



Mechanism for International Criminal Tribunals

Case No: MICT-12-25

Date: 5 November 2015

Original: English

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

MONITORING REPORT FOR SEPTEMBER 2015

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Monitors:

Ms. Elsy Sainna
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 of interactions of Ms. Elsy Sainna and Ms. Stella Ndirangu a Monitor's appointed by the Mechanism ("Monitor"), with various stakeholders during the month of September ("the Reporting Period").
3. During the Reporting Period, the Monitor's undertook three missions to Rwanda on 9 September 2015 to 12 September 2015, on 22 September 2015 to 23 September 2015 and on 27 September 2015 to 30 September 2015, to monitor the Jean Uwinkindi case.
4. Three Court sessions was held in the High Court during the Reporting Period, these were on 10 September 2015, on 23 September 2015 and on 29 September 2015. The Monitor's followed the hearing with the assistance of an interpreter.
5. During the Reporting period the Monitor's also held meetings with Jean Bosco Mutangana, the lead Prosecutor and Mrs. Isabelle Kalihangabo, Permanent Secretary, Ministry of Justice. The Monitor's held two meetings with Mr. Uwinkindi at the Kigali Central Prison with the assistance of an interpreter.
6. A detailed report on all activities during the Reporting Period is provided below.

II. DETAILED REPORT

A. Monitoring Mission from 9 September 2015 to 12 September 2015

High Court Hearing of 10 September 2015

7. The Court session commenced at 11.00 am, the Bench was composed of Judge Kanyegeni Thitmoti and Judge Fidel Njanzimana. The Accused person was present in Court and the Prosecution was represented by Mr. Jean Bosco Mutangana.
8. The Court informed that the hearing could not proceed as the Presiding Judge Alice Ngendakuriyo was indisposed. The case was adjourned to 23 September 2015.

Meeting with Lead Prosecutor, Jean Bosco Mutangana on 10 September 2015

9. The Monitor met with Mr. Mutangana who reiterated that the Prosecution was keen to see the hearing proceed, and the Accused person assisted by Counsel.
10. He further stated that the Prosecution was willing to accept a request for additional time should the Defence require more time to prepare for hearing.

Meeting with Mrs. Isabelle Kalihangabo, Permanent Secretary, Ministry of Justice on 10 September 2015

11. The Monitor met with the Mrs. Kalihangabo at the Ministry of Justice offices.
12. Mrs. Kalihangabo confirmed that, in addition to the 15M RWF set aside to cater for the transfer cases, the Ministry had set a side separate funds for situations where witnesses were required and resided outside Rwanda. These additional funds would be administered within agreed contractual obligations with the Rwanda Bar Association.

Meeting with Mr. Jean Uwinkindi on 11 September 2015

13. The Monitor met with the Accused person at the Kigali Central Prison, in the presence of the Interpreter.
14. Mr. Uwinkindi expressed concern that during a monitoring mission in August 2015, the Monitor was not received well by the Prison authorities. Specifically, the Prison Director failed to provide a proper consultation room, as was the standard practice. He also wondered why the Monitor was not allowed to access detention facilities. He implored that the next monitoring visit should endeavor to visit the detention facilities.
15. With respect to detention facilities, he indicated that they have not been able to watch television news for over three months and when the matter was raised with the prison authorities, promises were made but no action has been forthcoming.
16. With respect to the trial process, Mr. Uwinkindi confirmed that he was concerned by his trial process. In his opinion, the Bar Association was not an independent body. He supported his assertions by indicating that from the list of sixty eight lawyers given to him to select Defence Counsel; none had the requisite competence or experience in handling the transfer cases. He was curious to know why lawyers with experience were not part of the list provided.
17. Mr. Uwinkindi opined that the assertion by the Ministry of Justice that it had allocated sufficient legal aid for accused persons was a misrepresentation of the position and assurances provided during his transfer hearing. Particularly, those adequate funds would be provided and that lawyers who were willing to be represent him would be paid by the

Rwandan government. Moreover, the removal of Counsel Mr. Gashabana and Mr. Niyibizi from his case because of a dispute regarding legal fees was still a mystery to him.

