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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 7 August 2015

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

JOINT MONITORING REPORT FOR MAY AND JUNE 2015

Monitor:
Dr. Ken Nyaundi
Ms. Stella Ndirangu

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I. INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, particularly part "C" of Annex II to the MOU between the Mechanism for International Criminal Tribunals ("MICT" or "Mechanism") and the Kenya Section of the International Commission of Jurists (ICJ Kenya), we respectfully submit this Report to the President of the MICT through the Registrar.
2. This Monitoring report pertains to the activities in the case of Jean Uwinkindi before the High Court of Rwanda ("Court") and of interactions of Dr. Ken Nyaundi and Ms. Stella Ndirangu, Monitors appointed by the Mechanism ("Monitors"), with various stakeholders during the month of May and June 2015 ("the Reporting Period").
3. During the Reporting Period, the Monitors undertook three missions to Rwanda on 27 to 29 May 2015, 1 to 5 June 2015 and 8 to 9 June 2015 to monitor the Jean Uwinkindi case.
4. During the month of May 2015, there was no court appearance for the Accused person. The report therefore communicates information on the meetings and discussions between Dr. Ken Nyaundi ("Monitor") and Mr. Uwinkindi, the Prison Director and the Lead Prosecutor.
5. In June 2015, there were two Court hearings before the High Court on 2 June 2015 and 9 June 2015, Stella Ndirangu ("Monitor") attended the hearings and held a meeting with Mr. Uwinkindi at the Kigali Central Prison.

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

II. DETAILED REPORT

A. Monitoring Mission from 27 to 29 May 2015

Meeting with the Prison Director, Mr. James Mugisha on 28 May 2015

6. On 29 May 2015 at 10.00 am the Monitor met with Mr. Mugisha, the Director of the Kigali Central Prison to discuss any arising issues.
7. It was the view of the Director of Prisons that the prison living conditions continue to be fair and the atmosphere conducive to the accused person's preparations for their trial.
8. The Director informed the Monitor that he had not received any complaints from the accused persons that needed to be attended to and therefore he believed that they were satisfied with the services offered.

Meeting with Mr. Jean Uwinkindi on 28 May 2015

9. The Monitor met Mr. Uwinkindi in the presence of an interpreter.
10. During this meeting, Mr. Uwinkindi expressed gratitude that the previous Monitoring report appears to have positively influenced the Mechanism's President to appreciate his request for revocation of his continued trial in Kigali, Rwanda. He however expressed regret that his request for legal Counsel had not, as then, received an affirmative response. It was clear that by that time two issues needed to be dealt with:
 - i. Assignment of a trial chamber pursuant to Art. 6(6) of the Statute of the Mechanism to consider whether to revoke the order of referral and make a formal request for deferral.
 - ii. Appointment of a Panel of judges to consider the revocation request pursuant to Art. 6(6).
11. Mr. Uwinkindi showed the Monitor a letter he had received from Mr. Algozin from the Mechanism, dated 21 May 2015, communicating the decision of the President of the Mechanism to assign a trial chamber, pursuant to Art. 6(6) of the Mechanism Statute and Rule 14(c) of the Mechanism Rules of Procedure and Evidence to consider whether to revoke the order of reference of his case to Rwanda.¹
12. Mr. Uwinkindi discussed with the Monitor the orders of the President of the Mechanism and the appointment of the following judges to hear his application for revocation:
 - i. Vagn Joensen, Presiding
 - ii. William Hussein Sekule
 - iii. Florence Rita Arrey
13. Mr. Uwinkindi showed the Monitor another letter that he had written to the Registrar dated 22 May 2015. In this letter Mr. Uwinkindi pleaded that he does not have the financial capacity to hire Counsel to represent him in Arusha. He requested the Mechanism to undertake to engage Counsel for him and proposed the following as a suitable team to represent him.
 - i. Mr. Gatera Gashabana
 - ii. Mr. Natacha Fauveau Ivanovic
 - iii. Mr. Sindyigaya Claver
 - iv. Mr. Niyibizi Jean Baptiste
14. In his opinion Mr. Uwinkindi would be happy if he were to get the services of this whole team of lawyers because they have a good understanding of his case. Mr.

