

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



More photos of today's Prosecution and Defence Outreach at the Annie Walsh Memorial School in today's *'Special Court Supplement'*

**PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office**

**as at:**

Tuesday, 28 February 2012

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
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Concord Times  
Tuesday, 28 February 2012

## LOCAL NEWS

By Olusegun Ogundefi Israel

After the two-time Presiding Judge of Trial Chamber II at the Special Court for Sierra Leone, Justice Julia Sebutinde was elected late last year to a seat on the International Court of Justice (ICJ), a prominent Kenyan jurist, Justice Philip Nyamu Waki, was yesterday sworn-in as an alternate judge of the Special Court's Appeals Chamber.

Waki made his solemn declaration at a special ceremony held in the Special Court's courthouse in Freetown before Registrar Binta Mansaray, and witnessed by Special Court President Justice Jon Kamanda, Attorney-General and Minister of Justice Franklyn Bai Kargbo on behalf of the government of Sierra Leone, and acting head of mission, UNIPSIL Berhanemeskel Nega representing the United Nations.

Speaking on Justice Waki's selection to the Trial Chamber which was assigned to sit on the trial of former Liberian President Charles Taylor in The Hague, Registrar Mansaray said: "In December 2006, an independent expert recommended that the Court appoint an Alternate Judge for the Taylor trial, and an Alternate Judge for the Appeals Chamber. That expert, the late Judge Antonio Cassese, pointed out that the Taylor trial would be 'of central importance to the success of the Special Court', and he stressed that 'it is very important for it to run smoothly and not falter.' Judge Cassese suggested that the Special Court appoint a 'distinguished African jurist'. Today I am proud to say that, Justice Philip Waki in whose honor we are gathered here today represents

# Special Court's Appeals Chamber gets alternate judge



the distinguished African jurist the late Justice Cassese had envisioned." According to a release from the Special

Court, Justice Waki was appointed jointly by the United Nations and the government of Sierra Leone to join the Appeals

Chamber in advance of any appeal which may follow judgement in the trial of former Liberian President Charles Taylor.

Justice Waki became a judge of the Kenya Court of Appeal in 2003, after having served as a Judge of the High Court of Kenya for nine years. Prior to 1995, he was in private law practice in Kenya since being called to the Bar in 1975. Justice Waki has worked actively for reform within the Kenyan judiciary. In 2008 he was named to head the Commission of Inquiry into Post-Election Violence in Kenya, also called the "Waki Commission", to look into the political violence committed during Kenya's 2007 elections.

In 2008 the International Commission of Jurists (Kenya) presented Justice Waki with the "Jurist of the Year Award".

"Justice Waki, you are joining an Appeals Chamber which will be remembered both in history and in precedent for breaking new grounds in international jurisprudence. It was this Chamber which first decided appeals relating to the conscription, enlistment and use of child soldiers; forced marriage as a crime against humanity; and attacks directed against UN peacekeepers as a war crime. It was also this Chamber which laid down the standard that defines Joint Criminal Enterprise," Registrar Mansaray reminded the new judge.

Awoko

Tuesday, 28 February 2012

## Kenyan judge sworn in as Special Court alternate judge

By Betty Milton

The Special Court of Sierra Leone yesterday administered the oath of office to Kenyan born Justice Philip Waki as an Alternate Judge of the Appeals Chamber.

Welcoming guests at ceremony which was held in the Trial Chamber, Registrar Binta Mansaray disclosed that "in December 2006, an Independent Expert recommended that the Court appoint an Alternate Judge for the Taylor trial and an Alternate Judge for the Appeals Chamber."

She said that the expert, the late Judge Antonio Cassese, pointed out that the Taylor trial would be

of "central importance to the success of the Special Court," as it is very important for it to "run smoothly and not falter."

The Special Court Registrar maintained that the Expert suggested further that the Court appoints a "distinguished African jurist".

"Today I am proud to say that, Justice Philip Waki in whose honor we are gathered here today represents the distinguished African jurist the Late Justice Cassese had envisioned."

