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**UNITED  
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Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 30 April 2015

Original: English

**Before: Judge Theodor Meron, President**

**Registrar: Mr. John Hocking**

**PROSECUTOR**

**v.**

**JEAN UWINKINDI**

**PUBLIC**

**MONITORING REPORT FOR MARCH 2015**

**Monitor:**  
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), 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"), the Supreme Court of Rwanda ("Court") and of interactions of Ms. Stella Ndirangu, a Monitor appointed by the Mechanism ("Monitor"), with various stakeholders during the month of March ("the Reporting Period"). This is the first report by the newly appointed Monitors, appointed by the Mechanism in furtherance of the MOU between MICT and ICJ Kenya.<sup>1</sup>
3. During the reporting period, the Monitor undertook four missions to Rwanda to Monitor the proceedings in the Jean Uwinkindi case. The missions were held on 2 to 6 March 2015, 8 to 12 March 2015, 15 to 19 March 2015 and 30 March to 2 April 2015. In addition to the objective of monitoring the case, the 15 to 19 March mission doubled up as a Monitoring mission for the Monitor as well as a formal introduction mission for all the new Monitors with key interlocutors in Kigali.<sup>2</sup>
4. Five Court sessions were held during the Reporting Period; the High Court held hearings on 3 to 5 March 2015, on 10 to 12 March 2015, on 16 March 2015 and on 31 March 2015. The Supreme Court held a hearing on 9 March 2015.
5. The hearings at the High Court were held before the full Chamber, in the presence of the Accused, Mr. Uwinkindi. The newly appointed Counsel Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda ("New Counsel") were present during the hearings but followed the proceedings without making interventions. The Prosecution was represented during the hearings by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa ("Prosecution").
6. The hearing at the Supreme Court was held before the full Chamber, comprising of Judge's Jean Baptiste Mutashya, Justin Gakwaya and Alphonse Hitiyaremye in the presence of the Accused who was represented by Mr. Gatera Gashabana and Mr. Jean-Baptiste Niyibizi (also referred to as "former Counsel"). The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa

<sup>1</sup> See *In the Matters of Jean Uwinkindi and Bernard Munyagishari*, Case Nos. MICT-12-25 and MICT-12-20, Order Appointing Monitors, 18 February 2015.

<sup>2</sup> The five monitors appointed on 18 February 2015, accompanied by an MICT staff member, participated in a joint introduction mission to Rwanda, where they were formally introduced to key stakeholders involved in the Jean Uwinkindi and Bernard Munyagishari cases.

- (“Prosecution”). The Monitor followed all the hearings with the assistance of an interpreter.
7. The High Court heard the witness testimonies for the Prosecution and Defence. The Court heard from 14 Prosecution witnesses and 9 Defence witnesses. Mr. Uwinkindi did not examine any of the witnesses who testified.
  8. At the 3 March 2015 hearing, Mr. Uwinkindi informed the Court that he was not represented and that the hearing should not continue as it would amount to him being tried without a lawyer. He urged the Court to adjourn the trial indicating he had received information that the Supreme Court would hear his appeal challenging the termination of his former Counsel the following week. The Court ruled that the proceedings were going to proceed as scheduled with the testimony of Prosecution witnesses.
  9. On 4 March 2015, before the hearing commenced, Mr Uwinkindi informed the Court that the Supreme Court had scheduled his appeal for 9 March 2015. He therefore requested the Court to adjourn the hearing until he was heard at the Supreme Court and to also allow him to prepare for his hearing. After hearing submissions from the parties on Mr. Uwinkindi’s request the Court ruled that it would proceed as scheduled with the hearing of the witness testimony on that day and the following day, 5 March 2015.
  10. On 9 March 2015, Mr. Uwinkindi appeared before the Supreme Court.<sup>3</sup> The hearing did not proceed as Counsel for Mr. Uwinkindi was informed that they had to pay the fine imposed by the High Court<sup>4</sup> before they could represent Mr. Uwinkindi before the Supreme Court. The hearing was adjourned until 6 April 2015, to give time to Counsel to comply with the High Court order.
  11. On 10 March 2015, the High Court finished hearing testimony from the Prosecution witnesses and indicated that it would hear testimony from Defence witnesses the following day. Mr. Uwinkindi objected to his witnesses being summoned, while he was not assisted by Counsel. The Court ruled that the hearing would proceed as scheduled. On 11 March 2015, at the invitation of the Court, Mr. Uwinkindi declined to engage in the proceedings. He protested saying he had not summoned his witnesses.
  12. The High Court completed hearing all the witnesses’ testimony on 12 March 2015 and scheduled the next hearing for 16 March 2015, indicating it expected to hear from the Prosecution on their final submissions summarizing the evidence adduced.<sup>5</sup> On 16 March 2015, at the request of the Prosecution the Court granted an adjournment of the

<sup>3</sup> Mr. Uwinkindi submitted an appeal to the Supreme Court of Rwanda on 20 February 2015, on the decision of the High Court that new Counsel be appointed for him.

<sup>4</sup> On 15 January 2015, the High Court had ordered Mr. Uwinkindi’s Counsel to each pay a fine of 500,000 Rwandan Francs to the Court. For additional information See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for January 2015 (“January 2015 Report”), 26 February 2015, para. 28.

<sup>5</sup> Mr. Uwinkindi indicated at the 16 March hearing, that he did not intend to engage in the proceedings and would therefore not provide any final submissions.

hearing to allow the prosecution to complete its final submission. The next hearing was scheduled for 31 March 2015, when the matter was further adjourned by the Court until 2 June 2015.

13. During the Reporting period the Monitor also held meetings with Mr. Joseph Ngabonziza one of the newly appointed Counsel for Mr. Uwinkindi, and Mr. James Mughisha the Prison Director. The Monitor held three meetings with Mr. Uwinkindi at the Kigali Central Prison with the assistance of an interpreter.
14. A detailed report on all activities during the Reporting Period is provided below.

## II. DETAILED REPORT

### A. *Monitoring Mission from 2 to 6 March 2015.*

#### High Court Hearing of 3 March 2015

15. Mr. Jean Uwinkindi was present. The newly appointed Counsel for the accused were also present. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventura Ruberwa. The new Counsel, Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were also present.
16. The Court invited the parties to confirm they were present. Mr. Uwinkindi indicated he was present but he did not have legal representation. The Court noting that, it could see Counsel seated next to Mr. Uwinkindi asked them to introduce themselves. The new Counsel introduced themselves and informed the Court, that they were appointed by the Bar Association to represent Mr. Uwinkindi but he had refused to accept them.
17. The Court informed the parties that it had decided the hearing would proceed as planned, even if Mr. Uwinkindi was not represented. Mr. Uwinkindi then made an intervention, indicating he had already informed the Court that he was not represented and therefore he should not be tried without a lawyer. He told the Court that he had requested the President of the Rwanda Bar Association to provide him with a list of qualified Counsel, from which he could choose his preferred Counsel but he had not received a response.<sup>6</sup> He also noted that an appeal was pending before the Supreme Court on the issue of representation by his former Counsel. He reiterated that he could not accept the trial to proceed. He indicated that if the Court decided to proceed with hearing witnesses testimonies, then the Court would have to call the witnesses again once he had Counsel to cross examine the witnesses.
18. The Court asked Mr. Uwinkindi if he thought he was the one who managed the trial. In his response Mr. Uwinkindi asked the Court to ensure that it worked within the confines of the law.

