

**UNITED
NATIONS**



International Residual Mechanism for Criminal
Tribunals

Case No: MICT-12-25

Date: 23 December 2019

Original: English

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

IN THE MATTER OF

JEAN UWINKINDI

PUBLIC

MONITORING REPORT FOR NOVEMBER 2019

Monitors :

Dr. Ken Nyaundi
Ms. Elsy C. Sainna

Table of Contents

INTRODUCTION.....	3
DETAILED REPORT	3
Monitoring Mission from 22 nd to 23 rd October 2019	3
Court of Appeal Hearing held on the 23 rd October 2019, Kigali	3
Court of Appeal hearing held on the 19 th November 2019	5
(Transcript of translated proceedings)	5
Monitoring Mission from 28 th to 30 th November 2019	6
Meeting held with Mr. Uwinkindi on 29 th November 2019 at the Mpanga Prison.....	6
CONCLUSION	7

INTRODUCTION

1. Pursuant to the Terms of Reference for the Monitors, in particular part "C" of Annex II to the MOU between the International Residual Mechanism for Criminal Tribunals ("IRMCT" or "Mechanism") and the Kenya Section of the International Commission of Jurists ("ICJ Kenya"), we respectfully submit this Monitoring Report to the President of the Mechanism through the Registrar.
2. This Monitoring report pertains to interactions between Dr. Ken Nyaundi and Ms. Elsy C. Sainna, Monitors appointed by the Mechanism ("Monitor") to monitor the case of Mr. Jean Uwinkindi, during the month of November 2019 ("the Reporting Period").
3. During the Reporting Period, the Monitor undertook two monitoring missions to Rwanda: from 22nd October 2019 to 23rd October 2019 and 28th to 30th November 2019. Thereafter the Monitor held a meeting with Mr. Uwinkindi at the Mpanga Prison.
4. A detailed report on all activities during the Reporting Period is provided below.

DETAILED REPORT

Monitoring Mission from 22nd to 23rd October 2019

Court of Appeal Hearing held on the 23rd October 2019, Kigali

5. The court session commenced at 9.30 AM. The Bench consisted of Presiding Judge Justin Gakwaya , Justice Agnes Nyirandabaruta and Judge Richard Muhumuza.
6. The Appellant, Mr. Uwinkindi was present and represented by Defence Counsel Soshi Bizimana. The Prosecution was represented by Gaspard Nyangezi.

7. The Court assistant read out the Memorandum of Appeal filed by Mr. Uwinkindi in respect of the High Court judgement rendered on 30.12.2016.
8. Thereafter, the Presiding Judge began by observing that the Court had received two submissions that had been filed separately: one filed by Defence Counsel Shoshi and other by the Appellant, Mr. Uwinkindi. Both were received on Monday 21.10.2019.
9. Because the submissions were filed two days before the hearing day, the Judge explained that the Prosecution had applied for an adjournment in order to avail themselves time for an orderly preparation of the Appeal.
10. Further, the Presiding Judge explained that the court was not sure whether to rely on Mr. Uwinkindi or his Defence Counsel's submissions. The confusion needed to be clarified.
11. In reply to the Presiding Judge's observations, Mr. Uwinkindi states that his submissions were intended to compliment that which was filed by Defence Counsel. However, the Presiding Judge did not concur and explained they were separate and quite distinct from each other.
12. For this reason and given the fact that the Prosecutor had applied for an adjournment in writing, the court would grant the Prosecution's request.
13. The court further issued the following directions:
 - a. The Prosecution to ensure that they have filed their submission by 5.11.2019;
 - b. Defence Counsel is to ensure that the joint submissions were on record;
 - c. The Appellant and Defence Counsel to finalise and file joint submissions by 15.11.2019;
 - d. The next hearing would be on 19.11.2019.

14. At this point Defence Counsel requested to submit on a pre-trial question and seek court's clarifications but the Presiding Judge declined the request stating that any questions or issue should be included in the submissions.

