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UNITED
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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 17 March 2015

Original: English

Before:

Judge Theodor Meron, President

Registrar:

Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

MONITORING REPORT FOR FEBRUARY 2015

Monitors:

Ms. Stella Ndirangu
Ms. Xheni Shehu

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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 (“Court”) and the interactions of the monitors appointed by the Mechanism for International Criminal Tribunals (“Mechanism”) with various stakeholders during the month of February (“Reporting Period”).
2. During the reporting period, the appointed monitors - Ms. Xheni Shehu and Ms. Stella Ndirangu (individually “Monitor”, collectively “Monitors”) - undertook two missions to Rwanda. Ms. Shehu undertook an individual mission from 2 to 6 February and a collective mission with Ms. Ndirangu from 24 to 27 February 2015. In addition to the monitoring activities, the purpose of the latter mission was also to introduce Ms. Ndirangu as a newly appointed monitor.¹
3. Two court hearings were held during the Reporting Period: on 5 and 6 February 2015. The hearings were held before the full Chamber, in the presence of the Accused, Mr. Uwinkindi, who was represented by newly appointed Counsel Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda (“Counsel”).² The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa (“Prosecution”). The Monitor followed both hearings with the assistance of an interpreter.
4. At the 5 February 2015 hearing, Mr. Uwinkindi rejected the appointment of new Counsel and requested the Court to issue an order to the Rwanda Bar Association (“RBA”) to provide Mr. Uwinkindi with the list of counsel. The Court also heard submissions from the parties on Mr. Uwinkindi’s request.
5. On 6 February 2015, the Court issued its written Decision, rejecting Mr. Uwinkindi’s request. At the end of this hearing, Mr. Uwinkindi announced his intention to appeal the Decision of the Court and requested the recusal of the Presiding Judge Alice Ngendahayo. A specially appointed three judge panel of the High Court considered Mr. Uwinkindi’s request for recusal. The panel issued a decision on 16 February 2016, dismissing Mr. Uwinkindi’s request. The High Court scheduled the next trial hearing on 3 March 2015.
6. In addition to observing the hearings, the Monitors met with Mr. Uwinkindi, his former Lead Counsel, Counsel for the Prosecution, the Permanent Secretary of the Ministry of Justice, and the President and the Executive Secretary of the RBA.

¹ See *In the Matters of Jean Uwinkindi and Bernard Munyagishari*, Case Nos. MICT-12-25 and MICT-12-29, Order Appointing a Monitor, 18 February 2015.

² The Monitor learned at the hearing of 3 February 2015 that the Rwanda Bar Association (“RBA”) had terminated the appointment of Mr. Gatera Gashabana and Mr. Jean Baptiste Niyibizi and appointed new Counsel to represent Mr. Uwinkindi.

7. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. *Monitoring Mission from 2 to 6 February 2015*

Court Hearing of 5 February 2015

8. In response to the Court's invitation to have the appearances of the parties, Mr. Uwinkindi indicated that he is present but did not have legal representation. Noting the presence of the two newly appointed Counsel, Mr. Uwinkindi stated that he does not accept them as his Counsel.
9. The Court asked Mr. Uwinkindi to explain his position. Mr. Uwinkindi responded that he did not choose the new Counsel and that he did not accept them. Mr. Uwinkindi claimed that contrary to established practice, as well as representations by the RBA in the Second Monitoring Report for December 2014,³ the RBA did not follow the procedure for the appointment of counsel. He noted that he was not provided with a list of counsel and that the new Counsel did not appear on the list initially provided to him on 23 April 2012. In support, Mr. Uwinkindi argued that he has a right to choose his Counsel in accordance with Article 14(3)(b) of the International Covenant on Civil and Political Rights ("ICCPR").⁴ He requested the Court to find that the new Counsel were not appointed in accordance with the law and to issue an order to the RBA to provide Mr. Uwinkindi with the list of counsel so that he may indicate a counsel of his choice.
10. Further, Mr. Uwinkindi informed the Court that he wrote a letter to the President of the RBA on 28 January 2015, but had not received a response as of the date of the hearing. He emphasized that he wishes to be assisted by his former Counsel, who did not voluntarily withdraw.
11. The Court asked Mr. Uwinkindi to clarify whether he rejects his newly appointed Counsel because he did not know them. Mr. Uwinkindi responded that he rejected his new Counsel because he was deprived of exercising his right to counsel of his own choice and the new Counsel were unfamiliar with his case.
12. The Court enquired whether Mr. Uwinkindi was challenging the authority of the President of the RBA to appoint competent counsel on behalf of indigent accused. Mr. Uwinkindi responded that he did not know if the new Counsel met the qualifications because he did not know anything about them.

³ See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Second Monitoring Report for December 2014, 27 January 2015 ("Second December 2014 Report"), para. 39.