¹ See *Prosecutor v. Uwinkindi* case no. MICT-12-25, Decision on Request for Revocation of an order referring a case to the Republic of Rwanda 13 May 2015.

Niyibizi and Mr. Gatera are members of the Rwanda Bar Association and are familiar with the issues; all of them are on the ICTR list and have been assisting him since his referral to Rwanda.

15. The Monitor was shown a letter dated 25 May 2015, written by Mr. Algozin of the Mechanism requesting Mr. Uwinkindi to indicate the name of only one Counsel who would be hired to represent him. In that letter reference was made to a meeting that had been held between Mr. Uwinkindi and Mr. Tindi, of the Mechanism, in which Uwinkindi suggested Mr. Gashabana. Mr. Gashabana has now been requested to submit certain documents to determine his suitability for admission as counsel. By the time of meeting with Mr. Uwinkindi no decision had been made on the appointment of Gashabana. However, on 27 May 2015, Mr. Uwinkindi wrote, again, to Mr. Algozin requesting for an additional counsel. He suggested Mr. Natacha as an additional counsel. No reply had come on this.
16. Mr. Uwinkindi fears that Mr. Gashabana may not be allowed to access him in Prison for the purpose of preparing for his defence in the Arusha proceedings. Mr. Uwinkindi states that he has had challenges holding meetings with Mr. Gashabana because he believes that the Prosecutor has given instructions to the prison authorities not to allow Mr. Gashabana to see him.
17. Mr. Uwinkindi expressed anxiety that there is a scheduled hearing in the High Court on 2 June 2015, but he shall not have legal representation. It is his view that the President of the Mechanism should find ways of adjourning the hearing so as to give him an opportunity to have the Arusha Court decide on his continued trial in Kigali, before the matter is decided in Kigali, either way.
18. Mr. Uwinkindi expressed that the High Court in Kigali is intent on proceeding and finalizing his trial without him having legal representation. If this happens it will prejudice his rights to a fair trial and his right to legal representation. Further, he thinks that his application for revocation of the referral should precede any other proceedings in the High Court in Kigali.
19. Turning to the conditions of detention, Mr. Uwinkindi complained that the visits by relatives are timed to last only five minutes. This is not enough time to discuss with family members. Sometimes, the visits last for a much shorter period. Further, the visits are open and do not afford any privacy because the guards are always present, listening in to private family conversations.
20. Another complaint that was communicated to the Monitor Mr. Uwinkindi and Mr. Munyagishari was the limited time given for Sunday worship. They both asserted that the time is limited to a nominal and insignificant period. Sometimes, they are taken out for the service only to arrive and find it finalized.

Meeting with the Prison Director, Mr. James Mugisha on 29 May 2015

21. On 29 May 2015, the Monitor held a meeting with the Director of Prison, Mr. James Mugisha at the Kigali Central Prison.
22. The Monitor invited Mr. Mugisha to respond to the three issues that had been raised by both Mr. Uwinkindi and Mr. Munyagishari. These were:
 - i. Curtailment of worship hours on Sunday
 - ii. The refusal to permit Mr. Gashabana, counsel for Mr. Uwinkindi to meet him.
 - iii. State of cleanliness of the Special Enclosure where the accused are detained.
23. In response to the first issue, Mr. Mugisha responded that Sunday worship is available to everyone. In fact, he said, the accused are allowed to attend church as soon as they request. He informed the Monitor that this particular complaint had not been brought to his attention. Mr. Mugisha indicated to the Monitor that he would address the complaint.
24. On Mr. Gashabana's visits, Mr. Mugisha stated that there were no instructions barring the Lawyer from visiting his client. Indeed Mr. Gashabana comes often to visit other clients, other than Mr. Uwinkindi.
25. On the state of cleanliness of the Special Enclosure, the Director informed the Monitor that the cleaner who had been appointed to clean the premises had been replaced by another and he would consider having the previous cleaner return to his duties.