<sup>6</sup> See *The Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25, Public Monitoring Report for February 2015 ("February 2015 Report"), 17 March 2015, para. 8-9.

19. The Court stated that an appeal does not suspend the hearing at the High Court. On the issue of choosing lawyers from the list of counsel, the Court reminded Mr. Uwinkindi that it had already pronounced itself on the issue and said that, so long as an accused is indigent, the accused does not have a right to choose and should accept counsel appointed by the Bar.<sup>7</sup> If the accused does not accept appointed counsel, they should represent themselves.
20. Mr. Uwinkindi observed that the position taken by the Court was contrary to the law regulating cases transferred to Rwanda.<sup>8</sup> He explained that he did not understand why other accused persons were allowed to choose their lawyers from a list provided by the Bar Association but he was denied the same right.<sup>9</sup> He asked the Registrar to ensure the record reflected that if the witnesses testified during that hearing, they would have to come back once he had Counsel assisting him.
21. The Court then asked the Registrar to call the first witness. But before the witness took the stand, Mr. Uwinkindi requested to postpone the hearing until the following week. In support of the request he stated that the Supreme Court had advised him that a decision on his pending appeal on representation by his former counsel, would be issued the following Monday, on 9 March 2015.
22. The Court reiterated its decision that an appeal during trial did not stay proceedings at the High Court, which is the procedural law applied at the Court.<sup>10</sup> Mr. Uwinkindi then asked to leave the Court. The Court informed him that he had a right to leave but that would not adjourn the hearing. Mr. Uwinkindi responded that he could not allow the Court to try him in absentia and he sat down.
23. The Court took a fifteen-minute break. When the hearing resumed the Court directed that the oath be administered before the first Prosecution witness “**BZJ**” could testify. The Prosecution interjected and requested to verify the identity of the protected witness in private. The Court informed the Prosecution that the Registrar had already verified the identity of the witness. Despite this assurance, the Prosecution insisted on the verification being done in their presence.
24. All observers, including the Monitor left the courtroom. Although the new Counsel stayed behind, but Mr. Uwinkindi requested that they leave as they were not representing any party in the case. The Court asked the Counsel to also leave the courtroom. Once the verification was completed, the hearing continued.
25. Before the witness could begin their testimony, the Prosecution revisited the issue of the presence of the new Counsel appointed by the Rwanda Bar Association. The

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<sup>7</sup> The High Court decision of 6 February 2015. For further details on the High Court decision of 6 February 2015, see February 2015 Monitoring Report, para. 42 - 43.

<sup>8</sup> In reference to Law N°47/2013 of 16 June 2013 relating to the Transfer of Cases to the Republic of Rwanda.

<sup>9</sup> See February 2015 Monitoring Report, para. 66.

<sup>10</sup> See January 2015 Monitoring Report, para. 21 - 24.

Prosecutor thanked them for coming to Court even though Mr. Uwinkindi had rejected their assistance. Noting that the Court had asked Counsel to leave the courtroom during the verification of the witness the Prosecution requested that they stay for the remaining of the proceedings in the interest of justice and because the appointment by the Rwanda Bar Association<sup>11</sup> was still effective.

26. The Court asked the Prosecution to indicate the law which would allow new Counsel to remain in Court during the proceedings. The Prosecution invoked Article 18 and 19 of the Rwandan Constitution that requires all the necessary guarantees for defence be made available to an accused during trial.<sup>12</sup> The Prosecution maintained that Mr. Uwinkindi had not elected to represent himself, under the Constitution he still had a right to be assigned a lawyer. The Bar Association had assigned the lawyers who were present in Court, unless the Court decided otherwise.
27. The Court invited the new Counsel to respond. In agreeing with the Prosecution, they indicated that as they had been appointed by the Bar Association following documented consultations with the Ministry of Justice, they would have to get further instructions from the appointing institution on whether to attend the hearings under the circumstances. The new Counsel therefore requested to remain in Court and follow proceedings without making any interventions. When invited by the Court to submit on the issue, Mr. Uwinkindi declined to respond indicating that he had already informed the Court of his intention not to participate in the hearing. Mr. Uwinkindi asked the Registrar to ensure the record reflected that the hearing would have to be repeated, once his counsel of choice was available.
28. In responding to the issues raised, the Court indicated it had no authority to remove Counsel from the hearing. If they had time and wished to follow the proceedings they could sit in but the record would reflect that Mr. Uwinkindi was not represented. The Court noted its obligation was to ensure lawyers were appointed in the event an accused was not represented; however, in the event an accused did not want the privilege, it was also their right not to be represented.
29. The hearing continued and the Court heard from one Prosecution witness. The oath was administered after which the witness was asked to give his testimony about Mr. Uwinkindi's conduct during the genocide. After the witness had testified the Prosecution examined his testimony further by asking him questions. The Court also asked the witness questions to clarify his testimony. Mr. Uwinkindi when invited by

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<sup>11</sup> The new Counsel were formally appointed by the President of the Rwanda Bar Association on 29 January 2015.

<sup>12</sup> Article 18 of the Constitution of the Republic of Rwanda of 2003, provides...“No one shall be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute a crime under the law in force at the time it was committed. 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 all other decision making organs.

Article 19 provides: “Every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defence have been made available. Nobody shall be denied the right to appear before a judge competent by law to hear his or her case.”

the Court to ask questions indicated that he had many questions to ask the witness but he could only do so when he was assisted by Counsel.

