitor held a brief meeting with Mr. James Mugisha, the Director of the Kigali Central Prison (“Prison”), before meeting Mr. Uwinkindi.

66. The Director stated that he meets with the detainees in the Special Enclosure<sup>27</sup> on a regular basis and the prison administration strives to resolve any issues brought to his attention as soon as possible, subject to the applicable rules and regulations. For example, he was pleased to inform that the renovations in the Prison are near completion, light bulbs inside the Special Enclosure have been repaired and he has opened a tender for procuring a new table and chairs for the sitting room in the Special Enclosure.

67. The Director indicated that routine medical services and assistance at the prison are provided by nurses. If necessary or at their request, the detainees in the Special Enclosure are referred to King Faisal Hospital.<sup>28</sup>

Meeting with Mr. Uwinkindi on 22 January 2015<sup>29</sup>

68. Mr. Uwinkindi was pleased to inform that the lights inside the Special Enclosure had been replaced. He reported that his main concern related to his visitation rights. Concerning family visits, he indicated that not all his family and friends have been allowed to visit and when they do, he has only been able to meet them for less time than granted by the previous Prison Director, which was usually 30 minutes.

69. Concerning his Counsel visits, Mr. Uwinkindi reiterated that despite the newly built consultation facilities (two gazebo-type structures outside the Special Enclosure), there is no privacy when he meets his Counsel.<sup>30</sup> He noted that the consultation facilities are located in the main Prison courtyard, are open and do not provide cover from prison guards or other individuals. He stated that he feels uncomfortable about engaging in confidential consultations with his Counsel in these facilities. In addition, Mr. Uwinkindi reported that the consultation rooms are often busy and are not reserved for the detainees in the Special Enclosure, as initially indicated by the prison administration. According to Mr. Uwinkindi, the facilities are now used by all detainees

<sup>27</sup> The Special Enclosure houses male detainees whose cases have been transferred by the ICTR and national jurisdictions. It is separated from the general section of the Prison.

<sup>28</sup> For additional details see *The Prosecution v. Jean Uwinkindi*, Case No. MICT-12-25, Public Second Monitoring Report for November 2014, 17 December 2014, para. 15.

<sup>29</sup> The Monitor met with Mr. Uwinkindi with the assistance of an interpreter.

<sup>30</sup> See e.g. *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for October 2014, 14 November 2014, paras. 77-78.

in the prison. The Prison Director had indicated to Mr. Uwinkindi that the meeting rooms are available to all the detainees in the Prison.

70. Turning to the proceedings in his case, Mr. Uwinkindi expressed grave concerns with the hearings of 15 and 21 January 2015. He explained that his Counsel did not wish to withdraw from the case. They were forced to withdraw provisionally because the Chamber rejected his argument that the substantive pleadings should not continue until the status of his Counsel was resolved. In Mr. Uwinkindi view, it was unreasonable for the Chamber to order his case to proceed with the trial and witness testimony if Counsel will be replaced in two months' time.
71. Mr. Uwinkindi expressed strong dissatisfaction with the Chamber's decision of 21 January 2015, noting that it seriously affects his rights to equality of arms, expeditious trial, and legal representation of his choice. He opined that the Chamber should not have rendered that decision at the hearing where he was not represented by Counsel. According to Mr. Uwinkindi, the Chamber's most recent decisions are supporting the positions of the Ministry of Justice and the Prosecution and suggest that the Court is not independent and is biased against him. Noting the fine imposed at the 15 January 2015 hearing and the ruling of the Chamber that Counsel should either plead or withdraw from the case, Mr. Uwinkindi indicated that he believes that his Counsel are intimidated and will be forced to permanently withdraw from the case.
72. Mr. Uwinkindi added that the conditions provided in Article 6<sup>31</sup> of the newly proposed contract also amount to direct intimidation of Counsel and are intended to compromise their independence.
73. Mr. Uwinkindi also expressed concern about the application of the Code of Civil Procedure to his case. In his view, the Chamber has not taken into account the different rights protected under the Code of Civil Procedure, mainly monetary claims, and those protected in a criminal case. He stressed that his liberty is at stake.
74. Turning to the issue of remuneration, Mr. Uwinkindi noted that the Government of Rwanda assured the ICTR that it would provide sufficient funding to defence counsel. He indicated that if the Government did not have sufficient funding, it should have indicated this fact from the start. He opined that perhaps his Counsel would have agreed to represent him *pro bono*.
75. Mr. Uwinkindi stated that he fears that the Ministry of Justice will appoint Counsel who accommodate the Government's expectations and are not independent. He indicated that he will not accept counsel that he suspects are not independent and do not have integrity.

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<sup>31</sup> See Article 6 reproduced in footnote 15.



76. In closing, Mr. Uwinkindi expressed his hope that the President of the Mechanism will make a speedy decision with respect to his application to revoke the case.