Meeting with the Lead Prosecutor, Mr. Jean Bosco Mutangana on 29 May 2015

26. Finally, on 29 May 2015, the Monitor met with the Lead Prosecutor, Mr. Jean Bosco Mutangana to discuss the fate of the cases, generally, and Mr. Uwinkindi's application for revocation, specifically.
27. On Mr. Uwinkindi's application for revocation, Mr. Mutangana holds the opinion that the trial of Uwinkindi shall continue until there is an order stopping it. In its decision of 24 April 2015, the Supreme Court found that the manner in which the issue of legal representation for Uwinkindi had been dealt with was in accordance with the law. Whether Mr. Uwinkindi accepts or rejects his new Counsel is a matter that the Prosecutor explained he could not express an opinion on since it is a matter totally within Uwinkindi's sole discretion. The Prosecution would only abide with the directions given by the Court.

28. On the application that was ongoing in Rwanda, Mr. Mutangana hoped the Government of Rwanda would be granted an opportunity to be heard as this was not the sort of application that the National Prosecutor is required to respond to.

B. Monitoring Mission from 1 – 5 June 2015

High Court Hearing of 2 June 2015

29. The hearing was held before the full Chamber, in the presence of the Accused, Mr. Uwinkindi and Mr. Bonaventure Ruberwa who appeared for the Prosecution. Defence Counsel Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were also present.
30. At the invitation of the Court, Mr. Uwinkindi submitted that as he had indicated during previous hearings the two lawyers were not his Counsel. He had not requested for their assistance and he did not recognize them. Counsel should not be involved in his case unless he expressly accepts them.
31. Mr. Uwinkindi requested the Court for an adjournment on the basis that the President of the MICT had issued a decision on 13 May 2015, appointing a bench to examine the pending concerns around his fair trial rights. Mr. Uwinkindi asserted that the proceedings before the MICT had a bearing on the ongoing hearings at the High Court and therefore an adjournment was necessary until the case before the MICT was dealt with.
32. The Court asked Mr. Uwinkindi to indicate if he had lawyers of his choice as he had indicated Counsel in Court were not his lawyers. Mr. Uwinkindi submitted that before the Court had ensured his former Counsel were fired despite his trial progressing well.
33. The Court invited Mr. Uwinkindi to explain why he had a problem with Counsel Joseph and Isacaar, what had they done to prevent the smooth flow of the case. In his response, Mr. Uwinkindi expressed that there was no record of him choosing the Counsel present in Court and that fact had prevented his case from moving smoothly. He asserted that a lawyer can only assist an accused after having a discussion with the accused but they cannot appear in Court without discussion with the accused. He indicated that the Counsel in Court had not consulted him they had just showed up in Court and sat beside him.
34. At the invitation of the Court Counsel Ngabonziza submitted that he and his co-Counsel they were in Court because of the decision issued by the Supreme Court on 24 April 2015, whereby paragraph 67 indicated that the decision of the High Court on 6 February 2015, had to be upheld and the Supreme Court confirmed that the new Counsel in Mr. Uwinkindi's case had been legally assigned to represent the Accused.

The Supreme Court decision implied Counsel had to represent Mr. Uwinkindi if he had no lawyers.