⁴ International Covenant on Civil and Political Rights, in Article 14(3)(b) provides: "3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

13. At the invitation of the Court, Counsel stated that they could not respond to Mr. Uwinkindi's submissions concerning their competence and left it to the discretion of the Court to decide on the matter.
14. The Court asked Counsel to respond to Mr. Uwinkindi's suggestion that Counsel may not have the requisite experience and qualification required by law. Counsel indicated that they were appointed by the RBA to represent Mr. Uwinkindi, which ensures that Counsel have sufficient experience and fulfill the requirements to represent indigent accused. Counsel further explained that the RBA appoints counsel for transferred cases in accordance with certain criteria and that not every lawyer is qualified to represent transferred accused. Counsel noted that they had been appointed by the RBA pursuant to the Decision of the Court rendered on 21 January 2015.⁵ Counsel concluded that if the Court orders them to represent Mr. Uwinkindi, they would do so professionally.
15. The Court invited the Prosecution to respond. The Prosecution stated that Mr. Uwinkindi's former Counsel voluntarily chose to withdraw from the case. The Prosecution noted that in accordance with the decision of the Court of 21 January 2015,⁶ on 29 January 2015, the President of the RBA terminated the appointment of the former Counsel and appointed new Counsel to represent Mr. Uwinkindi so that the trial could proceed expeditiously.
16. By reference to the *Šešelj* Contempt Judgement at the International Criminal Tribunal for the former Yugoslavia ("ICTY"),⁷ the Prosecution further argued that if Mr. Uwinkindi elects to be self-represented, then he will forfeit his right to legal representation even if he is indigent and must accept responsibility for the disadvantages that this choice may bring.
17. The Prosecution further submitted that contrary to Mr. Uwinkindi's arguments, the right to counsel of own choice does not apply to indigent accused. Relying on Articles 38 and 39 of the Law relating to the Code of Criminal Procedure ("Criminal Procedure Code"),⁸ Article 14(6) of the the Law relating to the Transfer of Cases to the

⁵ See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for January 2015 ("January 2015 Report"), 26 February 2015, para. 50.

⁶ *Ibid.*

⁷ See *In re Contempt Proceedings Against Vojislav Šešelj*, Case No. IT-03-67-R77.4-A, Public Redacted Version of "Judgement" issued on 30 March 2013, para. 39.

⁸ Article 38 of Law No. 30/2013 of 24 May 2013, relating to the Code of Criminal Procedure ("Criminal Procedure Code"), titled "Rights of the suspect", provides: "Any person held in custody by the Judicial Police shall be informed of the charges against him/her and his/her rights including the right to inform his/her legal counsel or any other person of his/her choice thereof. Such prerogative shall be indicated in the statement signed by both the Judicial Police Officer and the suspect."

Article 39 of the Criminal Procedure Code, titled "Right to a legal counsel", provides: "Any person held in custody by the Judicial Police shall have the right to legal counsel and to communicate with him/her. If a suspect is unable to find a legal counsel, the Judicial Police Officer or the Prosecutor shall inform the Chairperson of the Bar Association so that he/she assigns a legal counsel for the suspect. The suspect shall have the right to accept or refuse to be represented by such a legal counsel."

Republic of Rwanda (“Transfer Law”)⁹ and jurisprudence from the International Criminal Tribunal for Rwanda (“ICTR”),¹⁰ the Prosecution further argued that the right to counsel of own choice applies only to those accused who can bear the financial costs of counsel. However, when an accused claims to be indigent, as in the case at bar, then the accused must accept counsel appointed by the RBA. The Prosecution stressed that if Mr. Uwinkindi wishes to have counsel of his own choosing, he would have to bear the cost of legal representation.

18. Moreover, the Prosecution argued that there is no law that stipulates that indigent accused should receive a list of counsel so that they can make a choice. The Prosecution noted that the ICTR Appeals Judgement in the *Akayesu* case indicates that although an accused may choose from a list of counsel provided by the Registrar, the Registrar is not necessarily bound by the choice of the accused and has wide discretion that he exercises in the interest of justice.¹¹ The Prosecution averred that in Rwanda, the Ministry of Justice and the RBA play a similar role to that of the Registrar of the ICTR, and they have discretion in the interest of justice to appoint and remunerate counsel for indigent accused.
19. Further, by reference to jurisprudence of the ICTR,¹² the Prosecution argued that Mr. Uwinkindi could not reject Counsel for lack of competence unless he could show gross misconduct on the part of Counsel that has occasioned a miscarriage of justice. Since Mr. Uwinkindi did not make such showing, he did not have a right to reject Counsel appointed by the RBA. Consequently, the Prosecution submitted that as Mr. Uwinkindi is represented by competent Counsel, there is no legal basis for adjourning the trial.
20. Mr. Uwinkindi replied by stressing that he should be tried lawfully in a country that is law abiding. He claimed that his Counsel’s contract was terminated because they were trying to represent his interests.
21. The Court intervened by indicating that if Mr. Uwinkindi rejected the new Counsel, he had to choose between three options: cover the costs of his counsel of choice, elect to be self-represented or waive his right to appear in his own trial.
22. Mr. Uwinkindi requested the Court to grant him the same time to respond as that granted to the Prosecution. Mr. Uwinkindi continued that contrary to the Prosecution’s submissions, national and international laws provide that he has a right to choose his

