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**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre  
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12 September 2013

To: The President  
International Criminal Tribunal for Rwanda (“ICTR”)

The President  
Mechanism for International Criminal Tribunals (“MICT”)

Through: The Registrar  
ICTR

The Registrar  
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From: Anees Ahmed  
ICTR Monitor for the Uwinkindi Case

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**Monitoring Report for the Uwinkindi Case (July-August 2013)<sup>1</sup>**

**I. INTRODUCTION**

1. This Report (“Report”) pertains to the activities in the *Uwinkindi* case before the Rwandan judiciary and the interactions of the ICTR monitors with various stakeholders during July-August 2013 (the “Reporting Period”).<sup>2</sup> During the Reporting Period, the monitors (Messrs. Anees Ahmed and Constant Hometowu) made three visits to Rwanda.<sup>3</sup>
2. During the Reporting Period, no in-court judicial activity took place.
3. On 5 September 2013, a three-Judge bench of the High Court of Rwanda ruled that the trial would commence on 11 October 2013.

<sup>1</sup> To ensure completeness of information, especially pertaining to legal aid and discussions between the Defence Counsel and MiniJust regarding resources for defence investigation, the reports for the months of July and August are being issued in a combined document. The ICTR President granted leave to the monitors to do so on 29 August 2013.

<sup>2</sup> Exceptionally, the Report also includes the narrative of a High Court hearing that took place on 5 September 2013, as this event was closely related to the matters addressed in this Report.

<sup>3</sup> These visits also included activities pertaining to the monitoring of the case of Mr. Bernard Munyagishari, who was transferred by the ICTR to Rwanda for trial on 24 July 2013.

4. The matter of the allocation of resources by the Rwandan Ministry of Justice (“MiniJust”) to the Uwinkindi Defence for its investigations remains under discussion between MiniJust and the Defence.

## II. DETAILED REPORT

### *a. Payment for Defence Investigations and Trial Schedule*

5. By its decision of 16 May 2013, a three-Judge bench of the High Court of Rwanda, *inter alia*:
  - a. Denied the Defence request for the appointment of Defence investigators and legal assistants;
  - b. Ordered that the Defence approach MiniJust and the Kigali Bar Association (“KBA”) for allocation of financial resources to facilitate investigations by the Defence Counsel themselves;<sup>4</sup> and
  - c. Scheduled the resumption of proceedings for 5 September 2013.
6. The Defence Counsel (Messrs. Gatera Gashabana and Jean-Baptiste Niyibizi) informed me that they have been in touch with senior officials of MiniJust throughout the Reporting Period regarding the possibility of funding investigations. According to the Defence Counsel, MiniJust informed the Defence that no funding was possible until 15 July 2013, as resources could only be disbursed from the National Budget for 2013-2014 after that date. The Defence Counsel further advised me that, even after 15 July 2013, their negotiations with MiniJust had been inconclusive, as MiniJust had sought further clarifications regarding the request for funding. The Defence Counsel informed me that they will advise the High Court of these difficulties when proceedings resume on 5 September 2013.
7. On 7 August 2013, I had a meeting with Mr. Pascal Ruganintwali, the Permanent Secretary of MiniJust and the Deputy Attorney-General of Rwanda, regarding the Defence request for funding. Mr. Ruganintwali informed me that the deadline for the submission of requests for funds from the Rwandan National Budget for 2012-2013 was 15 May 2013, which had since passed. Since the Defence request was made after 15 May 2013, it was not possible for MiniJust to fund any Defence activity from the 2012-2013 Budget. In addition, funding from the 2013-2014 Budget will only be available after 15 July 2013. Mr. Ruganintwali also stated that MiniJust held a tripartite meeting with the KBA and the Uwinkindi Defence. However, according to Mr. Ruganintwali, the Defence submission for funding lacked material details, and, as a result, MiniJust could not approve the submission. Accordingly, MiniJust requested that the Defence file a revised request for funding with more detailed particulars about the specific activities to

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<sup>4</sup> The term “Defence Counsel” is used both in its singular and plural sense.

be funded and the specific amounts of funds required for each activity. Mr. Ruganintwali stated that this revised submission had not been received until the day he met with me (7 August 2013).