18. Mr. Uwinkindi showed the Monitor a letter dated 7 September 2015¹ that he had written to the presiding Judge, copied to the President of the Mechanism. In the letter, he objected to his case proceeding before the High Court, since he had an upcoming revocation hearing at the Mechanism. He requested a response to his letter.
19. Mr. Uwinkindi further mentioned that he was aware that a letter had been sent to the Director of Prisons and copied to the Prosecutor by the Rwanda Commissioner for correctional services, regarding new guidelines on conditions of detainees of transferred persons from other jurisdictions. Mr. Uwinkindi informed the Monitor that he had requested counsel Gashabana to obtain a copy of the letter but by the time of the monitoring visit, he had not received it. Mr. Uwinkindi was apprehensive regarding the content of the new guidelines and wanted to know whether the regulations meet or complied with the international standards for conditions of detention.
20. Mr. Uwinkindi further showed the Monitor a press advertisement regarding a call for expression prepared by the Rwanda Bar Association dated 22 July 2015. The interpreter read the contents of the press statement and subsequently sent a translated version to the Monitor which in sum indicated that the Bar Association had invited applicants from its membership so submit applications to be enlisted as defense lawyers for indigent persons and accused persons in transfer cases.
21. Mr. Uwinkindi showed the Monitor a letter² dated 7 July 2015, in which he had written to the presiding Judge indicating that he did not want his files handed over to newly assigned Defence Counsel. Further, Mr. Uwinkindi informed the Monitor that although, he had accepted that Monitors could speak independently to the assigned Counsel, he wanted his position specified very clearly from the outset that he did not recognize them as his Defence team.
22. Mr. Uwinkindi stated that he had made several requests to obtain Court transcripts and related decisions regarding to his case but none had been forthcoming. He expressed frustration and because of a lack of access to these documents, he felt that he did not have a full grasp or picture of his case.
23. He indicated that when he asked the Prisons Legal Officer and the Supreme Court for the documents, he was told that in order to obtain the transcript, he had to pay. He was perturbed at this revelation.
24. In relation to preparation for his defence and trial process, Mr. Uwinkindi wondered how he would be expected to cross examine witnesses yet he would not have had a chance to read the witness statements. At the same time, he was concerned and aware that the newly assigned defense counsel were writing to defense witnesses without his consent, he

¹ A copy of the letter was shared with the monitor and was forwarded to the Mechanism for translation

² See Letter is dated 7 July 2015, addressed to the Presiding Judge, copied to the President of the Mechanism and Prosecution

appealed to the President of Mechanism to intervene as this was an infringement of his fair trial rights.

25. [REDACTED]

B. Monitoring Mission of 22 September 2015 to 23 September 2015

High Court hearing of 23 September 2015

26. The hearing was held before the full Chamber, consisting of Judge Alice Ngendakuriyo, Judge Kanyegeni Thitmota and Judge Fidel Njanzimana. The Accused, Mr. Uwinkindi was present in Court and the Prosecution was represented by Mr. Jean Bosco Mutangana and Mr. Bonnaventure. Defence Counsel Joseph Ngabonziza and Isaacar Hishamunda were also in Court.
27. The Court noted that during the last hearing it was agreed that Counsel were to go through the case file and indicate at this hearing if the Court could proceed to recall the witnesses, so that Counsel could examine them.
28. Mr. Uwinkindi requested the Court to note that he was present but was not assisted. Reiterating that he had indicated many times in the past that Counsel in Court were not representing him. Further, Mr. Uwinkindi indicated that he had written to the Court on 7 September 2015, raising concerns about the stage where the case was, he had a problem with the lawyers and the witnesses, but the Court had taken prejudicial decisions which he had appealed. He asserted that he was not ready to say anything in Court until he was properly represented.
29. Mr. Uwinkindi requested the Court to ensure the record reflects that he did not recognize the lawyers and that he had requested that the Court not to hand over his file to lawyers he did not recognize. Further, he asserted that he would not sign any court transcript bearing the names of the two lawyers.
30. In response, the Court reminded the Accused that the case was not his personal property, the case file was the property of the Court and an Accused cannot give orders to the Court. The Court informed Mr. Uwinkindi that the requests he had made could not be granted, because it had made many decisions on the same issue. The two lawyers would be his defence lawyers and they have to fulfil their obligations as Defence Counsel.
31. The Court noted that it had heard the same concerns before and Mr. Uwinkindi should not keep repeating them at every hearing. The Court then invited Counsel to indicate if they had perused the file and if their briefs were ready.