⁹ Article 14 of the “Law N°47/2013 of 16 June 2013 relating [sic] Transfer of Cases to the Republic of Rwanda” (“Transfer Law”), titled “Rights of an accused person,” paragraph 6 provides, *inter alia*, that the accused person shall be entitled “to counsel of his/her choice in any a [sic] examination. In case he/she has no means to pay, he/she shall be entitled to legal representation.”

¹⁰ The Prosecution cited, *inter alia*, *Nahimana et al. vs. the Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007 (“*Nahimana et al. Appeals Judgement*”), para. 265, *The Prosecutor v. Akayesu*, Case No. ICTR-96-04-A, Judgement, 1 June 2001 (“*Akayesu Appeals Judgement*”), para. 61, and *Kambanda v. the Prosecutor*, Case No. ICTR-97-23-A, Judgement, 19 October 2000, para. 34.

¹¹ See *Akayesu Appeals Judgement*, para. 62.

¹² The Prosecution cited generally *Nahimana et al. Appeals Judgement* and *Akayesu Appeals Judgement*.

counsel. In response to the Court's inquiry on whether Mr. Uwinkindi could show the basis of his arguments, he indicated that he was being forced to defend himself. He further stated that if his Counsel of choice were present, they would defend him against the Prosecution's arguments and would show that his case is distinguishable from the cases cited by the Prosecution.

23. Mr. Uwinkindi asserted that if the RBA provided him with the list of counsel, he would choose his counsel quickly and the issue would be resolved. He noted that he was provided with a list of counsel at the ICTR and upon his transfer to Rwanda, and that in both cases lawyers were appointed with his own knowledge and approval. He further indicated that the newly appointed Counsel were not familiar with his case and did not have the case file. He stated that if he was to accept them, the Court would need to give them sufficient time to prepare and consult with his former Counsel, in order to ensure his fair trial rights.
24. The Court adjourned, requesting the Prosecution to provide the Court with a written submission of the jurisprudence cited at the day's hearing and informing the parties that it would render its decision on 6 February 2015 at 11:00 hours.

Meeting with Lead Counsel for the Prosecution on 5 February 2015

25. Mr. Jean Bosco Mutangana, Lead Counsel for the Prosecution, stated that with the exception of the issue of counsel, the *Uwinkindi* case was progressing well. Noting that former Counsel and the Ministry of Justice did not come to an agreement on the issue of remuneration of counsel, he indicated that the Prosecution plays no role on the matter and that the issue should have been resolved between former Counsel, the Ministry of Justice and the RBA outside of trial proceedings.
26. Mr. Mutangana stated that the Prosecution's position is that Mr. Uwinkindi's right to counsel of own choosing had not been violated, but that Mr. Uwinkindi had misinterpreted it. Mr. Mutangana indicated that as an indigent accused, Mr. Uwinkindi's right to counsel of choice is not absolute, and therefore the issue should not be an impediment to the continuation of the proceedings.
27. Mr. Mutangana indicated that he did not have an opinion on the process of the appointment of new Counsel. He noted, however, that the Criminal Procedure Code, in Article 39, only provides for a suspect to refuse the assignment of counsel. As an accused, Mr. Uwinkindi has a right to a defence lawyer of choice if he is able to cover costs.
28. Mr. Mutangana stressed that the Prosecution has been committed to ensuring an expeditious trial in accordance with international standards. He further expressed that it is important also for the Defence to commit to the same principle.

29. Mr. Mutangana anticipated that the appointment of new Counsel would likely delay the proceedings for at least one month, as new Counsel would need time to prepare the defence case. He indicated that it was possible for Counsel to prepare the case in the course of a month, with the assistance of the former Counsel.