Court of Appeal hearing held on the 19th November 2019

(Transcript of translated proceedings)

15. The Bench consisted of Presiding Judge Justin Gakwaya, Justice Agnes Nyirandabaruta and Judge Richard Muhumuza.

16. The Appellant, Mr. Uwinkindi was present and represented by Defence Counsel Soshi Bizimana. The Prosecution was represented by Prosecutors Bonaventure Ruberwa and Ms. Charity Wibabara.

17. The proceedings began with Presiding Judge addressing contents of a letter dated 12th November 2019 addressed to the court by the Appellant. In the letter, the Appellant, requested that Justice Richard Muhumuza recuses himself from the Bench. Prior to joining the Bench, Justice Muhumiza had been the Prosecutor in Appellant's trial.

18. In response, Defence Counsel Shoshi requested the court to consider a closed hearing session in order to address the question of recusal in line with the provisions of the recently enacted law contained in article 125 of the Penal Code published in September 2019 (Law No 027/2019).

19. At the invitation of the court, the Prosecution submitted that it had neither received nor seen the letter referred to by the Court. Therefore, the issue could not be canvassed without their prior knowledge. The court asserted that the letter had actually been lodged in the system and perhaps the Prosecution needed to check the issue on their end.

20. In concluding the hearing, the Presiding Judge directed as follows:

- i. That the Appellant and Defence Counsel should file responses to Prosecution submissions lodged in court on the 15th November 2019

- ii. The parties would be informed by notice, when hearing to address the question of recusal would be held.

Monitoring Mission from 28th to 30th November 2019

Meeting held with Mr. Uwinkindi on 29th November 2019 at the Mpanga Prison

21. The Monitor met with Mr. Uwinkindi in the presence of the Interpreter.
22. Mr. Uwinkindi began by the discussing the proceedings at hearing held on the 23rd October 2019¹. He informed the Monitor that the hearing that was scheduled for the 19th November did not proceed and acknowledged that the Monitors were not notified of this in good time.
23. Mr. Uwinkindi explained that instead, the hearing was adjourned until when the preliminary objections he had raised regarding the composition of the bench had been addressed. This was why the 19th November hearing could not proceed.
24. Mr. Uwinkindi informed the Monitor that he was aware the Prosecution had filed a response to Defence submissions two days before the hearing but between himself and Defence Counsel, they had not had opportunity to interrogate the content.
25. Although at the time of the monitoring mission, he had not met with Defence Counsel to discuss the Prosecution response, he was hoping he would do so in the coming days. Mr. Uwinkindi indicated that he would very much like to read the Prosecution submissions. He had received them on email but had not had opportunity to print.

¹ The Monitor obtained the typed proceedings from the Court of Appeal in Kigali and has included the content as part of this monitoring report.

26. On the detention conditions, Mr. Uwinkindi informed the Monitor that he did not have any new information to convey as nothing had changed since the last monitoring mission. The situation remains the same.

CONCLUSION

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

Dated the 23rd December 2019

Respectfully submitted,

//Elsy C. Sainna//

Elsy C. Sainna

Monitor for the Uwinkindi case

Nairobi, Kenya



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Greffe du MPTI</i>	<input checked="" type="checkbox"/> Arusha/ <i>Arusha</i>	<input type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
Case Name/ Affaire :	In the matter of Jean Uwinkindi		Case Number/ Affaire n° : MICT-12-25
Date Created/ Daté du :	23-12-2019	Date transmitted/ Transmis le :	23-12-2019
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	Monitoring Report for November 2019		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>	
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	
		<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>	
		<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :	<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>
	<input type="checkbox"/> Decision/ <i>Décision</i>	<input checked="" type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>					
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)					
<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input checked="" type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>					
Original/ Original en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en	<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>					
<input type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :	

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*
JudicialFilingsArusha@un.org OR/OU JudicialFilingsHague@un.org

Rev: April 2014/Rév. : Avril 2014