35. Mr. Ngabonziza also indicated that he was in possession of a letter from the Rwanda Bar Association dated 29 May 2015, reminding them that their appointment as Counsel for Mr. Uwinkindi still stood and they had to keep assisting Mr. Uwinkindi and ensure they were present during all Court sessions. Their presence in Court was therefore supported by the Court decisions and the RBA letter.
36. Mr. Ngabonziza requested for an adjournment before trial could proceed. He indicated that the adjournment would allow Defence Counsel to prepare the defence and access the case file. He noted as Counsel they could not go forward unless given time to prepare. He asserted that Counsel would want the trial to begin *de novo* because they had not been involved in the case from the beginning. He added that by this request Counsel was not trying to delay trial, after they obtain the case file and have the opportunity to assess the volume then they can give an indication of time needed to prepare before trial can commence.
37. The Court indicated that a request of indefinite time cannot be granted and asked Defence Counsel to be more specific on the timeframe they needed to prepare the defence before the case could proceed.
38. Mr. Ngabonziza in response indicated he could not specify the time needed until Counsel had seen the volume of the case file. He indicated that since the Court was aware of the volume of the case file, it could set a timeframe to allow them prepare but if Counsel found on the time given was not sufficient, they could ask for more time in the future.
39. At the invite of the Court Mr. Hishamunda, co- Defense Counsel emphasized that they were in Court because they were abiding by the Supreme Court decision and the RBA letter on the representation of the Accused. Responding to Mr. Uwinkindi's assertions that Counsel were preventing his case from proceeding smoothly, he indicated the Accused should understand their obligations and indicated Counsel would find time to sit with Mr. Uwinkindi once they were in possession of the case file.
40. The Court invited the Prosecution to submit on the issues raised. On the request by Mr. Uwinkindi for an adjournment on the basis of an MICT decision, the Prosecution indicated they had not received the decision referred to by Mr. Uwinkindi and requested the Court to avail it to peruse through before they could substantively respond the request for an adjournment.
41. The Court indicated it did not have the decision and invited Mr. Uwinkindi share a copy of the decision which he did share with the Court and the Prosecution.

42. After reading the decision the Prosecution submitted that the decision did not have any bearing on the subject matter of the trial. Noting that the case before the Mechanism was only addressing a request for revocation of Mr. Uwinkindi's transfer and had not decided that the trial in Rwanda should be suspended. The Prosecution added that just because the Mechanism had designated a bench to hear the request for revocation, it did not mean the request would be granted. Previous revocation requests had not necessitated a suspension of the ongoing trial. The Prosecution also indicated it was not clear from the decision if Mr. Uwinkindi would be needed in the hearings at MICT and it was likely the proceedings would be through written submissions.
43. The Prosecution submitted that the main issue to be determined by the Court was the issue of Counsel in Court not being Mr. Uwinkindi's Counsel of choice. The Prosecution asserted that an Indigent accused does not have a right to choose lawyers to defend him. Decisions by High Court and the Supreme Court in Mr. Uwinkindi's case on this issue indicate that an indigent works with the lawyers appointed for him. Mr. Uwinkindi therefore had no legal foundation to refuse the appointed Counsel. The Prosecution urged the Court to determine; whether an indigent person can refuse lawyers appointed by the Bar and if Mr. Uwinkindi does not accept the lawyers, whether he has to be forced to accept them, so as to ensure the trial is fair. The Prosecutor asserted that the Court should decide that the Counsel represent the accused whether he accepts them or not.
44. The Prosecution then addressed the request by Counsel for an adjournment to enable them review the case file, noting that the request was reasonable and the Prosecution was willing to accept the request once a reasonable timeframe was indicated for the review of the case file. The Prosecution added that they would not accept the request that the case begins *de novo*, submitting that Mr. Uwinkindi was assisted up to a certain part of the trial. Further they emphasized, they were willing to accept the case begin from the part where the case proceeded and decisions were made while Mr. Uwinkindi was not assisted.
45. Mr. Uwinkindi informed the Court that he had not received the decision issued by the Supreme Court. He had written a letter requesting for it but had not received the decision and he did not know content of the decision. Mr. Uwinkindi emphasized that the decision cannot take away his right to tell the Court he cannot be forced to accept lawyers that he has not chosen. In a serious trial, one cannot be forced to accept Counsel he rejects. Mr. Uwinkindi asserted in his opinion he had no Defence Counsel and the Prosecution was forcefully directing the Counsel in Court to assist him and therefore Counsel were likely to become puppets of the Prosecution.
46. Mr. Uwinkindi informed the Court that he had not received the letter from the RBA sent to Counsel on 29 May 2015, directing them to continue representing him. He

added it was unfortunate Counsel was being dictated on what to do by other parties other than the person they were supposed to represent.