Meeting with Former Lead Counsel on 5 February 2015¹³

30. Mr. Gashabana informed that on 29 January 2015, he and Mr. Niyibizi received a letter from the President of the RBA terminating their appointment and informing them of the appointment of new Counsel. Mr. Gashabana noted that the RBA letter referenced the decision of the High Court of 21 January 2015, a letter from the Ministry of Justice requesting appointment of new counsel, dated 27 January 2015, and the letter of termination of the Ministry of Justice of 22 December 2014.¹⁴
31. Mr. Gashabana reported that before the 5 February hearing, a meeting had been arranged between former and new Counsel and Mr. Uwinkindi at the Kigali Central Prison (“Prison”). The purpose of the meeting was to transfer the case file in the presence of the accused and consult with new Counsel as necessary. He explained that when former Counsel arrived at the Prison, the Prison Administration did not permit them to meet with Mr. Uwinkindi. Simultaneously, Mr. Uwinkindi refused to discuss his case with the new Counsel. Consequently, the meeting did not take place.
32. By reference to the meeting held with the President of the RBA on 23 January 2015,¹⁵ Mr. Gashabana informed that he received a letter from the President of the RBA on 28 January 2015 in response to their requests for assistance. Mr. Gashabana indicated that in this letter, the President of the RBA recalled the role of the Bar in appointing competent lawyers for accused and that remuneration must be negotiated between counsel and the Ministry of Justice. According to Mr. Gashabana, the position of the RBA is contrary to Rwandan law and the *Amicus Curiae* submissions of the Government of Rwanda and the Kigali Bar Association¹⁶ at the ICTR. Based on this letter, Mr. Gashabana concluded that the President of the RBA had decided not to take the issue to the Executive Council of the Bar or to an *ad hoc* independent committee, as proposed by Mr. Gashabana and Mr. Niyibizi.¹⁷
33. Mr. Gashabana indicated that to his knowledge the RBA had not taken any decision concerning the Court’s request for disciplinary measures against former Counsel.¹⁸ According to Mr. Gashabana, the President of the RBA indicated at their last meeting

¹³ During the mission, the Monitor was unable to reach new Counsel for a meeting.

¹⁴ See Second December 2014 Report, para. 50; see also January 2015 Report, para. 26.

¹⁵ See January 2015 Report, para. 81.

¹⁶ The former “Kigali Bar Association” is now the “Rwanda Bar Association”, which was established by Law No. 83/2013 of 11 September 2013 Establishing the Bar Association in Rwanda and Determining its Organization and Functioning, published in the Official Gazette on 4 November 2013.

¹⁷ See January 2015 Report, paras. 31 and 53.

¹⁸ *Id.*, para. 54.

that, having heard former Counsel's explanation of the position of the Defence and their former Client, he found no grounds to initiate misconduct proceedings against them.

34. Mr. Gashabana indicated that the appointment of new Counsel was not in line with established practice, in that Mr. Uwinkindi was not consulted and only received a letter from the RBA *post facto*. He believed that counsel will not independently represent Mr. Uwinkindi's interests, if they are not counsel of Mr. Uwinkindi's choice.
35. In Mr. Gashabana's view, the Government of Rwanda had reneged on its undertakings before the ICTR concerning defence rights. Mr. Gashabana asserted that there is no precedence in international law for the unilateral termination of defence Counsel contracts without cause or a showing of gross misconduct or incompetence of counsel. Mr. Gashabana indicated that their contract was terminated simply because they did not hold the same opinions as the Ministry of Justice and did not adhere to its expectations. Mr. Gashabana emphasized that for him, it was impossible to agree to the terms of the new draft contract while ensuring that the interests and rights of Mr. Uwinkindi are protected.¹⁹
36. Mr. Gashabana indicated that he was well aware of the Government's position on legal aid before the referral proceedings at the ICTR because he assisted in formulating the position in his former capacity as the President of the Kigali Bar Association. He expressed disappointment that the Government had reneged on its commitments and averred that the concerns expressed by Human Rights Watch in their submission to the ICTR have materialized.

Meeting with the Permanent Secretary of the Ministry of Justice on 6 February 2015

37. The Permanent Secretary noted that on 21 January 2015, the Court found that Mr. Uwinkindi was no longer assisted by Counsel and ordered that new counsel be appointed. The Permanent Secretary informed that pursuant to this order, on 27 January 2015, the Ministry sent a letter to the RBA requesting that new counsel be appointed. The RBA appointed new counsel on 29 January 2015.
38. The Permanent Secretary stated that former Counsel should not have seised the Court of disputes related to the contract as it is not the Court's competence to address such matters. The Permanent Secretary reiterated that former Counsel were informed that they had an obligation to continue assisting Mr. Uwinkindi until the end of the three month notice of termination period.²⁰ The Permanent Secretary stated that if former Counsel were unsatisfied with their remuneration, they should have informed their Client that they were unable to assist. However, in appearing before the Court, former Counsel had an obligation to plead the case.

¹⁹ For additional details on the position of former Counsel on the new draft contract see Second December 2014 Report, para. 64 and January 2015 Report, para. 30.

²⁰ See January 2015 Report, paras. 36-37.