8. Mr. Ruganintwali also informed me that upon receipt of the revised request, MiniJust will make an expeditious decision regarding the disbursement of funds. Mr. Ruganintwali informed me that he will remain in touch with the KBA and the Defence Counsel on this matter.
9. Mr. Athanase Rutabingwa, the President of the KBA, also confirmed that the KBA had been in contact with MiniJust regarding funding for the Uwinkindi Defence investigation, and that the final decision will be made by MiniJust. While the funds will be provided by MiniJust, they will be disbursed to the Defence Counsel by the KBA according to the existing procedure.
10. On 7 August 2013, Mr. Gashabana, the Lead Defence Counsel, informed me that the Defence had filed a detailed budget proposal that morning, as requested by MiniJust.
11. On 19 August 2013, the Defence Counsel filed an application before the High Court of Rwanda informing the Court of the status of their negotiations with MiniJust. The Defence Counsel informed the High Court that they had been unable to contact Defence witnesses for want of financial resources, and had therefore been unable to adequately prepare their case. Accordingly, the Defence Counsel stated that they required an extension of six months, after the receipt of the funds from MiniJust, to prepare their case.
12. On 5 September 2013, as scheduled, the case came up for hearing before a three-Judge bench of the High Court of Rwanda (sitting in the Supreme Court Chamber). The bench was comprised of Judges Alice Ngendakuliyo (presiding), Angeline Rutazana, and Cassien Nzaboninama. Mr. Jean-Bosco Mutangana and Mr. Bonaventure Ruberwa represented the Prosecution. The Accused was present along with his Counsel, Mr. Niyibizi. The Court was informed that the Lead Defence Counsel, Mr. Gashabana, was indisposed and could not attend the proceedings.
13. Upon commencement of the proceedings, Mr. Niyibizi informed the Court that the Defence had not been able to file its "submissions" in response to the Prosecution's dossier, *inter alia*, because the Defence was unable to receive the necessary financial resources from MiniJust to contact potential Defence witnesses and thereafter to prepare the Defence case. Mr. Niyibizi also stated that the Defence had written to, and met with, officials from MiniJust and the KBA, but had received no formal reply.
14. In response to the Defence request for an extension of time, the Prosecution stated that it had received letters from the Defence dated 19 August 2013 and 3 September 2013 seeking a six-month extension for the preparation of the Defence

case. The Prosecution stated that the Defence Counsel had not shown due diligence and good faith in their interactions with MiniJust and the KBA. The Prosecution stated that a review of documents indicated that a tripartite meeting was held on 24 June 2013 between officials of MiniJust, the KBA, and the Defence Counsel. In that meeting, the Prosecution asserted, MiniJust explained to the Defence Counsel that the Defence should expeditiously provide a detailed work-plan for their proposed investigation and not simply request a lump-sum amount. The Prosecution noted that the Defence Counsel waited until 22 August 2013 to provide this detailed work-plan and accordingly delayed the process of disbursing the resources. The Prosecution alleged that over a nine month period beginning July 2012, the Defence Counsel claimed 38 million Rwandan Francs (“RWF”) from the KBA for the preparation of the Defence case. The Prosecution submitted that the Defence Counsel should have used these funds to contact their witnesses and to prepare their case. According to the Prosecution, the Defence submitted a work-plan totalling RWF 103 million to conduct its investigation on top of the already claimed Defence fee of RWF 38 million. The Prosecution alleged that, given the time and resources that had already been allotted, the Defence Counsel should have been able to contact all their witnesses, particularly those residing in Rwanda. Accordingly, the Prosecution asked the Court to hold that the Defence Counsel had delayed the case for ulterior reasons and “fraudulently” misused State funds. Finally, the Prosecution requested that the Court order an early commencement of the trial, beginning with the testimonies of Defence witnesses residing in Rwanda, and submitted that the Defence could continue negotiating with MiniJust for resources in order to contact overseas witnesses.