30. Once the Court had finished hearing from the witness, the hearing was adjourned to the following day at 8.30 a.m.

Meeting with Counsel Joseph Ngabonziza on 3 March 2015

31. The Monitor met with Mr. Joseph Ngabonziza, Lead Counsel appointed to represent Mr. Uwinkindi. The purpose of the meeting was to gather information on the progress of the appointment process and the transfer of the case file by the former Counsel for Mr. Uwinkindi. The meeting was held with the assistance of an interpreter.
32. Mr. Ngabonziza informed the Monitor that he and his co-Counsel were still negotiating their contract with the Ministry of Justice and had not signed. They had received a draft contract on which they had proposed changes and they were waiting for the Ministry to respond. He indicated they were hopeful the issue would be settled in the coming week.
33. Mr. Ngabonziza indicated that the transfer of the file from the former Counsel to the new Counsel had not taken place. He informed the Monitor that together with Mr. Uwinkindi's former Counsel, he and his co-Counsel had sought a meeting with Mr. Uwinkindi but Mr. Uwinkindi refused to accept them as his new Counsel indicating he wanted to continue being represented by Mr. Gashabana and Mr. Niyibizi.
34. Mr. Ngabonziza indicated that Mr. Gashabana was obliged to hand over the case file to new Counsel, but the new Counsel had not actively sought the transfer of the file because Mr. Uwinkindi had refused to accept their representation, creating uncertainty on whether they would eventually act as his Counsel. He indicated that they hesitated to push for the transfer of the file given the possibility that they might never represent Mr. Uwinkindi. Mr. Ngabonziza confirmed that the new Counsel would only pursue the transfer of the file once Mr. Uwinkindi accepted their representation.
35. Counsel further informed the Monitor that in the event Mr. Uwinkindi accepted their representation, they planned to ask the Court to give them time to peruse the file and prepare the defence. The plan was also to request the Court to begin the trial afresh, for the witnesses to be interrogated again.
36. Mr. Ngabonziza doubted the President of the Bar Association would appoint other Counsel to represent Mr. Uwinkindi, whether or not the impasse continued. He was of the view that Mr. Uwinkindi should reconsider his stance and accept the new Counsel as they were prepared to make a good defence on his behalf. Mr. Uwinkindi's objections would not stop the Court from proceeding as long as it was not violating any law, as had been observed in the hearing that took place that day. He indicated Mr. Uwinkindi had three options; to accept legal assistance available, to represent himself

or to quit the trial and it would still continue in his absence. Even if Mr. Uwinkindi chose to remain silent, the Court would still continue with the hearings, because if the contrary were to happen the accused would hold the Court hostage.

37. Mr. Ngabonziza indicated that they have no problem in refunding any money they may receive under a contract with the Ministry of Justice if they end up not representing Mr. Uwinkindi.

High Court Hearing of 4 March 2015

38. On 4 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The new Counsel, Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were also in the courtroom.
39. The Court begun by acknowledging Mr. Uwinkindi was present in Court but was not represented because he had refused to be assisted by Counsel appointed by the Bar Association. The Court indicated the hearing would continue with the testimony of Prosecution witness **BZI**. The Court requested the observers to leave the court for the parties to verify the identity of the witness.
40. Before the verification commenced Mr. Uwinkindi addressed the Court noting that he had new information to give before the proceedings could go on. He indicated that he had been formally summoned to submit on his appeal before the Supreme Court on 9 March 2015. He requested for an adjournment of the trial pending the hearing at the Supreme Court.
41. At the invitation of the Court, the Prosecutor responded that while it was true that Mr. Uwinkindi had been summoned to appear before the Supreme Court on 9 March 2015, they insisted that Mr. Uwinkindi should explain why he needed an adjournment. The Prosecutor noted Mr. Uwinkindi had been silent at the previous day's hearing, and wanted to know if Mr. Uwinkindi had an intention to participate in that day's hearing. The Prosecution argued that if Mr. Uwinkindi's intention was to participate, the Court should grant an adjournment for one day to allow Mr. Uwinkindi prepare for the High Court proceedings. If this was not the position of Mr. Uwinkindi, the Prosecution did not agree to an indefinite adjournment.
42. Mr. Uwinkindi responded that he was requesting an adjournment so that he has time to prepare for the upcoming hearing at the Supreme Court. The Prosecution replied that while they did not want to impede Mr. Uwinkindi's right to prepare for the appeal, the Court should consider whether to proceed with the hearing taking into account the witnesses' time, which should not be wasted. The Prosecution indicated they were convinced that the day's hearing should proceed and another hearing could be scheduled after Monday, 9 March 2015.

43. The Court requested Mr. Uwinkindi to provide it with a copy of the Supreme Court document indicating that the appeal would be heard on Monday, 9 March 2015. The Court also asked Mr. Uwinkindi if he had filed his substantive written submissions with the appeal at the Supreme Court. Mr. Uwinkindi told the Court that he had filed the preliminary submissions.
44. The Court took note of the invitation to appear before the Supreme Court on Monday, 9 March 2015 and indicated they considered Mr. Uwinkindi would have ample time between Wednesday, 5 March and Sunday 8 March 2015, to prepare for the hearing at the Supreme Court. The Court decided to continue with the hearing that day and the following day, Thursday, 6 March 2015, as scheduled. Further, the hearings would resume on Tuesday, 10 March 2015, after the Supreme Court hearing.
45. Mr. Uwinkindi responded to the Courts decision by stating that he was asking for an adjournment for two reasons: to prepare for the Supreme Court hearing scheduled for Monday, 9 March 2015 and to prepare to participate in the continuing proceedings before the High Court. Noting that Mr. Uwinkindi had refused to be represented, the Court ruled that it was not going to consider the matter again.
46. The Court heard the testimony of four Prosecution witnesses. The Prosecution and the Court examined the witness testimonies. When invited to address the witnesses, Mr. Uwinkindi maintained that he could not cross examine the witnesses without the assistance of his Counsel.

Meeting with Mr. Uwinkindi on 4 March 2015

47. The Monitor met with Mr. Uwinkindi on 4 March 2015, at the Kigali Central Prison. The meeting took place with the assistance of an interpreter.
48. Mr. Uwinkindi expressed concern regarding the manner in which the trial was being conducted. He indicated he had noticed from the hearings that the Court was determined to stop him from having a fair trial. He expressed concern about the Monitor being asked to leave the Court when the identities of the witnesses were being verified.
49. Mr. Uwinkindi indicated that he felt miserable about what had transpired in the trial. The Ministry of Justice and the Court had refused to provide resources for him to find defence witnesses and this had also contributed to the disagreement with his former Counsel. He indicated his concern that the eight defence witnesses the Court had chosen to call to testify in his defence were from Bugasera and most were in Prison. He said he could no longer trust the witnesses to defend him, because the Court and the Prosecution had met them without his approval and he did not know what the witnesses could have been told. Further, when he had provided a list of possible witness's he was not fully aware of how the information would be used.

50. Mr. Uwinkindi opined that the Registrar should not have met his witnesses to find out if they wanted to be protected or not that should have been the responsibility of his Counsel. He further informed the Monitor that his fears were founded on the fact that one of his witnesses who had provided a strong statement in support of his defence had indicated to the Registrar that he was no longer willing to testify.
51. Mr. Uwinkindi noted that the manner in which the trial was being accelerated was not in good faith and it provided evidence that he was not going to receive a fair trial. Despite his assertion in Court that he would cross examine witnesses once he had Counsel, he noted he was doubtful that the Court would agree to re-hear the witness and have them examined by his Counsel.
52. Mr. Uwinkindi confirmed that his greatest fear was that the Court would finish with the Prosecution witnesses and then ask him to call the defence witnesses who he had not prepared. According to Mr. Uwinkindi, it was likely that if he was not prepared to call them, the trial would be considered complete.
53. Mr. Uwinkindi indicated there was no equality of arms between the Prosecution and Defence in support given to prepare for trial, observing that the first Prosecution witness had met prosecution investigators in 1998 and the investigations continued until 2012. The Prosecution therefore had sufficient time to prepare. He on the other hand, had been denied investigators to assist in locating his defence witnesses.
54. Further, on the issue of preparing for his defence Mr. Uwinkindi asserted that as the authorities frustrated his efforts to prepare his defence, they simultaneously arranged for the termination of his legal representation, the commencement of witness testimony and the appointment of new Counsel for him who are not familiar with his file. He indicated that if he chose to accept the new Counsel they would proceed to examine the Prosecution witnesses without proper understanding of the case file.
55. Mr. Uwinkindi noted there had been inconsistencies in the testimonies of the prosecution witnesses and some of the witnesses kept being reminded of dates and events which they could not remember. He asserted that if the information provided by Prosecution witnesses during the investigations had contributed to the framing of the indictment then, the indictment was questionable.
56. Mr. Uwinkindi re-asserted that, the decision to terminate his lawyers from acting was in bad faith and against his right to a fair trial. The High Court had decided to accelerate his trial before the Supreme Court had decided on his appeal regarding representation. He opined that the Court was operating like a gacaca court by forcing him to participate in his trial without representation, after having terminated his Counsel and rejecting his request for the provision of the list of counsel so that he could select Counsel of his choice. New Counsel were then imposed on him and the justification provided was that he was indigent and therefore had no right to choose his

