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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 21 August 2015

Original: English

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**Before:** Judge Theodor Meron, President

**Registrar:** Mr. John Hocking

**PROSECUTOR**

v.

**JEAN UWINKINDI**

**PUBLIC**

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**MONITORING REPORT FOR JULY 2015**

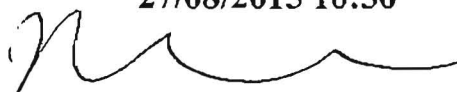
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**Monitor:**

Elsy C. Sainna

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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), I 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 Ms. Elsy C. Sainna, Monitor appointed by the Mechanism ("Monitor") with various stakeholders during the month of July 2015 ("the Reporting Period").
3. During the Reporting Period, the Monitor undertook two missions to Rwanda: 8<sup>th</sup> to 10<sup>th</sup> July and 15<sup>th</sup> -17<sup>th</sup> July 2015 respectively to monitor the Jean Uwinkindi case.
4. The Report contains information on the meetings and discussions held between Elsy C. Sainna ("Monitor") and Lead Prosecutor, Mr. Jean Bosco Mutangana, the Prison Director James Mugisha, Mrs. Isabelle Kalihangabo, Permanent Secretary Ministry of Justice, the President of the Rwanda Bar Association Mr. Jean Vianney and Mr. Jean Uwinkindi.

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

## II. DETAILED REPORT

### A. Monitoring Mission from 8<sup>th</sup> – 10<sup>th</sup> July 2015

#### 1. Meeting with the Lead Prosecutor, Mr. Jean Bosco Mutangana on 8<sup>th</sup> July 2015

5. The Monitor met with Jean Bosco Mutangana at his office. Mr. Mutangana expressed the view that the Prosecution was keen to proceed with the trial since Mr. Uwinkindi's newly assigned Counsel had been granted three (3) months to prepare and return to court for a further hearing scheduled for 10<sup>th</sup> September 2015.

6. Noting that the case had advanced in the trial process, the Prosecution wondered why the Accused would assert and ground his claim that having no representation had rendered him unable to challenge the evidence adduced by the Prosecution, yet at the same time, decline legal representation.
7. Mr. Mutangana expressed the view that since the Supreme Court had made decision and provided the way forward, cooperation from Defense and Accused was necessary for justice to be achieved.
8. Mr. Mutangana further observed that the Prosecution preferred that the trial should proceed as it has public policy implications on the national processes and that the government of Rwanda had already invested time and resource in the case.

## **2. Meeting with Mr. Jean Uwinkindi on 9<sup>th</sup> July 2015**

9. The monitor met Mr. Uwinkindi in the presence of an Interpreter.
10. Mr. Uwinkindi stated that he remained deeply concerned at the fact that he had been unable to speak with or access his Defense Counsel Mr. Gashabana. He indicated that he was aware Counsel Gashabana had tried to contact him on several occasions but had not been granted access by the Prison Director. As such, Counsel Gashabana had written to the Bar Association and had obtained authorization from the Supreme Court to visit the Accused in prison but he was still unable to meet the Accused. Thus, in light of the revocation request, where parties were required to file within 30 days, Mr. Uwinkindi was concerned that he would be inadequately prepared for the hearing thereby infringing on his fair trial rights.
11. Mr. Uwinkindi further observed that he did not agree with the Courts decision to assign new lawyers to his case. In his view, the contractual issue was merely a smoke screen. He maintained that as an indigent Accused, he had a right to choose counsel contrary to the Prosecution and the Bar association arguments that an indigent did not have a right to choose counsel.

12. Mr. Uwinkindi stated that, of the list of lawyers provided by the Bar association, majority did not have the requisite experience to represent him at this stage of the trial process.
13. With regard to the detention conditions, Mr. Uwinkindi stated that he was not content with the fact that he was only allowed to talk to members of his family but not his legal representatives. As regards the state of the Special Enclosures, Mr. Uwinkindi regretted that this had not improved; the facilities were still dirty and messy.

## **B. Monitoring Mission from 15<sup>th</sup> – 17<sup>th</sup> July**

### **1. Meeting with Mrs. Isabelle Kalihangabo Permanent Secretary Ministry of Justice – 16<sup>th</sup> July 2015**

14. The monitor met Mrs. Kalihangabo at 10.00am in her office in the presence of an Interpreter
15. Mrs. Kalihangabo confirmed that the Ministry had recently signed a Memorandum of Understanding (MOU) with the Rwanda Bar Association in which the Bar association's Terms of Reference included the mandate to appoint legal counsel for indigent accused persons.
16. This was a departure from previous practice where the Ministry of Justice had directly contracted legal counsel. The law and Ministry policy required that:
  - i. an indigent persons demonstrated inability to pay or engage counsel
  - ii. subsequently filled a legal aid assistance form
17. Mrs. Kalihangabo further confirmed that the Ministry had set aside 15 Million RWF to cater for the transfer cases of which the amount was exclusive of tax and only covered in country witnesses.

18. Mrs. Kalihangabo expressed the view that in Mr. Uwinkindi case, counsel needed to abide by court decision which had provided the requisite guidelines on the question of legal representation.
19. Mrs. Kalihangabo further confirmed that the allocated legal fees would be paid directed to Bar association now tasked with contract related responsibilities.