Meeting with Lead and Co-Counsel on 22 January 2015

77. Counsel requested to meet with the Monitor to provide additional information relevant to the issue of legal representation. Messrs. Gashabana and Niyibizi informed that on 21 January 2015, they were denied the right to visit their Client in prison. According to Counsel, the Prison Director had informed them that pursuant to verbal instructions from the Court, they were no longer authorised to see Mr. Uwinkindi. Counsel expressed serious concern about this development as they were not aware of any official termination of appointment from the Bar Association, which is the institution vested with powers to appoint and withdraw counsel. They deduced that there is a link between the instruction from the Court with an anticipated decision by the Ministry of Justice and the Bar to terminate their appointment.

78. Counsel observed that there is no precedent with the Court's Decision of 21 January 2015, discharging lawyers and requesting the appointment of new counsel. According to Counsel, the Court's decision is unreasonable because it does not take into consideration Mr. Uwinkindi's submissions.

79. Counsel further informed the Monitor that the Ministry of Justice held a press conference on the same day regarding the *Uwinkindi* case. They claimed that the Ministry of Justice used the press conference to portray Counsel as "specialists of mismanagement of public funds and as persons without any conscience and who are interested only in money." According to Counsel, this is a direct attack against the professional activities of Counsel and infringes on the principle of the separation of powers enshrined in the Rwandan Constitution. They explained that the Ministry cannot interfere in judicial activities as it impacts the independence of lawyers and the Court.

Examination of the Case File on 22 January 2015

80. The Monitor examined the Case File in the office of the Registrar. The following documents were added to the case file since the previous examination:<sup>32</sup>

- i. Letter from the Ministry of Justice to Counsel dated 2 December 2014, requesting a meeting to discuss the new contract;<sup>33</sup>
- ii. Letter from Counsel to the Ministry of Justice dated 8 December 2014, explaining Counsel's position pertaining to the new draft contract;<sup>34</sup>
- iii. Letter from the Ministry of Justice to Mr. Uwinkindi, dated 6 January 2015, concerning legal aid;<sup>35</sup>

<sup>32</sup> See Second Monitoring Report for December, para. 11.

<sup>33</sup> See para. 36 *supra*; see also Second Monitoring Report for December, para. 20.

<sup>34</sup> See para. 36 *supra*; see also Second Monitoring Report for December, para. 21.

<sup>35</sup> See para. 40 *supra*; see also January Special Report, para. 10.

- iv. Letter from the Minister of Justice to the President of the Rwanda Bar Association, dated 8 January 2015, containing minutes of the meeting held between the Ministry and the Bar on 6 January 2015;<sup>36</sup>
- v. Written Decision of the High Court of 15 January 2015;<sup>37</sup>
- vi. Defence Appeal against the High Court's Ruling of 15 January 2015, filed on 19 January 2015;<sup>38</sup>
- vii. Minutes of the hearing of 15 January 2015;
- viii. Letter from the President of the High Court to the President of the Rwanda Bar Association, dated 19 January 2015, noting Counsel's conduct at the 15 January 2015 hearing and requesting the Bar to take appropriate measures;<sup>39</sup>
- ix. Letter from Counsel to the President of the High Court, dated 20 January 2015;<sup>40</sup>
- x. Minutes of the hearing of 21 January 2015; and
- xi. Written Decision of the High Court of 21 January 2015<sup>41</sup>

Meeting with Lead and Co-Counsel on 23 January 2015

81. Counsel requested an additional meeting with the Monitor, to provide new information regarding a meeting they held with the President of the Bar Association, at his request, on the morning of 23 January 2015. According to Counsel, the President of the Bar informed Counsel that he was unable to intervene on their behalf to negotiate a contract which he supported. They stated that the Bar cannot and does not wish to engage in any negotiations regarding the issue of contract. Counsel asserted that the only reasonable inference from the position of the Bar Association is that it takes instructions from the Ministry of Justice. Counsel added that the Bar has failed to discharge its responsibilities, and expressed the view that everyone, with the exception of their Client, wishes them to resign from the case.
82. Further, Counsel noted that they would not be in a position to preserve the rights of Mr. Uwinkindi under these circumstances. According to Counsel, there is no equality of arms, the Ministry of Justice is compromising their independence and Mr. Uwinkindi is prevented from seeing his Counsel of choice. Counsel expressed indignation that the Bar Association is not interested in these issues.

### III. CONCLUSION

83. The Monitor remains available to provide any additional information, at the President's direction.

<sup>36</sup> See para. 37 *supra*; see also, January Special Report, para. 9.

<sup>37</sup> See para. 28 *supra*.

<sup>38</sup> See para. 49 *supra*.

<sup>39</sup> See para. 54 *supra*.

<sup>40</sup> See para. 54 *supra*.

<sup>41</sup> See para. 50 *supra*.

Dated this 26<sup>th</sup> day of February 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Xheni Shehu', written in a cursive style.

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