32. Mr. Ngabonziza indicated that they had prepared enough although, they had encountered challenges in getting their client to meet then to assist in preparation of the brief. He informed the Court that on 3 August 2015, he had gone to prison to meet the Accused but when Mr. Uwinkindi was asked to go meet his Counsel he refused and told the prison guard he didn't know them. As a result Counsel had a challenge in finalizing on their brief as they were forced to create the brief using the case file only, and this was limiting. He proposed the trial continues, if they encountered a challenge they would let the Court know.
33. Counsel Isacar reiterated that Counsel can prepare the legal aspects of the brief, but the Accused has to share on the facts to allow the defence to prepare a proper defence.
34. The Court thanked Counsel for their submissions and indicated it was aware of the challenges, and noted that witnesses would be recalled, the examination of witnesses would assist Counsel to prepare the other aspects of the defence in the interest of the case.
35. The Court invited the Prosecution to indicate how to proceed since the Court was going to hear from the witnesses again. In particular, the Court wanted to know if the witness list used earlier in the year was going to be followed or the order would change. The Court indicated it was prepared to start with four witnesses.
36. The Prosecution indicated that before it could respond to the questions posed by the Court, it had views regarding what had been said in Court by the other parties, and believed the Court needed to be informed on these issues. The Prosecution acknowledged that many decisions and orders had been issued in the interest of a fair trial but felt that they had an obligation to provide Court with suggestions to allow the case to proceed seamlessly.
37. Reflecting back on the time previous Defence Counsel, Mr. Gatera Gashabana and Mr. Jean Baptiste Niyibizi left the Court, the Court decided Uwinkindi needed to get a fair trial, new Counsel were appointed but, as submitted earlier the Accused had not accepted the new Counsel and he continued to assert that they were not his lawyers of choice. As heard from Defence Counsel, they had experienced challenges preparing the defence brief, because they were not able to meet their client.
38. The Prosecution questioned how the case could proceed, if Prosecution witnesses would appear in Court and be cross examined, without Mr. Uwinkindi's participation. Prosecution noted that proceeding with hearing the witnesses, was likely to be a waste of time since Counsel did not know the facts of the case. The Prosecution submitted that the Court was likely to engage in an exercise that would waste its time.
39. Prosecution noted that different Parties including the Bar had worked hard to find adequate solutions for Mr. Uwinkindi, one of which was to publish an order requesting Counsel, who were ready to accept the amount available of 15 Million RWF to represent

transferred persons, to express interest by writing to the Bar Association. From this exercise a list of the interested sixty eight lawyers was prepared.

40. The Prosecution submitted that this was a good development for cases transferred to Rwanda for trial, as it puts an end to the different problems encountered with Counsel who were unwilling to accept the terms set by the Ministry. Noting that previous decisions had been made in the interest of justice, including that of deciding that the new Counsel continues to represent the Accused. The new Counsel did not know the facts of the case and the only person who could help them is Mr. Uwinkindi.
41. The Prosecution proposed that an alternative way of addressing the issue and bring an end to all the challenges observed, was to avail the list submitted by the Bar Association to Mr. Uwinkindi to select Counsel that he could work with. If Mr. Uwinkindi refused which was a possibility, the Court should decide he had waived his right to be represented and appoint lawyers for him or have him represent himself.
42. Turning back to the question posed by the Court on whether the witnesses can be recalled and by using which order, the Prosecution submitted that it was up to the Court to decide after examining the request that the Prosecution had made to the Court. If the request was dismissed the Prosecution confirmed it would abide by the Court's decision, but in its opinion proceeding with the hearing under the current circumstances, would be a waste of time.
43. At the invitation of the Court Mr. Uwinkindi submitted that he would prefer his former Counsel to be retained in the trial and if the Court was to decide otherwise, then it should provide him with a list of experienced lawyers as presented at the ICTR before his transfer.
44. The Court asked Mr. Uwinkindi to explain which list he was referring to and to indicate whether he had the list. If he did not have the list the Court wanted to know if he would choose from the list that would be given to him.
45. Mr. Uwinkindi submitted that he did not have the list with him, and he was not going to choose from a list he did not agree with even if availed to him.
46. The Court requested the Prosecution to assist Mr. Uwinkindi with a copy of the list of Counsel they had referred to and the Prosecution obliged.
47. Mr. Uwinkindi informed the Court that he needed time to look through the list and the Court assured him it would give him time.
48. Defence Counsel were invited by the Court, to respond to the Prosecution assertion that they did not know the facts of the case. The Court wanted to know if having read the file, they were ready to cross examine the witnesses.