47. Responding to the submission by the Prosecution that he should be forced to accept appointed Counsel, Mr. Uwinkindi asserted that it meant indigent people cannot have a fair trial, only rich people can and that reality was regrettable. Just because he was an indigent accused he had been experiencing challenges in his trial. Mr. Uwinkindi requested the Court to allow him to choose Counsel he can trust to defend him and who would not be compromised.
48. The Court asked Mr. Uwinkindi to indicate if he had other lawyers of his choice. In his response Mr. Uwinkindi submitted that he had lawyers who were stopped from representing him without good reason. He had subsequently written to the Bar president more than twice asking for a list of Counsel to choose other counsel from and he had not received a response.
49. The Court indicated it wanted know if Mr. Uwinkindi had Defence Counsel he could pay. Mr. Uwinkindi submitted that he was not referring to Counsel that he could pay. Counsel appointed by the RBA to represent him had not resigned and no written evidence existed to the contrary. If the Court did not like them then it ought to give him an opportunity to select lawyers he can trust.
50. At the invitation of the Court, Defence Counsel indicated that the rejection by the Prosecution of their request that the case be restarted was not a valid submission. Counsel was new to the case and did not know what was done when Mr. Uwinkindi was represented. If the previous proceedings touched on the merits of the case, then the request to the Court to allow them to revisit those proceedings that relate to the merits of the case was weighty.
51. The Court adjourned the hearing to deliberate and indicated the decision would be issued on 5 June 2015. The date was subsequently changed to 9 June 2015 and confirmed by the Monitor through the registry.

Meeting with Mr. Uwinkindi 3 June 2015

52. The Monitor met Mr. Uwinkindi at the Kigali Central Prison. The meeting was conducted with the assistance of an interpreter.
53. Mr. Uwinkindi informed the monitor that he had not received the translated monitoring report for the month of March and requested that a follow up be made to ensure the report in Kinyarwanda was availed to him soon.

54. In relation to the trial, Mr. Uwinkindi expressed concern about being forced to accept Defence Counsel. He indicated that the letters from the RBA produced in Court during the hearing on 2 June 2015, by Defence Counsel surprised him because he had not received the communication and he saw it for the first time while in Court. Mr. Uwinkindi questioned the procedure of writing to his 'supposed' Defence Counsel without providing him with a copy.
55. Mr. Uwinkindi complained that while in Court during the 2 June 2015 hearing, he became aware of a letter by Defence Counsel addressed to the High Court making two requests; for the case to be adjourned so that Counsel could familiarize themselves with the case file and that the case begins *de novo*. He expressed displeasure in Defence Counsel making filings in his case without consulting or informing him. Mr. Uwinkindi opined that to him the Defence Counsel were just traitors and prosecution puppets.
56. Mr. Uwinkindi reiterated that he had not written to the RBA requesting for the two lawyers to assist him and Counsel Joseph and Isaacar had no authority to make requests to any institution before consulting him.
57. Further, Mr. Uwinkindi informed the Monitor that his appeal to the Supreme Court earlier in the year, was because of being treated unfairly in the High Court proceedings. Mr. Uwinkindi informed the monitor that he had written letters on 8 May 2015 and 26 May 2015, to the Supreme Court requesting for Court transcripts for the hearing and the decision by the Supreme Court on his appeal but was yet to receive them. He further informed that the Prison legal officer had gone to the registry twice to follow up on the request and was told that Mr. Uwinkindi had to pay for the documents he was requesting for. Mr. Uwinkindi expressed disappointment and asserted that he has never had to pay for the Court documents received in the past.
58. Mr. Uwinkindi averred that Counsel Joseph and Isaacar had been issued with the decision but not himself. He expressed disappointment because of the decision of the Court to communicate to individuals who were not his lawyers.
59. In Mr. Uwinkindi's opinion, any person who was not wealthy in Rwanda cannot have a fair trial because if an Accused has no means he cannot choose his Defence Counsel. Mr. Uwinkindi informed the Monitor that the Government had seized all his properties that could give him income, forcing him to be indigent and subsequently, his rights had been taken away on the basis of him being indigent.
60. Mr. Uwinkindi informed the Monitor that on 2 June 2015, after the hearing, Counsel Joseph Ngabonziza was interviewed by the Voice of America radio station, in the broadcast, Counsel was asked to explain how he planned to defend an accused person who did not accept his assistance. Counsel's response was whether Mr. Uwinkindi accepted their representation or not, they would still work as his defence in the trial and