39. Regarding the appointment process, the Permanent Secretary indicated that the Ministry of Justice does not interfere in the RBA's authority or procedures for appointment of counsel. The Permanent Secretary stated that the law is clear: if an accused wishes to have legal representation at the expense of the Government, they must accept counsel appointed by the RBA. She explained that in effect there are two legal aid regimes for indigent accused in Rwanda. Under the first regime, the RBA appoints counsel on a *pro bono* basis and the lawyers are required by law to provide such services. Under the second regime, the RBA appoints counsel, while the Government provides for their remuneration.
40. In addition, the Permanent Secretary informed that the Ministry is carefully reviewing the draft contract with a view to clarifying any provisions that may appear to hamper the independence of counsel. In particular, the Permanent Secretary noted Article 6 of the draft contract on termination.²¹ The Permanent Secretary explained that the Ministry is considering the type of behavior or conduct that may fall under this provision. The Permanent Secretary further informed that the Ministry is considering to re-incorporate the RBA as a party to the contract, given its role in appointing counsel, monitoring their activities and facilitating their payment.
41. The Permanent Secretary reiterated that investigation of witnesses residing outside Rwanda would be negotiated and funded separately.²²

Court hearing of 6 February 2015

42. On 6 February 2015, the Court read its written decision on Mr. Uwinkindi's request to declare the appointment of new Counsel unlawful and to issue an order to the RBA to provide Mr. Uwinkindi with the list of counsel.

²¹ 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.

²² See January 2015 Report, para. 33; see also Second December 2014 Report, para. 15.

43. Following a summary of the parties' submissions, the Court rejected Mr. Uwinkindi's request, finding that the appointment of counsel was lawful and the RBA was competent to appoint counsel and was not required to provide a list of counsel to the accused. Relying on the *Akayesu* Appeals Judgement, the Court reasoned that the right to choose counsel under Article 14(6) of the Transfer Law did not apply to an accused who is unable to bear the costs of counsel. The Court further found that the RBA was not required by law to provide a list of counsel to Mr. Uwinkindi, even though Mr. Uwinkindi was previously provided such a list. The Court confirmed the appointment of new Counsel and ordered the continuation of trial proceedings.
44. Mr. Uwinkindi requested to address the Court. He informed the Court that on 5 February 2015, he received a copy of the Prosecution's written submissions of its arguments at the previous day's hearing. Mr. Uwinkindi claimed that the Court's acceptance of the submission infringes on his right to equality of arms and that he did not have an opportunity to respond and be heard on the submission. Mr. Uwinkindi further noted that he did not have legal representation and rejected the newly appointed Counsel. He announced his intention to lodge an appeal against the Decision of the Court.²³
45. Additionally, Mr. Uwinkindi submitted an oral request for the recusal of Presiding Judge Alice Ngendahayo on the ground that she manifested bias against his case. At the invitation of the Court, the Prosecution responded that it had no submissions to make as the request for recusal would be decided by another Chamber of the High Court.
46. The Court ruled that Mr. Uwinkindi should submit his written request for recusal by 11:00 a.m. on Monday, 9 February 2015.

Communication from the Registry of the High Court on 18 February 2015

47. On 18 February 2015, the Monitor received an email correspondence from the Registry of the High Court of Rwanda transmitting the Decision of the High Court on Mr. Uwinkindi's request for the recusal of Judge Alice Ngendahayo.
48. A three judge panel of the High Court dismissed Mr. Uwinkindi's request, finding Mr. Uwinkindi's allegations "inadmissible" on the ground that they did not demonstrate "animosity" by Judge Ngendahayo.
49. The Registry of the High Court also informed the Monitor that the next court hearing was scheduled on 3 March 2015.

B. Monitoring Mission of 24 to 27 February 2015

Meeting with Lead Counsel for the Prosecution on 25 February 2015

²³ Mr. Uwinkindi submitted an appeal to the Supreme Court of Rwanda on 20 February 2015.

50. After the introduction of the newly appointed Monitor, Mr. Mutangana welcomed the newly appointed Monitor, extended his cooperation and provided a brief overview of the role of the Prosecution and the proceedings in the *Uwinkindi* and *Munyagishari* cases.²⁴
51. On a general note, Mr. Mutangana indicated that the Prosecution is dedicated to ensuring expeditious and fair trials in both cases. Noting that issues related to legal representation continue to be raised in Court, he shared the Prosecution's hope that such issues will be resolved expeditiously and that the accused will be represented by competent and professional Counsel.

Meeting with Mr. Uwinkindi on 25 February 2015

52. The Monitors met with Mr. Uwinkindi at the Kigali Central Prison, where he is detained.²⁵ After the introduction of the newly appointed Monitor, Mr. Uwinkindi expressed concern with the transition of the monitoring activities to new monitors. He expressed his hope that the newly appointed Monitors will be independent as they are taking over the monitoring activities at a crucial stage of the proceedings.
53. Mr. Uwinkindi then continued to provide a brief background and overview to his case. In his view, the pertinent issues are, *inter alia*, that he has been wrongfully charged, that the Court is biased against him and that he no longer has legal representation as his Counsel were being intimidated and forced to withdraw from the case.
54. Turning to the issue of his legal representation, Mr. Uwinkindi wished to emphasise that, contrary to the Prosecution's allegations and the Court's findings, his Counsel did not voluntarily withdraw from the case. He further indicated that he did not ask for their withdrawal and Counsel never refused to assist him. Mr. Uwinkindi opined that the Government of Rwanda has not acted in good faith as exhibited by the Ministry's unilateral termination of his Counsel's contract and the contentious provisions of the new draft contract. In his view, such actions amounted to intimidation contrary to the commitments made before the ICTR.
55. Mr. Uwinkindi indicated that the Prosecution and the Court are suggesting that if he rejects new Counsel, he could elect to be a self-represented accused. He insisted that he has not chosen to be self-represented and that he needs the assistance of qualified and competent lawyers who know well his case. Mr. Uwinkindi averred that if he refuses to appear in Court, the Court is likely to continue the trial without him or his Counsel present. Mr. Uwinkindi asserted that his case has devolved to the "Gacaca standards, where people are condemned even in *absentia*."