Counsel. Mr. Uwinkindi indicated that he considered this reasoning dishonest and condemning.

57. In Mr. Uwinkindi's opinion the position taken in his case by the Court and the Rwanda Bar Association were not accurate because when he was transferred from Arusha to Kigali, he was availed with a list of qualified Counsel from which he chose Mr. Gashabana and Mr. Niyibizi and he was not required to pay them. Mr. Uwinkindi asserted that the Bar Association should have followed its past practice and availed a list as opposed to imposing counsel on him.
58. Mr. Uwinkindi informed that he did not think he would get a fair trial in Rwanda because the Court the President of the Bar always agree with the positions advanced by the Prosecution and the Ministry of Justice.
59. Mr. Uwinkindi asserted that the court had elected not to give him the right to examine the witnesses by terminating representation by his Counsel. He alleged that the termination was pre-planned because the Court summoned witnesses to testify while it knew that Mr. Uwinkindi could not examine the witnesses unassisted.
60. Mr. Uwinkindi requested that the President of the Mechanism to recall the requests made seeking for a transfer of the case from Rwanda to another jurisdiction where Mr. Uwinkindi could get a fair trial.
61. On the issue of new Counsel Mr. Uwinkindi indicated that it was inappropriate for the new Counsel to sit by his side in Court. He stressed that the presence of the new Counsel in Court was meant to create the impression he was still being represented. Mr. Uwinkindi informed that despite indicating his discomfort with the new counsel being in Court, the Prosecutor had convinced the Court to let them remain in the courtroom. He opined that if they were professional lawyers who did not have any other interest in the case they should have just withdrawn their presence after he rejected them.
62. With regard to the issue of accessing his former Counsel, Mr. Uwinkindi informed that since the High Court decision of 21<sup>st</sup> January 2015, Mr. Gashabana had on four occasions visited Kigali Central Prison to meet with him but had been denied access, yet he still had the case file. Mr. Uwinkindi informed that he was desperate because he could not meet his Counsel. In addition he asserted that he in the past he was able to talk to his family members weekly through telephone but recently he would be told by the Prison authorities they could not be reached on phone.
63. Indicating that he was expected to have Counsel representing him at the Supreme Court on 9 March 2015, Mr. Uwinkindi expressed that he did not know who would represent him because he nether had access to his former Counsel nor his family members who he could have asked to get him a lawyer.

64. Adding that his family members used to visit him every Friday but in the last two Friday's they had not come; Mr. Uwinkindi wondered whether they could have been denied entry by the Prison authorities. Mr. Uwinkindi said he could not ascertain what the problem was because he could not reach them on phone.
65. In closing, Mr. Uwinkindi requested the President of the Mechanism to direct the Government to allow his lawyers to meet him and hand over his case file. He affirmed it was not possible for him to participate in the hearing without his Counsel.

High Court Hearing of 5 March 2015

66. On 5 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The new Counsel, Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were also present in the courtroom.
67. The proceedings begun with the Court observing they would proceed with the hearing with Mr. Uwinkindi not being assisted by Counsel. The Court recalled that Mr. Uwinkindi had rejected Counsel provided by the Bar Association.
68. The Court then proceeded to hear the testimony of four Prosecution witnesses. The Prosecution and the Court examined the testimonies of the witnesses. When given an opportunity to cross examine the witnesses, Mr. Uwinkindi informed the Court that he was not able to do so without legal assistance.
69. At the close of the hearing the Court informed that it would continue the trial on 10 March 2015 at 8.30 am.

Meeting with Mr. Uwinkindi on 6 March 2015

70. On 6 March 2015, the Monitor met with Mr. Uwinkindi at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.
71. Mr. Uwinkindi expressed concern that the following week, it was likely that the Court would summon defence witnesses who had not been prepared for trial. He alleged mischief in how the trial was being conducted relating it to the termination of his Counsel's contracts after they had asked to be facilitated to meet the defence witnesses and prepare for the trial.
72. Mr. Uwinkindi indicated he had called for the meeting with the Monitor to re-emphasize that his case was being accelerated because there was a plan to sentence him without a proper trial. He reiterated that his trial was being conducted using standards of the Gacaca Courts despite being held at the High Court. Further, he questioned how

the Court could hear from five witnesses in one morning, opining that the intention was to ensure that all the witnesses were heard without their testimony being challenged.

73. Mr. Uwinkindi re-asserted that there was a plan to remove his Counsel because they had mastered his case file, to have the witnesses testify while he did not have legal representation; and lastly, to allocate him new Counsel who did not understand his case file. He opined that there was effort to finish the High Court trial before the Supreme Court could issue its decision. He asserted his right to proper defence had been denied.
74. Further Mr. Uwinkindi expressed concern that the Prison Director would not allow him to meet his lawyers yet he still considered them as his Counsel because they were in possession of the case file and had not withdrawn from acting for him.
75. Mr. Uwinkindi informed that many of the defence witnesses did not live in Rwanda and when his former Counsel asked for funds to go meet the defence witnesses to prepare for trial they were accused of extravagance and misusing the country's funds.
76. Mr. Uwinkindi's message to the President of the Mechanism was to remember that was being transferred to Rwanda, the Government and the Rwanda Bar Association affirmed that certain fair trial guarantees were in place. The government and the Bar had promised that the lawyers in Rwanda were independent, justice could be achieved in Rwanda, Courts were independent and funding to pay lawyers was available. He observed that despite these promises, the current reality in his case was different. He asserted further that his Counsel were intimidated and the judges were not independent as they were influenced by the Prosecution and the Ministry of Justice. Mr. Uwinkindi asserted that when the government had made commitments in Arusha at no time had it indicated that the poor should take care of the legal representation costs. He expressed concern indicating that if the President of the Mechanism did not intervene soon he would be sentenced before he could defend himself.
77. Regarding the hearing at the Supreme Court scheduled for the following week on 9 March 2015, he informed that he had asked Mr. Niyibizi and Mr. Gashabana to represent him and he was hopeful that they would come. He also hoped that the Supreme Court would allow them to represent him.
78. Mr. Uwinkindi asserted that all the requests he had asked for from the Court had been denied and he was of the opinion that the only person who could stop what was going on with his trial in Rwanda was the President of the Mechanism. Mr. Uwinkindi pleaded that the President of the Mechanism would have to intervene if he is to get any justice in Rwanda.