15. In response, Mr. Niyibizi expressed his surprise at the submissions of the Prosecution. He argued that the Defence promptly submitted its initial work-plan to the KBA on 22 May 2013, within a week of the High Court’s order of 16 May 2013. Mr. Niyibizi further submitted that the Defence had a meeting with MiniJust wherein MiniJust advised the Defence that no budget allocation could be made until at least 15 July 2013. The Defence, according to Mr. Niyibizi, is still waiting for the official minutes of that meeting and further communication from MiniJust. Mr. Niyibizi contended that the Prosecution should not interfere with the Defence’s negotiations with MiniJust and the KBA, nor should the Prosecution have any role in determining how much money the Defence Counsel should receive for representing Mr. Uwinkindi. Mr. Niyibizi emphasised that the payments received from the KBA so far only covered the evaluation of the dossier and visits to the Accused. The current contract between the Defence Counsel and the KBA, according to Mr. Niyibizi, does not provide any funding for travel or other expenses incurred while conducting investigations and contacting witnesses.
16. In reply, the Prosecution submitted that the Defence Counsel had visited Mr. Uwinkindi in prison at least four times a week without any tangible evidence of trial preparation. The Prosecution reiterated that this failure on the part of the Defence Counsel implies that the Defence is delaying the case by “fraudulent” means and requested that the Court direct an early commencement of trial by

hearing the testimonies of the 35 proposed Defence witnesses who reside in Rwanda.

17. After hearing the Prosecution and the Defence Co-Counsel, the High Court asked Mr. Uwinkindi directly whether he consented to the proposed commencement of the trial, wherein Defence witnesses resident in Rwanda would testify first, pending resolution of the question of funding for contacting overseas witnesses. Mr. Uwinkindi nodded in agreement.
18. After an hour-long deliberation, the Court issued a short written decision.<sup>5</sup> The decision noted that the Defence Counsel should have filed their submissions by 20 August 2013, and that they had failed to do so. The Court also noted that the trial would commence with the testimonies of Defence witnesses residing in Rwanda, which would allow for the continued negotiation between the Defence and MiniJust for the resources to contact overseas witnesses. The Court noted Mr. Uwinkindi's agreement with this proposal. Accordingly, the Court directed the Defence to file its submissions by 3 October 2013 and scheduled the commencement of trial for 11 October 2013.
19. Later, in a conversation on 8 September 2013, Mr. Gashabana informed me that it will be difficult for the Defence to prepare and conduct its case in the absence of financial resources from MiniJust, as the Defence needs to conduct its investigation even to respond to the Prosecution's dossier and to cross-examine Prosecution witnesses.

*b. Fair Trial Issues*

20. During the Reporting Period, the monitors had four meetings with Mr. Uwinkindi, including three detailed meetings at the Kigali Central Prison ("the Prison") in the presence of the Defence Counsel, and one meeting at the High Court after the hearing on 5 September 2013.
21. During a meeting with me and Mr. Constant Hometowu on 29 July 2013, Mr. Uwinkindi stated that his fair trial rights were being prejudiced as his Defence Counsel had not been able to receive funding for identifying, contacting, and interviewing Defence witnesses, most of whom reside abroad. Mr. Uwinkindi stated that, at this stage, it is difficult to provide a precise witness list, as the Defence Counsel have not yet been able to make contact with those potential witnesses or discover their whereabouts. Mr. Uwinkindi added that the Defence cannot determine whether any individual can provide testimony, and the extent of that testimony, until initial contacts are made with potential witnesses. He stated that the Defence is not aware of the whereabouts of some potential witnesses. Accordingly, locating suitable individuals will require considerable expense. Mr. Uwinkindi further argued that the Prosecution had had disproportionately greater

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<sup>5</sup> The decision was read orally in Court. The monitors have applied for, but have not yet received, a copy of the written decision.

time and resources to conduct its investigation, while the Defence had been unable to prepare its case due to financial constraints. According to Mr. Uwinkindi, this situation has led, and will further lead to, an inequality of arms that will jeopardise the preparation of the Defence.