²⁴ This meeting mainly discussed the *Munyagishari* case. This report only contains those portions of the discussion that are relevant to the *Uwinkindi* case.

²⁵ The Monitors met with Mr. Uwinkindi with the assistance of an interpreter.

56. Mr. Uwinkindi expressed confusion with the refusal of the RBA and the Court to provide him with the list of counsel. He claimed that all the transferred accused, including those transferred from national jurisdictions, had received a list and chosen their own counsel. Mr. Uwinkindi indicated that he did not understand how the circumstances had changed from the time when he or Mr. Munyagishari were initially transferred to Rwanda. Additionally, by reference to the Second December 2014 Report,²⁶ Mr. Uwinkindi noted that the Executive Secretary of the RBA explained that they provide a list of counsel to the accused.
57. Mr. Uwinkindi stated that he does not know his new Counsel, they are not familiar with his case and do not have the case file. According to Mr. Uwinkindi, one of his newly appointed Counsel was previously appointed to represent Mr. Mbarushimana.²⁷ He alleged that Counsel did not represent Mbarushimana well and the latter terminated his services. Mr. Uwinkindi stated that he will not accept incompetent lawyers who “keep quiet” or do not represent his interests in Court.
58. Citing specific examples of how former Counsel had allegedly exposed gaps, inconsistencies and misinformation in the Prosecution’s evidence, Mr. Uwinkindi opined that his former Counsel have been highly competent in defending him. As a result, the Court and the Prosecution “sacked” them.
59. Mr. Uwinkindi indicated that he prefers two options, both of which involve the reinstatement of his former Counsel: the first would be reinstatement of Counsel with adequate funding provided by the Ministry of Justice and negotiated in good faith, and the second would be reinstatement of Counsel on a *pro bono* basis. Mr. Uwinkindi stated that if the latter option is the only one remaining, he is confident that his lawyers would accept the case *pro bono*. He stated that the President of the Mechanism should ask the Government of Rwanda to reinstate his former Counsel.
60. In addition, Mr. Uwinkindi alleged that he will not receive a fair trial in Rwanda under the current circumstances. In support, Mr. Uwinkindi claimed that he was denied investigators, when the Prosecution had 28 investigators working on his case; he has been unable to undertake investigations abroad, which impedes his ability to develop his defence case; his Counsel’s contract was terminated and the Government has indicated that it does not have the funds to remunerate counsel; and, the Court is biased. Mr. Uwinkindi stated that for these reasons he has requested the Mechanism to revoke the case.
61. According to Mr. Uwinkindi, the most recent decision of the High Court rejecting his request to recuse Judge Ngendahayo is further proof that he cannot have a fair trial in

²⁶ See Second December 2014 Report, para. 38-39.

²⁷ Mr. Mbarushimana is an accused transferred from a national jurisdiction who is detained at the Special Enclosure of the Kigali Central Prison where Mr. Uwinkindi and Mr. Munyagishari are also detained.

Rwanda. He claimed that the Court did not address or consider his concerns in its decision.

62. Mr. Uwinkindi pleaded that if the Mechanism does not revoke his case, he should be transferred to another country where “lawyers can speak their mind and judges are objective.” He claimed that every time he stands before the Court, the judges do not look at him as accused but as a convicted murderer.
63. Turning briefly to his conditions of detention, Mr. Uwinkindi complained that he has not been allowed to worship with other prisoners, which has impacted his ability to practice his religion and calling as a pastor. He further claimed that he has not spoken to his family and has not been allowed to speak with his former Counsel even to ensure the proper transfer of the case file and the preparation of new Counsel. He indicated that he had requested a meeting with the Deputy Prison Director to discuss these concerns, but had not received a response.