***B. Monitoring Mission from 8 to 12 March 2015.***

*Examination of the Supreme Court File on 9 March 2015*

79. The Supreme Court file included Mr. Uwinkindi's appeal filed on 2 March 2015, challenging the High Court decision of 2 February 2015 on three grounds: the decision of the High Court to continue the trial without Mr. Uwinkindi being assisted by Counsel; the decision of the High Court to terminate the services of his Counsel and the decision of the High Court directing that Mr. Uwinkindi be assisted by new Counsel, whom he did not choose for himself.
80. Mr. Uwinkindi requests the Supreme Court to reinstate his rights asserting that the position taken by the High Court on 2 February 2015 was erroneous as there was no documented evidence that his former Counsel withdrew representation, and even the Bar Association had no evidence to support this position.
81. The appeal therefore requests the Supreme Court to: admit his appeal; declare the decision of the High Court issued on 2 February 2015 unlawful; declare that the accused had the right to plead with the assistance of Counsel; provide the accused with any other rights provided by law; and adjourn the High Court hearings until the decision on appeal was rendered.
82. Other documents in the file were:
- a. An Order by the President of the Supreme Court appointing a three judge bench to hear the Appeal, dated 3 March 2015.
  - b. An Order by the President of the Supreme Court and the Chief Registrar setting the hearing for the appeal for 9 March 2015, dated 3 March 2015.
  - c. The Prosecution's response to the appeal filed on 6 March 2015.

*Supreme Court Hearing of 9 March 2015*

83. The hearing was held before the full chamber comprising of Judge's Jean-Baptiste Mutashya, Justin Gakwaya and Alphonse Hitiyaremye. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. Mr. Jean Uwinkindi was represented by Mr. Gatera Gashabana and Mr. Jean-Baptiste Niyibizi.
84. The Court commenced by indicating that it had four cases scheduled for hearing and it would start with the other three cases and end with that of Mr. Uwinkindi.
85. Mr. Niyibizi addressed the Court requesting to be allowed to start because he wanted to ask for an adjournment. The Court, noting that arguing for an adjournment also constituted a hearing, informed the parties that it had decided to hear the other cases first because they were waiting to receive a document they considered quite important in the case. The Court indicated that if it received the document before finalizing the

other three cases, they could slot the request by Mr. Uwinkindi to be heard before the other cases were concluded.

86. After the Court had finished hearing the three other cases, they moved to hear Mr. Uwinkindi's appeal. The Court begun by asking Mr. Uwinkindi to confirm if he had Counsel to represent him.<sup>13</sup> Mr. Uwinkindi confirmed he had Counsel and they were standing beside him.
87. The Court noted that it was aware of a decision of the High Court, imposing a fine on Mr. Uwinkindi's Counsel.<sup>14</sup> The Court asked if the lawyers had paid the fine. Mr. Gashabana informed that they had lodged an appeal against the decision High Court.
88. The Court asked Counsel to confirm if they had received the decision on their appeal regarding the fine imposed by the High Court. Mr. Gashabana indicated that the Registrar of the Supreme Court had decided that the appeal was inadmissible but they had lodged a further appeal on the Registrar's decision with the President of the Supreme Court.<sup>15</sup> They were yet to receive a decision from the President of the Supreme Court.
89. The Court indicated that it had a copy of the decision of the President of the Supreme Court, which would be communicated to the parties in the course of the week. The Court informed Mr. Uwinkindi's Counsel that the President had upheld the decision of the Registrar, finding that there were no legal grounds to appeal the High Court decision.
90. The Court then proceeded to inform Counsel for Uwinkindi that, in light of the decision by the President of the Supreme Court rejecting their appeal, they had to pay the fine before they could appear before the Court to assist Mr. Uwinkindi.
91. The Court asked Mr. Uwinkindi if he had other lawyers who could assist him before his Counsel paid the fine. Mr. Uwinkindi stated that he did not understand why the dispute affecting his Counsel and not himself should stop the case from proceeding or his Counsel from assisting him.
92. The Court reiterated that Mr. Gashabana and Mr. Niyibizi should first pay the fine before representing any clients. The Court further explained that it required a bank slip showing the fine had been paid before the two lawyers could assist Mr. Uwinkindi. The Court also indicated that it recognized Mr. Uwinkindi's appeal before them was on the decision of the High Court of 2 February 2015 on the appointment of new Counsel.

<sup>13</sup>Article 42 of Organic Law N°03/2012/OL Of 13/06/2012 Determining the Organisation, Functioning and Jurisdiction of the Supreme, titled "Representation before the Supreme Court" provides: It shall be mandatory for an appellant before the Supreme Court to be represented by a counsel.

<sup>14</sup> See January 2015 Monitoring Report, para. 28.

<sup>15</sup> The appeal to the President of the Supreme Court was filed on 23 February 2015. For additional information on the decision of the Registrar of the Supreme Court, see March 2015 Report, para. 79.

93. The Court invited the Prosecution to provide their position on the issues raised. The Prosecution agreed with the position taken by the Court. He affirmed that the proceedings should only continue, if there was evidence of payment of the fine or if Mr. Uwinkindi decided to accept other Counsel to assist him. The Prosecution also indicated they had an additional concern that they were going to raise with the Court to address relating to the question of whether the two lawyers should be allowed to represent Mr. Uwinkindi at the Supreme Court. The Prosecutor indicated that he would eventually argue before the Court that the ethical conduct of the two lawyers did not allow them to be at the hearing or to represent Mr. Uwinkindi at the Supreme Court.
94. The Court indicated that it was going to consult briefly and then give a new date for the hearing. Mr. Gashabana addressed the Court emphasizing that together with his co-Counsel, they were not aware of the decision of the President of the Supreme Court, when they went to Court that morning. He stressed that they had come to Court convinced that the last decision on the imposition of fines was that of the Registrar of the Supreme Court which they had appealed to the President of the Supreme Court. He told the Court it would be prejudicial to treat them as if they knew of the decision by the President of the Supreme Court and came to Court having not complied with it.
95. Mr. Gashabana also informed the Court that since the High Court's decision of 21 January 2015, discontinuing them from representing their client Mr. Uwinkindi, they had been unable to access Mr. Uwinkindi. Mr. Gashabana requested that the Court issue an order directing that they be allowed to access Mr. Uwinkindi in order to prepare for the appeal. The Court indicated that the request by Counsel to see Mr. Uwinkindi was related to the limitations imposed on assisting him. Counsel was required to pay the fine first before access could be granted. Mr. Gashabana insisted that the Court should order that they be allowed to meet their client. He emphasized that the Court should honor the rights of their client.
96. Noting that he had been appearing before the High Court without representation, Mr. Uwinkindi requested the Supreme Court to order the High Court to adjourn the trial. The Court advised Mr. Uwinkindi to put the request to the High Court, which has authority to decide on whether to stay the proceedings pending appeal proceedings.
97. The judges then consulted amongst themselves on a new date for the hearing. Before announcing the date the Court asked Mr. Uwinkindi to indicate the time he thought he needed before his Counsel could be ready to assist him. Mr. Uwinkindi responded that the issues his Counsel were facing should not stop his hearing. The Court reiterated its earlier position that the hearing would only continue if there was evidence of payment of the fine imposed and asked Mr. Uwinkindi to indicate how much time he needed in order for him to come back with lawyers who could represent him. Mr. Uwinkindi indicated he needed seven days.