Giving a background of the team the judge will be joining Registrar Binta Mansaray said the Appeals Chamber which "will be remembered both in

history and in precedent for breaking new grounds in international jurisprudence."

She recalled that it was this Appeal Chamber "which first decided appeals relating to the conscription, enlistment and use of child soldiers; forced marriage as a crime against humanity; and attacks directed against UN peacekeepers as a war crime."

Binta Mansaray said that the appointment of Justice Waki "is a sign that the Special Court has yet again taken a step closer to completing our mandate but there is still work to do."

Hoping that the judgment in the Taylor trial will be delivered

in the coming weeks she said "the Appeals Chamber will hear any appeal which may arise out of the Taylor trial."

President of the Court Jon Kamanda in welcoming the Alternate Judge said a lot has been said about the judge with regards to his qualification and this has made him fit into the "distinguished Chamber."

He said that the Chamber comprises of different people and from different nationality and the Chamber is supported by a formidable legal team adding that they hope to benefit from his "distinguished and academic wealth."

Justice Philip Waki took the

oath of office to serve "without fear or favour, affection or ill-will." He promised to serve "as judge of the Special Court of Sierra Leone honestly, faithfully, impartially and conscientiously."

Justice Philip Waki has been a judge of the Kenyan Court of Appeal since 2003, and from 1995 to 2003 served as a Judge of the High Court of Kenya. In 2008, he was named to head the Commission of Inquiry into Post-Election Violence in Kenya, also known as the "Waki Commission," which looked into the political violence committed during Kenya's 2007 elections.



## Justice Philip Waki of Kenya Sworn in as Alternate Appeal Judge

Justice Philip Nyamu Waki, a prominent Kenyan jurist, was sworn in on Monday as an alternate judge of the Special Court's Appeals Chamber.

Justice Waki made his solemn declaration before Registrar Binta Mansaray at a special ceremony held in the Special Court's courthouse in Freetown. Special Court President Justice Jon Kamanda then gave the closing address.

The solemn declaration was witnessed by Attorney-General and Minister of Justice Franklyn Bai Kargbo on behalf of the Government of Sierra Leone, and by Acting Head of Mission, UNIPSIL Berhanemeskel Nega representing the United Nations.

Justice Waki joins the Appeals Chamber in advance of any appeal which may follow judgement in the trial of

former Liberian President Charles Taylor. He was appointed jointly by the United Nations and the Government of Sierra Leone.

Justice Waki became a judge of the Kenya Court of Appeal in 2003, after having served as a Judge of the High Court of Kenya for nine years. Prior to 1995, he was in private law practice in Kenya since being called to the Bar in 1975. Justice Waki has worked actively for reform within the Kenyan judiciary. In 2008 he was named to head the Commission of Inquiry into Post-Election Violence in Kenya, also called the "Waki Commission," to look into the political violence committed during Kenya's 2007 elections.

In 2008 the International Commission of Jurists (Kenya) presented Justice Waki with the "Jurist of the Year Award."

## Statement by Special Court Registrar

Honorable Frank Kargbo, Attorney General and Minister of Justice of the Republic of Sierra Leone,  
Mr. Nega, Acting Head of Mission, UNIPSIL and Representative of the United Nations,

Honorable President of the Special Court Justice Jon Kamanda,

Honorable Justice George Gelaga-King,

Honorable Justice Philip Waki,

Prosecutor Brenda Hollis

Your Excellencies, and Representatives of the Diplomatic and Consular Corps,

Distinguished Ladies and Gentlemen:

It is my honour to welcome you today to the Special Court for Sierra Leone for the swearing-in ceremony of Honorable Justice Philip Waki as an Alternate Judge of the Appeals Chamber.

In December 2006, an Independent Expert recommended that the Court appoint an Alternate Judge for the Taylor trial, and an Alternate Judge for the Appeals Chamber. That expert, the late Judge Antonio Cassese, pointed out that the Taylor trial would be "of central importance to the success of the Special Court," and he stressed that "it is very important for it to run smoothly and not falter."

Judge Cassese suggested that the Special Court appoint a "distinguished African jurist". Today I am proud to say that, Justice Philip Waki in whose honor we are gathered here today represents the distinguished African jurist the Late Justice Cassese had envisioned.