22. In another meeting with me on 6 August 2013 at the Prison, Mr. Uwinkindi stated that he is being wrongfully detained and tried, as the indictment refers to an individual called “Jean-Bosco Uwinkindi,” while his name is “Jean Uwinkindi.” Mr. Uwinkindi stated that neither the ICTR nor the Rwandan courts have considered this incongruity, adding that this has caused him significant prejudice. Mr. Uwinkindi further claimed that, being an ordinary pastor, he could not have exercised any legal or factual superior authority over members of the Rwandan Army, *gendarmerie*, *Interahamwe*, or other civilians, as alleged in the indictment.
23. Mr. Uwinkindi stated that he will not receive justice in Rwanda simply because the prosecutors, the Judges, and all those handling his case are of an ethnicity other than his. Mr. Uwinkindi stated that he has been denied the right to presumption of innocence in Rwanda, as both the media coverage and the State authorities regularly proclaim his guilt for the alleged crimes.
24. Finally, Mr. Uwinkindi claimed that the amendments made to the Transfer Law on 16 June 2013 are detrimental to the rights of a transferred accused, and that Rwanda has caused prejudice to his fair trial rights. Mr. Uwinkindi did not elaborate further on this matter, but stated that the Defence will raise the issue at an appropriate time. He did contend, however, that the ICTR decision to refer his case to Rwanda was premised on the assumption that the conditions governing the trial will be those contained in the un-amended Transfer Law extant at the time of the referral decision.<sup>6</sup> Mr. Uwinkindi claimed that by amending the Transfer Law after the referral decision was made, Rwanda materially breached the conditions on which the transfer was predicated.

### c. *Conditions of Detention*

25. Mr. Uwinkindi and the Defence Counsel stressed the absence of a secure place within the Prison for Mr. Uwinkindi to consult with his Defence Counsel. Mr. Uwinkindi stated that he is compelled to meet with his Defence Counsel in a noisy open area in which other detainees, visitors and guards are present or pass through and overhear the Defence conversations. According to Mr. Uwinkindi and the Defence Counsel, the use of a guard-room where they met previously has been discontinued.
26. Mr. Uwinkindi and the Defence Counsel stated that on rare occasions they are able to meet each other in the meeting room attached to the Prison Director’s office. However, according to them, this meeting room is often occupied for

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<sup>6</sup> The ICTR Referral Chamber issued its decision on 28 June 2011. The Appeals Chamber upheld the decision of the Referral Chamber on 16 December 2011.

official meetings, and there have been occasions where visiting Defence Counsel have had to leave without engaging in meaningful and confidential consultations with Mr. Uwinkindi.