98. The Court informed the parties that the case would be heard on 6 April 2015 at 8.30 am. They explained that more time had been given to Mr. Uwinkindi than he had requested so that he could have Counsel who were in good standing by the next hearing.
99. Before the close of the proceedings, Mr. Uwinkindi requested the Court to order the Prison Director to allow his lawyers to access him, so that he could prepare his defence. Noting that it did not advocate for the barring of lawyers from accessing their clients, the Court stated that the prison leadership and the Court had different operating rules, and therefore could not interfere with how the prison operated.

High Court Hearing of 10 March 2015

100. On 10 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The New Counsel Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were in the courtroom.
101. The Court began by observing that, Mr. Uwinkindi was present but was not assisted because he refused the lawyers appointed by the Bar Association.
102. Mr. Uwinkindi addressed the Court requesting for the hearing to be adjourned because the previous day, on 9 March 2015, the Supreme Court had adjourned its hearing until 6 April 2015. At the invitation of the Court the Prosecution submitted Mr. Uwinkindi's request had no legal basis, because the Supreme Court had not adjourned the trial at the High Court. The Prosecutor informed the Court that although Mr. Uwinkindi had asked the Supreme Court to order the High Court to adjourn its proceedings the Supreme Court had not accepted the request. Further, the Prosecution added that Mr. Uwinkindi was advised that if the High Court found it necessary, it could adjourn the trial.
103. In response, Mr. Uwinkindi emphasized that the Supreme Court had not held that it was not possible to adjourn the case. Mr. Uwinkindi argued that he was requesting an adjournment based on the Supreme Court's advice that the High Court could examine and see if it was necessary to adjourn the trial. The Court noting that Mr. Uwinkindi had previously asked for an adjournment for the same reasons indicated that it had already issued a decision<sup>16</sup> which was not going to change. The Court directed that the hearing would continue as scheduled and requested for the first witness to take the stand.
104. The Court heard the testimonies of the last five Prosecution witnesses. Similar to the previous hearings, the witness testimonies were examined by the Prosecution and the

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<sup>16</sup> See para.22 *supra*

Court. When given an opportunity to examine the witnesses, Mr. Uwinkindi informed the Court that he could only do so with the assistance of Counsel.

105. After hearing from the last witness, the Court asked the Prosecution to indicate if they were ready to deliver their final submissions on the evidence adduced by the witnesses or if they preferred to submit at the close of the defence witnesses' testimonies. The Prosecution confirmed that they were not ready and they would give their summary after hearing the defence witnesses.

106. The Court informed that the next hearing would be held the following day, on 11 March 2015, and they would hear from defence witnesses starting at 8.30am.

107. Mr. Uwinkindi addressed the Court objecting to his continued appearance without legal assistance and the decision to forcefully summon his witnesses. Mr. Uwinkindi asserted that the conduct of the proceedings so far meant that he was not allowed to play any role in his trial and had been reduced to an observer.

108. The Court invited the Prosecution to respond to Mr. Uwinkindi's concerns. The Prosecution indicated that procedures should be respected in the hearing. On the issue of Mr. Uwinkindi's Counsel, the Prosecutor noted that the Court had already addressed the issue. The Prosecutor argued that Mr. Uwinkindi had a right to defence but he had chosen not to speak and had refused the lawyers assigned to him. In addition, Mr. Uwinkindi had not provided any suggestions on how to move forward. The Prosecutor noted that Mr. Uwinkindi had accepted to stay in Court and therefore should be deemed to have accepted the continuation of the proceedings. He then questioned why Mr. Uwinkindi would object to his own witnesses testifying, arguing that there was no reason for the hearings to stop.

109. In his response, Mr. Uwinkindi indicated that he had expressed himself before and the Registrar should have taken note of the fact that he objected to proceeding without being assisted by Counsel. He stressed he chose to sit and listen because he did not want the Prosecution to chase him from his own proceedings. He stated that the Prosecution wanted him to continue the hearing without legal assistance. Further he stated the Prosecution had control over their witnesses, they should not control his witnesses. He stressed that only his lawyers had control over his witnesses. Mr. Uwinkindi then wondered why the Court wanted his witnesses to testify without him calling them to testify.

110. In its response the Court stated that it had already addressed the issue of Counsel and it could not force Mr. Uwinkindi, if he did not want the legal assistance offered. The Court further noted that Mr. Uwinkindi's the new Counsel, whose representation Mr. Uwinkindi had refused, were in Court.

111. The Court adjourned by stating that it would hear from the defence witnesses the following day, on 11 March 2015, at 8.30am.

Meeting with Prison Director, Mr. James Mugisha on 10 March 2015

112. On 10 March 2015, the Monitor met with Mr. Mugisha, the Director of the Kigali Central Prison to formally introduce herself and to follow up on some of the concerns raised by Mr. Uwinkindi during previous meetings.
113. In regards to Mr. Uwinkindi's access his former Counsel, Mr. Mughisha informed the Monitor that once the Court had issued its decision, directing new Counsel be appointed for Mr. Uwinkindi, he received written communication from the National Public Prosecution Authority informing him that Mr. Uwinkindi was no longer represented by Mr. Gashabana and Mr. Niyibizi. He said he had informed Mr. Uwinkindi of the instructions and he could not allow his former Counsel to access him unless he received other instructions to the contrary.
114. With respect to the concern raised by Mr. Uwinkindi on his visitors not being allowed access, the Prison Director indicated all visitors were allowed to access the accused during the designated visiting days and times. He indicated that Mr. Uwinkindi's wife visited several times.
115. Mr. Mugisha informed the Monitor that one of the common complaints raised by the accused persons with his office and with previous monitors was the availability of printing papers and functional printers. Mr. Mugisha informed the Monitor that supplies are availed to the accused in accordance with existing guidelines. According to the guidelines, the supplies are obtained from the Prosecutor General's office periodically. The Prison Director's office prepares a requisition which after he signs is submitted to the Prosecutor General's office. The supplies are supposed to last a specified time before new requisitions can be made and supplies replenished. The Prosecutor General's office had in the past questioned the use of the supplies, when they ran out before the projected timeline. The Director further informed that his office assists the accused persons with the prison printing facilities in situations where the accused need to print urgently and they had depleted their supplies from the Prosecutor General's office.
116. In reference to the issue of the accused not being allowed to worship on Sunday's, the Director indicated that everyone was allowed to go to church on Sunday. The prison has no activities on Sunday other than worship. He said some of the detainees even participated in choirs.