Justice Waki, you are joining an Appeals Chamber which will be remembered both in history and in precedent for breaking new grounds in international

jurisprudence. It was this Chamber which first decided appeals relating to the conscription, enlistment and use of child soldiers; forced marriage as a crime against humanity; and attacks directed against UN peacekeepers as a war crime. It was also this Chamber which laid down the standard that defines Joint Criminal Enterprise.

Your appointment as Alternate Judge to the Appeals Chamber is a sign that the Special Court has yet again taken a step closer to completing our mandate-but there is still work to do. The trial judgement in the Taylor will be delivered in the coming weeks. The Appeals Chamber will hear any appeal which may arise out of the Taylor trial. The Judges may also be called upon to hear appeals from contempt trials pending in Freetown.

Justice Waki brings with him a wealth of experience that would

be beneficial to the Appeals Chamber. Justice Philip Waki has been a judge of the Kenya Court of Appeal since 2003, and from 1995 to 2003 served as a Judge of the High Court of Kenya. In 2008, he was named to head the Commission of Inquiry into Post-Election Violence in Kenya, also known as the "Waki Commission," which looked into the political violence committed during Kenya's 2007 elections.

Justice Waki received his Bachelor of Laws Honours degree in 1974 from the University of Nairobi, and was admitted to the Roll of Advocates in 1975, at which time he entered into private practice before the Kenyan courts.

As a lawyer and then as a judge, Justice Waki served in the Kenyan judiciary for nearly 40 years. He was known as a judicial reformer, and as a thoughtful scholar of international law.

The International Commission of Jurists (Kenya) presented Justice Waki with the "Jurist of the Year Award" for 2008

I could go on and on and on as there are so many good things to say about Justice Waki, but at this stage

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I will now proceed with the Solemn Declaration by Justice Philip Waki, in accordance with Rule 14(A) of the Rules of Procedure and Evidence of the

Special Court for Sierra Leone. May I invite you, Honorable Justice Waki to please join me at the rostrum and make your Solemn Declaration.

\*Recitation from Document\*

REGISTRAR instructs Justice Waki to 'sign here' and points at the document on the rostrum. Then, in leaving J. Waki at the rostrum,

REGISTRAR carries the signed document to the witnesses where they also sign the document.

REGISTRAR then places the document back on the rostrum and in front of J. Waki.

REGISTRAR: I will now invite the President of the Special Court, Honorable Justice Kamanda, to address the new Judge and welcome him to the Appeals Chamber.

REGISTRAR instructs Justice Waki to "please be seated."

President's Address

REGISTRAR: This brings us to the end of the Swearing in Ceremony. Thank you very much for honoring the Special Court with your attendance. I would like to invite our guests for refreshments upstairs.

EXIT

# In-depth: Child Soldiers Should they be prosecuted for their crimes?

Justice systems are struggling to determine whether children should be treated as victims or perpetrators (IRIN) - International human rights law meanders between the vague and the hazy when it comes to its stance on the age of criminal responsibility and what, if any, punishments should be imposed on child soldiers guilty of war crimes.

The godfather of human rights laws, the Geneva Conventions, oblige all member states to act on grave breaches of human rights, but does not stipulate the age of criminal responsibility.

Robert Young, deputy permanent observer and legal adviser to the International Committee of the Red Cross (ICRC) based in New York, told IRIN international humanitarian law (IHL) remains "silent" on the age of responsibility for perpetrators of grave human rights abuses, such as wilful killing, torture and inhumane treatment.

International Criminal Court (ICC) Article 26 prevents the court from prosecuting anyone under the age of 18, but not because it believes children should be exempt from prosecution for international crimes, "but rather that the decision on whether to prosecute should be left to States," says the Office of the Special Representative of the Secretary-General (SRSG) for children and armed conflict (Working Paper Number 3: Children and Justice During and in the Aftermath of Armed Conflict, September 2011). "[The] exclusion of children from the ICC jurisdiction avoided an argument between States on the minimum age for international crimes," it noted.

The age of criminal responsibility varies from country to country, from 7-16, but the bar is most commonly set at 14.