49. Defence Counsel informed the Court that they did not get all the information after reading the case file and that is why it was important to get more information from the accused so that they can have a more effective defence.
50. The Court enquired if Defence Counsel were of the opinion that the case could not proceed without Mr. Uwinkindi's cooperation.
51. Counsel Isacar responded indicating that without the Accused's collaboration, they could not defend him effectively. Counsel Ngabonziza added that they were not saying nothing can be done, they could work with what was in the file but it would be difficult for them to present a proper brief containing the facts and ideas of the client as well as the legal issues.
52. Turning to Mr. Uwinkindi, the Court enquired if he had examined the list, to see if the names of Counsel of his choice were in the list. Mr. Uwinkindi said he needed time to examine the list. The Court informed that it would take a thirty minute break after which Mr. Uwinkindi would inform the Court if he had found names of Counsel he wanted to represent him in the list.
53. After the hearing resumed the Court invited Mr. Uwinkindi to inform it if could choose Counsel to work with, from the list provided by the Bar Association.
54. Mr. Uwinkindi submitted he was unable to arrive at a decision because he was not sure if the list was complete.
55. The Court asked Mr. Uwinkindi to explain, how he intended to ascertain if the list was complete. Did he have criteria that he could share with the Court?
56. Mr. Uwinkindi submitted that he did not have a response to that question.
57. At the invitation of the Court the Prosecution submitted that in its opinion, thirty minutes were not sufficient for Mr. Uwinkindi to decide on who could represent him considering he was given the list in Court earlier in the morning.
58. The Court emphasized that it had not asked Mr. Uwinkindi to choose Counsel while in Court. What the Court wanted to know was whether the names of the Counsel he wanted were in the list provided in Court, Mr. Uwinkindi however had indicated there was another list of experienced Counsel. The Court wanted him to compare the list of Counsel by the bar and his list. The Court noted it did not have the other list that Mr. Uwinkindi was referring to, as a result, the Court was working with what was in Court so as to try and move the issue forward.
59. The Prosecution submitted that it was of the same view as the Court but had one concern, and this was the fact that Mr. Uwinkindi was not very familiar with the Rwanda Judicial system, he hardly knew lawyers. Therefore asking him to compare two lists could be difficult for him.