Meeting with Mr. Uwinkindi of 10 March 2015

117. The Monitor met with Mr. Uwinkindi on 10 March 2015, at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.

118. Mr. Uwinkindi was concerned that the President of the Mechanism had not intervened. He asserted there were many reasons the President of the Mechanism should intervene and respond to the challenges he was facing in his trial. According to Mr. Uwinkindi one of the reasons was the fact that the President had overseen his transfer to Rwanda and the referral decision was based on the guarantees of fair trial, which had now been renege. He asserted that the President of the Rwanda Bar Association had presented in Arusha a list of five counsel qualified to represent him and if Mr. Gashabana and Mr. Niyibizi would not be allowed to represent him then the other three should have been made available.
119. Further he asserted that the new Counsel appointed were not experienced to try cases in the High Court. As an example he claimed that one of the Counsel had challenges with another transferred accused, who had terminated his services. He questioned why he could not be allowed to choose Counsel that he had confidence in, yet other accused persons facing a similar predicament had previously been accorded that right.
120. Mr. Uwinkindi affirmed that his only hope was in the President of the Mechanism intervening before the trial was completed. Indicating that he did not trust the defence witnesses, he expressed his fear that the Prosecution could have reached out and intimidated his witnesses. On a general note, he asserted that if an accused informs the Court that a witness is not going to serve his interest, then the Court should listen to the accused and should not force the witness to testify. An accused is supposed to decide which witnesses are of greatest assistance to their case.
121. Reaffirming his trust in his former Counsel, Mr. Uwinkindi noted that they were victimized because they spoke the truth about the impediments to his trial. According to Mr. Uwinkindi, the Ministry of Justice had intimidated his Counsel by cancelling their contracts thrice with the main issue of contention being money legal fees and facilitation fees to meet witnesses and prepare the defence.
122. Mr. Uwinkindi further reported that when the Court requested for the list of witnesses earlier in the proceedings, he thought it would assist him and his counsel to get in touch with the witnesses. He claimed that now it was evident the intention was to corrupt them. He explained that out of the 75 names of witnesses provided by the Defence, 38 lived outside Rwanda. He alleged that the Court had followed the advice of the Prosecution to only contact those witnesses who were the easiest to reach and these were witnesses currently in Ririma prison. Again he asserted that the Court's decisions always followed the suggestions and views of the Prosecution. According to Mr. Uwinkindi the Court did not ask him to indicate the witnesses he wished to call, they just decided to choose from the list. In his view, this was part of a plan to ensure he did not have a fair trial. Mr. Uwinkindi claimed that for these reasons it was impossible for him to have a fair trial. The fact that the Court had decided to just hear from a handful of defence witnesses out of the list of seventy five confirmed his fears.

123. Calling on the President of the Mechanism to intervene, Mr. Uwinkindi asserted that he had been deprived of all rights pertaining to his defence and legal assistance.
124. In explaining the reason for requesting frequent meetings with the Monitor, Mr. Uwinkindi informed that since he no longer had access to his legal Counsel, he needed to meet the Monitor often to express his concerns.
125. Turning to issues concerning the conditions of detention raised in the previous meeting, Mr. Uwinkindi updated that his wife had visited him the previous Friday after a long absence. She had informed him that she had been unwell, hence her absence during the Prison's visiting days. Mr. Uwinkindi, however, complained that they were only given a few minutes to talk, which was not the case before the issue with his Counsel arose. Mr. Uwinkindi informed that his wife had complained that telephone calls placed by Prison authorities to her. Attributing mischief, Mr. Uwinkindi stated that the prison authorities would notify him that his relatives were unreachable on telephone.
126. On the issue of being allowed to worship on Sunday, Mr. Uwinkindi acknowledged that ordinarily he goes to church but does so when the service was almost over. He explained that this was because he goes to church after the Catholics service. He informed the Monitor when he complained, a prison guard had asked why he did not worship with the Catholics if he wanted to go to church earlier. He questioned if the prison authorities had the right to "change" his religion.

High Court Hearing of 11 March 2015

127. On 11 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The new Counsel, Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were in Court.
128. The Court informed that the Registrar had brought to Court seven defence witnesses who would be heard that day. All the witnesses were protected. The first witness was **UCA**. The witness's identity was verified in camera by the Parties, after which the oath was administered.
129. The Court then instructed Mr. Uwinkindi to inform the witness why he wanted the witness to testify, highlighting the importance of the testimony for his case.
130. In his response Mr. Uwinkindi noted that he had not summoned his witnesses, his appeal in the Supreme Court was still pending and his intention was to summon his witnesses once the appeal had been completed. He said he had nothing to say about his witnesses.

131. The Court taking note of the fact that Mr. Uwinkindi did not want to say anything, decided to proceed with hearing the witness. The Court informed the witness that Mr. Uwinkindi had asked that they come to court to testify in his defence. The Court asked the witness to tell the Court about Mr. Uwinkindi's conduct during the Genocide.
132. A total of seven defence witnesses were heard on that day. Mr. Uwinkindi did not address any of the witnesses. The Court led the examination of the witnesses and the Prosecution cross examined them.
133. At the close of the hearing the Court indicated that the trial would continue the following day, on 12 March 2015, with the testimony of additional defence witnesses

Meeting with Counsel Gatera Gashabana on 11 March 2015

134. Mr. Gashabana informed the Monitor that the Registrar of the Supreme Court had no power to make a judicial decision in rejecting their appeal challenging the decision of the High Court of 15 January 2015, imposing a fine on Counsel. Further he contended that the decision of the Court to order Counsel to pay fines was against the right of the defence. Mr. Gashabana explained that there had been conflict in the interpretation of the application of the Transfer Law and other laws applied in the case.<sup>17</sup>
135. Mr. Gashabana indicated that it was the right of an accused to have Counsel of his choice even if he could not pay for the Counsel. He reiterated that the promises made by the Rwanda government and the Rwanda Bar Association in Arusha at the referral proceedings were now being backtracked. He asserted that the Bar Association had specifically told the ICTR that fair trial guarantees were in place in Rwanda and a legal aid scheme had been set up.
136. Mr. Gashabana reported that since February he had not been able to see his client. He had hoped the Supreme Court would remedy this unfairness by allowing him and Mr. Niyibizi to meet with their client in Prison to prepare their submission before the Supreme Court.
137. Mr. Gashabana also informed the Monitor that the contract proposed by the Ministry of Justice to him and Mr. Niyibizi contained provisions that would not guarantee the independence of the Counsel.<sup>18</sup>
138. Further, Mr. Gashabana informed that following the High Court decision "stopping them from acting for Mr. Uwinkindi," the President of the High Court had written to the Bar Association requesting for disciplinary measures to be taken against them. In a meeting held on 23 January 2015, with the President of the Bar Association Counsel

<sup>17</sup> See January 2015 Report, para. 29.

<sup>18</sup> See January 2015 Monitoring Report, para. 30.

defended the position they had taken. The President of the Bar did not take further action on the request and if he had he would be required to forward the issue to the disciplinary committee.