Meeting with the Executive Secretary of the Rwanda Bar Association on 26 February 2015

64. After the introduction of the newly appointed Monitor, Mr. Mugabe welcomed the newly appointed Monitor, extended his cooperation and provided a brief overview of the role of the RBA. Mr. Mugabe then continued to clarify certain aspects of the role of the RBA in determining lawyers’ fees.
65. Mr. Mugabe explained that in Rwanda there are in effect three legal representation regimes. The first regime involves non-indigent accused, in which case counsel fees are negotiated between counsel and client within the scale of fees prescribed by the RBA. The second regime involves indigent accused who are represented by *pro bono* Counsel, who are only provided minor expenses. The third regime involves indigent accused whose representation is funded by the Government, as is the case with the transferred cases. In the latter case, Mr. Mugabe reiterated that the role of the RBA is limited to appointing competent counsel and supporting the Government in facilitating legal aid payments.²⁸ Mr. Mugabe also indicated that the RBA also ensures that counsel receive adequate support and assistance in fulfilling their professional obligations.
66. With respect to provision of the list of counsel to the accused, Mr. Mugabe indicated that there is no rule that requires the RBA to provide a list of counsel to indigent accused. Mr. Mugabe explained that in most cases the RBA designates lawyers for indigent accused. He indicated that the list of lawyers is posted on the RBA website and can be shared upon request with partner institutions, such as the Court, Prosecution, and national or international organisations. In the *Uwinkindi* case, Mr. Mugabe indicated that a list of two counsel was provided at the time of Mr. Uwinkindi’s transfer at the request of the Prosecution as provided by the Criminal Procedure Code. In the

²⁸ See January 2015 Report, para. 60; see also, *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Monitoring Report for the Uwinkindi Case (January and February 2014), 7 March 2014, para. 54.

Munyagishari case, Mr. Mugabe noted that the accused refused duty counsel assigned by the RBA.²⁹ Noting that an accused has a right to refuse counsel assigned by the RBA, Mr. Mugabe stated that Mr. Munyagishari chose lawyers who were on the list of RBA lawyers and the RBA accepted his choice. By comparison, Mr. Mugabe indicated that in the *Mbarushimana* case, a list of all RBA lawyers was provided at the request of the Court.

67. Turning to the *Uwinkindi* case, Mr. Mugabe indicated that the newly appointed Counsel are competent and bring significant years of experience in criminal trials.

Meeting with the President and the Executive Secretary of the Rwanda Bar Association on 26 February 2015

68. The Monitors met with Mr. Athanase Rutabingwa, the President of the Rwanda Bar Association. Mr. Mugabe was also in attendance.

69. After the introduction of the Monitors, Mr. Rutabingwa provided an overview of the role of the RBA. He explained that the RBA appoints or designates lawyers to indigent accused upon request from the accused, the Court or the Prosecution. Such counsel normally engage in *pro bono* representation. After the appointment, the RBA is available to assist counsel if they encounter difficulties in the course of their professional duties, including in accessing the accused at the Prison and having sufficient time to present their case in Court.

70. Mr. Rutabingwa indicated that given the magnitude and complexity of the transferred cases, the Government has agreed to provide legal aid funding. In accordance with the Legal Aid Policy and the budget, the Government has committed to remunerate counsel for transferred accused 15 million Rwandan Francs for the completion of the entire case, with the exception of investigation of witnesses outside Rwanda, which is negotiated separately with the Government.

71. Mr. Rutabingwa further explained that based on the practice in Rwanda, the scale of fees for a criminal case is between one to 15 million Rwandan Francs. Mr. Rutabingwa, informed that as the President of the RBA he has authority to recommend an increase in remuneration on the basis of the nature of the case, but this option is only available if the funder, be it the client or the Government, accepts the recommendation. Mr. Rutabingwa indicated that based on the nature of the transferred cases, the RBA recommended to the Ministry an increase in remuneration beyond 15 million. Within its allocated budget, however, the Ministry decided to remunerate the maximum amount for a criminal case. Mr. Rutabingwa stressed that the Ministry consulted the RBA in order to ensure that the overall budget was reasonable and the RBA did not negotiate with the Ministry on behalf of any specific counsel.

²⁹ See *The Prosecutor v. Bernard Munyagishari*, Case No. MICT-12-20, Monitoring Report for the Munyagishari Case (July-August 2013), 16 September 2013, paras. 49-50 and 95.

72. Mr. Mugabe stressed that while the scale of fees is the basis for determining payment of lawyers, it does not apply to cases falling under the legal aid regime.
73. Turning to the *Uwinkindi* case, Mr. Rutabingwa explained that former Counsel for Mr. Uwinkindi did not accept the newly proposed contract. On 21 January 2015, the Court noted that Mr. Uwinkindi did not have legal representation and ordered the appointment of new Counsel. Pursuant to the Court's order, the RBA appointed new Counsel on 29 January 2015.
74. With respect to the provision of a list, Mr. Rutabingwa stressed that the right to choose counsel applies only to non-indigent accused. In accordance with the Law establishing the RBA, the institution ensures that all indigent accused are assigned competent, professional and independent lawyers, subject to a conflict of interest or objection on personal conviction of counsel. He noted that all the lawyers accredited by the RBA have the competence to practice and represent accused. Mr. Rutabingwa explained that at the time of his transfer, Mr. Uwinkindi was provided a list of counsel at the request of the Prosecution. Most recently, the RBA acted upon the Decision of the Court which ordered the appointment of new counsel. Mr. Rutabingwa noted that the Court did not order the RBA to avail the list of counsel to Mr. Uwinkindi.
75. Mr. Rutabingwa confirmed that Mr. Uwinkindi had submitted at least two letters to the RBA in February 2015. He stated that in these letters Mr. Uwinkindi has asked the RBA to act contrary to the Court's order. Mr. Rutabingwa confirmed that the RBA had not responded to the letters as of the time of the meeting.
76. Concerning former Counsel's proposal to appoint an *ad hoc* committee to consider their situation, Mr. Rutabingwa stated that the RBA held discussions with former Counsel on the matter and a compromise was reached. Consequently, the RBA did not consider it necessary to intervene.