## **2. Meeting with the President of the Rwanda Bar Association Jean Vianney on 16<sup>th</sup> July 2015**

20. At 5pm, the Monitor met with the recently appointed Rwanda Bar association president at his office in the presence of an Interpreter.
21. Mr. Vianney explained that since he took over the presidency in July 2015, the relationship between the bar association and the Ministry of Justice remains cordial and was of the view that rejection by both Accused persons of their newly assigned Counsel was highly regrettable.
22. Mr. Vianney stated that the Bar association is mandated to examine requests from the Ministry of Justice in relation to representation of indigent accused persons. Furthermore, the Rwandan Constitution provides that every person has a right to be assisted by Counsel. The Bar association considered that both Mr. Uwinkindi and Mr. Munyagishari were indigent accused persons. However, if they opted to choose own counsel, they needed to demonstrate that they had the financial means to pay for lawyers of their choice, and this would be conferred on them as a matter of right.
23. Mr. Vianney clarified that according to the current law that regulated legal aid, the remuneration order provided for a minimum of 500,000 and maximum of 15 RWF. Additionally, the regulations provided that lawyers could discuss with client on mode of payments. Thus, the Bar association was of the view that the accused persons seem to be under the false impression that the lawyers should be paid more in excess of what is already provided for by law.

24. Mr. Vianney explained that the new counsel have been assigned to both cases on pro bono basis and as provided for in the Memorandum of Understanding between the Ministry of Justice and the Bar association. The Ministry of Justice would pay a maximum of 15million RWF which would cover the entire trial process from hearing to appeal.
25. Mr. Vianney Stated that the Bar association, as a matter of principle, assigned Defence lawyers to the accused persons on the basis of their indigent status and questioned why the accused persons would raise the issue of appointed counsel's competence by terming them inexperienced. The Bar associations reading of the situation was that, the accused persons are simply delaying the trial process.
26. The role and mandate of the Bar association remained clear: to assist in the administration of justice and remain true to principle that an accused person must be represented. Thus the position of the Bar association was that both matters should proceed irrespective of whether the lawyers in the cases of the accused change.
27. Mr. Vianney confirmed that, the contracts between the newly assigned counsels had been concluded but the problem was the accused persons had refused to refuse acknowledge the lawyers.

### **3. Meeting with the Prison Director, Mr. James Mugisha on 16<sup>th</sup> July 2015**

28. At the meeting with Mr. Mugisha, the Monitor raised Mr. Uwinkindi's concern regarding denied access or contact with Counsel Gashabana
29. Mr. Mugisha, stated that the Accused had refused to accept and recognized the new Counsel yet, the prison procedure required that only assigned lawyers were permitted access to meet accused persons. He repeated that as per procedure and upon notification from the prosecution and judiciary, the prison was obligated to enter names in the register and facilitate access to the accused persons. Because former Defence Counsels were not representation Mr. Uwinkindi and that the prison had not received

notification to the contrary, they could not facilitate counsel Gashabana's request for a meeting with the Accused.

30. However, since the 9<sup>th</sup> July, they had received formal notification and Mr. Uwinkindi had not only had been contacted by counsel Gashabana but that Counsel had paid the Accused a visit.
31. In response to the concerns raised regarding detention facility dirty and messy condition, Mr. Mugisha stated that the accused persons had abused the cleaning privileges as they would engage in clandestine communications. Furthermore, those assigned to clean the living quarters would demand payment thus this made it unsustainable for the prison services. However, he indicated that he would avail instead additional cleaning materials and that if the accused demonstrated better conduct, then the cleaning privileges would be reinstated.

#### **4. Meeting with Mr. Jean Uwinkindi on 16<sup>th</sup> July 2015**

32. The monitor met with Mr. Uwinkindi in the presence of the interpreter at the prison. He reported that he had finally had a chance to meet with his defense Counsel Gashabana.
33. Although he indicated that he did not have a detailed discussion with Defense Counsel, he was extremely relieved to have made contact and was anticipating for a more detailed discussion in the coming week.
34. Mr. Uwinkindi indicated that his only concern was his revocation application: that time had been ticking and he had not had adequate time to consult with his Defense counsel, an issue likely to affect his fair trial rights.
35. Mr. Uwinkindi questioned why newly assigned lawyers would proceed and purport to represent without his formal consent, yet he remained adamant that he would not accept counsel Hishamanda and Ngabonyiza as his Defense Counsel despite their request for time to prepare for his upcoming hearing.



36. The Accused was further concerned that while in court, the presiding judge did not grant him opportunity to respond or make oral submission in court. Instead, whenever he made attempts to interject or make an oral submission, he was ignored. Hence, he did not understand why the court decided to assign him new lawyers yet, there is a stands an unresolved matter regarding legal fees between his former Counsel, the Ministry of Justice, the Bar association.

37. With regard to detention conditions, Mr. Uwinkindi was concerned that the special Enclosure facilities were still dirty and messy. They were yet to be provided with additional cleaning equipment despite making several requests. At the same time, he raised the issue that he was still not allowed to contact his lawyers or members of his family by telephone. Thus he could only receive but not make telephone calls.

### III. CONCLUSION

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

Dated this 21<sup>st</sup> day of August 2015

Respectfully submitted,

**//Elsy C. Sainna//**

Elsy C. Sainna

Monitoring for the *Uwinkindi* case

Nairobi, Kenya