27. With respect to the conditions of detention, Mr. Uwinkindi claimed that he and his fellow transfer detainees are subjected to harsher conditions than those detained at the United Nations Detention Facility in Arusha and the convicts transferred for detention by the Special Court for Sierra Leone to the Mpanga Prison in Rwanda. In particular, Mr. Uwinkindi stated that his cell lacked a shelf to keep his books and files, bed sheets, blankets and pillows, and that he lacked other items of daily use. In addition, he stated that there was no possibility for him to engage in sports or any other physical activity.
28. Concerning food, Mr. Uwinkindi stated that he and his fellow transfer detainees are not permitted to make any choices and must sign for every meal they receive, even if the quality is substandard. Mr. Uwinkindi reported that on one Saturday the food was impossible to eat but, despite it being inedible, he was forced to sign a document affirming its receipt, and was told, "You eat or you don't."
29. Mr. Uwinkindi stated that there is no nutritionist to verify the nutritional content of the food he receives, and that it is injurious to his health. In particular, according to Mr. Uwinkindi, the meals are very oily, and he does not receive fruits or fish, and occasionally chicken.
30. Owing to this lack of quality food, Mr. Uwinkindi stated that he had lost 15 kilograms since his arrival in Rwanda in April 2012, going from 88 kilograms in Arusha to 73 kilograms in Kigali. Mr. Uwinkindi concluded that, being a man of religion, "it would be a sin if I call myself healthy."
31. With respect to religious practice, Mr. Uwinkindi claimed that he cannot pray regularly in the Prison Chapel, as it is situated in the "general" part of the Prison, separate from the special enclosure where the transferred detainees are kept, and therefore inaccessible except on Sundays.
32. Mr. Uwinkindi also claimed that he does not get hot water for washing and bathing purposes. He also stated that he has asked for a razor for a number of months, which he has not yet received.
33. With respect to outside contact, Mr. Uwinkindi claimed that he received insufficient telephone time to speak to his family members, who are otherwise unable to visit him personally.
34. Mr. Uwinkindi stated that he wrote six successive letters to the prison authorities (dated 8 May 2012, 29 October 2012, 27 February 2013, 24 May 2013, 17 June 2013, and 4 July 2013) requesting the above-mentioned and other basic amenities, but has received no reply.

35. On 7 August 2013, I had a meeting with the Director of the Prison, Mr. Rusa Gahima. Mr. Gahima stated that the prison had outsourced the provision of food to the transferred detainees in the “VIP Enclosure” to a private canteen. According to Mr. Gahima, the Prison provides a menu to the canteen operator in consultation with the inmates. He also stated that the inmates can provide input on what food they wish to eat; for example, some inmates prefer brochettes, Irish potatoes or *ugali*, while others prefer other types of food.
36. Mr. Gahima did say that he will look into the quality and quantity of food and direct the canteen accordingly. Mr. Gahima also stated that he would make sure that all reasonable requests made by Mr. Uwinkindi in his letters to the prison authorities, and the issue of space for meeting with his Defence Counsel would be addressed.
37. Mr. Gahima emphasised that all transferred detainees, including Mr. Uwinkindi, are regularly examined by a physician and are taken to a hospital, if required.

*d. Witness Protection*

38. On 31 July 2013, I met with Mr. Janvier Bayingana, the Witness Protection Expert engaged by the Supreme Court of Rwanda to head its Witness Protection Unit (“WPU”). Mr. Bayingana is a former staff member of the Witnesses and Victims Support Section of the ICTR, where he worked for a decade in both Arusha and Kigali.
39. Mr. Bayingana showed me the organigram of the WPU and also took me around the facilities created within the premises of the Supreme Court dedicated to handling protected witnesses during their appearances before the Court. Mr. Bayingana stated that he reports administratively and substantively to the Chief Registrar and the Secretary-General of the Supreme Court, under the overall supervision of the Chief Justice of Rwanda.
40. Mr. Bayingana stated that the WPU’s budget is sufficient for further modification and refurbishment of the facilities within the Supreme Court to handle protected witnesses. He informed me that procurement procedures have been initiated for further improvement of these facilities.
41. According to Mr. Bayingana, the WPU will address issues of general and judiciary-directed protection of witnesses, witness support, security, health, and transportation. He stated that arrangements have been made with a public hospital in Kigali to provide fully confidential medical and psychological treatment to protected witnesses, as required.
42. Mr. Bayingana further stated that the WPU has the means and the infrastructure to access and support protected witnesses anywhere in Rwanda and that provision had been made in the WPU budget for a safe-house where protected witnesses can be accommodated. Mr. Bayingana added that the WPU also proposed to maintain



a database of witnesses in order to provide protective measures even after the conclusion of the trial, if so ordered by the Court.