Meeting with former Lead Counsel on 26 February 2015

77. The Monitor met briefly with former Lead Counsel, Mr. Gatera Gashabana, to ascertain the status of the transfer of the case file to new Counsel and the interlocutory appeal filed before the Supreme Court on 19 January 2015, challenging the Decision of the High Court of 15 January 2015.³⁰
78. Mr. Gashabana informed that there had been no progress on the transfer of the case file since the last intended meeting at the Prison where the Prison administration refused

³⁰ For further details on the Decision of the Court, see January 2015 Report, para. 28; for further details on the Defence interlocutory appeal, see January 2015 Report, para. 49.

audience with Mr. Uwinkindi and Mr. Uwinkindi refused to meet with new Counsel.³¹ He indicated that no further contacts had been established by either Counsel.

79. With respect to the interlocutory appeal, Mr. Gashabana informed that the Registrar of the Supreme Court had found the appeal not admissible on the ground that the judgement was not definitive. Mr. Gashabana explained that according to Article 34 of the Organic Law determining the organization, functioning and jurisdiction of the Supreme Court, the Registrar of the Supreme Court has authority not only to register an appeal but also to determine admissibility.³² Mr. Gashabana opined that this law does not conform with the Constitution. He noted that Article 35 of the Law provides for an administrative recourse before the Chief Justice of Rwanda.³³ Mr. Gashabana informed that he filed an appeal before the Chief Justice on 23 February 2015.
80. Mr. Gashabana concluded that even if they agreed to represent Mr. Uwinkindi on a *pro bono* basis, he was not convinced that Mr. Uwinkindi would have a fair trial. He indicated that, notwithstanding the issue of Counsel, Mr. Uwinkindi may have recourse under Article 210 of the Criminal Procedure Code which provides that the Chief Justice, at the request of an accused, may request the assistance of an international judge in adjudicating cases of an international character.³⁴

III. CONCLUSION

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

³¹ See para. 31 *supra*.

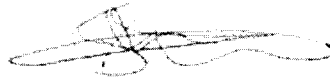
³² Article 34 of Organic Law No. 03/2012/OL of 13 June 2012, Determining the organization, functioning and jurisdiction of the Supreme Court, titled "Powers of the Chief Registrar of the Supreme Court" provides in part: "The Chief Registrar of the Supreme Court shall check whether the appeal is admissible before it is recorded in court registers. [...]"

³³ Article 35 of the Organic Law of the Supreme Court, titled "Contesting a decision of the Chief Registrar of the Supreme Court, provides: "If one party is not satisfied with a decision of the Chief Registrar of the Supreme Court, he/she shall complain to the President of the Supreme Court in writing stating the grounds of his/her complaint. The inadmissibility order of the claim by the President of the Supreme Court or the Chief Registrar of the Supreme Court shall be in line with the organisation of the functioning of courts. Such an order shall be in writing stating the grounds on which it was drawn.

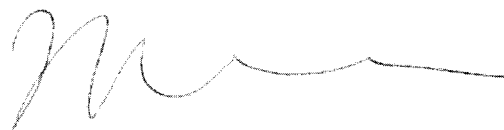
³⁴ Article 210 of the Criminal Procedure Code, titled "Trying international or crossborder crimes" provides: "When Rwandan courts try crimes provided for under Article 209 of this Law, the President of the Supreme Court may, in the interest of justice and for the sake of conforming proceedings to the international jurisprudence, seek, upon own initiative or request by the accused, his/her legal counsel or by national or foreign Public Prosecution, judicial cooperation from the United Nations, any other international organisation or foreign country by requesting them to send judges to Rwanda to sit alongside Rwandan judges to try cases of international and cross-border crimes committed on the Rwandan territory or abroad, the transfer of which to Rwanda is sought and which are provided under the Organic Law on the organization, functioning and jurisdiction of courts. Such cases shall be tried both at first instance and appeal level by a bench of at least three (3) judges. The request for a judge from a foreign country shall be made in accordance with cooperation procedure between countries and international organisations."

Dated this 17th day of March 2015

Respectfully submitted,



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