Although IHL does not set a minimum age for criminal responsibility for international crimes, it is argued that a yardstick has been laid down for some form of indemnity through IHL's recognition that recruitment of child soldiers under 15 was a war crime.

The Children and Justice During and in the Aftermath of Armed Conflict report says: "If a child under the age of 15 is considered too young to fight, then he or she must also be considered too young to be held criminally responsible for serious violations of IHL while associated with armed forces or armed groups."

"Children are often desired as recruits because they can be easily intimidated and indoctrinated. They lack the mental maturity and judgment to express consent or to fully understand the implications of their actions... and are pushed by their adult commanders into perpetrating atrocities," the report said.

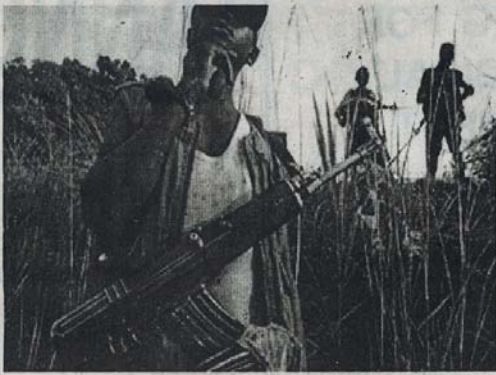
That children should be held accountable for their crimes during conflicts was acknowledged by the report, but "more effective and appropriate methods, other than detention and prosecution are encouraged, enabling children to come to terms with their past and the acts they committed."

The report said child soldiers should not be prosecuted "simply for association with an armed group or for having participated in hostilities... There are instances where children are accused of crimes under national or international law and are prosecuted before a criminal court. Prosecution of a child should always be regarded as a measure of last resort and the purpose of any sentence should be to rehabilitate and reintegrate the child into society."

## Victims and perpetrators

The International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) did not cite a minimum age for criminal responsibility, but no one under 18 appeared before the tribunals. The Statute of the Special Court for Sierra Leone (SCSL) provided the court with jurisdiction over any person above 15, but the court's prosecutor decided against indicting children for war crimes because of their dual status as both victims and perpetrators.

If minor children who have committed serious war crimes are not prosecuted, this could be an incentive



for their commanders to delegate to them the dirtiest orders, aiming at impunity

It may appear a grey area easily resolved by providing indemnity for crimes committed by child soldiers under the age of 15, but Radhika Coomaraswamy, SRSG for children and armed conflict, noted - in a 2010 article for the International Journal of Children's Rights: The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification - that such a provision could be perversely used.

"If minor children who have committed serious war crimes are not prosecuted, this could be an incentive for their commanders to delegate to them the dirtiest orders, aiming at impunity. For this reason the ICC and SCSL focus strongly on those persons most responsible for human rights and IHL violations and apply the concept of command responsibility to political and military leaders," Coomaraswamy said.

Command responsibility does not necessarily remove individual culpability for serious human rights violations by lower ranks or subordinates, but "rather it traces liability back up the chain of command," said legal adviser to the ICRC Young.

When child soldiers become adults

Dominic Ongwen was about 10 when he became a soldier with the Lord's Resistance Army in the 1980s.

The ICC issued an arrest warrant for him in October 2005 for crimes against humanity, including enslavement of children. However, jurisdiction by the court does not extend to crimes committed by people under 18, and before 2002 when the Rome Statute entered into force. The crimes cited are for when Ongwen was an adult.

"Ongwen is the first known person to be charged with the same war crimes of which he is also a victim," the Justice and Reconciliation Project, a Ugandan NGO concerned with transitional justice, said in a 2008 field note entitled Complicating Victims and Perpetrators in Uganda: On Dominic Ongwen.

"[Ongwen and other child soldiers] represent precisely the kind of complex political victims who, if excluded from justice pursuits, could give birth to the next generation of perpetrators in Uganda; generations marginalized by the judicial sector and who have nothing to gain from citizenship and nothing to lose from war," the field note observed.