if Mr. Uwinkindi did not avail his case file to them they would find other avenues of accessing it. Mr. Uwinkindi questioned where else Defence Counsel would access his case file, if not from their client. Adding that unless it was from the Prosecution or the Court, again showing the influence the Court and Prosecution had on his case making Defence Counsel susceptible to influence and subject to submitting the whims of those who appointed them.

61. Mr. Uwinkindi stated that there was a scheme led by the Prosecutor, the President of the Bar, the Director of the Kigali Central Prison and the Ministry of Justice to ensure his former Counsel do not access him and deny him justice.
62. Mr. Uwinkindi requested the Monitor to let the President of the Mechanism know that he had written a letter to the MICT on 28 May 2015, requesting for an intervention on his case in Rwanda to have it suspended.
63. Mr. Uwinkindi opined that the assertions by the High Court that it had not seen the decision from the Mechanism was an excuse aimed at ensuring the trial proceeds with the newly appointed Defence Counsel, making it difficult for him to prepare for the hearing before the MICT. He added that the situation also makes it difficult for the Counsel he had proposed to represent him at MICT hearings to access him.
64. Mr. Uwinkindi expressed confidence that the President of the Mechanism is competent to suspend his trial in Rwanda and if this was not done he feared he would not be able to meet the deadlines required to file the defence briefs in the MICT proceedings.
65. Mr. Uwinkindi requested the President of the Mechanism to ensure his case file not given to individuals he does not recognize.
66. Further, Mr. Uwinkindi informed the Monitor that he could not access Mr. Gashabana to prepare for the MICT hearing. Mr. Uwinkindi had sent the documents received from the Mechanism to Mr. Gashabana but did not know if he had received them.
67. Mr. Uwinkindi also informed the Monitor that he had proposed Mr. Gashabana and other Counsel to represent him in the MICT proceedings but he was informed that he could only propose one Counsel. He expressed that his desire was that Natacha one of the Counsel he had proposed accepted as co-counsel to Mr. Gashabana, he had communicated this request in writing but had not received feedback.

High Court Hearing of 9 June 2015.

68. The hearing was held before the full Chamber, in the presence of the Accused. Counsel Joseph Ngabonziza and Isaacar Hishamunda were present for the Defence. The

Prosecution was represented by Mr. Bonaventure Ruberwa and Mr. Jean Bosco Mutangana.

69. The Monitor followed most of the proceedings without the assistance of the interpreter as the interpreter arrived when the session had progressed significantly. After the Court adjourned, the interpreter assisted the monitor to translate the abridged version of the written decision that was available in the Court file.

70. The Court delivered its decision where it found that the request to adjourn the hearings lacked merit. Mr. Joseph Ngabonziza and Isaacar Hishamunda would continue representing the Accused. Defence Counsel were given three months to prepare for trial and the hearing will resume on 10 September 2015.

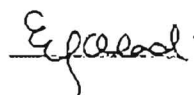
71. Mr. Uwinkindi requested the Court to ensure that the record reflects that he intends to appeal the decision and that his file should not be handed over to Counsel he is not comfortable with.

III. CONCLUSION

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

Dated this 7th day of August 2015

Respectfully submitted,



Ken Nyaundi

Monitoring for the *Uwinkindi* case
Nairobi, Kenya



Stella Ndirangu

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