43. Mr. Bayingana stated that the WPU is aware of the specific requirements of the cases transferred from the ICTR and other national jurisdictions to Rwanda, which are subject to the *sui generis* Transfer Law. He said that the WPU will continue to prepare for and meet the specific requirements of witnesses who will testify from abroad via video-link. Mr. Bayingana added that arrangements will be made in consonance with Article 15 of the Transfer Law to ensure the protection from search and seizure or arrest of witnesses arriving from abroad to testify in the transferred cases.
44. Mr. Bayingana advised me that the WPU budget is of a hybrid nature having two components. The first component of the budget is drawn from the regular budget of the Supreme Court and the second component comes from external donors.
45. Mr. Bayingana confirmed that he had received a list of witnesses in the Uwinkindi case from a registrar of the High Court. The WPU is waiting for the schedule of dates on which these witnesses will be called by the respective parties. At this stage, according to Mr. Bayingana, all the witnesses will be considered protected until a judicial decision is issued to the contrary.
46. Finally, Mr. Bayingana stated that so far the WPU has assisted with the protection of witnesses in one genocide case before the High Court and / or Supreme Court.

*e. Meetings and Interactions with the Prosecution Authorities*

47. On 28 August 2013, I was invited to a meeting between Mr. Bongani Majola, Registrar of the ICTR, and Mr. Alphonse Hitiyaremye, Deputy Prosecutor-General of Rwanda. During this meeting, officials of the National Public Prosecution Authority (“NPPA”) apprised Mr. Majola of the progress of the transferred cases of Messrs. Uwinkindi and Bernard Munyagishari.<sup>7</sup> The NPPA officials expressed their dissatisfaction with the alleged delays by the Uwinkindi Defence in preparing its case. The Prosecution reiterated these views before the High Court during the hearing of 5 September 2013, details of which are discussed above.
48. Mr. Hitiyaremye, *inter alia*, advised Mr. Majola that the NPPA has recruited two staff members from the Office of the Prosecutor of the ICTR—Ms. Florida Kabasinga and Ms. Aisha Kagabo—to assist and advise the NPPA on matters pertaining to the transferred cases from the ICTR.

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<sup>7</sup> Discussions concerning the case of Mr. Munyagishari will be described separately in the monitoring report concerning that transferee.

*f. Other Meetings, Activities, and Observations*

49. During their visits to Rwanda, the monitors meet with various stakeholders of the transferred cases. These stakeholders include, but are not limited to, judicial officers, prosecuting and defence attorneys, court officials, prison authorities, and members of the diplomatic corps and the civil society.
50. The monitors have also applied for, and have received access to, the case file of the Uwinkindi case before the High Court of Rwanda.
51. In their reporting, the monitors have been governed by the guidelines issued by the ICTR and the MICT concerning the monitoring programme. In particular, the monitors have been cognisant of Article 3.3 of the *Guidelines on Monitoring Trials Referred to National Jurisdictions under Rule 11bis by ICTR Staff Monitors*, which states as follows: "ICTR monitors shall express no personal opinion regarding the merits of transferred cases, other cases occurring in the national courts, or on the larger justice system."<sup>8</sup>
52. Officials of the ICTR and the MICT provide logistical support to the monitors on mission in Rwanda.

### III. CONCLUSION & RECOMMENDATION

53. The trial in the Uwinkindi case, as scheduled by the High Court, will commence on 11 October 2013. Once it begins, the trial will likely continue on a day-to-day basis.
54. It is recommended that an ICTR / MICT trial monitor be based in Rwanda from early October 2013 for monitoring the trial.

Respectfully submitted,



Anees Ahmed

ICTR Monitor for the Uwinkindi Case

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<sup>8</sup> *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-2001-75-AR/11bis, Order on the ICTR Monitoring Arrangements, 29 June 2012, Annex A, Art. 3.3.



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