The Lubanga case

Tomaso Falchetta, Child Soldiers International (CSI) legal and policy adviser, told IRIN child soldiers should be viewed as victims and the NGO opposed their prosecution, as emphasis should be on the criminal responsibility of the adult recruiters. CSI "does not advocate for a cut-off point [for the prosecution of child soldiers], as it is a difficult issue."

The first person to stand trial at the ICC for enlisting children under 15 was former Democratic Republic of Congo (DRC) warlord Thomas Lubanga. His trial at The Hague is nearing completion after he allegedly recruited underage children into the Patriotic Forces for the Liberation of the Congo (FPLC) during the conflict in Ituri, a district in the eastern DRC, between 2002 and 2003.

An international humanitarian law expert, who declined to be identified, told IRIN Lubanga's case was "tremen-

dously important" as "it will make others pause and think... Every rebel leader must be aware of this case." Falchetta said it was "difficult to provide an empirical judgement on that [Lubanga's ICC prosecution being a deterrent]", and rather that accountability needed to be enforced at the national state level to discourage the continued use of child soldiers.

The former DRC president, Laurent Kabila, said in 2000 the armed forces would demobilize all child soldiers but a year after he made the commitment, four DRC child soldiers aged 14-16 were granted clemency, after death sentences imposed by a military tribunal led to international condemnation from human rights organizations. A 14-year-old child soldier was reportedly executed the previous year.

Capital punishment for persons under 18 violates the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. The DRC is party to both international human rights treaties.

"The DRC laws may be there [the use of child soldiers is illegal], but when it comes to implementation, investigation and prosecution [of adult recruiters], we've seen little of that," Falchetta said.

The CSI said in an April 2011 report (entitled Report to the Committee on the Rights of the Child in Advance of the DRC initial report on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict) that "hundreds of children remain in the ranks of the national armed forces (Forces Armées de la République Démocratique du Congo) despite legal and policy obligations to release them and government pledges to do so."

Prosecution of a child should always be regarded as a measure of last resort and the purpose of any sentence should be to rehabilitate and reintegrate the child into society

Laws of war

Matthew Happold of Hull University in the UK said in 2005 paper entitled The Age of Criminal Responsibility in International Criminal Law there were "good reasons" for regulating criminal responsibility of international crimes through international law as they were "often distinguished from crimes under national law because they transcend national boundaries and are of concern to the international community."

He said, in the paper presented at the Hague Academic Coalition's conference on international criminal responsibility, that from the perspective of a defendant, "it would seem wrong for an individual's liability under international law to depend upon the place of prosecution... States are obliged to prosecute and punish offenders. Permitting States to decide their own age of criminal responsibility would allow them to determine the scope of their international obligations."

Child soldiers, like any other combatants are subjected to the Nuremberg principle that holds: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him."

ICC's Article 33 determines that acting on orders from superiors was not a defence of criminal responsibility but there are mitigating circumstances, and among them, is that a person may be relieved from prosecution if they did not know the order was unlawful.

However, the commission of "manifestly unlawful" crimes, such as genocide or crimes against humanity cannot be mitigated.

Young said the "so-called 'defence of superior orders'... the [Nuremberg] principle that 'I was just following orders' can no longer relieve any of us of criminal (and moral) responsibility for unconscionable acts we commit at the behest of others."

However, Rule 155 of Customary IHL, provided leeway, where "coercion and duress may provide exceptions... and one can quickly imagine how this principle might mitigate the responsibility of a child soldier who was forcibly recruited and forced, under threat of harm, to commit war crimes," ICRC adviser Young said.



## Sierra Express (Online)

Monday, 27 February 2012

### Justice Philip Waki of Kenya Sworn in as Alternate Appeal Judge

By: SEM Contributor on February 27, 2012.

Justice Philip Nyamu Waki (in photo), a prominent Kenyan jurist, was sworn in on Monday as an alternate judge of the Special Court's Appeals Chamber.

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In 2008 the International Commission of Jurists (Kenya) presented Justice Waki with the "Jurist of the Year Award."