60. The Court informed the Prosecution that it was contradicting itself, as earlier in the proceedings, the Prosecution had requested that Mr. Uwinkindi be given the list of Lawyers to choose Counsel of his choice from and if he refuses the Court should consider he had waived his right to choose Counsel of his choice. The Court had availed the list but Mr. Uwinkindi had refused to respond.
61. The Prosecution reiterated that in its opinion, the thirty minutes given to Mr. Uwinkindi to scrutinize the list was not sufficient.
62. At the invitation of the Court Mr. Uwinkindi submitted that when the Court asserts that he was not responding to the question of the list, it was not true as he respects the Court. He clarified that he had indicated he could not provide the information the Court had asked for, because he did not have the other list. Mr. Uwinkindi requested to be given time to compare the list availed with the other list and then he would inform the Court if it was the same list.
63. The Court granted the request and indicated that Mr. Uwinkindi should file a written response by Friday 25 September 2015, indicating if it was possible for him to choose Counsel from the list provided or not.
64. Counsel Ngabonziza informed the Court that it should take note that the list availed in Court was the list that was recognized by the Bar Association for transferred cases and there was no other list.
65. The Court asked Mr. Uwinkindi whether it was necessary to wait for his answer as earlier pleaded if that was the only list.
66. Mr. Uwinkindi requested to be given time to respond on the issue. He informed the Court he required time to sit and decide who was going to defend him.
67. The Court clarified it was not asking him to choose a lawyer, all it wanted to know was if the list tallied with the list he had indicated he had. Emphasizing that it was not forcing Mr. Uwinkindi to accept defence lawyers, the Court underscored that it was trying to protect his interests by ensuring far trial despite the trial lagging for long.
68. The hearing was adjourned with the Court indicating that it would issue a ruling, on the request to let Mr. Uwinkindi select Counsel of his choice from the list of Counsel on Tuesday, 29 September 2015 at 11:00am.

C. Monitoring Mission 28 September to 30 September

High Court hearing of 29 September 2015

69. The hearing was held before the full Chamber, consisting of Judge Alice Ngendakuriyo, Judge Kanyegeni Thitmoti and Judge Fidel Njanzimana. The Accused, Mr. Uwinkindi

was present in Court and the Prosecution was represented by Mr. Jean Bosco Mutangana and Mr. Bonnaventure. Defence Counsel Joseph Ngabonziza was in Court.

70. Mr. Uwinkindi addressed the Court indicating that the Court record should reflect that he was not represented.
71. The Court delivered its ruling indicating that at the last hearing on 23 September 2015, the Prosecution had requested the Court to allow Mr. Uwinkindi get the list of Counsel and he be allowed to choose from the list, Counsel he would want to represent him. This request was based on the fact that Mr. Uwinkindi had refused to collaborate with the appointed Counsel, Mr. Joseph Ngabonziza and Mr. Isacar Hishamunda. The Prosecution had contended that allowing the request would be in the interest of justice and in line with fair trial standards.
72. Further the Prosecution had noted that even if Counsel had been appointed to assist in the interest of justice, they were of the opinion that all possible options needed to be explored, so as to ensure the Accused was assisted and that was why the Bar Association had invited Counsel willing to represent transferred accused persons, to apply. As a result, the Bar Association had compiled a list which the Prosecution was of the opinion needed to be availed to the Accused.
73. In addition, the Court noted that Mr. Uwinkindi continued to hold the position that he was not assisted by Counsel and he wanted to be allowed to choose Counsel of his choice, yet he had communicated to the Court that the list available from the Bar Association had no qualified lawyers and indicated that there was a list of experienced lawyers that was provided at the ICTR, during the transfer proceedings.
74. The Court further noted that Defence Counsel had indicated that they were ready to proceed with the hearing although, they did not have a complete defence brief, since Mr. Uwinkindi had refused to cooperate and provide them with the facts.
75. The Court indicated that when it directed the Bar Association to appoint Counsel for Mr. Uwinkindi, it had done so having observed his former Defence Counsel were no longer available to represent him. In February 2015, the Court issued a decision reiterating that the new Counsel had been appointed in accordance with the law. Mr. Uwinkindi appealed this decision and in April 2015, the Supreme Court upheld the decision of the High Court. During the hearing on 2 June 2015, the Prosecution requested the Court to order that Mr. Uwinkindi should be assisted by the new Counsel in the interest of Justice. The Court decided that for equality and a fair trial, Mr. Uwinkindi had to be assisted by the Counsel appointed.
76. The Court found that the Prosecution was therefore not founded in its request, as the Court had already issued decisions on Mr. Uwinkindi's representation. The Court took the view that the new list was not introducing new elements to the trial, Mr. Uwinkindi had

communicated to the Court that he would not choose from it, because he could not find names of Counsel given during the transfer proceedings in Arusha.