*High Court Hearing of 12 March 2015*

139. On 11 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The new Counsel were also in the courtroom.
140. The Court commenced the hearing by recognizing that Mr. Uwinkindi was present but was not assisted as he had refused the lawyers appointed by the Bar Association. The Court added that it was going to hear from two defence witnesses and it would start with witness **UCH**. The Court indicated that while it had planned to hear from a total of 11 defence witnesses, one had refused to come to Court and testify and the other could not be found at the address given by Mr. Uwinkindi.
141. The identity of the eighth defence witness was verified and the oath administered. The Court then asked the witness to tell them about what he knew about Mr. Uwinkindi's conduct during the genocide.
142. When the witness finished with his testimony the Prosecution and the Court examined him. Mr. Uwinkindi did not address the witness testimony and maintained his position that he would only engage in the proceedings if he had legal representation.
143. The Court then invited witness **UCI**, the last defence witness. After his identity was verified and the oath administered the witness testified that he did not know Mr. Uwinkindi. In response to questions by the Court the witness explained that he did not know why his name was given as a defence witness. He indicated that some people had visited him in the past and had told him that they would get in touch with him later so that he could come to Court. He said that he had not known what was expected of him when he came to Court and had just learnt that he was there to defend Mr. Uwinkindi. He reiterated that he was not familiar with Mr. Uwinkindi.
144. The Court asked Mr. Uwinkindi to respond to the issue. Mr. Uwinkindi confirmed that he also did not know the witness. He added that it was unfortunate that the Court had decided to call his witnesses without his concurrence and that now they were bringing witnesses whom he did not know.
145. The Court informed Mr. Uwinkindi that the name of that particular witness was in the list of witnesses that his former Counsel had provided to the Court. Mr. Uwinkindi protested saying that he also had his list of witnesses and that particular witness was not in the list.

146. At the invitation of the Court the Prosecution expressed its surprise that the witness did not know Mr. Uwinkindi, precisely because the witness name had been given by Mr. Uwinkindi. The prosecution indicated that it was interested in the witness further explaining what he was told by the people who allegedly came to see him.

147. The Court decided that if the witness did not know Mr. Uwinkindi, the Court did not need to hear from him and concluded the hearing.

148. The Court informed the parties to prepare their closing statements, to be presented at the next hearing which was scheduled for 16 March 2015.

*C. Monitoring Mission from 15 to 19 March 2015.*

High Court Hearing of 16 March 2015.

149. On 16 March 2015, the hearing was held before the full Chamber of the High Court, in the presence of the Accused, Mr. Uwinkindi. The Prosecution was represented by Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa. The new Counsel, Mr. Joseph Ngabonziza and Mr. Isacaar Hishamunda were in the courtroom.

150. The Court informed that it would hear the Parties closing statements on the evidence adduced through the witness testimonies, starting with the Prosecution.

151. The Prosecution informed the Court that they were not ready to present their closing statement as they had not managed to finalise it. Noting that the Prosecutors had to attend training from 19 – 25 March 2015, the Prosecution requested two to three weeks additional time to prepare.

152. Noting that Mr. Uwinkindi had nothing to say, the Court granted the Prosecution's request. It adjourned the hearing to 31 March 2015 at 8.30 am and ordered the Parties to file their statements three days before the hearing.

Meeting with Mr. Uwinkindi on 18 March 2015

153. With the assistance of an interpreter, the Monitor met Mr. Uwinkindi in the company of two other Monitors, Judge Imani Aboud and Ms. Elsy Sainna who were in Kigali for the formal introduction mission. Mr. Uwinkindi encouraged the other Monitors to look into the previous records of the case to ascertain the real identity of the person accused, asserting that the name in the arrest warrant was not his names.

154. Turning to the current situation of the Case, Mr. Uwinkindi noted that the trial was in its final stages, yet he had been deprived of the right to legal assistance and his former Counsel was terminated. He asserted that contrary to what the Court wanted the world

to believe, his former Counsel did not withdraw voluntarily from assisting him. He challenged everyone interested in ascertaining the truth to look into the record to ascertain whether there were any documents that indicate that his former Counsel withdrew their representation, stressing that none would be found. He added that the only letter that his former Counsel wrote was to the President of the Bar requesting him to intervene in settling the impasse with the Ministry of Justice so that they could continue representing Mr. Uwinkindi effectively.<sup>19</sup> He observed that instead of the assisting his former Counsel, the President of the Bar followed the Court's advice and terminated the services of his Counsel.

155. Mr. Uwinkindi reiterated that there was a plan to remove his Counsel, summon the prosecution witnesses against him and appoint new lawyers without his approval to carry on with the trial.<sup>20</sup> He asserted that he refused to accept their representation because the normal appointment process was not followed and the new Counsel were not in the list of qualified Counsel provided in Arusha before his transfer.

156. Mr. Uwinkindi faulted the Ministry of Justice for the predicament facing him, claiming that the Ministry had twice unilaterally changed the contracts of his Counsel. The third attempt to change the contracts led to Counsel being terminated. He reiterated that the Ministry had reneged on the promises it made in its affidavit of 15 April 2011 filed before the referral proceedings at ICTR.

157. Mr. Uwinkindi indicated he was concerned that the High Court had chosen to follow the provisions of the Civil Procedure Code yet there were other laws that applied in the proceedings, such as the Transfer Law and the Criminal Procedure Code. He reiterated that the Transfer Law was the law applied in case there was a conflict between the laws, yet the Court kept ignoring this provision in determining which laws to apply.

158. Mr. Uwinkindi said that he was disappointed that defence witnesses had been called to Court, yet he had not asked for them. He complained that despite the Court having a list of many witnesses, it only called witnesses who were in Ririma Prison<sup>21</sup> and deprived him of the right to decide the witnesses who would best defend him. He stressed that he was offended by the fact that a witness was brought from Ruhengeri whom he did not know. He informed that this witness was not in the list he had availed to the Court. He appreciated that the witness' honesty in pointing out that he did not know Mr. Uwinkindi. However, he stated that he feared the intention behind bringing a witness who was not on his list was so that he could be accused of giving a list of people who did not exist.

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<sup>19</sup> Counsel for Mr. Uwinkindi wrote to the President of the Rwanda Bar Association on 30 December 2014.

<sup>20</sup> See para. 73 *supra*.

<sup>21</sup> Ririma Prison is located South of Kigali in Bugasera district where many inmates accused of participating in the genocide are confined.

159. He finished by indicating that despite showing the Court a copy of his list that did not contain the name of the witness, the Court insisted that the list in its possession had this particular witness listed.

***D. Monitoring Mission from 30 March to 2 April 2015.***

***High Court Hearing of 31 March 2015***

160. On 31 March 2015, the Prosecution and Mr. Uwinkindi were present in Court. The Registrar was present in Court to communicate to the Parties that the Court had adjourned the trial to 2 June 2015.

**III. CONCLUSION**

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

Dated this 30<sup>th</sup> day of April 2015

Respectfully submitted,



Stella Ndirangu  
Monitor for the Uwinkindi case  
Nairobi, Kenya