#### **Below is the Registrar's address at today's swearing-in ceremony for Justice Philip Waki**

Honorable Frank Kargbo, Attorney General and Minister of Justice of the Republic of Sierra Leone,  
 Mr. Nega, Acting Head of Mission, UNIPSIL and Representative of the United Nations,  
 Honorable President of the Special Court Justice Jon Kamanda,  
 Honorable Justice George Gelaga-King,  
 Honorable Justice Philip Waki,  
 Prosecutor Brenda Hollis  
 Your Excellencies, and Representatives of the Diplomatic and Consular Corps,  
 Distinguished Ladies and Gentlemen:

It is my honour to welcome you today to the Special Court for Sierra Leone for the swearing-in ceremony of Honorable Justice Philip Waki as an Alternate Judge of the Appeals Chamber.

In December 2006, an Independent Expert recommended that the Court appoint an Alternate Judge for the Taylor trial, and an Alternate Judge for the Appeals Chamber. That expert, the late Judge Antonio Cassese, pointed out that the Taylor trial would be "of central importance to the success of the Special Court," and he stressed that "it is very important for it to run smoothly and not falter."

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May I invite you, Honorable Justice Waki to please join me at the rostrum and make your Solemn Declaration.

*Special Court for Sierra Leone, Outreach and Public Affairs Office*

United Nations News Centre  
Monday, 27 February 2012

### **UN-backed court for Sierra Leone appoints Kenyan jurist as appeals judge**



Justice Philip Nyamu Waki. Photo: Special Court for Sierra Leone

27 February 2012 –

The United Nations-backed court set up to try suspects indicted for war crimes in Sierra Leone today announced the appointment of Philip Waki of Kenya to serve as an alternate judge in its appeals chamber, in anticipation of any appeal that may follow the trial of former Liberian president Charles Taylor.

Mr. Waki took his oath of office today at the Special Court for Sierra Leone (SCSL) in the West African country's capital, Freetown, before the tribunal's registrar Binta Mansaray and the President of the court Jon Kamanda.

The Special Court is an independent tribunal established jointly by Sierra Leone's Government and the UN in 2002. It is mandated to try those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1996.

The trial of Mr. Taylor is continuing in a chamber of the court sitting in The Hague in the Netherlands for security reasons.

## The New Times (Rwanda)

Friday, 24 February 2012

### **ICTR Refers Another Genocide Suspect to Local Courts**

By James Karuhanga and Edmund Kagire

Prosecutors in Kigali yesterday welcomed a decision by the Tanzania-based International Criminal Tribunal for Rwanda (ICTR) to defer the case against Fulgence Kayishema to Rwanda.

The suspect is still at large.

On Wednesday, the Tribunal ruled that in case he is arrested, he should be returned to Rwanda to face trial. Kayishema is the former head of the judicial police in Kibuye.

The court order came after the Prosecution convinced the tribunal that the fugitive would get a fair trial since Rwanda has made the presumption of innocence part of its statutory criminal law, and that the accused would be detained in conditions that comply with required international standards.

"The referral of this case shall not have the effect of revoking the previous orders and decisions of this Tribunal in this case, including any protective measures for witnesses previously imposed," ruled the tribunal.

It therefore ordered the ICTR Prosecution to hand over to the Prosecutor General of Rwanda, "as soon as possible and not later than 30 days after this decision has become final, the material supporting the indictment against the accused and all other appropriate evidentiary material in the possession of the Prosecution".

John Bosco Siboyintore, the head of the Genocide Fugitives Tracking Unit (GFTU), yesterday told The New Times:

"We are very happy for the development after the referral of Jean Uwinkindi (another top Genocide suspect)."

Last year, the ICTR referred the first suspect, Uwinkindi, to Rwanda for trial.

"Kayishema Fulgence is still at large but at least a ruling has been made on which country will handle his case once he is arrested; in this regard the High Court of Rwanda," said Siboyintore, who is also a national prosecutor.

"This emphasises the trust that the tribunal has in our domestic jurisdiction in dispensing justice fairly. It will be a legal precedent for other countries to extradite Genocide fugitives to be tried in Rwanda, and have less burden and financial constraints to try them in Europe."