77. The Court's decision was that Mr. Uwinkindi would be assisted by the appointed Counsel, notwithstanding his disagreement with their appointment.
78. The Court noted it approved the appointment of the new Counsel because they were professionals, likely to assist the Court to reach a proper determination of the case.
79. The Prosecution request was dismissed. The hearing would resume on 15 October 2015, at 8.30 am and the Court would begin hearing the Prosecution witnesses *de novo*.
80. Mr. Uwinkindi addressed the Court indicating that he did not agree with the decision the Court had made regarding his defence. He requested that the court record reflects that he would appeal the decision.

Meeting with Mr. Uwinkindi on 29 September 2015

81. The Monitor met with Mr. Uwinkindi at the Kigali Central Prison. The meeting was held with the assistance of an interpreter.
82. Mr. Uwinkindi began by informing the Monitor that the monitoring report should not refer to Counsel Joseph Ngabonziza or Isacar Hishamunda as his Counsel. Asserting that Counsel who had not discussed a case file with a client but was appearing in Court could not purport to represent the client. He indicated that he did not recognize the two lawyers as his Defence Counsel and they were out to sabotage his case. Mr. Uwinkindi opined that he would rather be in Court on his own than be with individuals appointed to sabotage his case, pointing out that the two Counsel as well as the list of sixty eight lawyers were sanctioned by the Ministry of Justice.
83. The Monitor assured Mr. Uwinkindi that his concerns about the Defence Counsel would be reflected in the monitoring report.
84. Mr. Uwinkindi enumerated the challenges he was facing in his case. First, the monitoring reports were in English which made it difficult for him to read and understand. Second, he was not aware of what was happening at MICT since all the documents were in English. Third, when he felt attacked by the Court he did not know how to address the issue.
85. Mr. Uwinkindi proceeded to hand over several documents to the Monitor. First, was a copy of an expert report prepared by Mr. Martin Witteveen, an advisor in International Crimes to the National Prosecuting Public Prosecution Authority in Rwanda. The report had been prepared in 3 June 2015, for the extradition proceedings relating to the Government of Rwanda v. Vincent Bajinya and others. Mr. Uwinkindi pointed out that the

report made reference to the Bandora, Munyagishari, Mugesera and Uwinkindi trials, with criticism being levelled against the Defence. Mr. Uwinkindi pointed out that the expert refers to Defence Counsel as incompetent and unable to defend their client's.³

86. Mr. Uwinkindi noted further that the report had made reference to incidences where Prosecution witnesses had withdrawn earlier testimonies incriminating Bandora and has asserted that they were met by the Prosecution, told what to say in Court, given money and promised to be release from jail after testifying.⁴
87. Mr. Uwinkindi handed over to the Monitor a letter which was not dated,⁵ addressed to the commissioner of Rwanda correctional Services, by the Minister of Justice, with an annexure list of sixty six lawyers. In the letter the Minister informed that these were the only lawyers allowed to meet the four transferred accused persons⁶ detained at the Kigali Central Prison. This communication, in Mr. Uwinkindi's opinion demonstrated the role that the Ministry of Justice played, in the recruitment of Defence Counsel.
88. Mr. Uwinkindi handed the Monitor the announcement by the Rwanda Bar Association dated 22 July 2015, requesting lawyers that satisfied a list of requirements for representing accused persons in the transfer cases, to express their interest in writing to the Bar. Mr. Uwinkindi opined that this move by the Bar Association was a cover up for the mistakes made by the Ministry of Justice who had directed the Bar Association to appoint new Counsel for him.
89. Mr. Uwinkindi opined that the list of all members of the Rwanda Bar Association would have been the better list to be given to accused persons, to select their Counsel of choice from. The new list by the Ministry of Justice was a decoy for sabotaging the transfer cases.
90. Mr. Uwinkindi handed the Monitor two letters dated 8 September 2015 and 14 September 2015, by the President of Rwanda Bar Association addressed to the Minister of Justice. Both letters were forwarding the list of lawyers who were available to assist indigent Accused persons transferred to Rwanda for trial. The Annexure in the first letter had sixty six names, while the one in the second letter had sixty eight names. Mr. Uwinkindi observed that in the revised list with additional names, listed as number sixty seven was Counsel Isacar Hishamunda.
91. Mr. Uwinkindi showed the Monitor, a letter sent by the President of the High Court accompanying a decision made by the High Court on 25 March 2015 ordering the Rwanda

³ Additional Report by Mr. Martin Witteveen, Re: Rwanda v. Banjinya and others, June 3, 2015, para. 16, 14, 15, 51,52,61,62.

⁴ Supra para. 41

⁵ The copy that Mr. Uwinkindi showed the Monitor had been received by the National Prosecuting Authority on 14 August 2015.

⁶ Currently there are four accused persons detained at the Special enclosure in the Kigali Central Prison, transferred from the ICTR and other foreign jurisdictions for trial in Rwanda. They are Jean Uwinkindi, Bernard Munyagishari, Leon Mugesera and Emmanuel Mbarushimana.

Bar Association to give Mr. Mbarushimana⁷ a list of all lawyers registered by the Bar Association, so that he could choose Counsel to assist him.

92. Mr. Uwinkindi stated that he could not understand why he was not getting similar treatment, yet their cases were similar. He noted that he had raised this issue before the Supreme Court and the Court did not address itself to this concern in its decision.
93. Mr. Uwinkindi showed the Monitor, a letter by the President of the Bar dated on 6 April 2015, to the director of prison sending a list of 1,087 lawyers registered by the Bar Association, highlighting that among these 661 are competent to represent clients at all courts including the Supreme Court, while 426 of them could only appear in the lower Courts and the High Court. In the letter the Bar President asked the Prison Director to communicate the list to Mr. Mbarushimana pursuant to the High Court decision dated 25 March 2015. Mr. Uwinkindi emphasized that it was unfair for him to be given a restricted list to choose Counsel from, yet Mr. Mbarushimana's right to Counsel had been interpreted widely by the same Court.
94. Turning to the Court transcript of the last hearing of 23 September 2015, Mr. Uwinkindi observed that this time the Prosecution understood his challenges and was trying to plead his case by asking the Court to give him time to choose Counsel from the list of sixty eight, because the Court was pushing him to look at the list and decide during the hearing. He observed that the presiding Judge's demeanor was very aggressive towards him and he was not surprised. In his opinion it was as if the Judge was revenging because in the past he had asked her to recuse herself.
95. In reference to the Court proceedings Mr. Uwinkindi noted that the Judge had stated that the case file did not belong to him but to the Court and he was not in Court to give it orders. He expressed concern that the Court had decided to give his file to Counsel he did not recognize. By asserting that the case file was not his, Mr. Uwinkindi was of the opinion that it also meant he was not allowed to say anything in his trial.
96. Mr. Uwinkindi recalled how he was arrested with an arrest warrant that did not contain his names, yet none of the Courts appeared to take this issue seriously even after he had raised it, in the middle of his trial his Counsel were fired and Counsel who are agents of the Prosecution were appointed to represent him, so that the truth about the unfounded charges can be concealed. Further the presiding Judge in his trial declares openly in Court that the case was not his.
97. Mr. Uwinkindi reiterated that Counsel Ngabonziza was out to sabotage his case. Referring to his submission during the 23 September 2015 hearing, where Counsel had submitted to the Court that the only list that was available for Mr. Uwinkindi to select Counsel from was the list of sixty eight Counsel recognized by the Bar Association. In Mr. Uwinkindi

⁷ Prosecution v Mbarushimana Emmanuel RP 0001/15/HCCI:MPC/Mbarushimana Emmanuel

asserted that this was evidence of his outright bias, since there was another list that had been submitted to Mr. Mbarushimana.

98. In reference to the directive given to him by the Court on 23 September 2015, to look at the list and inform the Court by 24 September 2015, if he could choose Counsel from the list provided in Court. Mr. Uwinkindi informed the Monitor that he had responded to the Court informing it that the list of sixty eight provided in Court was not the full list of Bar Association lawyers and therefore he could not choose from the list.

III. CONCLUSION

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

Dated this 5th day of November 2015

Respectfully submitted,



Elsy Sainna
Monitor for the Uwinkindi case
Nairobi, Kenya



Stella Ndirangu
Monitor for the Uwinkindi case
Nairobi, Kenya