Siboyintore noted that it was "extremely expensive" to have the cases tried outside Rwanda seeing that in some countries where trials have taken place, it took the countries "millions of dollars."

"We are very happy with this ruling and my appeal to both Rwandans and foreigners is to give us information leading to his arrest, as there is a US\$5 million bounty on his head by the US Government to whoever will give valuable information that will lead to his arrest," Siboyintore added.

In another case, the defence for former Rwandan Planning Minister Augustin Ndirakobuca on Wednesday closed its case after calling 35 witnesses before the ICTR. His trial started on September 22, 2009.

### **Uwinkindi transfer delays**

Meanwhile, a pending decision by the Appeals Chamber of the ICTR is delaying the transfer of Genocide suspect Jean Uwinkindi, which was expected to take place this week.

Uwinkindi last month petitioned the tribunal to reconsider its decision to refer his case to Rwanda, which saw the chamber place an interim order on January 26 delaying his transfer.

Uwinkindi's lawyers want him to remain in the ICTR custody until an operational monitoring mechanism by the African Commission on Human and People's Rights (ACHPR), as previously ordered by Trial Chamber, is put in place.

But the ICTR Prosecutor, Hassan Boubacar Jallow, asked the chamber to reject the application saying it was procedurally and substantively flawed.

The transfer was expected to take place not later than yesterday but, according to Roland Amoussouga, the ICTR Spokesperson, the transfer has again been delayed pending the decision of the appeals chamber.

"As you might be aware, Uwinkindi filed an application to review the decision of referral back to Rwanda. An interim order was put in place halting the transfer until such a time when the chamber has looked into the concerns raised by his lawyers.

"We are all waiting for the appeals chamber to pronounce itself on what next. In principle, this is the first time ever for such a development to take place at the ICTR. This is something that cannot be rushed until everything is looked into," Amoussouga told The New Times.

Amoussouga said that when the Chamber pronounces itself, the ICTR registrar will go ahead to file for a transfer from the ICTR custody.

"This is a judicial matter subject to recourses. Even someone who has been sentenced to life or death is given an opportunity to ask the court to review the final ruling and reconsider where possible," he said.

The former clergyman was born in 1961 in the former Kivumu commune, Kibuye prefecture. He is charged with genocide, conspiracy to commit genocide, crimes against humanity and extermination, according to the ICTR indictment.

A decision authorising the transfer of Uwinkindi's case had been confirmed by the Appeals Chamber on December 16, 2011, after he challenged an earlier ruling.

ICTR Prosecutor Jallow said Uwinkindi failed to demonstrate any exceptional circumstances meriting reconsideration of the Chamber's decision.

He had expressed confidence that the Registrar would meet the deadline for the transfer, but is still remains unclear when Uwinkindi will be transferred to Kigali.

In an interview with The New Times, the Spokesperson of the National Public Prosecution Authority, Alain Mukularinda, said the delay was unexpected.

"We were informed that the transfer was halted because of the application by Uwinkindi himself and other people who insisted on issues of monitoring before the transfer is made."

"We are awaiting the Judges' decision but, otherwise, we are ready. We expect the process not to take long," he said.

However, the president of Ibuka, the umbrella group for Genocide survivors, Jean Pierre Dusingizemungu, said the latest twist is an attempt to delay justice.

"We are not surprised. There are people who will always do their best to halt such a process, including revisionists and Genocide deniers.

"It's a matter of time before justice takes its course. We have seen this happen in the past, but the case in point is the deportation of Léon Mugesera," he said.

Jean Uwinkindi was arrested in Uganda in June 2010 on counts of genocide, conspiracy to commit genocide and extermination as a crime against humanity.

He is alleged to have led several groups of armed killers targeting Tutsi civilians in multiple attacks that spanned the 100 days of the genocide between April and July 1994.

At that time, Uwinkindi was pastor in charge of the Pentecostal Church of Kayenzi in Nyamata, south east of Kigali.

Closely aligned with the extremist wing of the MRND party, Uwinkindi is alleged to have sought the assistance of gendarmes and the ex-FAR to exterminate the local Tutsi population.

He later fled in July 1994, after 2,000 corpses were discovered near his church.

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